



Victorian Equal Opportunity
& Human Rights Commission

2018 report on the operation of the Charter of Human Rights and Responsibilities

Published by the Victorian Equal Opportunity and Human Rights Commission, Level 3,
204 Lygon Street, Carlton, Victoria 3053. November 2019.

Contact us

| | |
|------------------------|--|
| Enquiry Line | 1300 292 153 or (03) 9032 3583 |
| Fax | 1300 891 858 |
| Hearing impaired (TTY) | 1300 289 621 |
| Interpreters | 1300 152 494 |
| Email | enquiries@veohrc.vic.gov.au |
| Website | humanrightscormission.vic.gov.au |

The Victorian Equal Opportunity and Human Rights Commission acknowledges and celebrates the Traditional Owners of the lands throughout Victoria and we pay our respects to their Elders, past and present.

This work, *2018 report on the operation of the Charter of Human Rights and Responsibilities*, is licensed under a Creative Commons Attribution 4.0 licence. You are free to re-use the work under that licence, on the condition you credit the Victorian Equal Opportunity and Human Rights Commission as author, indicate if changes were made and comply with the other licence terms. The licence does not apply to any branding, including the Victorian Equal Opportunity and Human Rights Commission logo.

Please give attribution to:

© State of Victoria (Victorian Equal Opportunity
and Human Rights Commission) 2019



Accessible formats

This document is available for downloading from our website at
humanrightscormission.vic.gov.au/resources in PDF and RTF.
Please contact the Commission if you require other accessible formats.

Disclaimer

This information is intended as a guide only. It is not a substitute for legal advice.
All information was correct at time of production.

Ordered to be published.

PP 89 Session 2018–19

ISBN 978-0-6480881-4-1

Printed on Ecostar

**2018 report on
the operation
of the Charter
of Human
Rights and
Responsibilities**

Letter to the Attorney-General

28 October 2019

Dear Attorney-General

On behalf of the Victorian Equal Opportunity and Human Rights Commission, it is with pleasure that I present to you our twelfth annual report on the operation of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (the Charter) covering the 2018 calendar year.

In accordance with section 41(a)(i) of the Charter this report examines the operation of the Charter, including its interaction with other statutes and the common law.

During 2018 there were no declarations of inconsistent interpretation made by the Supreme Court of Victoria. Accordingly, it has not been necessary for this report to examine matters under section 41(a)(ii) of the Charter. There was one override declaration passed by the Victorian Parliament, in relation to the *Corrections Amendment (Parole) Act 2018 (Vic)*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kristen Hilton', with a long horizontal flourish extending to the right.

Kristen Hilton
Victorian Equal Opportunity and Human Rights Commissioner

Contents

| | |
|---|------------|
| Foreword from the Commissioner | 2 |
| Chapter 1. Victoria’s human rights system | 5 |
| Chapter 2. Human rights culture | 10 |
| 2.1 Summary | 10 |
| 2.2 Why is a human rights culture important? | 12 |
| 2.3 What makes a positive human rights culture? | 14 |
| 2.4 How do we measure this? | 14 |
| 2.5 Pilot findings | 16 |
| 2.6 Reporting against the framework | 18 |
| 2.7 Full analysis and findings | 21 |
| 2.8 Growing a human rights culture in practice – case studies | 55 |
| Chapter 3. Human rights in law-making | 61 |
| 3.1 The role of the Charter in law-making | 61 |
| 3.2 Statements of compatibility | 62 |
| 3.3 Override declarations | 63 |
| 3.4 The Scrutiny of Acts and Regulations Committee | 67 |
| Chapter 4. Human rights in courts and tribunals | 74 |
| 4.1 The Charter as an effective litigation tool | 74 |
| 4.2 The right to a fair hearing and natural justice | 75 |
| 4.3 The right to equality and non-discrimination | 77 |
| 4.4 Cultural rights | 79 |
| Chapter 5. 2015 Review recommendations – implementation progress | 83 |
| 5.1 2015 Review | 83 |
| 5.2 Implementation progress – an overview | 85 |
| 5.3 Commission reflection on implementation | 86 |
| Appendices | 118 |

Foreword from the Commissioner

I am pleased to present the Victorian Equal Opportunity and Human Rights Commission's *2018 report on the operation of the Charter of Human Rights and Responsibilities*. This yearly report allows us to take stock of efforts to embed human rights in Victoria and monitor how decision makers use the Charter. We can then assess whether these efforts translate to meaningful protections for Victorians.



It is now 10 years since a key part of the Charter came into operation: the duty of public authorities to respect human rights and take them into account in their day-to-day work. It is in this everyday commitment to human rights that the Charter does its real work. When public sector workers, departments, local government, ministers and police know their human rights obligations, and place people's rights at the centre of decision-making, the Charter will have its greatest impact. It promises to build a more democratic and inclusive Victoria where our shared values of respect, equality, dignity and freedom are realised.

Victoria's journey – from establishing the Charter as law, to a state where rights are translated into the everyday business of government – requires vision and commitment over the long term.

In 2015 an independent review of the Charter¹ made 52 legislative and policy recommendations to improve the operation of the Charter and the protection it offers all Victorians. The Commission is concerned that most recommendations supported by the Victorian Government are yet to progress and urges the government to progress the necessary changes. The Commission reported on the lack of progress as part of the 2017 report on the operation of the Charter and little has changed since.

One exception has been the recognition in the review that building a culture of human rights is the most significant contributor to effectively promoting human rights. The Victorian Government supported recommendations to strengthen Victoria's culture of human rights and has worked with the Commission to help make this happen.

There are strong signs that the commitment to embedding a culture of human rights in Victoria is having a positive influence on decision-making. In this report the Commission has noted progress across public authorities, courts and tribunals.

The annual survey of the Victorian public sector, the People Matter Survey, showed a 15 per cent increase in the number of staff members who agree or strongly agree that they understand how the Charter applies in their work.

As efforts to strengthen our culture of human rights gain momentum, the Commission has been called upon to support public authorities in their efforts. Responding to these requests, between 2017 and 2018 the Commission worked collaboratively with a range of public, community and private organisations.

In 2018 the Commission developed a practical framework for identifying actions, indicators and measures to track improvements in human rights culture within public authorities. The starting point was to develop a common understanding of a human rights culture. In this report, the Commission is excited to present the human rights culture indicator framework for the first time. It provides a roadmap for public authorities to embed human rights and a transparent framework for the Commission to monitor the growth of human rights culture within organisations.

This year 35 public authorities participated in a pilot survey responding to questions against the framework. The results are outlined in this report. We found encouraging indications that many public sector staff know about and value human rights. There were strong signs the public sector is engaging community organisations in decisions that impact their rights.

We found potential areas for improvement. The results suggested opportunities for leaders to further model and promote human rights. We found scope to better support staff to embed human rights. The results also highlighted ways to better use tools like complaints policies to identify and implement improvements to human rights protection.

The Commission has used the framework to make some practical suggestions in this report on how authorities can improve human rights culture. The Commission will continue to build on the framework in the future to give authorities the tools they need to make this a strong part of their culture.

The real measure of these efforts will be how people's lives are improved by a strengthened culture of human rights. In this report, we heard from community organisations who reported positive experiences in dealing with public authorities. They reported many public sector staff were respectful and demonstrated understanding of human rights. Many community organisations suggested, however, that work is still needed, particularly with rights holders having a meaningful impact on the outcomes of public sector decision-making. I thank the public authorities and community organisations who engaged with the Commission to produce this report.

Within courts and tribunals, we observed the Charter's meaningful outcomes for individuals in the justice system. During 2018, the right of a person with a mental illness to give informed consent to electroconvulsive medical treatment was upheld.² In the matter of *Cemino v Cannan*,³ the Supreme Court determined the cultural rights of an Aboriginal young person must be considered when deciding whether his matter should be heard before Aboriginal elders in the Koori Court. The courts closely considered the right to a fair hearing for unrepresented litigants in the matter of *Harkness v Roberts*.⁴ Without the Charter, these outcomes would not have been realised.

Everyone has a role to play in making Victoria a fair, safe and inclusive place where everyone is respected and treated with dignity – and the Charter makes sure this is a part of our everyday business.



Kristen Hilton
Victorian Equal Opportunity
and Human Rights Commissioner

Endnotes

- 1 Michael Brett Young, 'From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006' (Report, 1 September 2015).
- 2 *PBU & NJE v Mental Health Tribunal* [2018] VSC 564 (1 November 2018).
- 3 [2018] VSC 535.
- 4 [2018] VSCA 215 (29 August 2018).

Chapter 1.

Victoria's human rights system

When the Victorian Parliament passed the *Charter of Human Rights and Responsibilities Act 2006*, it affirmed the importance of building understanding and respect for human rights across the Victorian community.

Human rights are a basic entitlement for every one of us, regardless of our background, culture, gender, age or what we believe. The Charter enshrines civil, political and cultural rights into Victorian law. Any limitation on these rights must be reasonable, necessary, justified and proportionate.

The rights protected under, and promoted by, the Charter reflect the fundamental values of freedom, equality, respect and dignity. These values are important for our wellbeing and our ability to live a dignified life where we are treated fairly and can make genuine choices in our daily lives.

The Charter underpins the relationship between the Victorian Government and the Victorian community. Human rights are also expressly included as a Victorian public sector value,¹ and Victorian public sector employment principle.²

Human rights protected by the Charter

| The Charter protects 20 basic rights and freedoms in Victoria | |
|---|--|
| Section 8 | The right to recognition and equality before the law |
| Section 9 | The right to life |
| Section 10 | The right to protection from torture and cruel, inhuman or degrading treatment |
| Section 11 | The right to freedom from forced work |
| Section 12 | The right to freedom of movement |
| Section 13 | The right to privacy and reputation |
| Section 14 | The right to freedom of thought, conscience, religion and belief |
| Section 15 | The right to freedom of expression |
| Section 16 | The right to peaceful assembly and freedom of association |
| Section 17 | The right to protection of families and children |
| Section 18 | The right to take part in public life |
| Section 19 | Cultural rights, including Aboriginal cultural rights |
| Section 20 | Property rights |
| Section 21 | The right to liberty and security of person |
| Section 22 | The right to humane treatment when deprived of liberty |
| Section 23 | Rights of children in the criminal process |
| Section 24 | The right to a fair hearing |
| Section 25 | Rights in criminal proceedings |
| Section 26 | The right to not be tried or punished more than once |
| Section 27 | The right to protection from retrospective criminal laws |

How the Charter works

The Charter operates by placing obligations on the three arms of government: the legislature (Victorian Parliament), the judiciary (courts and tribunals), and the executive (public authorities, including government departments, local councils and bodies that execute a public function).

Public authorities under the Charter include:

- public officials
- ministers of Parliament
- local councils (including councillors and council staff)
- Victoria Police
- statutory entities that have functions of a public nature
- entities that carry out functions of a public nature on behalf of a public authority
- courts and tribunals when they are acting in an administrative capacity.

The Charter creates a ‘dialogue model’ of rights – a constructive and continuous conversation about human rights – between public authorities, Parliament, the courts and the Victorian community. The model is designed to ensure human rights are considered in the development of laws and policies, in the delivery of public services, and in government decision-making. It encourages each part of our democratic system to play a role in protecting and promoting human rights.

Figure 1: The Charter’s dialogue of rights



The Charter protects human rights in three key ways by:

- acting as a ‘filter’ for new legislation. All new laws to be considered by Parliament require a statement of Charter compatibility. This statement scrutinises how the new law compares with rights established in the Charter and offers a justification for any limits on rights.³
- placing an obligation on courts and tribunals to interpret all Victorian laws, as far as is possible to do so consistently with their purpose, in a way that is compatible with human rights.⁴
- making it unlawful for a public authority to act in a way that is incompatible with a human right or, when making a decision, to fail to give proper consideration to a relevant human right.⁵ If a public authority acts incompatibly with human rights or doesn’t consider human rights when making a decision, people can:
 - make a complaint to the Victorian Ombudsman, who can investigate certain public authorities
 - bring legal proceedings against the public authority. There is no direct cause of action under the Charter. This means that people cannot make complaints directly to courts and tribunals for breaches of the Charter alone. The Charter only allows a person to raise human rights if they already have an existing ground under another law based on the same act or decision (such as an administrative law or common law ground).

The Charter gives the Commission a statutory right to intervene in legal proceedings where a question of law arises about the application of the Charter or the interpretation of another law in light of the Charter.⁶

While each arm of government is subject to checks and balances, ultimate sovereignty rests with the Victorian Parliament. Parliament can pass laws that are not compatible with human rights. If there is an inconsistency between a proposed law and a Charter right, the statement made to Parliament must explain the nature and extent of the incompatibility. In exceptional circumstances Parliament can enact legislation that overrides the Charter.⁷

Endnotes

- 1 The Victorian public sector values are Responsiveness, Integrity, Impartiality, Accountability, Respect, Leadership, and Human Rights <<https://vpsc.vic.gov.au/ethics-behaviours-culture/promoting-integrity/vps-values-and-employment-principles/>>.
- 2 The Victorian Employment Principles are Fair and Reasonable Treatment, Merit in Employment, Equal Employment Opportunity, Human Rights, Reasonable Avenue of Redress, and Career Public Service <<https://vpsc.vic.gov.au/ethics-behaviours-culture/promoting-integrity/vps-values-and-employment-principles/>>.
- 3 *Charter of Human Rights and Responsibilities Act 2006*, s 28.
- 4 *Ibid* s 32.
- 5 *Ibid* s 38.
- 6 *Ibid* s 40.
- 7 *Ibid* s 31; Victoria's Charter of Human Rights and Responsibilities: Lessons for the National Debate, Parl Paper No 46 (2006) <http://www.aph.gov.au/senate/-/-/link.aspx?id=A20FB46F919D44A68AF6D8CB54EE2076&_z=z>.

Chapter 2.

Human rights culture

2.1 Summary

Victoria was bold and visionary to enact the Charter in 2006. Australia lacked – and still lacks – a federal law protecting human rights, and only the Australian Capital Territory had an existing human rights law. Without a history of human rights protections, our values, education and work practices did not link directly to human rights.

Since the Charter became a Victorian law, our culture of human rights has strengthened significantly. But the law alone is not enough to grow our human rights culture. If Victorians are to have their human rights respected, protected and upheld, we must ensure the community, as rights holders, know their human rights and how to advocate for them. Those with responsibilities under the Charter, the three arms of government, must know their obligations and be held accountable for them.

This is particularly important in public authorities. This includes the public sector, police, local government, ministers, and often contractors of public authorities. These people make decisions daily, big and small, which affect the lives of Victorians. Their decisions are highly influenced by the culture of the organisation in which they work. If the organisation's culture is positive towards human rights, it is more likely Victorians will enjoy the human rights to which they are entitled.

As the Charter is now an established law in Victoria, the challenge for public authorities is how to build and strengthen human rights culture.

An organisation has a positive human rights culture if it has a pattern of shared attitudes, values and behaviours that influence policy making, decisions and practices to uphold human rights.

Using expert advice from PwC, extensive consultation and our own experience, the Commission has determined that six influences within an organisation ensure a strong human rights culture.

1. **Engaged leadership:** Formal and informal leaders are committed to human rights and the Charter.
2. **Attitudes and values of employees:** Employees value human rights and are encouraged to act consistently with human rights.
3. **Transparency and accountability:** Organisations understand good human rights practice and comply with human rights reporting mechanisms.
4. **Community engagement and participation:** Community participation informs key work and the community can easily access the organisation's services.

5. **Operational capability:** Staff have the knowledge, skills and necessary resources to act compatibly with human rights and the Charter.

6. **Systems and processes:** Organisational policies, processes and tools embed human rights and the Charter.

We developed a human rights culture indicator framework to measure the existence of these influences and offer a road map to support public authorities to apply the Charter and grow their human rights culture. The framework offers guidance on actions, indicators and measures for a positive human rights culture.

For this report, we tested the framework with 35 public authorities. We appreciate the authorities engaging in the pilot with openness and willingness to test the application of the system. We note that the pilot necessarily involved asking questions which had not been posed in surveys before, so not all had set their data collection systems to provide the information sought. With these provisos in mind, we found positive results for:

- attitudes and values of employees
- community engagement and participation
- transparency and accountability

We found potential scope for councils and large agencies to improve:

- engaged leadership
- operational capability
- systems and processes

We have taken the opportunity in this report to provide some practical tips on how the framework can be applied to implement tools to make these improvements.

We also sought feedback from participating authorities on the survey itself.

This showed us some areas to improve its operation in future years.

This included assessing:

- survey length (46 questions)
- guidance for responding on behalf of larger organisations
- guidance on potential data sources

In coming years, the Commission framework will be used to provide tools for public authorities to help put a healthy human rights culture into practice.

We also plan to widen the measurement of the framework to a larger range of authorities. This will assist to provide an evidence base for public authorities to make informed decisions about how to embed a culture of human rights, address areas in need of improvement and allocate resources to grow a human rights culture.

2.2 Why is a human rights culture important?

We know cultural change involves more than simply making practices more compliant with human rights standards and laws. It requires addressing underlying attitudes and values that influence behaviour, and moving to a culture where human rights are considered and prioritised in everyday business.

In 2017, the public sector, through the Victorian Secretaries' Board, committed to strengthening Victoria's human rights culture. In 2018 the Board reaffirmed its commitment to human rights education across the Victorian public sector. It has supported the Commission and Human Rights Unit of the Department of Justice and Community Safety to work with public authorities in building a culture of human rights. This work has included:

- delivering Charter education and capacity building across the public sector under the Charter Education Program
- revising the Victorian Public Sector Guide
- developing a range of resources, including a Charter Quick Guide, to support education initiatives ¹
- developing a suite of six e-learning modules, made freely available through the Commission's website ²
- supporting the Charter Leaders Group, consisting of Deputy Secretaries and Assistant Commissioners from all Victorian government departments, the Victorian Public Sector Commission and Victoria Police, to lead tailored initiatives to embed a human rights culture in their organisations.

In addition, the Commission:

- is working with the Department of Education and Training to promote a human rights approach to diversity and inclusion in Victorian schools
- intervened in legal proceedings to act as an independent and expert advocate on interpretation and application of the Charter, to strengthen jurisprudence on the protection of human rights
- profiled the progress made by five public authorities in the 2017 Charter report, celebrating the work of these public authorities to grow their human rights culture.

The Commission has made it a strategic priority to support public authorities on their journey to embed a culture of human rights.

Benefits of a human rights culture

For government

- Builds relationship with the community
- Identifies problem areas
- Improves democratic legitimacy by demonstrating to the Victorian community a genuine commitment to human rights
- Connects Victoria with international efforts to translate human rights goals and standards into results for the people of Victoria
- Reinforces other work, for example, safety, equality, multiculturalism

For community members and advocates

- Assists government to make decisions that consider rights
- Establishes clear non-negotiable legal standards
- Strengthens cases where change is needed
- Empowers individuals
- Contributes to a fairer and more inclusive society
- Encourages community participation in decision-making

For public authorities

- Improves quality of service design, in particular for the most marginalised, excluded and disadvantaged in our community
- Improves decision-making by providing a legal framework to identify, assess and balance human rights against other rights and interests
- Helps manage organisational risks, such as litigation
- Builds reputation and credibility
- Creates a framework for solving problems

For staff

- Inspires staff
- Reconnects staff with core public service values
- Gives staff a framework to act lawfully and with a moral compass when dealing with people

2.3 What makes a positive human rights culture?

The Commission defines positive human rights culture as:

“ A pattern of shared attitudes, values and behaviours that influence the policy making, decisions and practices of government to uphold the human rights of all people.

2.4 How do we measure this?

In 2018, the Commission developed an indicator framework to help measure and report on a culture of human rights.

The framework assesses:

- **influences:** factors that determine whether a human rights culture is embedded
- **indicators:** activities that happen when a positive human rights culture exists
- **measures:** ways of tracking improvements in human rights culture.

For a full depiction of the indicator framework see Appendix A.

2.4.1 Influences and indicators

The Commission identified six key influences on a human rights culture and indicators that show whether they exist. These influences and indicators are described in the table on the next page.

| Influences on a human rights culture | Indicators of a positive human rights culture |
|---|--|
| <p>Engaged leadership</p> <p>Formal and informal leaders are committed to human rights and the Charter</p> | <ul style="list-style-type: none"> • Formal and informal leaders demonstrate their commitment to human rights and the Charter, both publicly and within their respective organisations. • Discussions on human rights are included at leadership forums (including at business and branch planning forums). • Executive performance review documents include metrics on human rights. |
| <p>Attitudes and values of employees</p> <p>Employees value human rights and are encouraged to act consistently with human rights</p> | <ul style="list-style-type: none"> • People feel safe to raise issues and call out problems. • The organisation is genuinely diverse and inclusive and reflects the communities it serves. |
| <p>Transparency and accountability</p> <p>Organisations understand good human rights practice and comply with human rights reporting mechanisms</p> | <ul style="list-style-type: none"> • The organisation understands what is required for “good human rights practice”. • The organisation knows what they have achieved and what still needs to be done to embed a positive human rights culture. • The organisation understands and complies with human rights reporting mechanisms (for example by electing to complete the Commission’s survey on human rights culture). |
| <p>Community engagement and participation</p> <p>Community participation informs key work and community can easily access public services</p> | <ul style="list-style-type: none"> • Community participation has informed key work (community contributes to the design of services) and feedback is regularly sought from the community. • Improvements and interventions are made based on community feedback. • Tools and information are available for community about their human rights. • The organisation has structured and formal reflection on accessibility. • A diverse cross section of community accesses services. • Complaint mechanisms are available and accessible to the community. |
| <p>Operational capability – knowledge and resourcing</p> <p>Staff have the knowledge, skills and necessary resources to act compatibly with human rights and the Charter</p> | <ul style="list-style-type: none"> • Victorian public sector staff understand the Charter and how to apply it in their work. • Relevant human rights days and achievements are articulated and celebrated. • The organisation has dedicated resources (time and funding) to embed human rights. • Champions or influencers of human rights are empowered and resourced. |
| <p>Systems and processes</p> <p>Organisational policies, processes and tools embed human rights and the Charter</p> | <ul style="list-style-type: none"> • The Charter is included in legal compliance frameworks. • The organisation embeds human rights into key processes and tools. • The organisation delivers available, accessible, adaptable, acceptable, inclusive and quality services. |

2.4.2 Ways of tracking improvement in human rights culture

The Commission measured the existence of the influences and indicators using:

- a survey of a sample of 35 Victorian public authorities. We included departments, small and large agencies, as well as local councils, in recognition that different types of authorities have different challenges to embed a culture of human rights. See Appendix B for a full list of participants
- the Victorian Public Sector Commission’s People Matter Survey, which included specific questions on whether and to what extent employees understand and are encouraged to value and support human rights
- case studies identified through the Commission’s education work with public authorities on the Charter
- in-depth interviews with community organisations that engage with Victorian public authorities. See Appendix C for a full list of participants.

2.5 Pilot findings

| Observations | |
|--------------|---|
| 1 | Overall, the pilot departments, agencies and local councils demonstrated a commitment to embedding a positive human rights culture. |
| 2 | Prioritising and funding of public sector activities to grow a human rights culture is producing tangible results in relation to attitudes and values of employees, community engagement and participation and transparency and accountability. |
| 3 | Potential areas for improvement, in particular for local councils and large agencies, are engaged leadership, operational capability and systems and processes |

2.5.1 Consolidated findings

| Influences | Pilot findings |
|---|--|
| <p>Engaged leadership</p> <p>Formal and informal leaders are committed to human rights and the Charter</p> | <p>Variable results</p> <p>Government departments and small agencies recorded high scores for engaged leadership. Local councils and large agencies recorded lower scores on average.</p> |
| <p>Attitudes and values of employees</p> <p>Employees value human rights and are encouraged to act consistently with human rights</p> | <p>Positive signs</p> <p>Government departments and small agencies recorded higher scores for attitudes and values of employees. Local councils and large agencies also scored well.</p> |
| <p>Transparency and accountability</p> <p>Organisations understand good human rights practice and comply with human rights reporting mechanisms</p> | <p>Positive signs</p> <p>Out of 37 public authorities that agreed to participate in the Commission's human rights culture survey, 35 completed the survey, representing a very high response rate of 95 per cent.</p> |
| <p>Community engagement and participation</p> <p>Community participation informs key work and community can easily access public services</p> | <p>Variable results</p> <p>Most organisations recorded higher scores for community engagement and participation. Community groups provided suggestions on how participation could be made more effective. Around half of public authorities reported providing tools and information to the community on rights and responsibilities under the Charter.</p> |
| <p>Operational capability – knowledge and resourcing</p> <p>Staff have the knowledge, skills and necessary resources to act compatibly with human rights and the Charter</p> | <p>Positive signs</p> <p>Local councils and large agencies recorded lower scores for operational capability. Government departments and small agencies recorded high scores.</p> |
| <p>Systems and processes</p> <p>Organisational policies, processes and tools embed human rights and the Charter</p> | <p>Variable results</p> <p>Local councils, large agencies, small agencies and government departments recorded low scores for systems and processes</p> |

2.5.2 Putting this into practice

The Commission will use the results of the pilot survey to inform the support it provides public authorities to put the indicator framework in place.

We have identified here some practical ways authorities can implement improvements to some of the areas highlighted in this survey.

For example:

To improve **engaged leadership**:

- use leaders to visibly promote human rights at staff forums
- celebrate human rights days within and outside the authority
- give staff practical examples of how to put human rights into practice.

To improve **community engagement and consultation**:

- record how public consultation has influenced and changed decisions
- provide accessible materials to the public about human rights relevant to their work
- make use of suggestions provided by community organisations for how to engage with community.

To improve **operational capability**:

- give specific staff members responsibilities and support to promote human rights
- include human rights impact assessments in project and policy templates.

To improve **systems and processes**:

- include the Charter in any organisational legal compliance frameworks
- have a publicly available complaints policy.

2.6 Reporting against the framework

2.6.1 Survey of authorities

The Commission engaged an independent research company, ORIMA Research, to assist in the development and conduct of the survey of public authorities.

The Commission has used the responses from the survey for the purposes of preparing this report. Results have been presented in aggregate form.

The Commission has also used the information from the survey to prepare individual report cards for each public authority. These are an opportunity for each authority to see where their organisation sits overall in terms of its human rights culture. The report cards can help identify areas where their organisation is performing strongly and where human rights culture can be improved.

All survey responses relate to the 2018 calendar year.

2.6.2 Limitations of the framework and survey

Human rights culture is difficult to measure. The indicator framework is one way of moving public authorities along their journey to embed a culture of human rights. The Commission seeks to deliver the most accurate framework possible for tracking improvement in human rights culture, based on our expertise, research and consultation. However, the Commission acknowledges that the indicator framework may evolve over time as we evaluate and refine it based on learnings and practice.

The Commission also notes that while the results in this report are drawn from a variety of sources, a key data source measured against the indicator framework this year was the survey of public authorities. Relevantly, this year, being the first year the Commission has run the survey, several public authorities did not have systems set up to reliably respond and accurately collect each data source requested by the Commission. The piloted public authorities are now aware of the types of data we expect them to track in order to respond to our human rights culture survey in future years.

Finally, the Commission chose to survey a relatively small number of public authorities this year:

- 10 local councils
- 10 small agencies
- eight large agencies
- seven government departments or department divisions.

See Appendix B for the list of participating public authorities in each category.

The Commission plans to increase the number of participating public authorities in the future.

2.6.3 Presentation of research findings

Percentages presented in the report are based on the total number of valid responses made to the question being reported on. In most cases, results reflect those for respondents who had a view and for whom the questions were applicable. Percentage results throughout the report may not add up to 100 per cent due to rounding.

In terms of interviews, the following terms used in the report provide a qualitative indication and approximation of size:

- most – findings that relate to more than three quarters of the research participants
- many – findings that relate to more than half of the research participants
- some – findings that relate to around a third of the research participants
- a few – findings that relate to less than a quarter of research participants.

2.6.4 Our approach to scoring

Results have been summarised via the use of composite measures. These combine results of related questions under each influence on a human rights culture to provide a score. Scores are calculated through a points-based approach. Respondents are awarded points based on the answers they provided. The score is the total points awarded transformed to a 100-point scale.

For example, a score of 0 indicates no public authorities reported conducting any of the items used to measure performance in a particular influence on a human rights culture. A score of 100 indicates all public authorities surveyed conducted all items.

See Appendix D for full details of the scoring scheme.

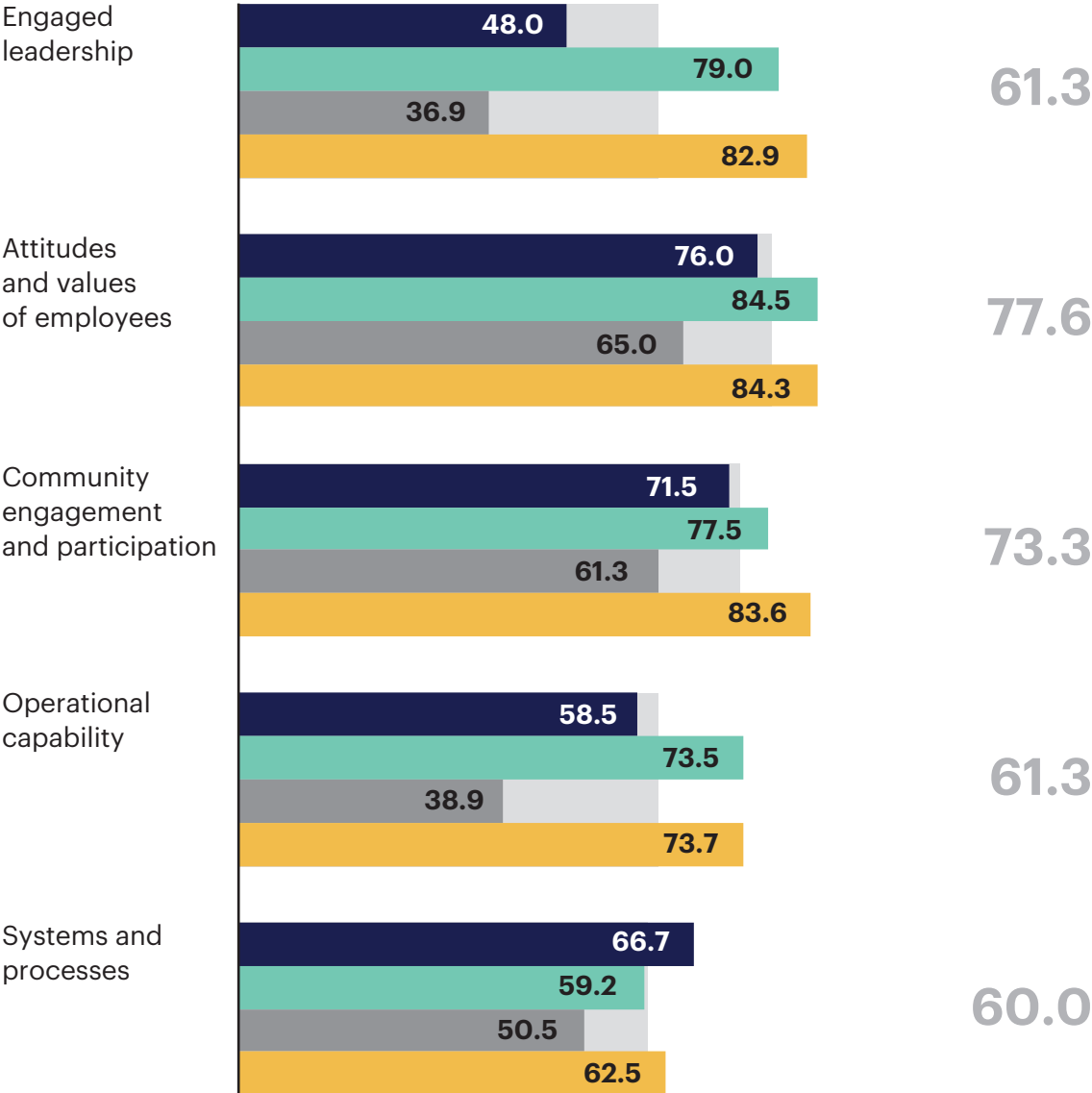
2.7 Full analysis and findings

2.7.1 Snapshot of overall results

Figure 2 shows the average performance across all participating public authorities in relation to each influence on a human rights culture, by category (the combined point score of public authorities in each of the four categories) and overall (the combined point score of all 35 participating public authorities).

Figure 2: Overall index scores³

(Base: all respondents)



- Overall (n=35)
- Local councils (n=10)
- Small agencies (n=10)
- Large agencies (n=8)
- Government departments (n=7)

2.7.2 Engaged leadership

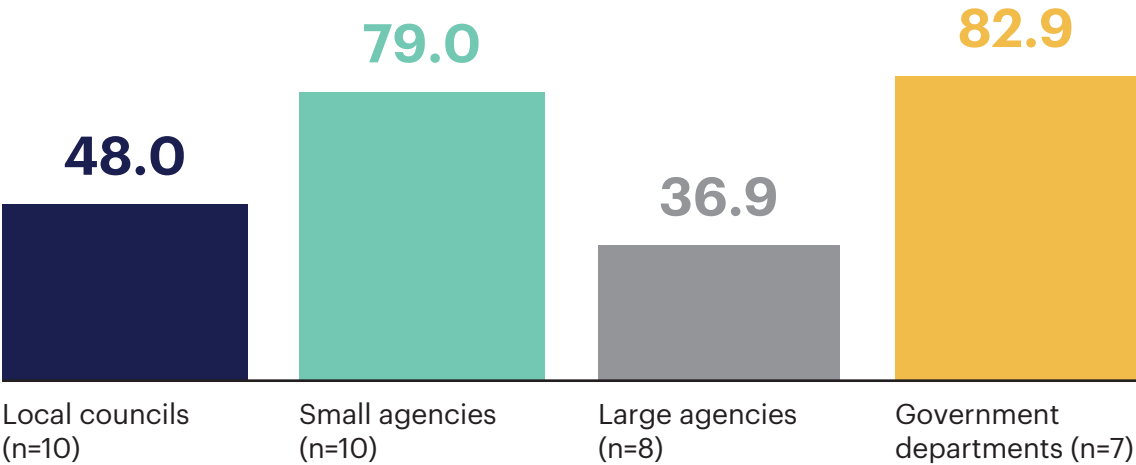
Leadership is a cornerstone of organisational culture. It is a critical influence in demonstrating internal and external commitment to human rights, creating an authorising environment for staff to meet their Charter obligations, role modelling human rights and values, and ensuring accountability for the Charter.

This section analyses the results of survey questions that relate to the engaged leadership cultural influence. See Appendix D for full details of the scoring scheme.

Government departments (82.9 points) and small agencies (79.0 points) recorded higher scores for leadership engagement overall. There is scope for improvement under this cultural influence across all public authorities (61.3 points).

Figure 3: Overall performance – Engaged leadership

(Base: all respondents)



A. Internal communications

Nearly all participating public authorities (91 per cent) indicated their leaders had promoted human rights in internal communications during 2018. Of these:

- 60 per cent indicated their leaders internally promoted their organisation’s obligations under the Charter
- 77 per cent internally promoted the importance of human rights to their work.

Leaders of government departments and small agencies were more likely to have promoted their organisation’s obligations under the Charter and the importance of human rights to their work (100 per cent and 80 per cent). Lower proportions of local council and large agency leaders promoted these aspects.

Examples

- Darebin City Council's Chief Executive Officer's weekly email to all staff acknowledged the tragic murder of student Aii Maasarwe in a location within their municipality, and highlighted that all people have the right to feel and be safe in public. The CEO noted that women particularly do not enjoy this right as they should.
- Peter MacCallum Cancer Centre's staff newsletter promoted its agreement with the Victorian Aboriginal Community Controlled Health Organisation, affirming its commitment to providing culturally safe care for Aboriginal and Torres Strait Islanders communities.
- The Department of Justice and Community Safety's Secretary sent an all-staff message celebrating International Human Rights Day and emphasising the importance of integrating human rights into the department's work.
- Court Services Victoria's leadership promoted Charter education via its intranet and linked these communications to the employee learning and organisational development platform.
- The Department of Premier and Cabinet held a Human Rights Week presentation, which emphasised that human rights is one of the Victorian public sector values and that officials should respect and promote human rights set out in the Charter.

B. External communications

Around 83 per cent of public authority leaders promoted human rights in external communications. All leaders of small agencies and government departments had promoted human rights in external communications. Leadership of large agencies were least likely to have promoted human rights in external communications.

Examples

- Department of Justice and Community Safety promoted a taskforce to address the over-representation of Aboriginal young people in the youth justice system.
- Port Phillip City Council promoted the Pride Centre, Pride March and the opening of the Rainbow Road.
- The Commission for Children and Young People added an 'Upholding Children's Rights' page to its website. It also updated its Aboriginal Inclusion Action Plan, which includes a commitment to ensuring its work is inclusive of the needs of Aboriginal children and young people, in accordance with the Charter.
- The Department of Premier and Cabinet Secretary joined the Male Champions of Change initiative, under which male leaders act to advance gender equity.
- The Victorian Public Sector Commission's Commissioner published *Getting to Work: Victorian public sector disability employment action plan 2018–2025*.

Most public authority leadership had promoted their organisation’s public sector obligations under the Charter (59 per cent) and the importance of human rights to their work (74 per cent) in external communications.

Government departments’ and small agencies’ leadership were more likely to have expressly promoted their organisation’s public sector obligations under the Charter externally. Government departments’ and small agencies’ leadership were also more likely to promote the importance of human rights to their organisation’s work in external communications.

C. Types of human rights

Different organisations tended to promote different rights, with these also differing depending on whether the promotion was internal or external.

Table 1: Human rights most commonly promoted in internal communications

(Base: All respondents)

| Local councils | Small agencies |
|---|--|
| <ul style="list-style-type: none"> • Protection of families and children (80 per cent) • Cultural rights (70 per cent) • Right to recognition and equality before the law (60 per cent) • Right to privacy and reputation (60 per cent) | <ul style="list-style-type: none"> • Right to recognition and equality before the law (70 per cent) • Right to privacy and reputation (70 per cent) • Cultural rights (60 per cent) • Right to freedom of thought, conscience, religion and belief (60 per cent) • Right to freedom of expression (60 per cent) |
| Large agencies | Government departments |
| <ul style="list-style-type: none"> • Right to recognition and equality before the law (63 per cent) • Cultural rights (50 per cent) • Right to freedom of thought, conscience, religion and belief (50 per cent) • Right to freedom of expression (50 per cent) | <ul style="list-style-type: none"> • Cultural rights (71 per cent) • Right to freedom of thought, conscience, religion and belief (71 per cent) • Protection of families and children (71 per cent) |

Table 2: Human rights most commonly promoted in external communications

| Local councils | Small agencies |
|---|---|
| <ul style="list-style-type: none"> • Cultural rights (80 per cent) • Protection of families and children (70 per cent) • Right to freedom of thought, conscience, religion and belief (50 per cent) • Right to taking part in public life (50 per cent) | <ul style="list-style-type: none"> • Right to privacy and reputation (80 per cent) • Right to recognition and equality before the law (70 per cent) • Cultural rights (60 per cent) • Right to freedom of thought, conscience, religion and belief (60 per cent) |
| Large agencies | Government departments |
| <ul style="list-style-type: none"> • Right to privacy and reputation (50 per cent) • Right to recognition and equality before the law (50 per cent) | <ul style="list-style-type: none"> • Right to privacy and reputation (71 per cent) • Right to freedom of expression (71 per cent) • Protection of families and children (71 per cent) • Cultural rights (71 per cent) • Right to freedom of thought, conscience, religion and belief (71 per cent) |

Reflections from community interviews

Community organisation participants rarely recalled communications explicitly mentioning the Charter. However, most indicated they had seen or heard communications promoting human rights and related principles such as:

- the right to privacy
- gender equality
- the rights of vulnerable groups in the community
- the right to self-determination
- the right to live free from violence.

Participants who had seen or heard communications generally felt positive about how human rights were incorporated and promoted. However, some felt human rights were occasionally included as an 'add-on' or in a tokenistic manner.

Generally, community organisation participants reported they did not take any direct action after seeing or hearing the communications. However, some participants commented the communications reinforced their commitment to uphold the human rights being promoted by public authorities in their own work.

Again, these results are encouraging and also show scope for improvement. Leaders in all public authorities (local councils and large agencies in particular) should externally promote a broader range of human rights protected under the Charter, to demonstrate to the public their commitment to human rights.

D. Executive's performance reviews

Around 41 per cent of public authorities included human rights metrics in at least some executives' performance review documents. The commitment to a human rights culture requires that leaders be held accountable for delivering this.

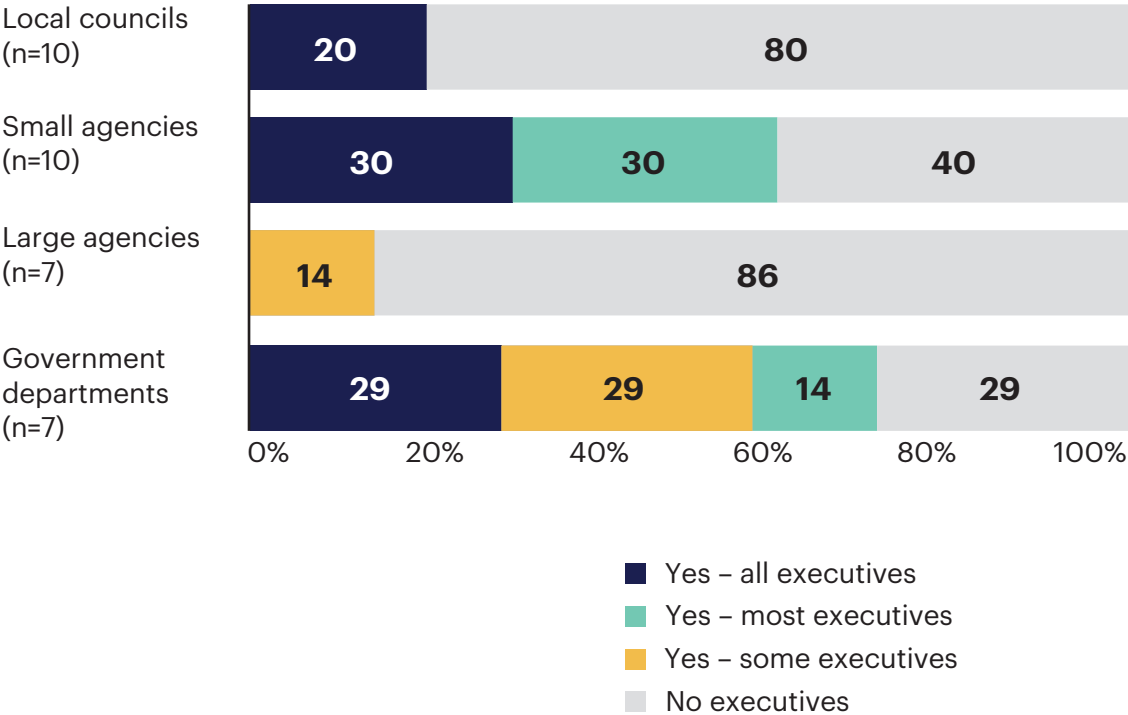
Government departments (71 per cent) were most likely to have human rights metrics included in executives' performance review documents, followed by small agencies (60 per cent). Local councils and large agencies were less likely (20 per cent and 14 per cent respectively).

Some examples of these metrics included:

- demonstrating how they uphold organisational values in their role (with human rights values incorporated into the organisational values)
- developing goals for each executive relating to how they will have an impact on Aboriginal engagement and employment
- implementing targeted initiatives to increase the diversity and inclusion of the team aligned with priority groups (for example, women, culturally and religiously diverse people, people with a disability, Aboriginal and LGBTI people).

Figure 4: Inclusion of metrics related to promotion and protection of human rights in executives' performance review documents

(Base: all respondents)



Tips on putting this into practice

Some ways the framework shows to improve engaged leadership are to:

- use leaders to visibly promote human rights at staff forums
- celebrate human rights days within and outside the authority
- give staff practical examples of how to put human rights into practice.

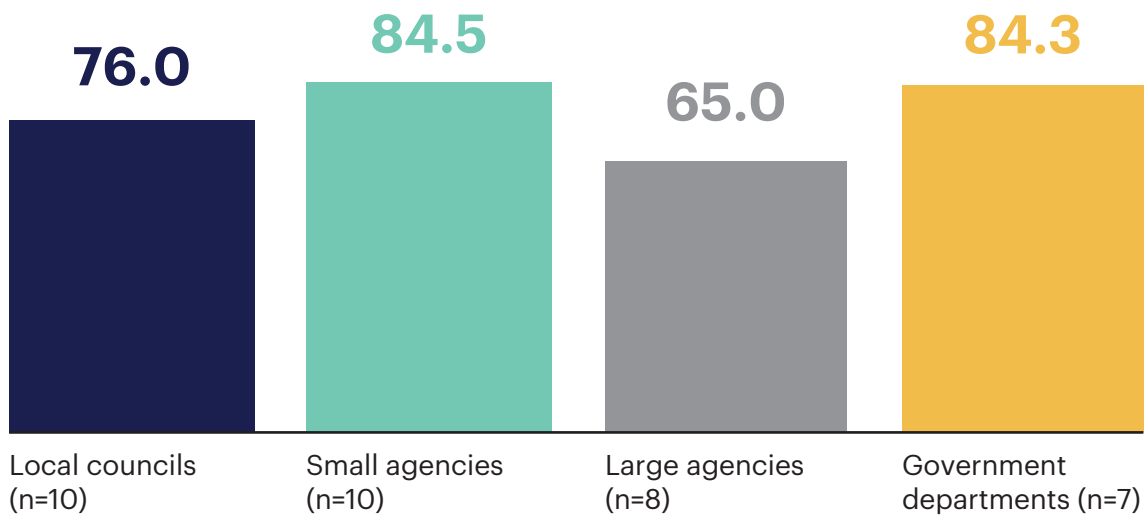
2.7.3 Attitudes and values of employees

Workplace values and attitudes are an important area of influence on workplace culture. Where employees feel safe to raise issues and call out problems, a positive human rights culture can grow.⁴ Having a genuinely diverse and inclusive workforce, where staff reflect the communities they serve, brings significant benefits,⁵ including to an organisation's human rights culture.⁶

Performance scores for employees' attitudes and values were relatively high across all organisation types. Government departments (84.3 points) and small agencies (84.5 points) recorded the highest scores. These results are very positive.

Figure 5: Overall performance – Attitudes and values of employees

(Base: all respondents)



A. Promotion of human rights among employees

Most public authorities (88 per cent) shared examples of behaviours or decisions upholding or promoting human rights at significant forums open to a majority of staff.

B. Organisational values

Public sector bodies must comply with the Victorian public sector values, which expressly include human rights. Many organisations also develop their own values statements, in addition to the public sector values.

The Commission surveyed public authorities that had their own values statement to see whether they included human rights. We found:

- 77 per cent had human rights expressly incorporated into organisational values
- government departments (100 per cent), small agencies (100 per cent) and local councils (80 per cent) were much more likely to have human rights expressly incorporated
- large agencies were less likely to include human rights (33 per cent).

C. Diversity and inclusion plan

Most public authorities (89 per cent) had a diversity and inclusion action plan that was internally available, which can positively influence the attitudes and values of staff. Local councils (100 per cent) and government departments (100 per cent) were slightly more likely to have an action plan compared to small agencies (80 per cent) and large agencies (75 per cent).

Public authorities had developed a range of diversity and inclusion plans, primarily:

- Aboriginal or reconciliation action plans
- disability action plans
- LGBTI action plans
- multicultural or cultural diversity action plans
- gender equity action plans.

D. Attitudes and values of employees according to the People Matter Survey

The framework also uses responses to the following statements in the Victorian Public Sector Commission's People Matter Survey as a measure. Responses from pilot participants were generally in line with responses throughout the public sector:

- "In my workgroup, human rights are valued." (83 per cent agreed across the whole Victorian public sector, up from 80 per cent in 2017 and 79 per cent in 2016).
- "My organisation encourages employees to act in ways that are consistent with human rights." (87 per cent agreed across the whole Victorian public sector, up from 80 per cent in 2017 and 78 per cent in 2016).

Public authorities can track their performance by reviewing their results from the Victorian Public Sector Commission's People Matter Survey questions: "In my workgroup, human rights are valued" and "My organisation encourages employees to act in ways that are consistent with human rights".

Reflections from community interviews

Community organisation participants had positive perceptions of the attitudes and values of public authority employees they engaged with. All participants indicated the employees they engaged with were professional and respectful overall, and most felt employees demonstrated a good understanding of human rights.

However, some participants noted that a few employees behaved in a manner inconsistent with human rights under the Charter.

2.7.4 Transparency and accountability

The Commission considers participation in the human rights culture survey a positive indication of transparency and accountability, as it demonstrates a willingness to participate in human rights reporting mechanisms and engage with the Commission to better understand what is required for good human rights practice.

Response rates for the pilot were high (35 organisations out of an original 37 invited to participate responded). The Commission plans to use this as a baseline and track improvement over time.

2.7.5 Community engagement and participation

Community engagement and participation is a core influence on human rights culture, where rights holders and duty bearers work together to improve human rights. Community participation should inform key work of public authorities and influence the outcome.

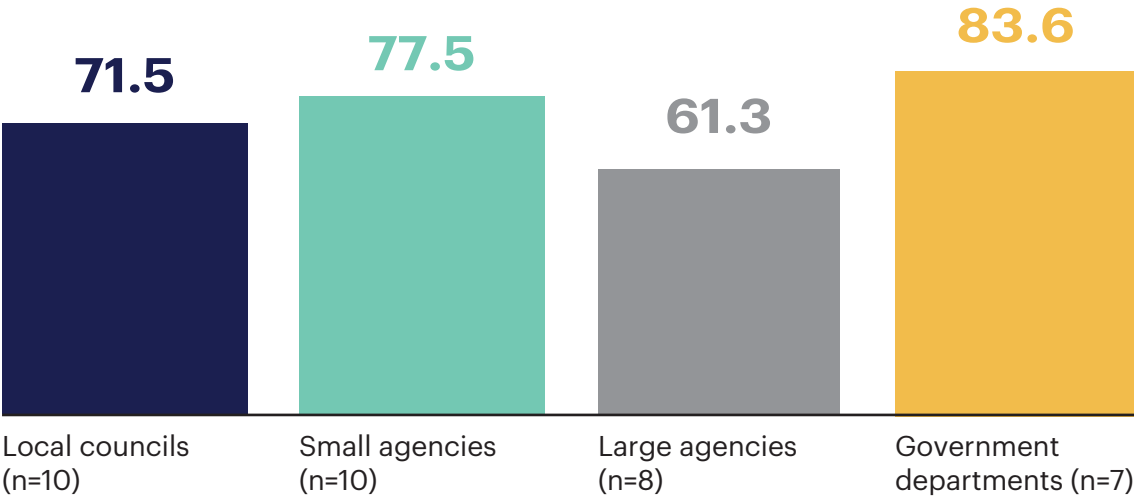
The regular feedback from community should be regular and shared within organisations to avoid duplication and isolation of information. This will ensure that key work and policy positions are informed by the most up-to-date community needs and perspectives. The Commission notes that community feedback may be received through a formal community engagement process, or public authorities may be approached directly by community groups from time to time with a view to influence their organisations' policies, procedures and practices by using the Charter.

Accessible tools and information about human rights and obligations should be made available for community.

All organisation types performed well on community engagement and participation, particularly government departments (83.6 points).

Figure 6: Overall performance – Community engagement and participation

(Base: all respondents)



The Commission notes that in 2018 there were only seven public submissions from community organisations to the Scrutiny of Acts and Regulations Committee, in relation to four Bills. Public submissions promote public accountability in law-making. A high number of submissions could indicate a culture in government where community members are engaged and invited to participate in the development of Victorian laws and policies. The Commission will track these results over time to identify trends.

A. Development of key work and policy positions

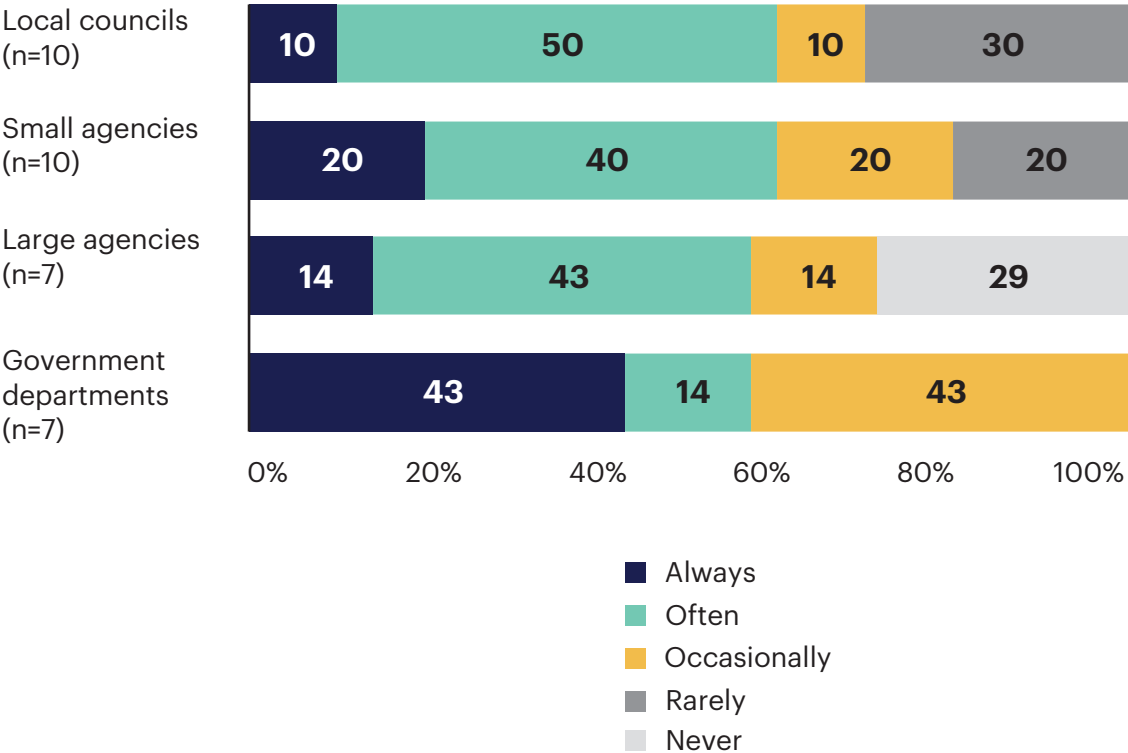
Nearly all public authorities (94 per cent) engaged with relevant community groups when developing key work and policy positions. Government departments were most likely to report ‘always’ engaging with relevant community groups (43 per cent) compared to other organisation types. Around 40 to 50 per cent of other organisations⁷ reported engaging with relevant community groups ‘often’.

Examples from public authorities of community engagement impacting key work or policies

- The Office of the Victorian Information Commissioner had regular engagement with its Youth Advisory Group to inform policy positions on privacy matters relating to young people.
- The Peter MacCallum Cancer Centre completed an Aboriginal and Torres Strait Islander cultural safety audit. The outcomes of this audit led to the establishment of the Aboriginal and Torres Strait Islander Advisory Committee and the making and development of a possum-skin cloak for Aboriginal and Torres Strait Islander patients to use during their treatment. The cloak is displayed in the hospital foyer when not being used by patients, contributing to a more culturally sensitive model of care and culturally safe environment.
- The Office of the Public Advocate's engagement with culturally and linguistically diverse groups enabled it to test translated fact sheets.
- The Department of Premier and Cabinet developed an African Communities Action Plan in partnership with the Victorian African community, with an initial focus on employment, education and health, underpinned by human rights.
- Golden Plains Shire Council sought input from its Disability Access and Inclusion Advisory Committee in the designs of a new community facility and council office building.

Figure 7: Frequency of engagement with relevant community groups when developing key work and policy positions

(Base: all respondents)



Reflections from community interviews

Most community organisation participants reported dealings with Victorian public authorities on at least a weekly basis. This engagement occurred in a range of contexts, primarily through:

- formal working or reference groups
- steering committees
- consultation processes, written submissions and public hearings
- advocacy
- ad hoc conversations through informal channels (for example, telephone and email).

All community organisation participants reported they had been asked to engage with public authorities as they developed key work and policy positions. The frequency of engagement varied from weekly to monthly, but most were happy with the level of engagement occurring.

The perceived impact of their engagement with public authorities was mixed. Most were able to provide examples of when their engagement had made an impact on the development of key work and policy positions. However, most were also able to provide examples of when their engagement had not been as effective.

More often community organisation participants felt an impact could be seen in the development of more specific key work, such as community programs, communications models and action plans for particular issues. In contrast, most felt it was more difficult to see any impact from their engagement in relation to broader policy development (for example, the Royal Commission into Family Violence).

Examples of community engagement provided by community organisations

- The Department of Health and Human Services engaged Aboriginal Housing Victoria to deliver the Aboriginal Housing and Homelessness Framework. Aboriginal Housing Victoria reported it had been given a high level of agency and independence in the development of the Framework, which ensures the development of the Framework is driven by the Aboriginal community.
- The Department of Education and Training asked the Association for Children with a Disability for its assistance in developing its annual student survey, with the aim of making the survey more inclusive for students with an intellectual disability. The Association for Children with a Disability felt its engagement played an important role in the development of the survey and made the survey more accessible for students with disability.

Instances where participants felt engagement was not particularly effective primarily occurred when:

- working group or ad hoc meetings were held *after* the majority of key work or policy development had already taken place. In these instances, most participants felt they were being ‘talked at’ during these meetings and were only being provided an opportunity to sign off on decisions already made. Some participants acknowledged time was often a key issue in these cases, and public authorities did not have adequate time to conduct a genuine consultation process.
- engagement occurred at different levels around the same issues. A few participants felt they were having the same conversation with multiple people at different levels of the organisation and the outcomes from each engagement were not being disseminated throughout the organisation.

B. Ongoing feedback about key work and policy positions

Nearly all (91 per cent) public authorities engaged with relevant community groups to obtain ongoing feedback on key work and policy positions, including 50 per cent who obtained feedback on at least a monthly basis.

Half or more local councils (50 per cent), small agencies (60 per cent) and government departments (57 per cent) engaged with relevant community groups on at least a monthly basis to obtain feedback on key work and policy positions during 2018.

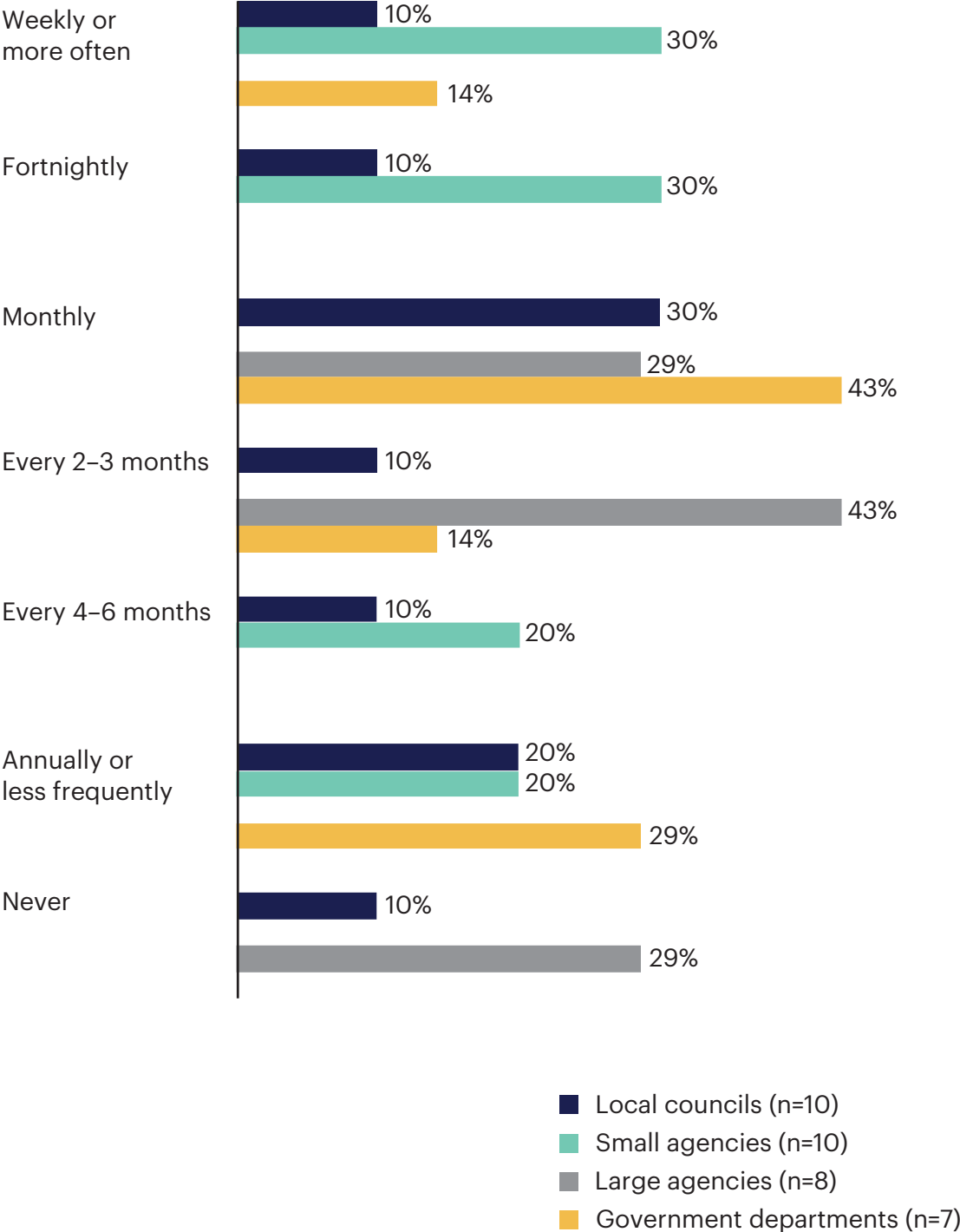
Large agencies were most likely to never (29 per cent) obtain ongoing feedback from community groups. This is a significant area for improvement.

“ The biggest message for me is how amazingly simple it is. We need to consider human rights in our decisions and be able to demonstrate we’ve done that.

– Anthony Murphy, Barwon Prison Operations Manager

Figure 8: Frequency of engagement with relevant community groups to obtain feedback on key work and policy positions

(Base: all respondents)



Reflections from community interviews

Some community organisation participants indicated they were asked to provide ongoing feedback on key work and policy positions after their implementation. Among participants who were asked to provide ongoing feedback, most felt this occurred in an informal manner (for example, feedback could be raised during a working group meeting but would not be a specific agenda item). Most participants felt feedback should be sought in a more formal process, as it was difficult to see whether informal feedback made any impact on the key work or policies. Additionally, community organisation participants generally felt public authorities should seek feedback more often than it was currently being sought.

C. Approaches by community groups

Overall, around 39 per cent of public authorities had been approached by community groups with a view to influence their organisation's policies, procedures and practices by using the Charter. Government departments (67 per cent) were most likely to have been approached.

Some examples of when community groups approached public authorities and used the Charter as a tool of advocacy related to:

- the Department of Justice and Community Safety's segregation of particular prisoner cohorts and treatment of particular prisoners
- the Registry of Births, Deaths and Marriages Victoria's initiatives to better enable Aboriginal and Torres Strait Islander peoples to register births and have access to their birth certificate
- Greater Geelong City Council, who found the Charter to be a useful tool to facilitate discussions between community representatives and the City as part of the City's Access and Inclusion, Multicultural and Kareenga Aboriginal Advisory Committees.
- the Department of Health and Human Services, Housing and Infrastructure's funding proposals for new housing and homelessness programs.

D. Tools and information

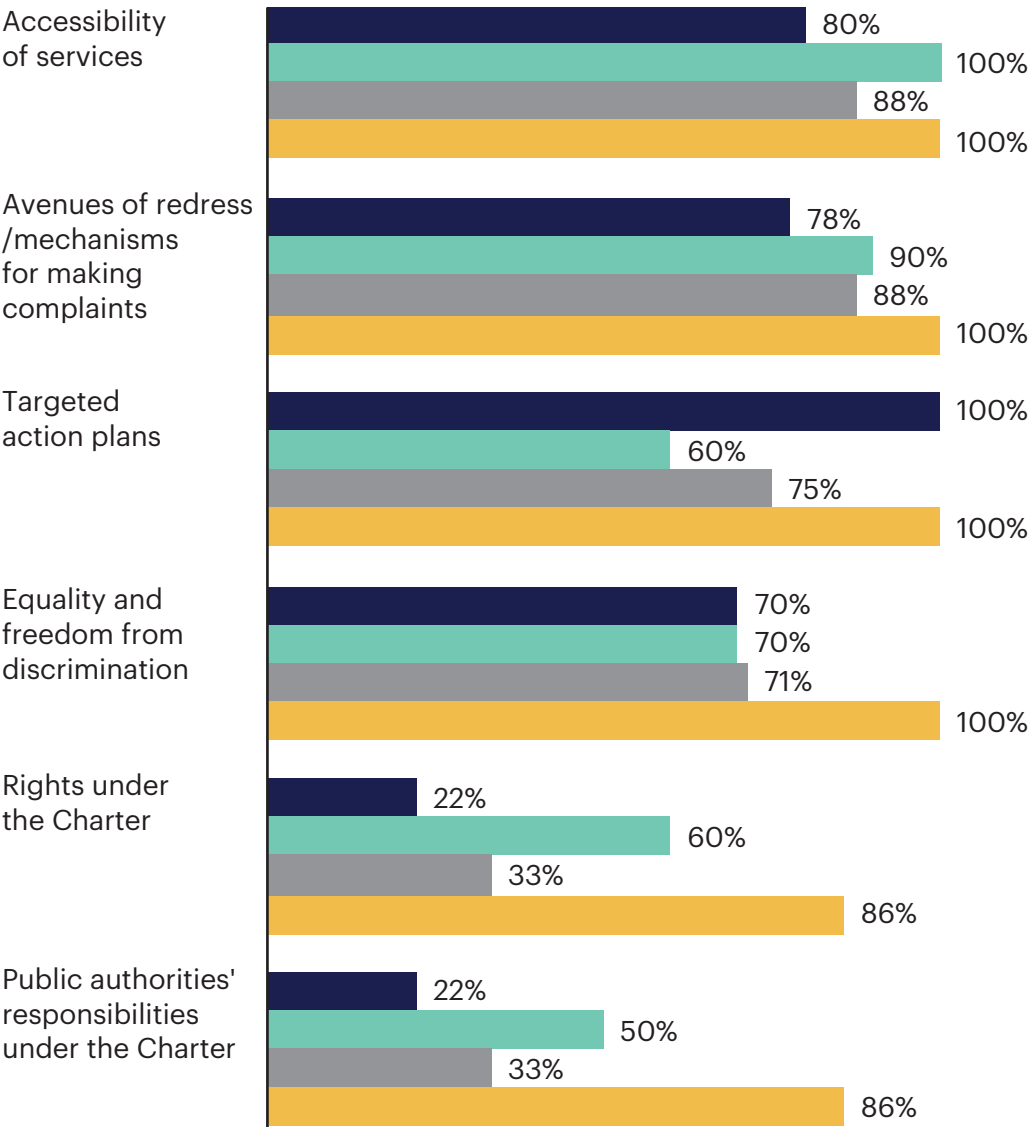
Most public authorities provided the Victorian community with tools and information about accessibility of services (91 per cent) and avenues of redress, including mechanisms for making complaints (88 per cent).

However, only around half of public authorities provided tools and information related to the community's rights under the Charter (50 per cent) and public authorities' responsibilities under the Charter (47 per cent).

9 shows the breakdown of tools and information provided around each aspect of the community's human rights by organisation type.

Figure 9: Tools and information about human rights provided to the community

(Base: all respondents)



- Local councils (n=10)
- Small agencies (n=10)
- Large agencies (n=8)
- Government departments (n=7)

Nearly all public authorities (97 per cent) used their website to provide tools and information about human rights to the community. Government departments reported higher use of pamphlets or brochures (100 per cent), posters (86 per cent), displays on premises (86 per cent) and in different languages (86 per cent) compared to other organisations.

Reflections from community interviews

Most community organisation participants felt unsure about whether the public authorities they engaged with made information about the Charter and human rights available to the community. Many believed the resources were available, but that public authorities did not necessarily promote this information to the community. One participant indicated public authorities provided them with information about human rights directly, which they in turn passed onto their community through displays in their offices and information in their newsletters.

All community organisation participants felt public authorities should make information about human rights available and promote it to the community. Participants provided a range of suggestions for how this information could be effectively communicated, including:

- promote information through community organisations and local councils
- use social media and community events to engage the community
- ensure information is culturally appropriate and in plain English.

Community organisation participants reported they typically referred members of the community to public authority resources relevant to the work they do, rather than resources about human rights in general. For instance, the Association for Children with a Disability referred community members to Disability Services Commissioner resources. A few participants indicated they referred members of the community to the Commission's website.

Most community organisation participants stated they sought information about human rights on an ad hoc basis (for example when preparing submissions or if a particular issue was raised by a community member). Participants reported they primarily sought information through an online search. However, a few participants noted they referred to the Commission's website.

Tips on putting this into practice

Some ways the framework shows to improve community engagement are to:

- record how public consultation has influenced and changed decisions
- provide accessible materials to the public, in a range of formats, about human rights relevant to the public authority's work
- make use of suggestions provided by community organisations for how to effectively engage with community.

2.7.6 Operational capability – knowledge and resourcing results

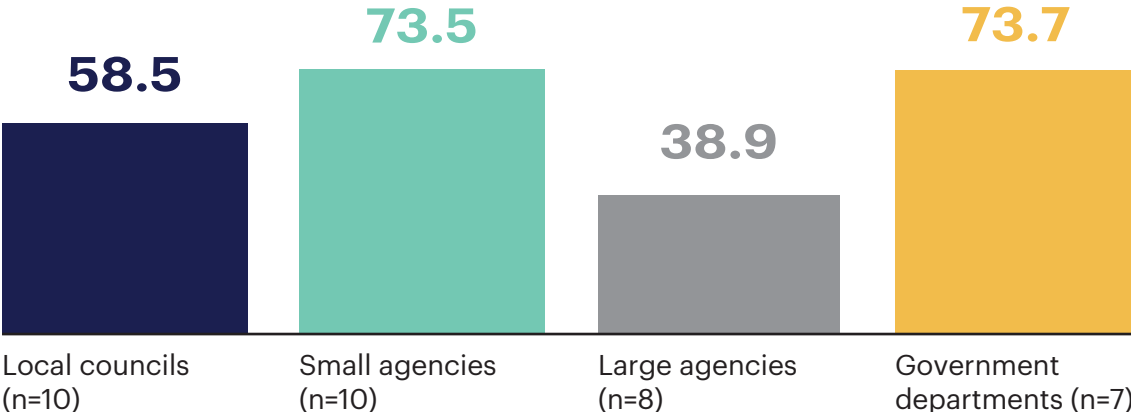
A further influence on a culture of human rights is operational capability, including knowledge and resourcing. Staff should know how the Charter applies to their work and have capability and skills to act compatibly with human rights. Human rights days should be celebrated, and achievements promoted.

Organisations need dedicated resources to build capacities. Human rights champions and human rights advisers can have a positive influence on an organisation’s human rights capability.

Government departments (73.7 points) and small agencies (73.5 points) recorded, on average, higher scores on operational capability.

Figure 10: Overall performance – Operational capability

(Base: all respondents)



A. Charter education

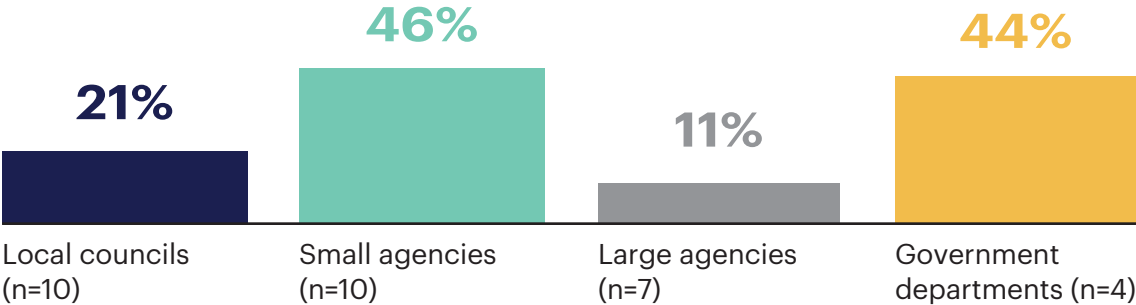
An average of 30 per cent of staff across all participating public authorities completed Charter education programs in the 2018 calendar year. A greater proportion of government department (44 per cent) and small agency (46 per cent) staff completed Charter education programs compared to local councils (21 per cent) and large agencies (11 per cent).

The Commission expects organisations to provide education on the Charter during induction of new staff, as well as ongoing professional development of staff commensurate with their role and duties. The Commission will track the percentage of staff educated on the Charter over time.

Examples of Charter education completed by staff comprised training delivered by the Commission and internally by the organisation. Training was delivered through a range of channels including face-to-face training, seminars, workshops and online modules.

Figure 11: Percentage of staff who completed Charter education programs in the 2018 calendar year

(Base: all respondents)



The Victorian Public Sector Commission’s People Matter Survey includes the question, “I understand how the Charter applies to my work”. The result to this question can indicate the level of knowledge and skills of staff in respect of the Charter.

In 2018, in response to the People Matter Survey, across the whole of the Victorian Public Sector 76.2 per cent agreed or strongly agreed to the statement, “I understand how the Charter applies to my work”. These results were a significant 15 per cent increase from the previous year, 61.2 per cent in 2017.

Regarding the Commission’s survey, 43 per cent of small agencies and 57 per cent of government departments confirmed their organisation increased in positive responses to the PMS statement. Conversely, one third (33 per cent) of large agencies reported results that were lower than the Victorian public sector average on this aspect.

B. Raising awareness of human rights

Nearly all public authorities (97 per cent) had raised awareness of human rights among staff in 2018, most commonly through celebrating significant human rights days (89 per cent). Examples includes International Women’s Day, White Ribbon Day, National Sorry Day, Pride March and Harmony Day. Many public authorities used a combination of channels such as internal communications campaigns, staff-wide events and newsletter articles to support and promote these celebrations.



Increased understanding of how the Charter works for VPS staff

Examples of how public authorities promoted human rights

- The Department of Health and Human Services, Community Services Operations conducted cultural competence training and invited guest speakers to raise awareness about the importance of cultural competency and safety.
- Court Services Victoria held numerous activities in support of human rights days, such as hosting morning teas, stories on its intranet, links to online human rights campaigns and e-learning modules.
- Port Phillip City Council participated in the 16 Days of Activism around family violence and lit up its town hall in rainbow colours in support of marriage equality.

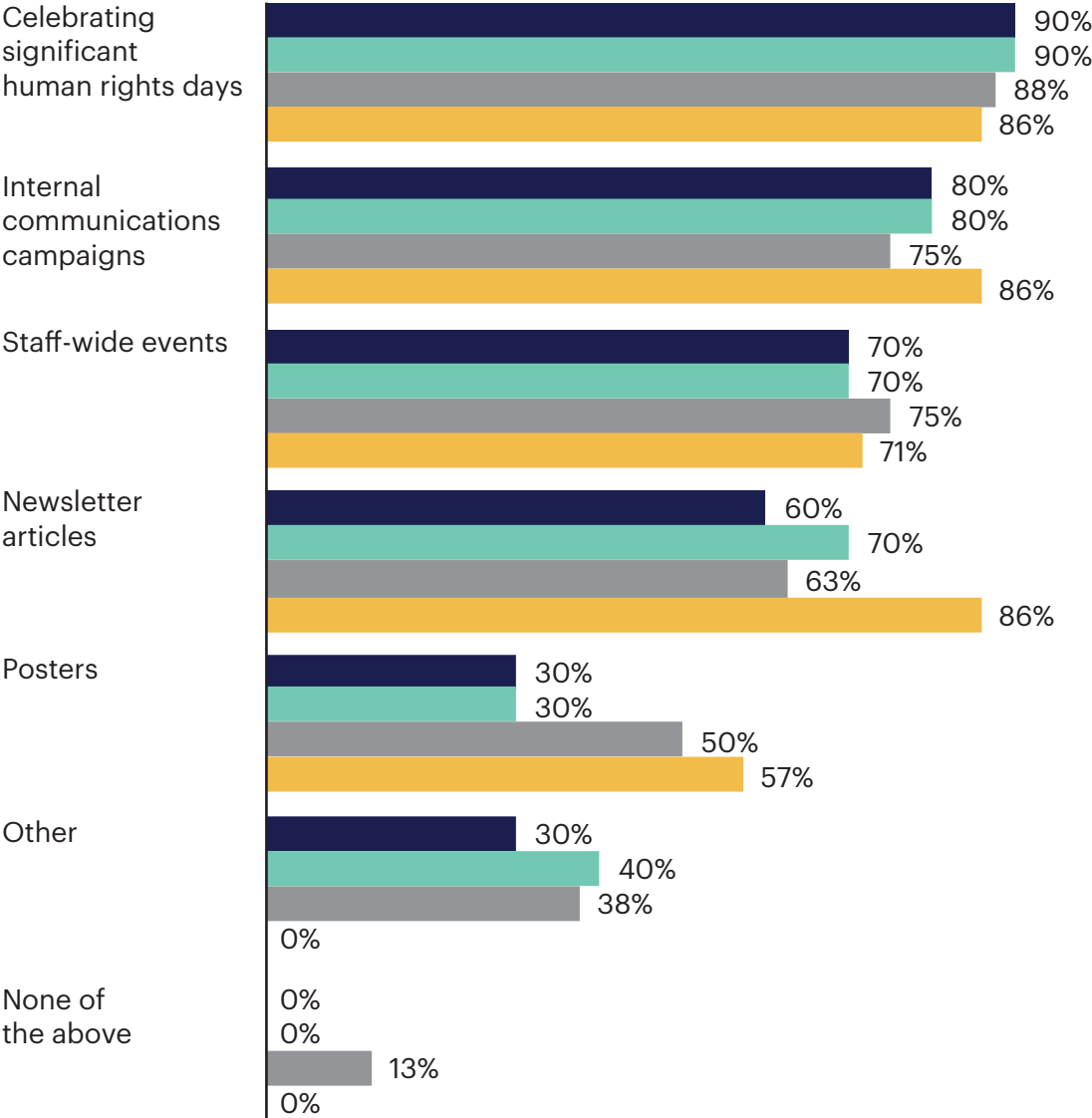
A small minority (13 per cent of large agencies) had not raised awareness of human rights among staff through any channels.

“ The Charter Education Program brought all departments together in a common cause to promote human rights.

– Victorian Public Sector Commission

Figure 12: Channels used to raise awareness of human rights among staff

(Base: all respondents)



- Local councils (n=10)
- Small agencies (n=10)
- Large agencies (n=8)
- Government departments (n=7)

C. Resources for embedding a positive human rights culture

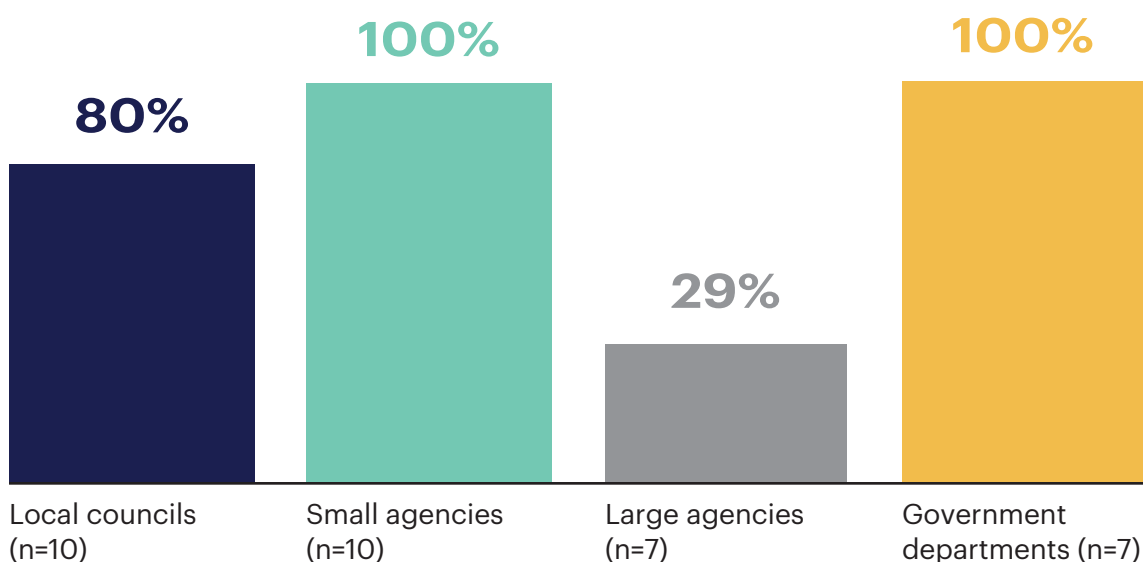
The majority (79 per cent) of public authorities had dedicated resources for embedding a positive human rights culture. Large agencies were least likely to have dedicated resources for embedding a positive human rights culture (29 per cent).

Examples of resources available included:

- funding for staff to undertake training and awareness raising activities
- allowance of time to consider and incorporate human rights in key work
- designated staff members responsible for promoting human rights
- strategies and guides that outline how human rights and the Charter are incorporated in their organisation's work.

Figure 13: Dedicated resources responsible for embedding a positive human rights culture

(Base: all respondents)



D. Professional development activities

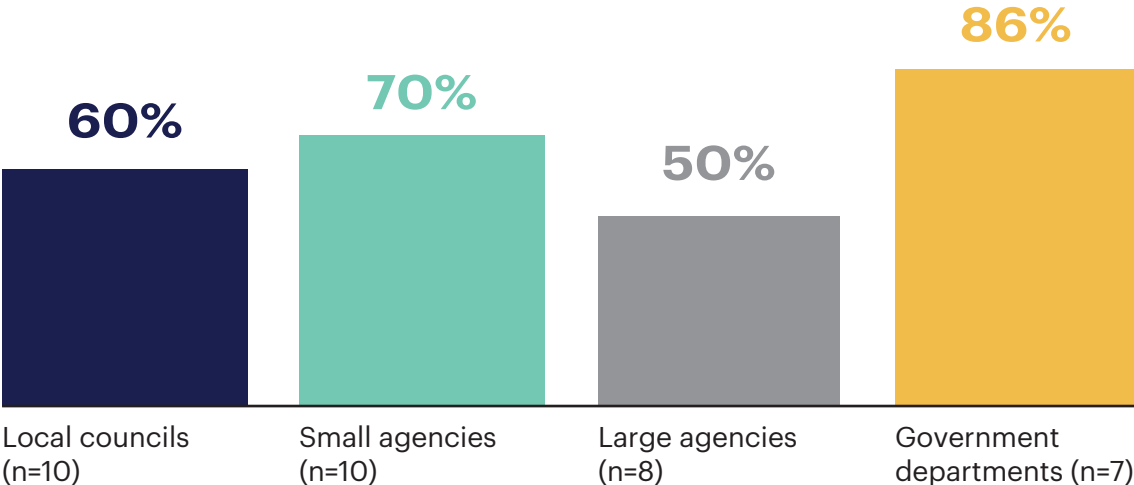
Two thirds (66 per cent) of public authorities had human rights and the Charter embedded in general professional development activities. Government departments (86 per cent) were most likely to have embedded human rights and the Charter.

Ways human rights and the Charter were embedded in professional development activities included:

- performance review metrics
- promoting or hosting events and seminars related to human rights
- various forms of diversity and inclusion training
- including human rights and the Charter in induction training.

Figure 14: Human rights and the Charter embedded in general professional development activities

(Base: all respondents)



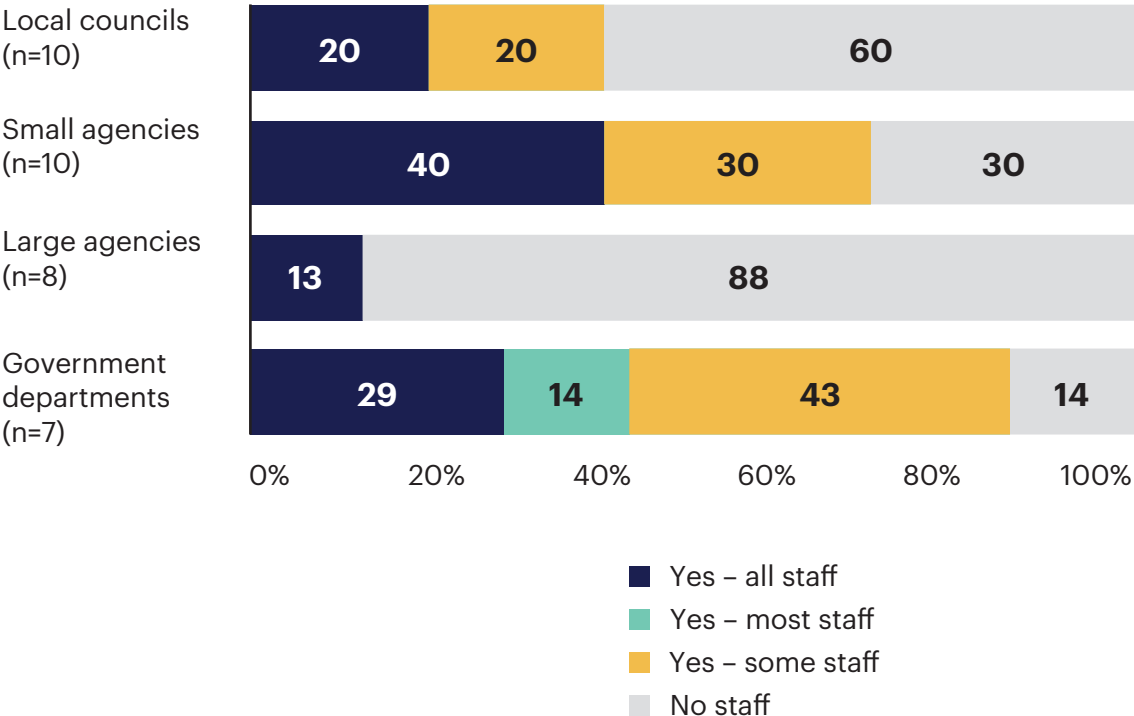
E. Staff performance reviews

Around half (51 per cent) of public authorities had metrics related to protecting and promoting human rights included in staff performance review documents. Government departments (86 per cent) and small agencies (70 per cent) were more likely to have metrics included. Large agencies were the least likely (13 per cent).

Most examples of metrics included in staff performance review documents related to staff performing their role in line with the values of their organisation, which include values related to human rights.

Figure 15: Metrics related to promoting and protecting human rights included in staff performance review documents

(Base: all respondents)



Tips on putting this into practice

Some ways the framework shows to improve operational capability are to:

- give specific staff members responsibilities and support to promote human rights
- include human rights impact assessments in project and policy templates.

2.7.7 Systems and processes

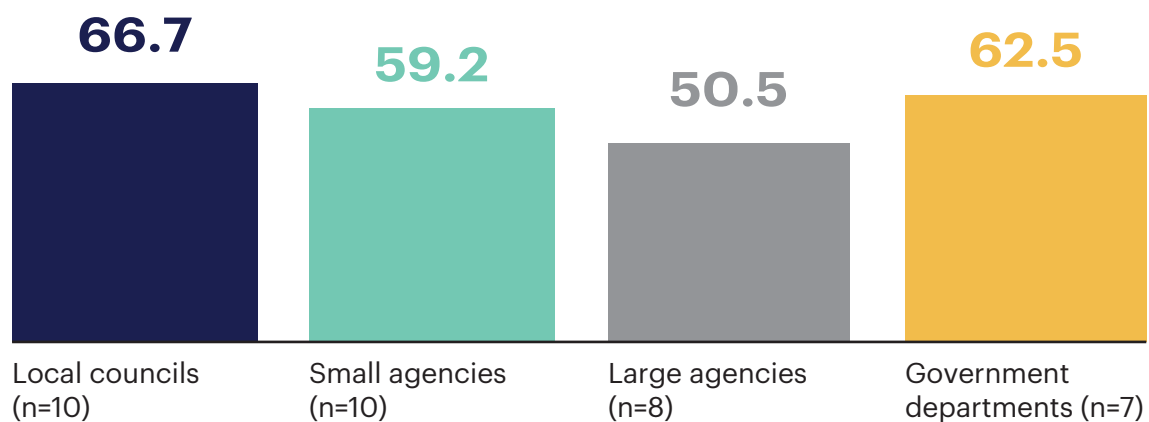
The final influence on a culture of human rights is an organisation's systems and processes. A strong human rights culture is one where human rights are embedded in systems and processes such as:

- legal compliance frameworks
- complaints policies
- planning documents
- codes of conduct
- employment standards
- risk management plans
- internal grievance systems and processes
- position descriptions
- performance reviews.

Overall, local councils (66.7 points) reported embedding human rights into systems and processes to a greater extent than other organisation types.

Figure 16: Overall performance – Systems and processes

(Base: all respondents)



A. Processes and tools

On average, public authorities had embedded human rights into processes and tools to a moderate extent. Small agencies and government departments had human rights embedded into processes and tools to a larger degree than local councils and large agencies.

Public authorities reported embedding human rights to a greater extent in policies, recruitment or other human resources processes and legal compliance frameworks compared to other tools and processes.

Figure 18 shows the full breakdown of the extent human rights were embedded into each process and tool for each organisation type.

Examples of how public authorities used the Charter in developing work, practices, programs or policy positions

- The Victorian Multicultural Commission used the Charter for community consultations to build discussion topics around a wellbeing framework.
- Port Phillip City Council used the Charter to develop an initiative to tackle rough sleeping in the city.
- The Department of Justice and Community Safety built Charter considerations into practices for community and custodial staff, with many procedures requiring Charter considerations to be documented as part of a decision.

Figure 17: Average extent to which human rights are embedded into processes and tools

(Base: all respondents)

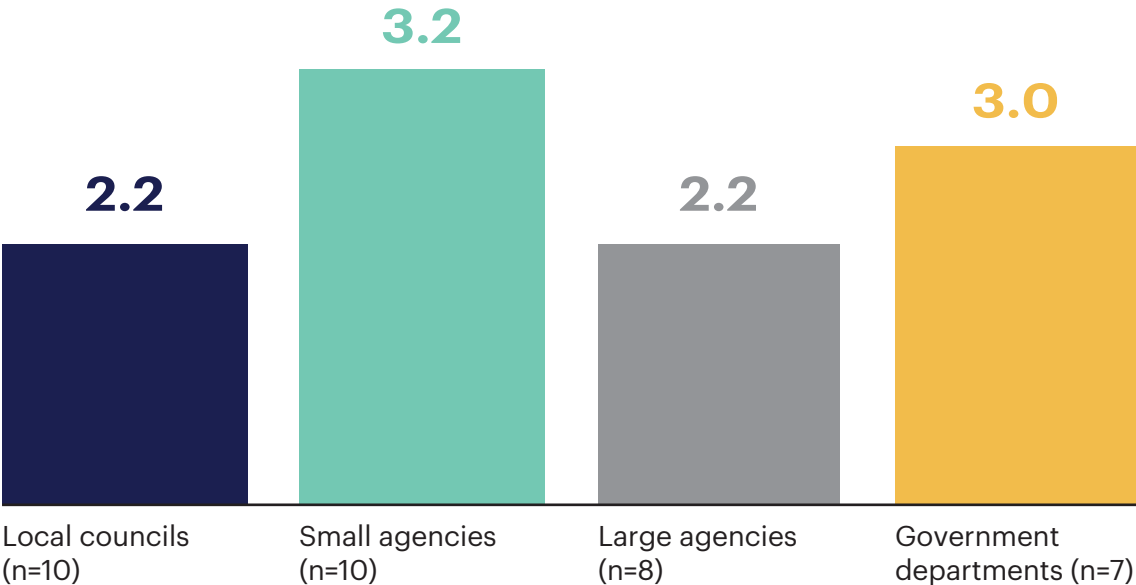
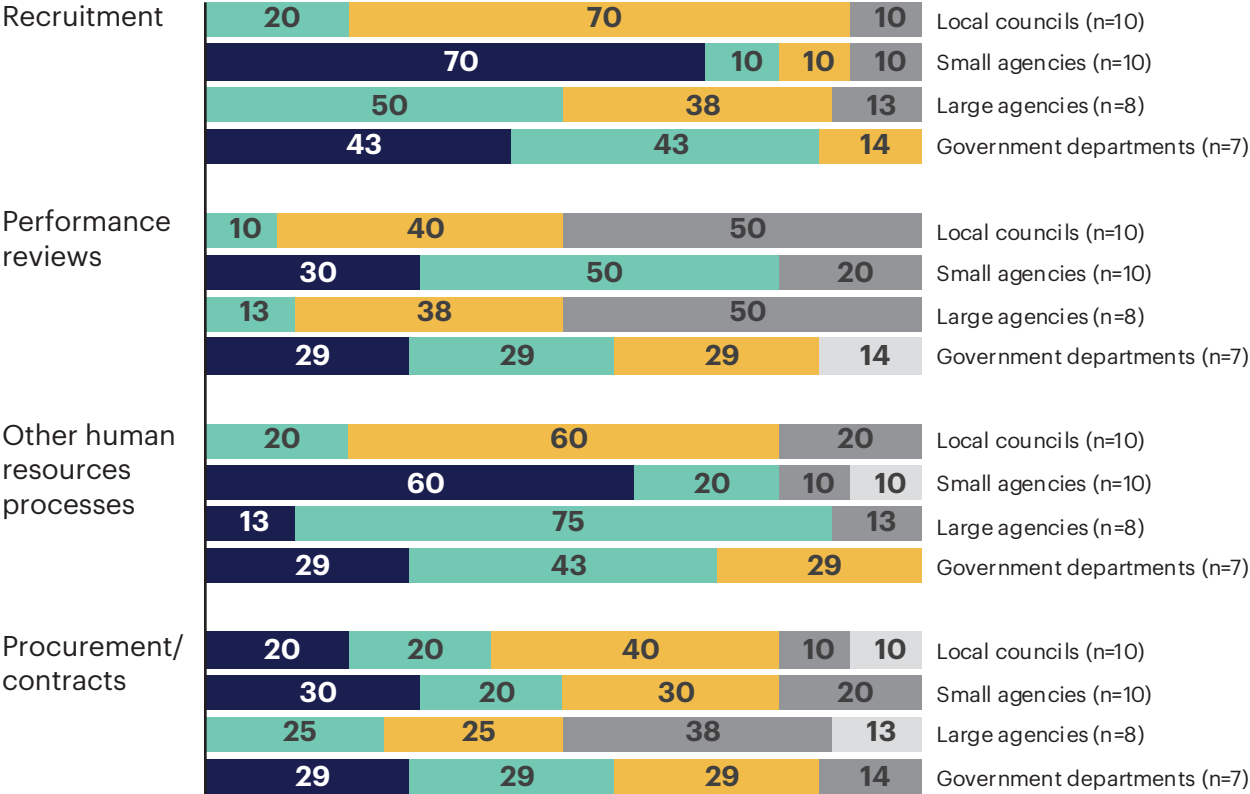
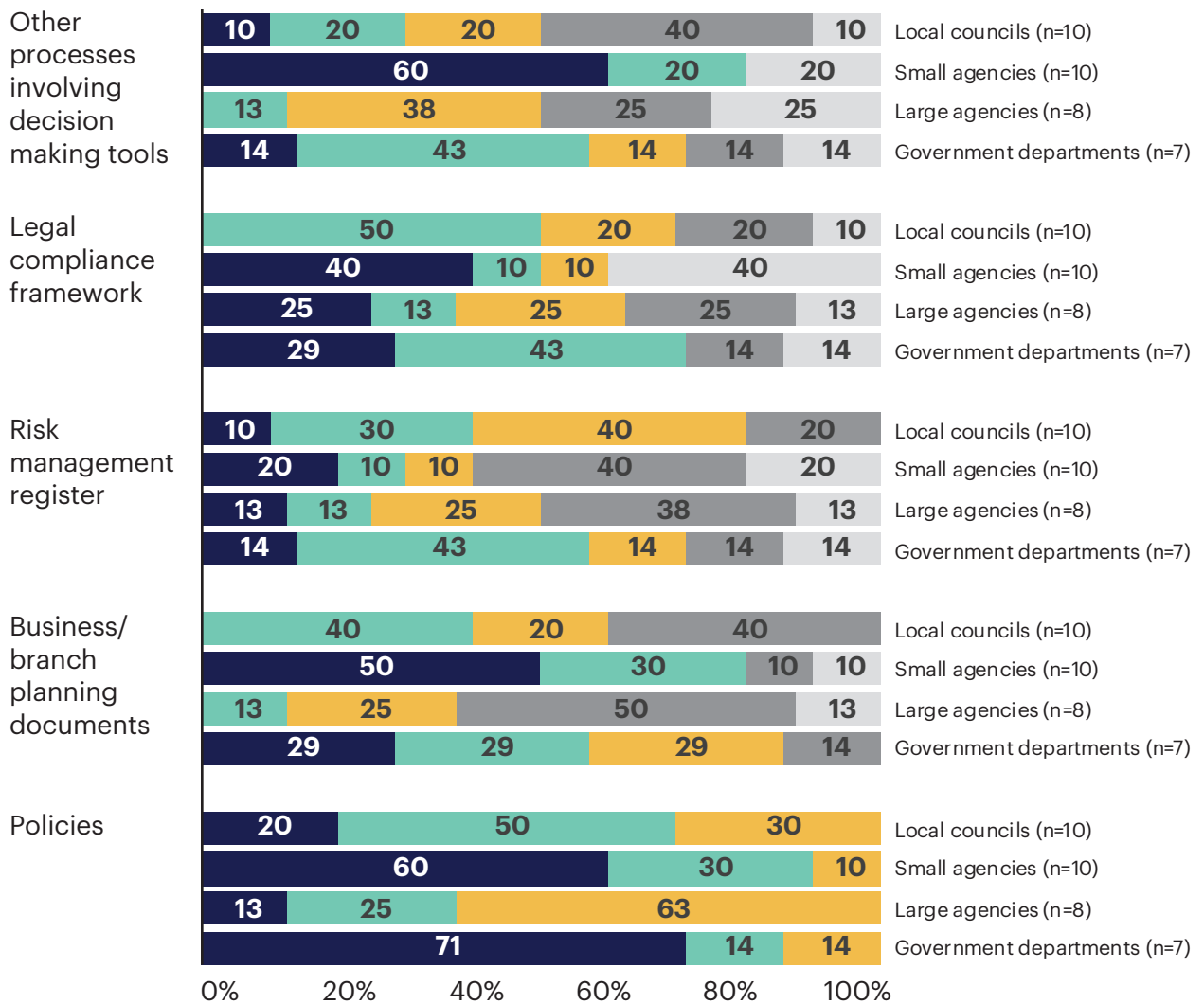


Figure 18: Extent human rights are embedded into processes and tools

(Base: all respondents)



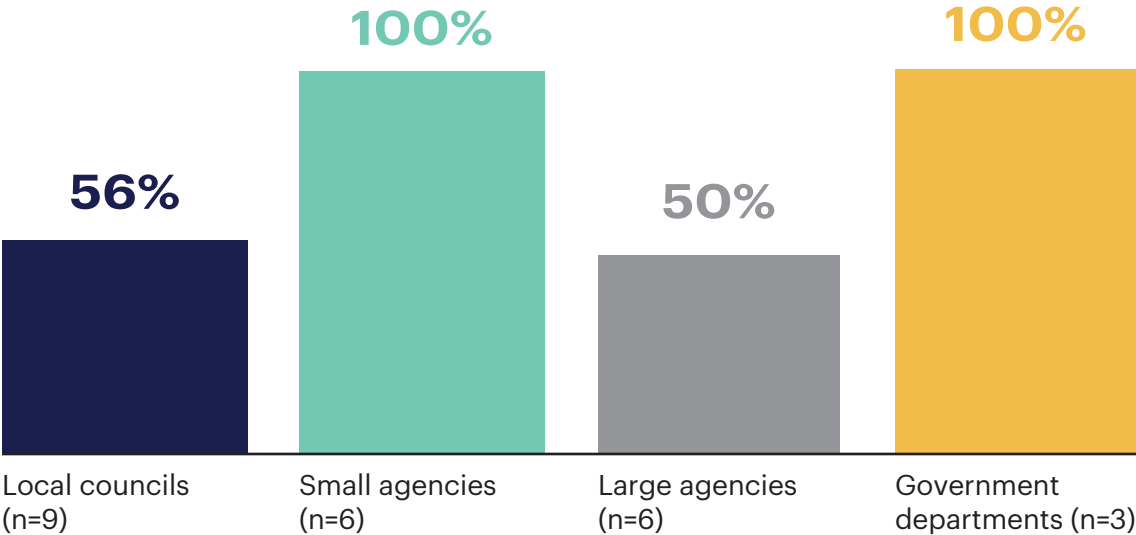


- To a great extent
- To a moderate extent
- To some extent
- Not at all
- Not Applicable

Among public authorities that had a legal compliance framework, the majority (71 per cent) included the Charter as a relevant law. All government departments and small agencies, and around half of local councils (56 per cent) and large agencies (50 per cent), included the Charter in their legal compliance framework.

Figure 19: Inclusion of the Charter in legal compliance framework

(Base: Respondents with a legal compliance framework)



Among those with a risk management register, small agencies recorded the highest number of risks on average compared to other organisation types. The Commission will track these results over time to identify trends or themes.

B. Investigations, inquiries and audits

Government departments reported the highest average number of investigations, inquiries or audits related to human rights undertaken by external independent bodies into their organisation in 2018, compared to agencies and local councils. The Commission will track these results over time to identify trends or themes.

C. Complaints

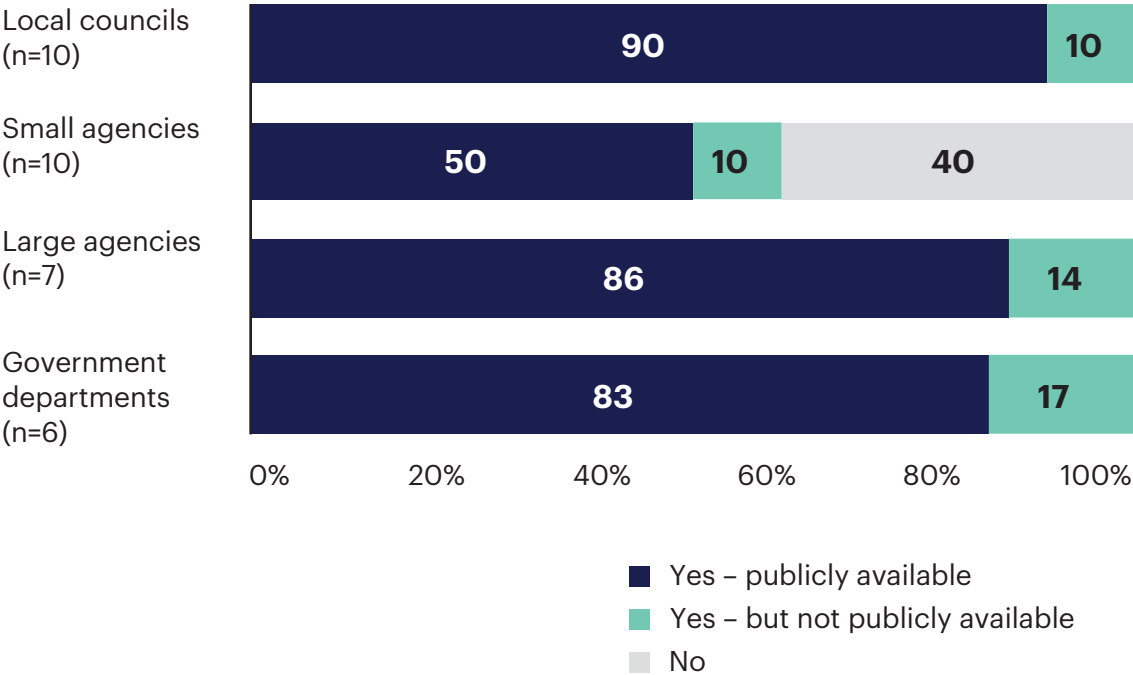
Most public authorities (88 per cent) had a complaints policy, including 76 per cent that made their complaints policy publicly available. Small agencies were least likely to have a complaints policy (60 per cent).

“ My advice would be to take the time to understand the Charter. Don’t surmise, or guess. Understand yourself what the Charter means and you’ll be more effective.

– Anthony Murphy, Barwon Prison Operations Manager

Figure 20: Organisational complaints policy

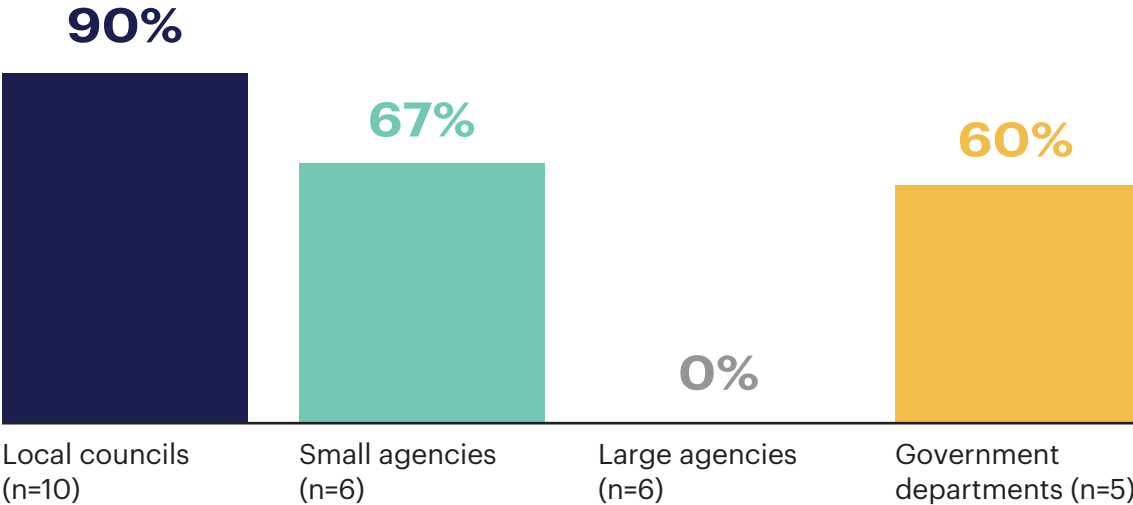
(Base: all respondents)



Among public authorities that had a complaints policy, around 59 per cent indicated their complaints policy prompts staff to consider whether the human rights of the complainant have been engaged. Local councils were most likely to prompt staff to consider human rights in their complaints policy (90 per cent). Conversely, no large agencies reported their complaints policy prompted staff to do this.

Figure 21: Complaints policy prompts staff to consider whether the human rights of complainant have been engaged

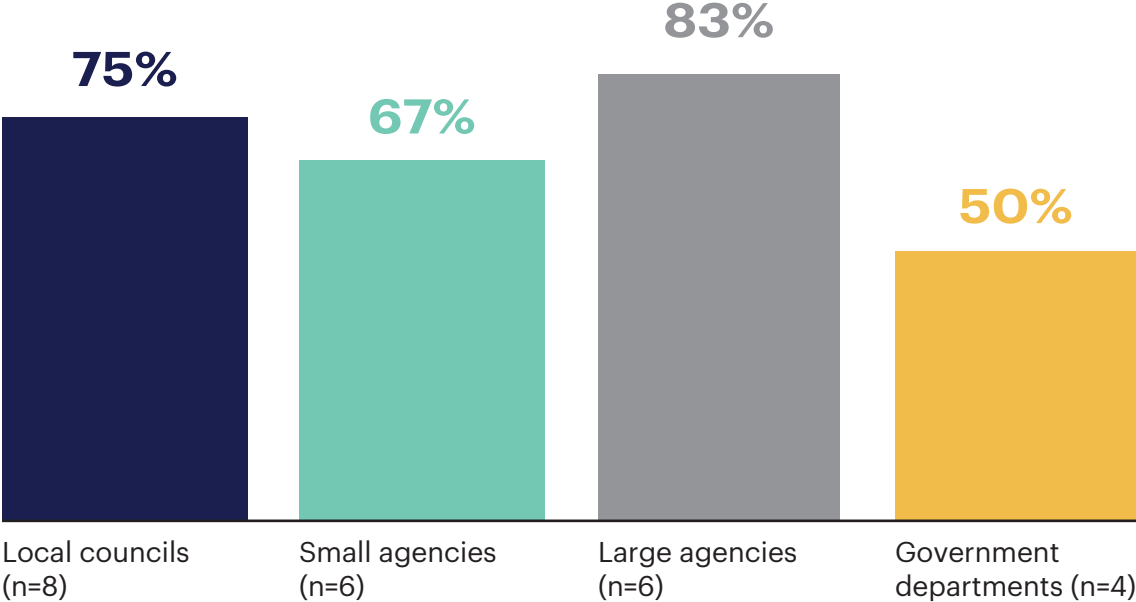
(Base: Respondents with a complaints policy)



Three quarters (75 per cent) of public authorities overall reported they had a timeframe for resolving complaints as part of their complaints policy. Government departments were less likely to have this (40 per cent).

Figure 22: Timeframe for resolving complaints

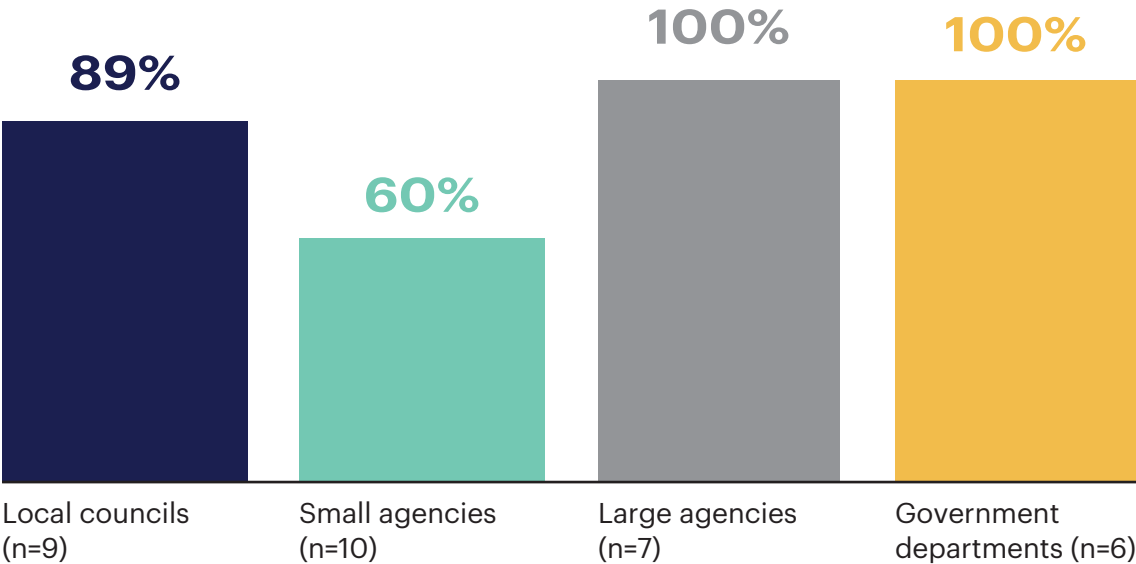
(Base: Respondents with a complaints policy)



Most public authorities (84 per cent) had received a complaint from the public about their organisation during the 2018 calendar year. The Commission does not have a position on whether these results are indicative of a positive human rights culture. While a high level of complaints can indicate human rights compliance problems, it can equally be evidence of an effective and accessible complaints policy. The Commission will track these results over time to identify trends or themes.

Figure 23: Whether any complaints were received from the public

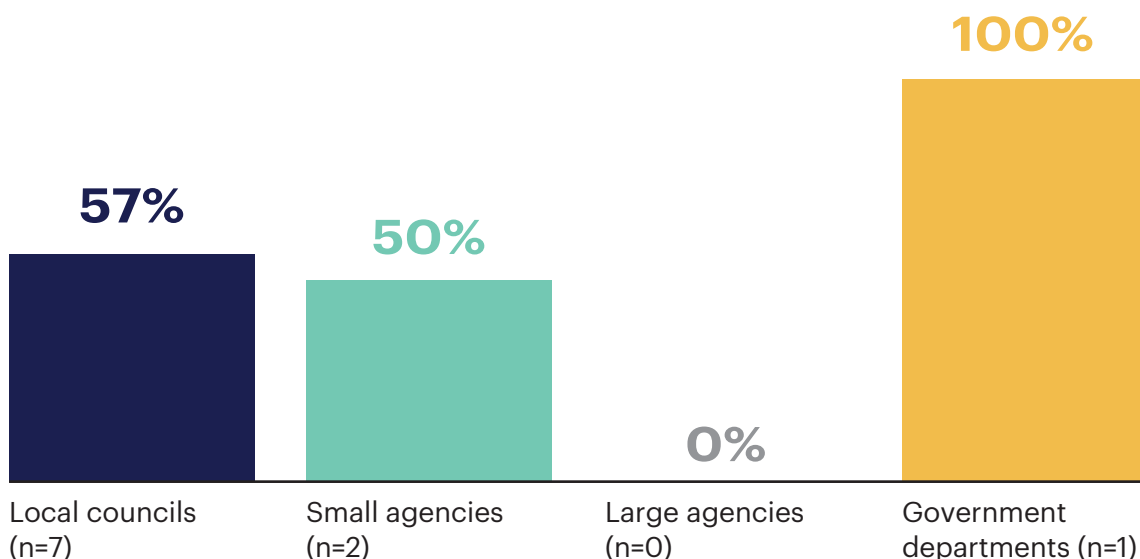
(Base: all respondents)



Among public authorities that had received a complaint about their organisation, and whose complaints policy prompts staff to consider whether the human rights of the complainant were engaged, 60 per cent recorded whether complaints involved a human rights issue.

Figure 24: Record whether complaints involve a human rights issue

(Base: respondents who received a complaint about their organisation and whose complaints policy prompts staff to consider human rights)



Among those that had received a complaint about their organisation, most public authorities (71 per cent) recorded whether service improvements were made in response to complaints.

Around half (54 per cent) of public authorities who received a complaint involving a human rights issue made a service improvement in response. Government departments (100 per cent) and small agencies (83 per cent) were most likely to have made a service improvement.

Examples of service improvements

- The Independent Broad-based Anti-corruption Commission took steps to address welfare risks associated with some private examinations in late 2018, including providing witnesses with access to a welfare service.
- The Department of Health and Human Services reduced restrictive practices in secure welfare service.
- The Office of the Victorian Information Commissioner changed how it processed freedom of information complaints to decrease response times and improve engagement with complainants.

Figure 25: Record whether service improvements are made in response to complaints

(Base: respondents who received a complaint about their organisation)

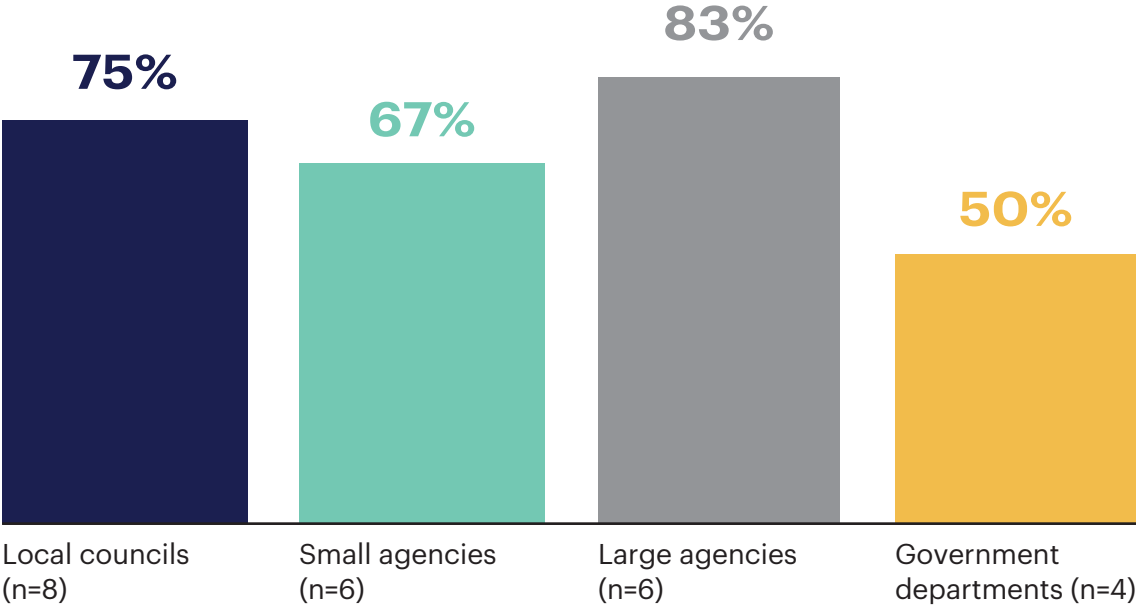
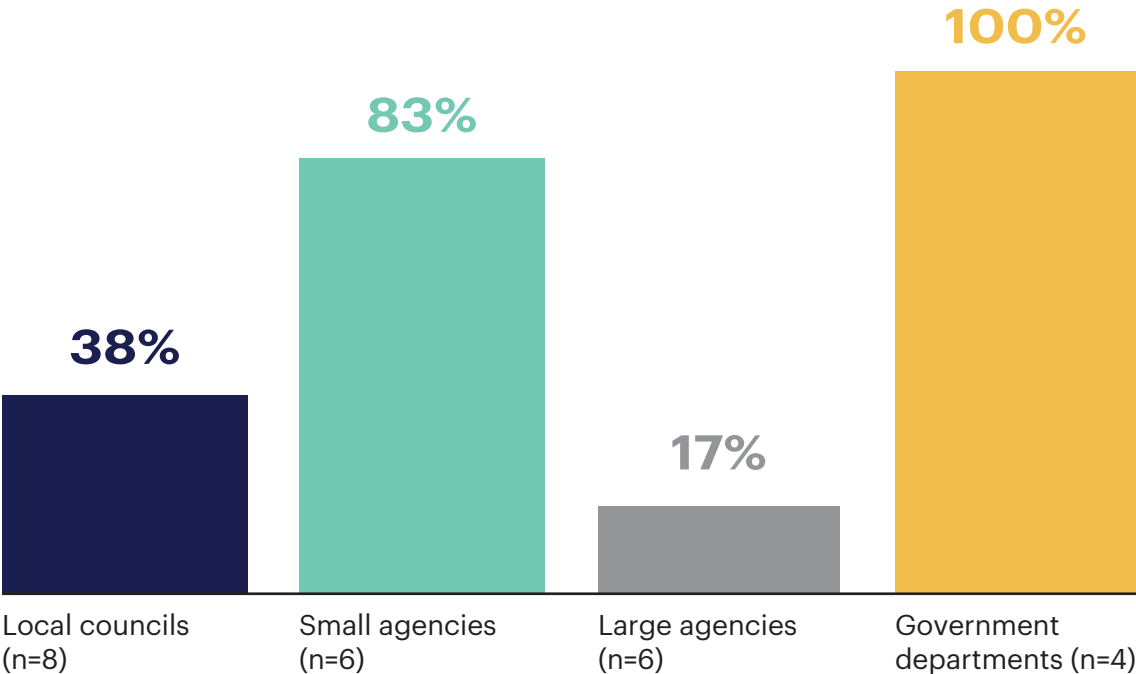


Figure 26: Service improvements made in response to complaints involving a human rights issue

(Base: respondents who received a complaint about their organisation)



Reflections from community interviews

No community organisation participants reported they had made a complaint against a public authority on behalf of their clients or stakeholders. However, some indicated they had supported members of the community to make their own complaints. Most participants felt they were confident they would be able to make a complaint on somebody's behalf should they ever need to.

Participants provided suggestions to improve public authorities' complaints processes, including:

- provide an expected timeframe for a response
- ensure complainants are not treated unfairly as a result
- make the complaints process accessible to everyone in the community.

Tips on putting this into practice

Some ways the framework shows to improve systems and processes are to:

- include the Charter in any organisational legal compliance frameworks
- have a publicly available complaints policy.⁸

2.8 Growing a human rights culture in practice – case studies

This section profiles two public authorities that are working to embed a positive human rights culture in their respective organisations:

- Corrections Victoria, through the lens of a Barwon Prison Operations Manager
- Victorian Public Sector Commission

The case studies have been provided by these authorities. The Commission commends these public authorities for their efforts to grow their human rights culture in 2018 and hopes their experiences serve as inspiration for other public authorities.

2.8.1 Case study 1: Barwon Prison Operations Manager

Mr Anthony Murphy is an Operations Manager at Barwon Prison.

What Charter education did you undertake?

I received Charter education from the Victorian Equal Opportunity and Human Rights Commission. First, we had a training session for all Barwon staff. I then received a more tailored training session for the executive team at Barwon, which was focused on our role as managers and was designed to help us effectively deliver the message to the prison officers on the ground.

Everyone hears about 'human rights', but after the training we had a much better understanding about what we are required to do.

What are the key messages that influenced you going forward?

The biggest message for me is how amazingly simple it is. We need to consider human rights in our decisions and be able to demonstrate we've done that. If we're not considering human rights at all, with the Charter in mind, then we won't be making the best decisions.

How did this change your day-to-day work?

One of the most telling moments for me was when I realised that I'm not hamstrung or hindered if I use the Charter in my job. This is something people worry about.

For example, I got a chance to use the Charter on the same day I received the Charter education, and it led to a positive outcome.

We had a challenging prisoner who was very aware of the Charter and his human rights, as a lot of prisoners are. He was in a holding cell and was required to produce a urine sample. However, he was demanding to the prison staff that he wanted his lunch, and that it was against his human rights not to give it to him.

We identified that the prisoner's human rights were engaged – he was hungry and had the right to be treated with dignity as a person. However, in this situation, providing him lunch would compromise the process, and we would only be delaying his lunch for a short time. We communicated to the prisoner that we'd considered his human rights but had decided it was justified to limit them in these circumstances. The prison staff rang me later and they told me that they couldn't believe how willingly the prisoner accepted the decision after that had been communicated to him.

Considering the prisoner's human rights absolutely changed the situation for the better. I've always been about fairness and equality anyway, as a person. But that gave me a real insight into what we are required to do under the Charter. The reality is that we work in an environment where we have to limit a prisoner's human rights from time to time.

Another example when the Charter was helpful was in a situation that arose with a religious Muslim prisoner who was being held in a high security cell. We have

prisoners of all different religions and cultures. At a certain time of year, the Muslim prayer times were at the same time as the prisoner 'count'. This was a source of tension, because when the prison officers were doing their count they would ask the prisoner to stand up so that they could see him and make sure he was OK. The prisoner was upset about our interruptions during his prayer time.

We identified that the prisoner had a right of his religious belief and to pray and we needed to be respectful of that. We brought in the Muslim chaplain to assist. We went through the Muslim prayer calendar, and identified that for certain times of the year, prayer time and 'count' time would clash. We had discussions with the prisoner and came to an agreement that we'd let him pray at that time, but that when the staff came around to his cell, they would interrupt him by lifting the curtain and looking in. We found a solution that least restricted his human rights but still achieved our objectives. Working together we came to a solution that worked for us and worked for the prisoner.

What is the impact of that change on those around you?

I think my staff are more aware of the Charter and are getting better at recognising it. My team are seeing the benefits because we are making it clear for them.

People think you go to prison and you lose all your human rights, but that's not the case. We educate our staff to consider a prisoner's human rights while in jail, and to use empathy – what if it were you? How would you expect to be treated? The benefit is that you end up with better relationships with the prisoners. You end up with more positive outcomes when the prisoners know you see them as a person with human rights. We need to consider them as people regardless of what they've done. My team has taken that on board.

We are also educating the team that the Charter doesn't mean you can never limit a prisoner's human rights. One of the biggest fears or misconceptions is that because of the Charter a prisoner can get everything they want, but that's not the case. Once you alleviate that fear, prison staff become more confident to deal with the prisoners and genuinely consider their human rights to make the best decision in the circumstances.

What are your next steps?

I think there's still a lot of education to be done with frontline staff, which is why we've been working with the Commission on designing tailored training for them.

It's really the frontline staff who get bombarded with questions from prisoners. It's a little easier for me as a manager because by the time it gets to me I have more time to consider my decisions.

What advice would you have for other prisons and/or prison officers?

My advice would be to take the time to understand the Charter. Don't surmise, or guess. Understand yourself what the Charter means and you'll be more effective.

2.8.2 Case study 2: Victorian Public Sector Commission

The Victorian Public Sector Commission works closely with government departments and public entities to promote public sector professionalism, integrity and capability.

Why did you decide to engage with the Charter Education Program?

Human rights is both a Victorian public sector value and employment principle. We have an important role to play in promoting behaviour that is consistent with the values and principles including human rights. Our work in this area includes:

- encouraging our Victorian public service leaders and newest recruits to embrace human rights
- providing employment opportunities to our Victorian community through the Aboriginal Employment Program, and the Disability Employment Action Plan, *Getting to Work*
- setting standards through the Code of Conduct and Employment Standards
- monitoring and reporting on how well the public sector is doing through the People Matter Survey and our reviews.

What actions did you take to grow a culture of human rights?

We had activities for Victorian Public Sector Commission staff and for the broader public sector.

For our staff, we celebrated Human Rights Week and the 70th anniversary of the Universal Declaration of Human Rights. We began by reflecting on the human rights that we now take for granted, that are still uncommon in many parts of the world today. We then had a human rights quiz that was based on two concepts: freedom of choice and inclusion. Soon there was much laughter but also learning.

We also worked with the Victorian Equal Opportunity and Human Rights Commission to customise human rights training to our work. Through this training we thought about the broader context for human rights, its history and how it applied to our day to day work.

For the broader public sector, we provided Charter education to graduates participating in the Graduate Recruitment and Development Scheme and to participants in the Early Development Program.

Our Victorian Leadership Academy collaborated with the Australia and New Zealand School of Government to develop a case study on homelessness which is being delivered as part of a new Victorian Leadership Academy Leadership Development Program. The focus on homelessness presents opportunities for leaders to make more nuanced decisions when they consider people's human rights.

Finally, our binding Victorian public sector Employment Standards recognise that human rights don't just apply to our clients but also to our employees. For the first time, the People Matter Survey will include a statement on how human rights apply to the management of staff.

What are your next steps?

In the next financial year, we will continue to incorporate human rights considerations in the whole of Victorian government policies that we are developing on issues such as the prevention of sexual harassment and the proper use of social media. We will continue to provide Charter education to specific groups such as new Victorian public sector executives. We will provide further guidance on how to respect employees' human rights, and how to maintain interest in human rights for the long term.

What were you hoping to achieve for your organisation?

The Charter Education Program brought all departments together in a common cause to promote human rights. It therefore supported our statutory function of working with departments to promote the values and employment principles.

What have been the biggest challenges for you to grow your human rights culture?

It is important that human rights be seen as something that would help employees achieve better results, not as something separate or an add on to their work. While the training has raised their awareness of human rights, the tricky bit will be keeping it relevant and front of mind in the long term.

Have you seen any improvements in human rights culture? If so, in what way?

Employees now have a much better understanding of human rights and how it applies to their work. They are much more likely to mention human rights when considering matters or making decisions.

What advice would you give to other public authorities who are trying to grow their human rights culture?

The Charter Education Program is essentially a behaviour change program. A senior sponsor is essential for demonstrating that the organisation takes the program seriously. In our case this was our Charter Leader, the Deputy Commissioner. She opened each of the Charter Education Workshops held at the Victorian Public Sector Commission.

The Victorian Public Sector Commission also had a Human Rights Coordination Group that regularly met to discuss what we were doing to embed human rights both at the Victorian Public Sector Commission and across the Victorian public sector. This group helped us to take a step back from our everyday work to consider how human rights is essential to everything we do.

The Victorian Equal Opportunity and Human Rights Commission and the Human Rights Unit of the Department of Justice and Community Safety provided excellent support through their customised workshops, communication strategies, engaging artwork and always obliging advice.

The members of the Charter Leaders and the Implementation Leaders Groups generously shared their ideas and experiences at each meeting. This helped us to understand the range of issues that departments were considering and the strategies that were most likely to be effective.

Endnotes

- 1 Victorian Equal Opportunity and Human Rights Commission, 'The Charter', *Victoria's Charter of Human Rights and Responsibilities* (Web Page) <<https://www.humanrightscommission.vic.gov.au/human-rights/the-charter>>; <<https://www.humanrightscommission.vic.gov.au/component/k2/item/117?Itemid=584>>.
- 2 Victorian Equal Opportunity and Human Rights Commission, 'e-learning', *Charter of Human Rights in Victoria Online education program* (Web Page) <<https://humanrightscommission.vic.gov.au/e-learning>>.
- 3 Transparency and Accountability does not receive a score as no questions in the survey or other data sources collected by the Commission specifically addressed this influence on a human rights culture. See section 2.7.4 for further details.
- 4 Michael Brett Young, 'From Commitment to Culture: The 2015 Review of the *Charter of Human Rights and Responsibilities Act 2006*' (Report, 1 September 2015), 46.
- 5 Victorian Equal Opportunity and Human Rights Commission, *Waiter, is that inclusion in my soup?: a new recipe to improve business performance* (Report, June 2015) 62.
- 6 Michael Brett Young, 'From Commitment to Culture: The 2015 Review of the *Charter of Human Rights and Responsibilities Act 2006*' (Report, 1 September 2015), 36
- 7 50 per cent of local council, 40 per cent of small agencies and 43 per cent of large agencies.
- 8 Recommended references for developing any policy: *Complaints: Good Practice Guide for Public Sector Agencies* (2016), Victorian Ombudsman; *Councils and complaints: A good practice guide* (2015), Victorian Ombudsman; *Good Practice Guide: Managing Complaints Involving Human Rights* (2017), Department of Justice and Regulation

Chapter 3.

Human rights in law-making

3.1 The role of the Charter in law-making

In Victoria, the Charter ensures human rights are considered at every stage of the law-making process. Under this model, all Bills introduced into Parliament must be accompanied by a statement of compatibility, which provides an overview of any human rights impacted by the Bill and why any proposed limitations are reasonable and justified. Members of Parliament can then consider these statements and raise any concerns they may have during the parliamentary debate.

The Charter also requires the Scrutiny of Acts and Regulations Committee (SARC) to prepare a report on any Bill introduced into Parliament, which must consider whether the Bill is incompatible with human rights. SARC accepts and considers public submissions on Bills it is considering, which are available on the SARC website with the relevant Alert Digest. In this way, the human rights impact of a proposed law can be thoroughly scrutinised. The Charter's dialogue model provides an important mechanism for enabling both parliamentarians and the community to consider human rights implications of proposed legislation.

This chapter highlights instances of Parliament actively engaging with the Charter and contemplating human rights issues during parliamentary debates and through the law-making process. These are examples of the dialogue model operating effectively, to ensure human rights are considered during the development of all Victorian laws.

In 2018, SARC continued to perform an important role in scrutinising the human rights impact of proposed laws. SARC reports were referenced in parliamentary debates and several House amendments were made in response to the committee's human rights scrutiny.

The Commission considers that strengthening aspects of the Charter's operation in developing legislation would further promote its role in the law-making process. For example, by avoiding the use of perpetual override declarations and ensuring SARC has sufficient time to scrutinise Bills and properly consider relevant public submissions. This would also ensure that human rights are considered during the development of all Victorian laws.

3.2 Statements of compatibility

A minister or member of Parliament must provide a statement of compatibility with any Bill introduced into Parliament, which sets out how the Bill is compatible with human rights or, in some cases, the nature and extent of any incompatibility.¹

It is important to recognise that, while most Bills are compatible with human rights, there are instances where this is not the case. When a Bill includes a part or provision that is incompatible, the minister or member of Parliament will explain the nature and extent of the incompatibility. This process ensures Charter incompatibility is identified and provides Parliament with the opportunity to debate the issue and find a possible solution.

In 2018, there was one formal statement of partial incompatibility prepared in relation to the Justice Legislation Miscellaneous Amendment Bill 2018.

Table 3: Formal statements of partial incompatibility

| Year | 2018 ² | 2017 ³ | 2016 ⁴ | 2015 ⁵ | 2014 | 2013 | 2012 |
|-------------------------------|-------------------|-------------------|-------------------|-------------------|------|------|------|
| Statements of incompatibility | 1 | 2 | 1 | 1 | 0 | 0 | 0 |

Justice Legislation Miscellaneous Amendment Bill 2018

The Justice Legislation Miscellaneous Amendment Bill 2018 amended 13 Victorian justice-related Acts. The Bill amended the *Sentencing Act 1991* to introduce mandatory minimum sentences for anyone who causes serious injury to emergency workers and custodial workers who are on duty, regardless of whether it is recklessly or intentionally caused.⁶

The Bill provided a very narrow ‘special reasons’ exception for cases involving offenders with a mental or cognitive impairment or where an offender assisted law enforcement authorities. This Sentencing Act amendment was found to be Charter compatible.

The Bill also made amendments to the *Criminal Procedure Act 2009*, which was found to be partially incompatible. Where an offender successfully appeals a mandatory minimum sentence, the Director of Public Prosecutions (DPP) may appeal that decision to the Supreme Court of Appeal if the DPP considers that “there is an error in the sentence imposed and that a different sentence should be imposed”. The DPP should also be satisfied that a further appeal is in the public interest. However, if an offender is unsuccessful in their attempt to overturn a mandatory minimum sentence, they have no right to appeal that decision to the Supreme Court of Appeal. This would mean, in practice, that only the DPP has appeal rights in relation to certain decisions: the offender does not.

The Attorney-General tabled a statement of partial incompatibility, which noted that the right to a fair hearing includes equality before the courts. It requires the same procedural rights be provided to all parties unless distinctions are based on law and can be justified on objective and reasonable grounds that do not entail actual disadvantage or other unfairness to the defendant. The statement acknowledged that the Bill may be partially incompatible with the right to a fair hearing because only the DPP has the right to appeal.⁷ However, the statement

also observed that providing offenders a power to appeal would be contrary to Parliament's intention to deter attacks on on-duty emergency workers and custodial officers and that the DPP's appeal power is limited to cases of particular concern to the government and the community. The statement also noted that providing the appeal right to the DPP will ensure that "statutory minimum terms of imprisonment are being correctly imposed by the courts and the system can self-correct".⁸

SARC's report on the Bill also observed that sentence appeals by offenders, like those by the DPP, may also achieve the objective of ensuring that the statutory minimum terms are being correctly imposed and that the system can self-correct.⁹ SARC referred various issues to the Attorney-General for response, including whether:

- the DPP's appeal power may in practice extend beyond a 'special reasons' finding to any error in the sentence
- the statement of compatibility in relation to the DPP's appeal power was, in fact, a statement of incompatibility.

SARC received a joint submission regarding the Bill from the Federation of Community Legal Centres Victoria and the Law Institute of Victoria.¹⁰ In this submission, among other things, they expressed concern the Bill would disproportionately affect vulnerable minorities and queried whether there was any evidence to support the use of mandatory sentencing to achieve a deterrent effect. The Bill was passed with the controversial provisions intact.

3.3 Override declarations

The Charter provides that Parliament may, in exceptional circumstances, declare that a law or part of a law has effect despite being incompatible with human rights.¹¹ This is known as an 'override declaration'. The declaration signals to courts, public authorities and the community that a law does not have to be interpreted compatibly with the Charter and that public authorities do not need to act compatibly with human rights when implementing it.

An override declaration should only be used in exceptional circumstances.¹² In its report recommending the creation of the Charter, the Human Rights Consultative Committee referred to the *International Covenant on Civil and Political Rights* (ICCPR) in setting out when an override might apply.¹³ Article 4 of the ICCPR states that governments should only act incompatibly with human rights "in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed".¹⁴

The Human Rights Consultative Committee also strongly stated, echoing the ICCPR, that it would be inappropriate to use the override clause to sanction a breach of important rights such as the right to life, freedom from slavery, freedom from torture and freedom of conscience, thought and religion.¹⁵

As the Commission has previously observed, resorting to an override declaration should only occur in extreme situations, where there is an evidence base and urgent serious risk to public security or a state of emergency.¹⁶

The Charter provides that override declarations expire no later than five years after introduced,¹⁷ which means that a decision to re-enact an override declaration is subject to review and public scrutiny.¹⁸ However, often this default expiry is removed by the legislation.

One of the functions of the Commission under the Charter is to provide a report to the Attorney-General that examines all override declarations made during the relevant year.¹⁹ In total, four override declarations have been included in Victorian Bills since the Charter was enacted (refer to Table 4 below). None of these override declarations appear to have involved exceptional circumstances, in the sense of constituting a serious threat to national security or a state of emergency.²⁰ Further, three of the overrides have provided for perpetual, ongoing regimes of detention of individual prisoners, including the most recent override declaration discussed below.²¹ The Commission is of the view that all override declarations should be constrained by a sunset clause to allow for transparency and debate as to whether they should be re-enacted.

Corrections Amendment (Parole) Bill 2018

In 2018 Parliament enacted an override declaration in relation to the Corrections Amendment (Parole) Bill 2018. The Corrections Amendment (Parole) Bill 2018 amended the *Corrections Act 1986* to prevent the Adult Parole Board from granting parole to prisoners convicted of killing police officers unless satisfied that the prisoner is in imminent danger of dying or is seriously incapacitated (2018 amendments). The Bill was specifically directed at the case of Dr Craig Minogue, who was sentenced in 1988 for the Russell Street bombing that killed police officer Angela Rose Taylor.

The Bill was introduced after Dr Minogue successfully argued in the High Court that a similar version of the amendments passed in 2016 did not apply to Dr Minogue because he was not sentenced on the basis that he knew that, or was reckless as to whether, the person murdered was a police officer.²²

The 2018 amendments were quickly introduced and made technical changes in response to the High Court decision. They passed before SARC was able to comment. The amendments explicitly excluded the application of the Charter and the need for the override declaration to be re-enacted after five years to “provide legal certainty and to avoid a court giving the Bill an interpretation based on Charter rights which do not achieve the government’s intention”.²³

The Statement of Compatibility concluded the Bill was incompatible with the Charter as it unjustifiably limited the right to protection from torture and cruel, inhuman or degrading treatment and the right to humane treatment when deprived of liberty.

The Statement of Compatibility noted that, despite the High Court findings, the government remained committed to preventing the release from prison of Dr Minogue and other prisoners convicted of murdering police officers – “the most serious example of the most serious crime”.²⁴ The government considered that there was no less restrictive means of achieving the purpose of the amendments, which is “to protect society”.

In relation to the impact on the relevant Charter rights, the Statement of Compatibility provided that the limitation of the rights was confined, with the amendments only affecting the parole applications of three prisoners currently serving life sentences with non-parole periods for the murders of police officers.

The Statement of Compatibility acknowledged that the nature of the limitation was severe for the prisoners affected, as it would prevent the offender from seeking parole except in very limited circumstances (that is, where the offender is dying or seriously incapacitated). Also, the retrospective application means that up until the reforms were announced, the offenders would have had an expectation “that they may have some possibility for release in the future and the capacity to live a useful life post-release”.²⁵

Although the amendments had already passed, SARC nonetheless reported on the Bill, referring to its discussion on the 2016 amendments and querying:²⁶

- whether there were less restrictive means available that would achieve the purposes of the Bill (that is, to protect the community and deter future murders of police officers), such as the extension of the model in the *Serious Offenders Act 2018* that allows for the ongoing detention of serious sex offenders
- whether the amendments would capture a person who committed the offending when he or she was a child
- whether the amendments, to the extent that they bar parole for prisoners who murdered a police officer as a child, are compatible with the Charter rights of child offenders to protection by the state and to humane treatment in detention.

In her response on those issues, the Minister for Corrections highlighted the differences between the objectives of the serious offenders’ scheme and the parole reforms.²⁷ While the Serious Offenders Act reforms aim to address social concerns regarding the protection of the community from serious sexual or violent offending, the parole reforms “target the worst kind of offending in Victoria” by reinforcing that “parole is a privilege” and ensuring that “prisoners who commit the heinous crime of murdering a police officer are granted parole only in very restrictive circumstances”. In addition, the Minister submitted that the parole reforms would, in her view, have limited effect on child offenders as they do not apply to the Youth Parole Board and would not capture any existing offender who was sentenced as a child.

In October 2018 Dr Minogue commenced proceedings in the High Court, again seeking to challenge the amendments on the basis that they are constitutionally invalid and amount to cruel, inhuman or degrading treatment.²⁸ In September 2019, Dr Minogue lost his High Court challenge.

Table 4: Override declarations

| Year | Override | Rationale for override | Duration of override validity | Further information |
|------|--|---|---|--|
| 2014 | <i>Legal Profession Uniform Law Application Act 2014</i> and Schedule 1 | Section 6 aims to ensure uniformity in interpretation and application of legal professional conduct scheme across all jurisdictions, including those jurisdictions without an equivalent to the Charter. | Perpetual: new section 6(2) states that Charter section 31(7), which limits overrides to five years, does not apply. | Victoria is host jurisdiction. Other participating jurisdictions (only NSW to date) apply law as if it is their own |
| 2014 | <i>Corrections Amendment (Parole) Act 2014</i> | Amends <i>Corrections Act 1986</i> by restricting capacity of Parole Board to grant convicted murderer Julian Knight (responsible for 1987 Hoddle Street Massacre) parole unless “in imminent danger of dying/seriously incapacitated”. Enacted in case a court considered that the legislation not Charter compatible. | Perpetual: new section 74AA states that Charter section 31(7), which limits overrides to five years, does not apply. | Minister considered amendment was Charter compatible because any limitations on Charter rights it included were reasonable and justified due to the nature of Knight’s crimes and his ongoing risk |
| 2018 | Corrections Amendment (Parole) Bill 2018. The Corrections Amendment (Parole) Bill 2016 was similar in substance, but the High Court found the law did not apply to Dr Minogue. | Amends <i>Corrections Act 1986</i> to restrict capacity of Parole Board to grant Dr Craig Minogue (convicted murderer involved in 1986 Russell Street bombings) parole unless “in imminent danger of dying/seriously incapacitated”. | Perpetual: new section 74AAA and 74AB state that Charter section 31(7), which limits overrides to five years, does not apply. | Minister included override to provide legal certainty and to avoid a court giving the Bill an interpretation based on Charter rights which do not achieve the government’s intention. |

3.4 The Scrutiny of Acts and Regulations Committee

SARC is a bipartisan parliamentary committee that provides independent scrutiny of Bills and statutory rules for compatibility with human rights. SARC reports on the compatibility of Bills in Alert Digests tabled in Parliament each sitting week.

SARC provides a crucial mechanism for independent scrutiny of human rights, particularly when a statement of compatibility has not adequately considered human rights implications. A SARC report provides feedback to Parliament, the executive and the community on the human rights issues in a Bill. It also provides an avenue for questions to be put to a minister or member and for community organisations and individuals to make submissions on a Bill. As such, the SARC process can facilitate a meaningful human rights dialogue between the community and government.

The Commission considers SARC's role could be strengthened by:

- allowing more time for SARC reports
- increasing the accessibility of the public submission process
- ensuring public submissions are reflected in SARC reports.

These recommendations are consistent with the recommendations of the 2015 review into the Charter, discussed in Chapter 5. These recommendations were accepted in principle by the government at the time but remain open.

3.4.1 A snapshot of SARC Charter reporting

Fifty-five Bills were introduced into Parliament in 2018. This is fewer than in previous years,²⁹ presumably due to the government going into caretaker in October 2018 ahead of the state election on 24 November 2018.

SARC produced reports in relation to 62 Bills, including reports in relation to Bills introduced in previous years.³⁰ SARC identified and substantively reported on human rights issues in just over half of those Bills.

Table 5: Number of Bills in which SARC reported on human rights

| Year | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 |
|-------|------|------|------|------|------|------|------|
| Bills | 32 | 26 | 34 | 23 | 16 | 14 | 19 |

SARC referred questions regarding human rights to a member or minister in relation to all 32 Bills it identified as having human rights issues and received 28 responses.

SARC referred questions regarding human rights to Parliament in relation to two Bills that were scrutinised in 2018 and received responses in both cases.

The first of these, the *Corrections Amendment (Parole) Act 2018*, is discussed above.

The second is the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018. This Bill referred powers to the Commonwealth

Parliament for Victorian government and non-government institutions to participate in the national redress scheme for institutional child sexual abuse as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.

The scheme prevents redress to victims of sexual abuse who are being lawfully detained following conviction for an offence or pending trial or sentencing for an offence (except in exceptional circumstances), or who are subject to a security notice due to the cancellation of their visa or passport for security reasons. These survivors can still apply for redress. However, they will need to go through a special assessment process before they can access redress.

SARC considered that the effect of those limitations may be to largely deny redress under the national scheme to Victorian victims who are not (or no longer) Australian citizens or permanent residents. SARC referred to Parliament the question of whether the limitations therefore indirectly discriminated on the grounds of race and, if so, whether they were a reasonable limitation on the right to equality.³¹

SARC also raised various issues directly with the Attorney-General, including the question of what mechanisms exist for the consideration of compatibility with Charter rights in the development of the national scheme. The application of the Charter to national schemes remains unclear, as generally states will have referred power to enable the Commonwealth to make a single law extending to all participating jurisdictions. As such, any resulting legislation is a law of the Commonwealth.³²

The Attorney-General's response acknowledged that the provisions in question may limit the right to equality, but that in both cases he considered the limitation reasonable and justified. Specifically, the Attorney-General wrote that the restriction in relation to people who are subject to a security notice is intended to ensure that redress funds are not used to undermine Australia's national security interests, while survivors of child sex abuse who are incarcerated could not be properly supported to participate in the redress process. Survivors incarcerated for short periods may be able to apply for redress upon release, while there is a discretion for other incarcerated survivors to receive redress if it would not bring the scheme into disrepute or affect public confidence in the scheme.³³

Reference to SARC reports in Parliament

During 2018, SARC reports on Bills informed parliamentary debate in various contexts. Parliamentary debate included reference to SARC's human rights analysis on the following Bills:

- The Environment Protection Amendment Bill 2018. Members referred to SARC's analysis of, among other things, whether the strict liability offence could result in arbitrary detention in breach of section 21(2) of the Charter (the privilege against self-incrimination), given that the scope of the prohibited behaviour appeared to be unclear and difficult to ascertain and there is no requirement to prove intent. SARC had also considered whether the proposed noise restrictions for non-residential premises limited the freedom of expression of musicians and music venues.³⁴
- The Corrections Amendment (Parole) Bill 2018 (discussed above). Although the Bill was introduced and passed before SARC had the

opportunity to report on it, a member referred to the SARC report on the 2016 amendments that were substantially the same.³⁵ Another member also noted the limitations of not having a SARC report available on the current amendments to provide guidance on human rights issues.³⁶

- The Advancing the Treaty Process with Aboriginal Victorians Bill 2018. Members referred to the SARC discussion of the Bill's potential impact on Aboriginal Victorians' cultural rights in relation to representation in support for the treaty negotiation process and the Aboriginal Representative Body.³⁷
- The Serious Offenders Bill 2018. A member referred to SARC's report in relation to the right to a fair hearing and the proposed powers of arrest, entry and search without a warrant and also the privilege against self-incrimination in relation to the provision that empowers a relevant officer during a search to direct an offender to provide information.³⁸ Other members noted SARC's concerns around the lack of minimum sentence length before an offender can be subjected to a post-sentence order.³⁹
- The Children Legislation Amendment (Information Sharing) Bill 2017. The Bill sought to establish a framework to allow certain professional entities, such as Maternal and Child Health nurses, hospitals and schools, to share information about children to promote their safety. The issues raised by SARC, particularly in relation to the right to privacy, were referred to by members in support of sending the Bill to committee.⁴⁰

The use of SARC reports by members during parliamentary debate on proposed legislation is an example of the Charter's dialogue model in practice and ensures proper scrutiny of human rights issues.

3.4.2 House amendments to Bills

Members of Parliament can propose amendments to Bills during parliamentary debate. In 2018, 25 House amendments were made to Bills,⁴¹ some of which raised significant human rights issues. However, there is no requirement for a statement of compatibility to be prepared or updated when amendments are proposed. The Commission considers that public accountability of the law-making process may be compromised where new human rights issues raised in House amendments are not properly scrutinised.

The 2015 Review made several recommendations for more effective parliamentary scrutiny, including that members of Parliament be encouraged to provide a short statement on the human rights compatibility of their proposed House amendments to Parliament, when time permits.⁴² The Commission has noted the status of the implementation of these recommendations in Chapter 5 of this report.

SARC reports are sometimes used directly by members of Parliament to support the tabling of House amendments. In 2018, two House amendments were made that referenced human rights issues raised in SARC reports.

Serious Offenders Bill 2018

The Serious Offenders Bill 2018 (discussed above) established a scheme under which offenders who have served custodial sentences for certain serious sex offences and serious violence offences could be made subject to ongoing detention and supervision. SARC identified drafting issues that gave rise to possible ambiguities and might affect how these provisions were interpreted by the courts. SARC noted the Bill could impact the right to a fair hearing and liberty rights under the Charter if the issue of how contravention offences may be dealt with summarily in the Supreme Court and County Court was not clarified. House amendments were tabled in response to provide certainty regarding the rules, practice and procedure for a contravention offence. Where the charge is to be heard and determined summarily, the consent of the accused is required, and where the court grants a summary hearing, the maximum term of imprisonment that may be imposed is two years.⁴³

Advancing the Treaty Process with Aboriginal Victorians Bill 2018

The Advancing the Treaty Process with Aboriginal Victorians Bill 2018 (discussed above) facilitated treaty making between Aboriginal Victorians and the Victorian Government and provided for the government to recognise the Aboriginal Representative Body as the sole representative of Aboriginal Victorians for the purpose of treaty negotiations. SARC raised concerns regarding the cultural rights of Aboriginal people.⁴⁴ The SARC report noted that the Bill did not require that the members of the Aboriginal Representative Body must be Aboriginal Victorians or that they hold cultural authority to represent Aboriginal Victorians.

The choice of representatives may be an expression of cultural identity or it could be considered to be a cultural practice. Because certain representatives carry authority within Aboriginal culture, such as elders, allowing those elders to represent the community in establishing the treaty process may allow the expression of that cultural identity and respect that cultural practice.⁴⁵

The government responded to this issue by tabling a House amendment providing that, among other things, only traditional owners can be on the Aboriginal Representative Body.⁴⁶ This change recognises that mandating Aboriginal representation in establishing the treaty process will promote the expression of cultural identity and practice required under the Charter.

Table 6: House amendments supported by SARC reports

| Year | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 |
|----------------------|------|------|------|------|------|------|------|
| Number of amendments | 2 | 2 | 0 | 3 | 3 | 0 | 1 |

The 2015 Review recommended that members of Parliament be encouraged to provide a short statement on the human rights compatibility of their proposed House amendments to Parliament, when time permits.⁴⁷ The government indicated its support for this recommendation, however, it has not yet been implemented.

3.4.3 Public submissions process

Organisations and individuals may provide submissions to SARC on Bills introduced into Parliament. This promotes public accountability in the law-making process. Generally, SARC has about two weeks after a Bill is introduced until it is debated, to table a Charter report. However, in some cases, SARC will have less time than this, or will be unable to provide a report until after the Bill has passed, as was the case with the Corrections Amendment (Parole) Bill 2018 (discussed above).

Even where Bills have not been expedited due to urgency, the current process provides the community with a very short time frame to make a submission. The 2015 Review included a recommendation that the government consider how best to ensure that SARC has enough time to scrutinise Bills that raise significant human rights issues.⁴⁸ The Commission has noted the status of the implementation of these recommendations in Chapter 5 of this report.

Furthermore, although SARC publishes submissions on its website, the substance of the submissions is not always reflected in SARC’s reports. The 2015 Review recommended that SARC should refer to the content of submissions in its reports in order to improve public engagement in the scrutiny of human rights issues.⁴⁹ In addition, the Commission has previously proposed that, where possible, SARC should also consider holding public or private hearings on Bills with substantial human rights implications in order to provide community groups and experts an opportunity to put evidence on the record in a public forum.⁵⁰

In 2018, seven submissions were made to SARC in relation to four Bills:

- the Justice Legislation Amendment (Unlawful Association and Criminal Appeal) Bill 2018⁵¹
- the Justice Legislation Miscellaneous Amendment Bill 2018⁵²
- the Justice Legislation Amendment (Terrorism) Bill 2018⁵³
- the Engineers Registration Bill 2018.⁵⁴

Case study: Justice Legislation Amendment (Terrorism) Bill 2018

The Justice Legislation Amendment (Terrorism) Bill 2018 strengthened Victoria’s counter-terrorism framework and provided for new detention and inquisitorial powers for police to prevent terrorist acts and violent extremism. Both the Commission and the Commissioner for Children and Young People raised concerns around the preventative detention scheme applying to children as young as 14 and the lack of safeguards to protect the human rights of vulnerable people.⁵⁵

The parliamentary debate expressly referred to the submission from the Commissioner for Children and Young people in relation to the Bill allowing children to be detained even in situations where they were peripheral to or even unaware of a terrorist attack.⁵⁶ This issue, among others, was examined at committee stage in the Legislative Council. The Bill was ultimately passed without amendment.

Table 7: Number of public submissions to SARC

| Year | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 |
|-------------|------|------|------|------|------|------|------|
| Submissions | 7 | 14 | 5 | 14 | 15 | 21 | 0 |

Endnotes

- 1 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 28.
- 2 101 Bills were presented to the Victorian Parliament in 2018, according to the Bills Status List archive <<http://www.legislation.vic.gov.au>>.
- 3 123 Bills were presented to the Victorian Parliament in 2017, according to the Bills Status List archive <<http://www.legislation.vic.gov.au>>.
- 4 124 Bills were presented to the Victorian Parliament in 2016, according to the Bills Status List archive <<http://www.legislation.vic.gov.au>>.
- 5 102 Bills were presented to the Victorian Parliament in 2015, according to the Bills Status List archive <<http://www.legislation.vic.gov.au>>.
- 6 Victoria, Parliamentary Debates, Legislative Assembly, 21 June 2018 (Martin Pakula).
- 7 Ibid.
- 8 Ibid.
- 9 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Alert Digest No.10 (2018).
- 10 Ibid.
- 11 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 31(1).
- 12 Human Rights Consultation Committee, 'Rights, Responsibilities and Respect' (Report, 30 November 2005) 75.
- 13 Ibid. See also Explanatory Memorandum, Charter of Human Rights and Responsibilities Bill 2006 (Vic) 1, 21.
- 14 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, [1980] ATS 23 (entered into force 13 November 1980) art 4.
- 15 Human Rights Consultation Committee, 'Rights, Responsibilities and Respect' (Report, 30 November 2005) 75.
- 16 Victorian Equal Opportunity and Human Rights Commission, *2014 Report on the Operation of the Charter of Human Rights and Responsibilities* (Report, June 2015) 62.
- 17 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 31(7).
- 18 Victorian Equal Opportunity and Human Rights Commission, *2014 Report on the Operation of the Charter of Human Rights and Responsibilities* (Report, June 2015) 62.
- 19 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 41(a)(iii).
- 20 Potential exceptional circumstances envisaged in the Explanatory Memorandum, Charter of Human Rights and Responsibilities Bill 2006 (Vic) 21 cl 31 included "threats to national security or a state of emergency which threatens the safety, security and welfare of the people of Victoria".
- 21 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 31(7).
- 22 *Craig Minogue v State of Victoria* [2018] HCA 27.
- 23 Victoria, Parliamentary Debates, Legislative Assembly, 25 July 2018 (Lisa Neville) 2238.
- 24 Victoria, Parliamentary Debates, Legislative Assembly, 24 July 2018 (Lisa Neville) 2235.
- 25 Ibid.
- 26 Scrutiny of Acts and Regulation Committee, Parliament of Victoria, Alert Digest No. 11 (2018).
- 27 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Alert Digest No.12 (2018), 34.
- 28 *Minogue v State of Victoria* [2019] HCA 31. On 11 September 2019, Dr Minogue lost his High Court challenge.
- 29 82 Bills were introduced into Parliament in 2017 and 92 Bills were introduced in 2016.
- 30 The number of Bills introduced in 2018 and the number of SARC reports are not correlative as SARC also responded to Bills introduced in previous years.
- 31 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Alert Digest No.7 (2018), 18,19.
- 32 Victoria, Parliamentary Debates, Legislative Assembly, 9 May 2018 (Martin Pakula).
- 33 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Alert Digest No.8 (2018), 49
- 34 Victoria, Parliamentary Debates, Legislative Council, 9 August 2018, 3977 (David Davis) and 3993 (Joshua Morris).
- 35 Victoria, Parliamentary Debates, Legislative Council, 26 July 2018, 3294 (Edward O'Donohue).
- 36 Ibid 3297 (Sue Pennicuik).
- 37 Victoria, Parliamentary Debates, Legislative Council, 19 June 2018, 2764 (Georgie Crozier) and 21 June 2018, 2908 (Georgie Crozier).

- 38 Ibid.
- 39 Ibid 2516 (Sue Pennicuik) and Legislative Assembly, 23 May 2018, 1523 (Robert Clark).
- 40 Victoria, Parliamentary Debates, Legislative Council, 8 March 2018 840 (Melina Bath) and 842 (Inga Peulich).
- 41 Parliament Victoria, Bills Status List 2018.
- 42 Michael Brett Young, 'From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006' (Report, 1 September 2015).
- 43 Victoria, Parliamentary Debates, Legislative Assembly, 21 June 2018, 2197 (Lisa Neville).
- 44 Victoria, Parliamentary Debates, Legislative Assembly, 5 June 2018, 1727 (Lidia Thorpe).
- 45 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Alert Digest No. 5 (2018), 9, 10.
- 46 Victoria, Parliamentary Debates, Legislative Assembly, 6 June 2018, 1847.
- 47 Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Report, 1 September 2015), Recommendation 43.
- 48 Ibid, Recommendation 37(a).
- 49 Ibid, Recommendation 37(c).
- 50 Victorian Equal Opportunity and Human Rights Commission, *2016 Report on the Operation of the Charter of Human Rights and Responsibilities* (Report, October 2017) 55.
- 51 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Submissions from Commissioner for Children and Young People, Youthlaw and joint submission from the Law Institute of Victoria, Federation of Community Legal Centres, 2018 <<https://www.parliament.vic.gov.au/sarc/article/916>> and Alert Digest No. 11 (2018), 21.
- 52 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Joint submission from Law Institute of Victoria, Federation of Community Legal Centres and Human Rights Law Centre, 2018 <<https://www.parliament.vic.gov.au/sarc/article/916>> and Alert Digest No. 10 (2018).
- 53 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Submissions from the Commission and the Commissioner for Children and Young People, 2018 <<https://www.parliament.vic.gov.au/sarc/article/916>> and Alert Digest No. 7 (2018).
- 54 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Submission from the Australian Road Transport Suppliers Association, 2018 <<https://www.parliament.vic.gov.au/sarc/article/916>> and Alert Digest No. 4 (2018).
- 55 Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Submissions from the Commission and the Commissioner for Children and Young People, 2018 <<https://www.parliament.vic.gov.au/sarc/article/916>>.
- 56 Victoria, Parliamentary Debated, Legislative Council, 26 July 2018, 3348.

Chapter 4.

Human rights in courts and tribunals

4.1 The Charter as an effective litigation tool

In 2018 the Charter was raised or considered in more than 40 cases in Victoria's higher courts (see Appendix E), including the Supreme Court, Court of Appeal and County Court. These cases demonstrate that the Charter continues to be used as an effective litigation tool, across an increasingly broad range of issues, ranging from the religious freedom and freedom of expression in prisons, freedom from medical treatment without full, free informed consent, and equality before the law.

Litigation provides an important platform for individuals and groups to assert their human rights, obtain remedies for breaching rights and achieve more human rights compliant outcomes. The decisions by courts and tribunals help in the interpretation and application of Charter rights by public authorities. Public authorities can refer to these decisions when considering the application of the Charter in the exercise of their functions.

In 2018 there were some clear themes to the human rights litigation. This chapter focuses on cases that involved:

- the **right to a fair hearing** in the context of unrepresented litigants (*Roberts v Harkness*) and in situations where the parties have not been notified of, and are not present at, the proceedings (*AB & EF v CD*)
- the **right to equality and non-discrimination before the law** in relation to people with a mental illness (*PBU & NJE v Mental Health Tribunal*) and access to, and use of, common property of an owners' corporation (*Owners Corporation v Black*).

The Commission has the power to intervene in court proceedings to assist the court to understand and apply the Charter. We intervened in two significant matters in 2018:

- **Cemino v Cannan & Ors**: The Supreme Court confirmed courts must consider the distinct cultural rights of Aboriginal people under the Charter when making decisions in relation to a request to be heard in the Koori Court. This decision has the potential to assist Aboriginal people to access the Koori Court, where matters can be heard in a culturally appropriate forum.
- **AB & EF v CD**: This case eventually became known as 'Lawyer X'. It involved a barrister who had become an informer for Victoria Police. The court accepted that it had to act compatibly with the human rights of the convicted persons, balanced against the rights of EF and her children. This was a unique case in which the court was obliged to

uphold the right to a fair hearing for people who did not know the case was happening. The court was eventually satisfied a fair hearing could take place without advising the people at issue. The court appointed a legal representative as ‘friend of the court’ to represent their interests.

The Attorney-General similarly has the power to intervene in court proceedings that raise the Charter. In 2018, the Attorney-General intervened in the following matters:

- *Karl Hague v Director of Public Prosecutions* S APCR 2018 0134 (before the Supreme Court of Appeal at the time of publication)
- *Cemino v Cannan & Ors* [2018] VSC 535
- *Director of Public Prosecutions v Shaun Rayment* [2018] VSC 663.

4.2 The right to a fair hearing and natural justice

The courts extensively considered the application of the right to a fair hearing in the context of unrepresented litigants (*Roberts v Harkness*)¹ and in situations where the parties had not been notified of, and were not present at, the proceedings (*AB & EF v CD*). In *Roberts v Harkness*, the court set out factors a court must consider to ensure a fair hearing has been provided to an unrepresented litigant.

Factors to consider to ensure a fair hearing

When it comes to procedural fairness or natural justice, the concern of the law is to avoid practical injustice.²

The question to ask is whether the party in question was given a reasonable opportunity to present their case, advance submissions in support, know the opposing party’s case and make submissions in opposition.³

What is reasonable will depend on the circumstances and will include:

- the nature and complexity of the issues in dispute
- the nature and complexity of the submissions which the party wishes to advance
- the significance to that party of an adverse decision; and
- the competing demands of the time and resources of the court.⁴

AB & EF v CD⁵

This matter involved EF, a barrister who had become an informer for Victoria Police ('AB'). Victoria Police had assured EF her identity would remain confidential. The Independent Broad-based Anti-corruption Commission (IBAC) prepared a confidential report for 'CD', the Victorian Director of Public Prosecutions (DPP). The report recommended the DPP consider if any prosecutions had resulted in a miscarriage of justice by evidence obtained through a breach of legal professional privilege. The DPP concluded she was under a duty to disclose some of the information from the IBAC report to the convicted persons.

Victoria Police considered that if the DPP were to disclose this information, risk of death to EF would become 'almost certain'. On 10 June 2016, Victoria Police and the barrister EF instituted proceedings in the Supreme Court seeking declarations that the information the DPP proposed to disclose was subject to public interest immunity, meaning she was not permitted to disclose it. The hearing was heard in the absence of the convicted to decide whether disclosure was warranted.

The Commission intervened in these proceedings primarily to make submissions on whether, and how, the Charter affected the appropriateness of the court dealing with the case in the absence of the convicted persons. The Commission submitted, and it was accepted by the court, that through the direct application of section 6(2)(b) of the Charter, the court itself had to act compatibly with the human rights of the convicted persons (relevantly fair hearing and criminal procedure rights), balanced against the rights of EF and her children (relevantly the right to life, liberty and security and freedom from arbitrary interference with family).

The court held that the rights of the convicted persons were limited because the proceeding took place without notice to, or direct participation, by them. This was a significant departure from ordinary court processes, so raising the possibility that the hearing was not fair under section 24(1).⁶ However, the court was satisfied that a fair hearing could take place without notice to the convicted persons. Importantly, the court appointed lawyers as 'friends of the court' to represent the interests of the convicted persons.

On 19 June 2017, the Supreme Court dismissed Victoria Police and EF's public interest immunity claims on the basis that, although there was a clear public interest in preserving EF's anonymity as a police informer, and thus keeping her and her children safe from harm, there was a competing and more powerful public interest in favour of disclosure. In addition, the court stated that disclosure was in the public interest to maintain public confidence in the integrity of the criminal justice system.⁷

In making its decision, the court noted that the Chief Commissioner of Police had indicated that Victoria Police would endeavour to provide protection to EF and her children once the disclosures were made.

On 21 November 2017, the Court of Appeal dismissed AB's and EF's appeals. AB and EF appealed the decision to the High Court. The High Court initially granted special leave to appeal but later revoked that grant in November 2018.⁸

The case has since led to a Royal Commission into the Management of Police Informants, which remains ongoing.

4.3 The right to equality and non-discrimination

The courts considered the right to recognition and equality before the law and the right to effective protection against discrimination.⁹ For example, the courts reiterated in *PBU & NJE v Mental Health Tribunal*¹⁰ that it is particularly important to consider Charter rights in relation to people with a mental illness because they are especially vulnerable to discriminatory ill-treatment, stigmatisation and personal disempowerment.

In the matter of *Owners Corporation v Black*,¹¹ the courts found that owners corporations provide goods and services under the *Equal Opportunity Act 2010* (Vic) to people that occupy the buildings they administer. The courts reiterated that the right to equality protected by the Charter includes the right to effective protection from direct or indirect discrimination in respect of access to, and use of, common property.

PBU & NJE v Mental Health Tribunal¹²

This was an appeal of a decision from the Victorian Civil and Administrative Tribunal that the plaintiffs, who have a mental illness, be compulsorily subjected to electroconvulsive treatment.

The Supreme Court noted the case raised important legal issues about the *Mental Health Act 2014* (Vic), especially provisions on capacity to consent to or decline treatment, in light of human rights specified in the Charter.¹³

The court stated the fundamental purpose of the right to equality before the law is to protect the inherent and universal dignity of human persons. This right is particularly important for persons with a mental illness as they are especially vulnerable to discriminatory ill-treatment, stigmatisation and personal disempowerment.¹⁴

The court found people with mental illness are highly vulnerable to interference with the exercise of their human rights, especially their right to self-determination, to be free of non-consensual medical treatment and to personal inviolability.

The court found the Tribunal erred in law by determining that PBU and NJE lacked capacity to give informed consent to treatment and had therefore applied that Act incompatibly with their rights under the Charter.¹⁵

The decision makes it clear that if the broader Victorian community is only required to satisfy a certain threshold of capacity to make their own medical decisions, it would be discriminatory to require those being treated under the *Mental Health Act 2014* to meet a higher one.

Victoria Legal Aid, which acted on behalf of the applicant at the hearing, commented that the decision underlines a paradigm shift from paternal best-interests decision-making to a greater focus on self-determination intended by Parliament.¹⁶ The decision is useful not just for people in Mental Health Tribunal hearings, but also in direct negotiations with a person's treating team regarding whether an ECT application should even be made. The decision has the potential to reduce the numbers of people being subjected to ECT against their will.¹⁷

Owners Corporation v Black¹⁸

This was a Supreme Court appeal of a decision from the Victorian Civil and Administrative Tribunal (VCAT).

Ms Black had problems accessing an apartment she owned due to heavy manual doors that did not open easily for her mobility scooter.

The owners corporation responsible for managing the apartment complex argued they did not provide a service, and that Ms Black must pay for any changes to the building herself.

The Commission joined the case, as a friend of the court, to provide expert advice on the human rights and discrimination law.

The Supreme Court found owners corporations must make reasonable adjustments to buildings for tenants and visitors with a disability, or they risk being discriminatory.

The Supreme Court returned the matter to VCAT to decide whether the adjustments Ms Black sought to the doors were reasonable. VCAT found they were and ordered the owners corporation to make the adjustments. It also found Ms Black had suffered humiliation, stress, anxiety, frustration and embarrassment and ordered \$10,000 in compensation.¹⁹

This decision highlights the importance of owners corporations obligations' to make reasonable adjustments to accommodate people with disabilities. It confirms that owners corporations must consider requests for modification by owners and occupiers with disabilities.

4.4 Cultural rights

Cemino v Cannan²⁰

In April 2017, Mr Cemino applied to the Magistrates' Court in Echuca to transfer criminal charges he was facing to the Koori Court in Shepparton for sentencing. Mr Cemino submitted that he wanted to be heard before his elders in the Koori Court, where he would have felt more comfortable discussing the circumstances around his actions, including the recent passing of his mother, a Yorta Yorta woman.²¹ Mr Cemino explained:

The Elders know who I am and who my family is. Talking to the Elders is like talking to my family. They can speak to me about my mother and her family, about who I am, and what it means to be Yorta Yorta [...] The Elders understand my feelings, that there is a 'shame job' there related to my mum because I treated her poorly and now she's gone. The Elders know what this means for me. I can speak to them about this, in a way I can't speak to the mainstream Court.

The Koori Court had jurisdiction to deal with the proceedings and the transfer to Shepparton was necessary because the Koori Court does not sit at the Echuca Magistrates' Court. Importantly, both Echuca and Shepparton are located on Yorta Yorta land, with many Aboriginal people from the Yorta Yorta clan residing in Echuca, Shepparton and elsewhere.

The Magistrates' Court in Echuca refused Mr Cemino's application, based on the magistrate's understanding of the importance of the 'proper venue' principle.²² According to this principle, the proper venue for a case to be heard is the venue nearest to the place where the offence was alleged to be committed, or the place of residence of the defendant.

The Victorian Aboriginal Legal Service, on behalf of Mr Cemino, appealed, arguing:

- the Magistrate made an error of law in applying the proper venue principle, as this was effectively a clause of the Magistrates' Court Act 1988 (Vic), which had since been repealed
- the Magistrate's Court acted unlawfully by failing to properly consider the plaintiff's cultural rights under section 19(2)(a) of the Charter and his right to equality under section 8(3) of the Charter.²³

The Commission and the Attorney-General intervened in the appeal to make submissions on the application of the Charter to the proceedings.

The Supreme Court found the Magistrate made an error by giving primacy to the Rossi principles, and that the traditional 'proper venue' considerations should generally be given less weight than the purposes of the Koori Court.²⁴

The Supreme Court confirmed the right to equality protected in section 8(3) of the Charter. The cultural rights of Aboriginal people protected in section 19(2)(a) were applicable to the Magistrates' Court by reason of section 6(2)(b) of the Charter, which provides that the Charter applies to courts and tribunals, to the extent they have certain functions. Accordingly, courts must consider the distinct cultural rights of Aboriginal people and their right to equality when making decisions in relation to an Aboriginal Victorian's request to be heard in the Koori Court.

Justice Ginnane accepted the evidence given by Mr Cemino that he felt understood by the elders in the Koori Court and could also better understand the proceedings.²⁵ Further, Justice Ginnane found the Magistrates' Court should have considered the plaintiff's rights when deciding whether to transfer the proceedings to the Koori Court by reason of section 32(1) of the Charter, which requires that all statutory provisions be interpreted in a way that is compatible with human rights so far as it is possible to do so consistently with their purpose.²⁶

The Court also recognised the important role that Koori Courts play in addressing systemic disadvantage faced by Aboriginal people in the justice system:²⁷

The Koori Court was established for purposes that included addressing systemic disadvantage faced by Aboriginal people who have been over-represented in the criminal justice system, in imprisonment and in deaths in custody. The Koori Court seeks to reduce that systemic disadvantage by providing special measures and accommodations so that the procedure is less disadvantageous for Aboriginal offenders and it seeks to protect against indirect discrimination on the basis of race. It is a means through which systemic disadvantage in the justice system is mitigated in pursuance of the section 8(3) Charter right.

The Supreme Court's decision has the potential to increase access to the Koori Court for Aboriginal Victorians. Access to the Koori Courts allows Aboriginal people to have their matters heard in a culturally appropriate forum that incorporates traditional Aboriginal beliefs and practices. This demonstrates the capacity and effectiveness of the Charter to be used alongside the Koori Court legislation as a tool in helping reduce over-representation of Aboriginal people in Victorian prisons.

Endnotes

- 1 *Robert v Harkness* [2018] VSCA 215 (29 August 2018).
- 2 Ibid [47], Referencing Gleeson CJ in *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex Parte Lam* (2003) 214 CLR 1.
- 3 Ibid [48].
- 4 Ibid [49].
- 5 *AB & EF v CD* [2017] VSC 350; *AB v CD & EF* [2017] VSCA 338 (21 November 2017); *AB v CD; EF* [2018] HCA 58 (5 November 2018). The proceedings commenced in 2017, however no reporting of the matter was permitted by the courts until 5 February 2019.
- 6 Ibid [172].
- 7 Ibid [244]-[245].
- 8 *AB v CD; EF v CD* [2018] HCA 58 (5 November 2018).
- 9 *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 8.
- 10 [2018] VSC 564.
- 11 [2018] VSC 337.
- 12 [2018] VSC 564 (1 November 2018).
- 13 Ibid [87].
- 14 Ibid [113].
- 15 Ibid [283].
- 16 Victoria Legal Aid, *PBU & NJE v Mental Health Tribunal case note* (November 2018) 62 Victoria Legal Aid, *PBU & NJE v Mental Health Tribunal case note*, June 2018 (Web Page) <<https://www.legalaid.vic.gov.au/about-us/news/landmark-judgment-strengthens-patients-rights-in-compulsory-electroconvulsive-treatment-cases>>.
- 17 Ibid.
- 18 [2018] VSC 337.
- 19 The Victorian Equal Opportunity and Human Rights Commission, *Owners Corporation v Black* [2018] VSC 337-21 June 2018 (Web Page) <<https://www.humanrightscommission.vic.gov.au/component/k2/item/1710-owners-corporation-v-anne-black#vcac-decision-20-december-2018>>.
- 20 [2018] VSC 535.
- 21 The Koori Court has jurisdiction to deal with the proceedings and the transfer to Shepparton was necessary because the Koori Court does not sit at the Echuca Magistrates' Court. Importantly, both Echuca and Shepparton are located on Yorta Yorta land, with many Aboriginal people from the Yorta Yorta clan residing in Echuca, Shepparton and elsewhere.
- 22 This principle is discussed in *Rossi v Martland* (1994) 75 A Crim R 411 (Rossi).
- 23 *Cemino v Cannan*, Ibid, [25].
- 24 Ibid [74].
- 25 Ibid [96].
- 26 Ibid [143].
- 27 Ibid [143].

Chapter 5.

2015 Review

recommendations –

implementation progress

5.1 2015 Review

To facilitate government and community reflection on how the Charter is operating, two statutory reviews were built into the Act: the first, after a period of four years,¹ and the second, after eight years of operation.² The four-year review was conducted in 2011 and reported on in the Commission's 2012 Charter report. The eight-year review was conducted in 2015 by Michael Brett-Young (2015 Review).

The 2015 Review found the Charter has promoted a solid foundational awareness of human rights principles within the Victorian public sector, Parliament and the courts. However, the 2015 Review also found efforts to embed the Charter in government processes and practices had stalled, limiting the establishment of an effective human rights culture in Victoria.

The 2015 Review contained 52 legislative and policy recommendations to make the Charter more accessible, effective and practical. The government accepted in full or in principle 45 of the 52 recommendations, however most recommendations have not been progressed. The Commission has prepared a list below detailing the implementation progress of each recommendation.

The Commission commends the Victorian Secretaries' Board commitment and investment to respond to recommendations strengthening Victoria's culture of human rights. This is leading to greater awareness of the Charter, skills in applying human rights and resources tailored to the public sector.

The Commission urges the government to progress all recommendations. The Commission considers that implementing these changes, as well as the specific recommendations the Commission has made in relation to human rights culture in Chapter 2 of this report, will greatly strengthen the protections of human rights for all Victorians.

The 2015 recommendations related to eight key policy areas, outlined below.

1. Building our human rights culture

The 2015 Review found that, for the Charter to be effective, the Victorian Government must prioritise work to build a stronger human rights culture. It found that Victoria needs a culture that makes human rights real in people's everyday interaction with government, and that a strong human rights culture facilitates better government decision-making.

2. Clarifying responsibilities for human rights

The 2015 Review made recommendations for clarifying the role of public sector organisations and their responsibilities in relation to protecting and promoting human rights. These included recommendations to ensure greater certainty about who is a public authority.

3. The role of statutory authorities

The 2015 Review set out recommendations to better facilitate compliance with the Charter, support the resolution of issues when a member of the community is concerned government has not complied with the law, and to clarify oversight roles. The 2015 Review found the Charter is missing key elements of an effective regulatory system. It recommended the Charter be enhanced to enable the Commission to offer dispute resolution (as it does under the *Equal Opportunity Act 2010* (Vic) and the *Racial and Religious Tolerance Act 2001* (Vic)).

4. Remedies and oversight – the role of the courts

The 2015 Review examined the role of the courts in determining whether a person's human rights have been breached and what should happen. The 2015 Review proposed a remedies provision modelled on section 40C of the *Human Rights Act 2004* (ACT) to provide a clear framework to achieve these outcomes. The proposed model would give community members access to dispute resolution at the Commission, and an avenue to have the Victorian Civil and Administrative Tribunal decide whether their rights have been breached. People could continue to raise the Charter in other legal proceedings where relevant. Government oversight bodies could continue to look at Charter issues that are relevant to their jurisdiction.

5. Interpreting and applying the law

The 2015 Review considered the role of human rights in interpreting Victorian laws and recommended the Charter step out the obligations on courts and tribunals to:

- interpret all Victorian laws, as far as is possible to do so consistently with their purpose, in a way that is most compatible with human rights
- prefer an interpretation of a Victorian law that is least incompatible with human rights, when a choice must be made between two or more possible meanings that are incompatible with human rights
- ensure that the section 7(2) of the Charter, which sets out when a human right may be reasonably limited, applies to the assessment of which interpretation is most compatible with human rights.

6. More effective parliamentary scrutiny

The 2015 Review considered the role of human rights scrutiny in law-making. It noted that parliamentary human rights scrutiny has had a positive impact on the human rights compatibility of new laws, but some small changes are needed to increase the robustness and transparency of this process. The main criticism of the scrutiny process was the short time frame within which the Committee must consider and report on Bills. This time frame means that the public has little opportunity to make submissions on the human rights impacts of proposed legislation, and the Committee lacks the time and capacity to consider any submissions in detail.

7. Emerging issues

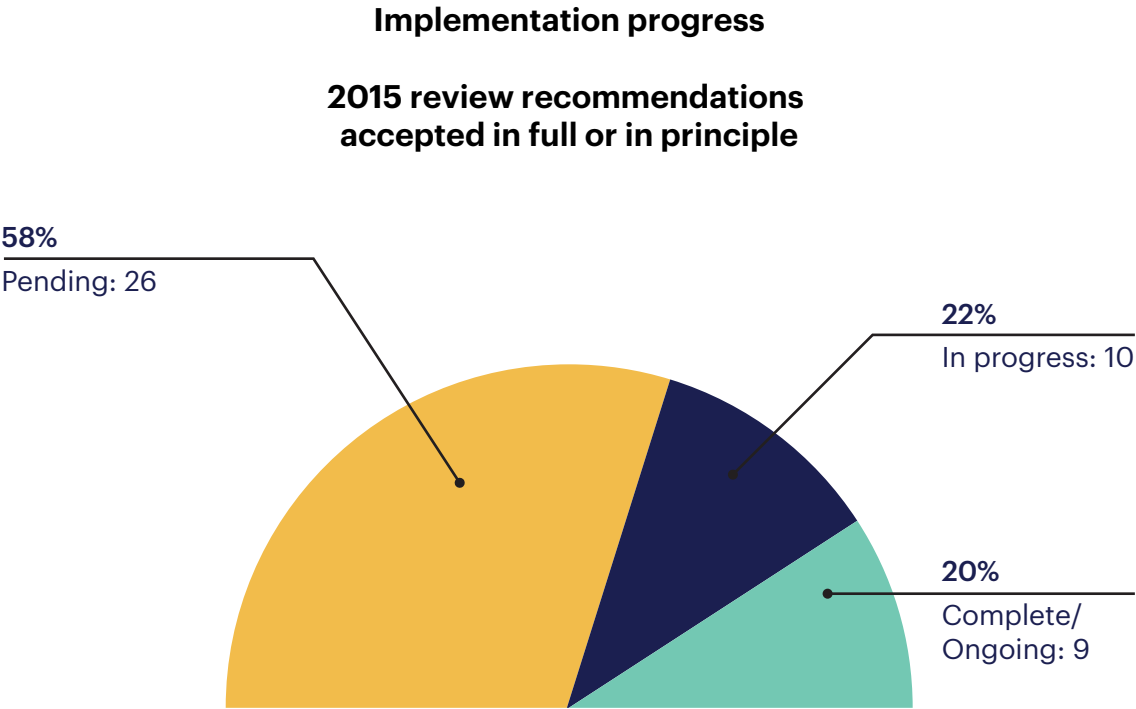
The 2015 Review examined other issues, including the application of the Charter to national schemes, the introduction of additional rights into the Charter and the definition of discrimination.

8. The need for a further review

The 2015 Review also recommended that the Charter be amended to require a further review four years after the commencement of the proposed new complaints and remedies framework.

5.2 Implementation progress – an overview

The Victorian Government’s response to the 2015 Review recommendations accepted in full or in principle 45 of the 52 recommendations. Last year, the Commission provided an update on the progress of implementation of the recommendations. The list below provides a summary of the actions undertaken on all recommendations during both 2017 and 2018. The list demonstrates that most recommendations that were supported by the Victorian Government are yet to progress.



5.3 Commission reflection on implementation

The Commission is concerned about the lack of progress that has been made in implementing the 2015 Review recommendations. There has been very little change to the status of the recommendations since the Commission reported on it as part of the 2017 Charter Report. The reforms recommended in the 2015 Review would greatly improve the operation of the Charter and the protections it offers all Victorians. The Commission urges the government to progress the necessary changes.

2015 Review recommendations – implementation progress

The Human Rights Unit of the Department of Justice and Community Safety assisted the Commission to prepare this data.

Chapter 1 – Building our human rights culture

Recommendation 1

The Victorian Government make a public statement of commitment to human rights and Ministers reinforce in their dealings with departments and agencies their expectation that they should act compatibly with human rights.

Status

Complete/Ongoing

Government response

Supported

Progress – as reported in the 2017 Charter Report

The Victorian Government has made several public statements of its commitment to human rights, including when the Attorney-General released the government's response to the 2015 Charter Review on 22 July 2016 and when opening the whole-of-government International Human Rights Day event on 5 December 2017.

Ministers will continue to reinforce to departments and agencies the need to consider the Charter in actions and decision-making processes.

Progress during the 2018 calendar year

The Victorian Government continues to make public statements of its commitment to human rights and reinforcing to departments and agencies the need to consider the Charter in actions and decision-making processes.

For example, the Secretary, Department of Justice and Community Safety issued a statement on International Human Rights Day on 10 December 2018, reinforcing that human rights under the Charter are an integral part of the department's work.

The former Deputy Secretary, Civil Justice also spoke of how the Charter reflects the Victorian Government's commitment to protecting and promoting fundamental human rights, when opening the whole-of-government International Human Rights Day event on 11 December 2018.

Recommendation 2

The Victorian Secretaries Board include the development of a human rights culture as part of its work in setting values and standards across the Victorian public sector. An inter-departmental committee should support this work by providing leadership and coordination for departments and agencies at the State government level.

Status

Complete/Ongoing

Government response

Supported

Progress – as reported in the 2017 Charter Report

On 26 September 2017, the Victorian Secretaries Board reaffirmed its commitment to human rights, issuing statements by departmental secretaries to all departmental staff.

An inter-departmental executive sponsors group (Charter Leaders Group) has also been established to support this work and provide leadership and coordination for departments and agencies. The mandate of this group is to embed a stronger culture of human rights across the Victorian public sector.

Progress during the 2018 calendar year

The Commission and the Human Rights Unit (HRU) continue to provide ongoing project support and human rights expertise to the Victorian Secretaries Board and the Charter Leaders Group.

On 12 September 2018, the Victorian Secretaries Board agreed to provide two-year funding to HRU and the Commission to continue building Victoria's human rights culture. It also approved HRU and the Commission providing an annual report back to the Victorian Secretaries' Board on progress made to build Victoria's human rights culture.

The Charter Leaders Group met three times in 2018 to support the work of developing a human rights culture and to provide leadership and coordination for departments and agencies.

Recommendation 3

The Victorian Government encourage public sector entities to promote a human rights culture in their organisations, including by:

- a. ensuring their organisational vision, plans, policies and procedures support good human rights practice
- b. building relevant human rights capabilities into staff position descriptions and ongoing professional development.

Status

In progress

Government response

Supported

Progress – as reported in the 2017 Charter Report

The Charter Leaders Group will consider these (and other) initiatives as part of its mandate to promote and embed a stronger human rights culture across the Victorian public sector.

It is anticipated that greater awareness and understanding of human rights through the Charter Education Program will lead to public sector entities promoting a human rights culture within their organisations and referencing human rights in business plans, policies and position descriptions.

One initiative already implemented has been the publication of the 'Good Practice Guide: Managing Complaints Involving Human Rights'. The Guide was jointly produced by the Department of Justice and HRU, the Commission, the Ombudsman and the Independent broad-based anti-corruption commission (IBAC) and was launched in May 2017. The Guide is intended to inform, complement, be incorporated into, and read in conjunction with existing complaint handling procedures.

Progress during the 2018 calendar year

The HRU observes that greater awareness and understanding of human rights through human rights education has already led to public sector entities promoting a human rights culture within their organisations and identifying the need to reference human rights in business plans, policies and position descriptions.

During 2018, the HRU worked with several public sector entities to further embed human rights considerations in their organisational policies, as a direct result of staff from that organisation having received human rights education.

In September 2018, the Victorian Secretaries Board endorsed the work already undertaken by the Charter Education Program and approved two years of additional funding for continuation of the project in its next phase as the Charter Education Program.

As part of this next phase, the HRU and the Commission is working with the Charter Leaders Group to develop customised human rights work plans for each public sector entity.

Recommendation 4

The Victorian Government review the structure and placement of the Human Rights Unit so that it can provide centralised expertise on human rights within government. The Unit's role should include providing advice, developing and maintaining human rights resources for use within the Victorian Government, and providing specialist training (such as training on how to develop human rights compatible policy and legislation, and how to draft statements of compatibility).

Progress – as reported in the 2017 Charter Report

The government considers that as the Charter falls within the Attorney-General's portfolio, the HRU is best positioned to fulfil its functions of providing expert human rights advice and delivering human rights training across government from within DJR.

Progress during the 2018 calendar year

Completed in 2017.

Status

Complete

Government response

Supported in principle

Recommendation 5

The Human Rights Unit update the Charter Guidelines for Legislation and Policy Officers. The Unit should also work with departments and agencies to continue to develop specialist guidance and promotional materials in key areas of policy and service delivery, such as policing, corrections, health services, disability services, child protection and education.

Progress – as reported in the 2017 Charter Report

The HRU is considering whether the Charter Guidelines for Legislation and Policy Officers should be updated, or alternatively whether it is preferable to design, develop and maintain a suite of alternative resources that complement existing resources, including the Judicial College of Victoria's Charter Bench Book.

The HRU will continue to work with the Commission and other agencies to provide human rights guidance and educative resources, including human rights e-learning modules and a human rights online 'hub'.

Progress during the 2018 calendar year

Based on discussions with and requests from departments and agencies, HRU during 2018 continued to focus on working with the Commission and other agencies to provide human rights guidance and educative resources. This included the Commission's human rights e-learning modules, human rights online 'hub', and a revised Charter Guide for Victorian Public Sector Workers.

As part of the work with the Charter Leaders Group, the Commission and the HRU are also developing 'how-to' guides for embedding the Charter in

Status

In progress

Government response

Supported in principle

public sector acts and decisions. These resources will support the development of communities of practice around the Charter.

Recommendation 6

The Victorian Equal Opportunity and Human Rights Commission be given responsibility to provide human rights education within the public sector to:

- a. leaders across the Victorian public sector to ensure that they can influence a positive culture of human rights
- b. local government councillors. As a priority, materials should be available to support the induction of new councillors after the October 2016 local government elections
- c. staff of Victorian public sector departments, agencies and local government. Where possible, the training should be tailored to the needs of work areas and be delivered in consultation with frontline staff who understand the operational aspects of the work area
- d. private entities that perform functions of a public nature and have obligations under the Charter.

Status

Complete

Government response

Supported in principle

Progress – as reported in the 2017 Charter Report

During 2017, the Commission and the HRU collaborated in the delivery of education sessions on the Charter to more than 3000 staff from public authorities, funded by the Victorian Government under the Charter Education Program. The public authorities included departments, local government and statutory authorities. Each session covered an overview of the Charter, the rights specifically protected and the obligations on public authorities. Participants applied the Charter to realistic workplace scenarios tailored in partnership with the public authorities. The Charter Education Program delivered the sessions to executive teams, managers and staff.

In 2017, the Commission began developing suite of e-learning modules for public authorities as part of a move toward blending e-learning with face-to-face education.

Progress during the 2018 calendar year

During 2018, the Commission and the HRU continued to build on the significant progress made in delivering targeted and tailored human rights education within the public sector. This included working with the Charter Leaders Group to identify and action priorities related to human rights education for the 2018–19 financial year.

By the end of 2018, the number of staff members from public authorities who received face-to-face training by the Commission and the HRU under this initiative increased to more than 5,800 in total.

Throughout 2018, the Commission continued to design and deliver

human rights education services to public authorities, local councils and community organisations. These services were designed together with public sector partners to ensure appropriate tailoring to support the application of the human rights in the day to day work.

In 2018, the Commission also launched its suite of six free e-learning modules for public authorities to raise general awareness of rights and obligations under the Charter. Consistent with leading practice, the modules are designed to be the first component of a blended learning approach to be followed by customised face-to-face training.

Recommendation 7

The Victorian Equal Opportunity and Human Rights Commission facilitate opportunities for public and community sector workers to share experience and expertise on the Charter. Such opportunities could include Human Rights Network events, the production of resources, the establishment of communities of practice sponsored by a senior executive, and the use of existing networks.

Progress – as reported in the 2017 Charter Report

During 2017, the Commission began developing an online Human Rights Hub. The purpose of the Human Rights Hub is to build a human rights community and culture by sharing information, resources, best practice and expertise. The Hub will be freely available and will provide an opportunity for workers across all sectors to share experiences.

Progress during the 2018 calendar year

During 2018, the Commission focused on establishing stronger networks and awareness of thematic communities of practice across the spectrum of public authorities to consider the most effective way to support sector-specific networks. Drawing on the data and knowledge gathered through this process, the Commission will conduct human-centred design workshops to identify effective and sustainable ways to develop relevant and useful resources for the public sector.

Status

In progress

Government response

Supported in principle

Recommendation 8

The Victorian Equal Opportunity and Human Rights Commission provide further human rights education to the community and community advocates.

Progress – as reported in the 2017 Charter Report

During 2017 the Commission developed Charter education with an emphasis on cultural rights, including creating partnerships with key community groups and councils. In addition, the Commission provided training sessions to primary, secondary and tertiary students.

Status

In progress

Government response

Supported in principle

The Commission has also developed materials specific to Aboriginal cultural rights in consultation with Aboriginal community groups, which were launched in June 2018. We have created a partnership with the Commission for Children and Young People to help identify ways to improve cultural rights for Aboriginal youth in detention, launched in July 2018.

Progress during the 2018 calendar year

In 2018 the Commission commenced a significant project in conjunction with the Department of Education to embed a human rights approach to diversity and inclusion across eight pilot schools in Victoria. The project is informed by leading practice incorporating a whole-of-school approach, comprised of:

- a blended learning program made up of an e-learning module and tailored face-to-face education workshops for school leaders and staff
- a coaching program for human rights ambassadors
- tools and resources designed to consolidate and deepen knowledge and skills and facilitate values alignment across the school community
- an additional awareness raising sessions for the school communities.

The Commission also commenced a program of work to raise awareness of rights and responsibilities amongst African and Muslim communities in Victoria. This approach was based on consultation with community and data, indicating that these communities are the most vulnerable to rights breaches, including discrimination from public authorities.

Recommendation 9

Public authorities make relevant human rights information available when providing services to the community and provide a way for people to have a say about issues that affect them.

Status

Complete/Ongoing

Progress – as reported in the 2017 Charter Report

While some public authorities already make human rights information available when providing services to the community, other strategies are being used across government to ensure that such information is more broadly provided, including through:

- the promotion of the 'Good Practice Guide: Managing Complaints Involving Human Rights' (referred to in Recommendation 3)
- communications from the Charter Leaders Group
- encouraging this approach in training provided to service delivery areas.
- Progress during the 2018 calendar year

Existing strategies continue to be used across government to ensure that human rights information is provided to the public.

Government response

Supported

Recommendation 10

The Victorian Equal Opportunity and Human Rights Commission look for ways to engage with the private sector to build a broader human rights culture in Victoria. Such engagement could include establishing a Corporate Charter Champions group, partnering with businesses on activities, or working with business networks to build understanding of the Charter.

Status

Not supported

Government response

Not supported

Recommendation 11

The Judicial College of Victoria be responsible for educating judicial officers and tribunal members regularly on how the Charter operates. Where appropriate, this education could be done in conjunction with professional development for the legal profession.

Progress – as reported in the 2017 Charter Report

This recommendation continues to be implemented through the Judicial College of Victoria's (JCV) ongoing work maintaining the Charter Bench Book, which is a resource for judicial officers on the operation of the Charter.

Additionally, the HRU assisted the JCV by presenting a Charter education session to the Victorian Drug Court on 1 August 2017 (as a component of the JCV's professional program). There were approximately 60 participants, including magistrates of the court, case workers, social workers, and lawyers from Victoria Police and Victorian Legal Aid. HRU and the Commission have also delivered a presentation for tribunal members and registry staff at VCAT as part of VCAT's professional development program.

Progress during the 2018 calendar year

During 2018, the HRU and the Commission continued to present Charter training sessions to registry staff at VCAT as part of VCAT's professional development program.

HRU also delivered training sessions on the Charter to staff at Court Services Victoria and the Dispute Settlement Centre of Victoria.

JCV generally undertakes substantive annual reviews of the Charter Bench Book content, as well as providing ad hoc updates in response to significant case law developments. JCV most recently undertook a substantive update of the Charter Bench Book in October 2018.

Status

In progress

Government response

Supported in principle

Chapter 2 – Clarifying responsibilities for human rights

Recommendation 12

Section 4 of the Charter be amended to set out a non-exhaustive list of functions of a public nature under section 4(1)(c), including:

- a. the operation of prisons and other correctional facilities
- b. the provision of public health services
- c. the provision of public education, including public tertiary education
- d. the provision of public housing, including by registered housing providers
- e. the provision of public disability services
- f. the provision of public transport
- g. the provision of emergency services
- h. the provision of water supply.

Progress – as reported in the 2017 Charter Report

In relation to this (and other) recommendations from the Review that require legislative amendment and that were accepted by the government, the introduction and passage of the necessary legislation is dependent on the government’s legislative program as a whole.

Progress during the 2018 calendar year

The Victorian Government will revisit this (and other) recommendations from the Review that require legislative amendment and that were accepted by the previous government, as part of the legislative program for the 2018-2022 term.

Status
Pending

Government response
Supported in principle

Recommendation 13

The Victorian Government use the *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2013* (Vic) to prescribe entities to be or not be public authorities—including entities that provide services under national schemes—where necessary to resolve doubt.

Progress – as reported in the 2017 Charter Report

This recommendation relates closely to Recommendation 12 and is therefore similarly ‘Pending’.

Status
Pending

Government response
Supported

Progress during the 2018 calendar year

This recommendation relates closely to Recommendation 12 and is therefore similarly 'Pending'.

Recommendation 14

A whole-of-government policy be developed for relevant State contracts to include terms that contracted service providers will have public authority obligations when performing particular functions under the contract and a provision be included in the Charter to authorise this.

Status

In progress*

Government response

Supported

Progress – as reported in the 2017 Charter Report

HRU will continue to consult with relevant parts of government to develop guidance on options for requiring contracted service providers to fulfil Charter obligations when performing particular functions under the Charter.

Regarding the recommendation to amend the Charter to include a provision to authorise this: See Recommendation 12.

Progress during the 2018 calendar year

During 2018, HRU continued to consult with relevant parts of government to develop guidance on options for requiring contracted service providers to fulfil Charter obligations when performing particular functions under the Charter.

Regarding the recommendation to amend the Charter to include a provision to authorise this: See Recommendation 12.

*** Regarding the recommendation to amend the Charter to include a provision to authorise this: PENDING**

Recommendation 15

The Charter provide for any entity to 'opt in' to public authority obligations by requesting the Attorney-General declare them to be a public authority, as in section 40D of the *Human Rights Act 2004* (ACT).

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 16

The Victorian Government review and clarify how the Charter applies to public sector employees who are not employed under the *Public Administration Act 2004* (Vic) (such as teachers).

Status
Pending

Government response
Supported in principle

Progress – as reported in the 2017 Charter Report

HRU proposes to review the legislative arrangements for the employment of public sector employees not employed under the *Public Administration Act 2004* (Vic). The HRU will then assess whether any legislative amendment or other action is desirable to clarify that such employees are clearly included in the Charter's definition of 'public authority'.

Progress during the 2018 calendar year

The review of the legislative arrangements for the employment of public sector employees not employed under the *Public Administration Act 2004* (Vic) will be included as part of the consideration of possible legislative changes to improve the operation of the Charter, as per the response to Recommendation 12.

Recommendation 17

The Charter be amended to clarify that decisions of public authorities must be substantively compatible with human rights, whether by defining 'to act' as including 'to make a decision' or by specifying in section 38(1) that it is unlawful for a public authority to make a decision that is incompatible with a human right.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 18

The Victorian Government consider the exception from public authority obligations in section 38(4) of the Charter (an exception relating to the religious doctrines, beliefs and principles of a religious body), as part of its current examination of religious exceptions and equality measures in other Victorian laws, so it can apply a consistent approach.

Progress – as reported in the 2017 Charter Report

This recommendation acknowledged legislative work being undertaken in relation to laws about religious exceptions and equality measures in other laws. Subsequently, the proposed amendments were defeated in the Legislative Council in 2016.

In any event, any legislative amendments to the Charter are now dependent on the government's legislative program as a whole (see Recommendation 12).

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 19

The second sentence in the note to section 4(1)(j) of the Charter be removed or amended, because listing cases and adopting practices and procedures may sometimes involve acting in a judicial capacity rather than in an administrative capacity.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Chapter 3 – Good practice and dispute resolution – the role of statutory authorities

Recommendation 20

The Victorian Equal Opportunity and Human Rights Commission be given the power to request information to assist with its statutory functions under the Charter and public authorities be given a duty to assist, as exists under the *Privacy and Data Protection Act 2014* (Vic).

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported in principle

Recommendation 21

The Victorian Equal Opportunity and Human Rights Commission be given the discretion to charge for the reasonable costs of voluntary compliance reviews, and education and training services.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 22

The Victorian Ombudsman, the Independent broad-based anti-corruption commission, and other relevant oversight bodies be given the power to request the Victorian Equal Opportunity and Human Rights Commission to help them when they exercise their statutory powers in relation to human rights issues.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 23

The Victorian Equal Opportunity and Human Rights Commission be given the statutory function and resources to offer dispute resolution for disputes under the Charter.

Progress – as reported in the 2017 Charter Report

This recommendation remains under consideration by the Victorian Government.

Progress during the 2018 calendar year

This recommendation remains under consideration by the Victorian Government.

Status

Under consideration

Government response

Under further consideration

Recommendation 24

The *Ombudsman Act 1973 (Vic)* make clear that the Ombudsman can consider human rights issues relating to the administrative actions of all public authorities under the Charter, except police and protective services officers. The Charter should note this jurisdiction.

Progress – as reported in the 2017 Charter Report

This recommendation remains under consideration by the Victorian Government.

Progress during the 2018 calendar year

This recommendation remains under consideration by the Victorian Government.

Status

Under consideration

Government response

Under further consideration

Recommendation 25

All relevant public sector oversight bodies should have the ability to consider human rights issues that arise within their jurisdiction, for example, the Mental Health Complaints Commissioner should continue to be able to consider human rights issues that relate to public mental health service providers. Mechanisms should be established to enable referral and appropriate information sharing between complaint-handling and oversight bodies. The Charter should note these roles.

Progress – as reported in the 2017 Charter Report

This recommendation remains under consideration by the Victorian Government.

Progress during the 2018 calendar year

This recommendation remains under consideration by the Victorian Government.

Status

Under consideration

Government response

Under further consideration

Recommendation 26

The Victorian Government ensure the Independent broad-based anti-corruption commission has capacity to investigate allegations of serious human rights abuses by police and protective services officers.

Progress – as reported in the 2017 Charter Report

The government will continue to ensure that the IBAC is

Status

Complete/Ongoing

Government response

Supported

sufficiently resourced to investigate allegations of human rights breaches by police and protective services officers.

Progress during the 2018 calendar year

The former Victorian Parliament Independent broad-based anti-corruption commission committee (IBAC Committee) conducted an inquiry into the external oversight of police corruption and misconduct in Victoria. The Committee's report was tabled on 4 September 2018.

That report makes recommendations which are relevant to this issue.

At the time of writing, the Victorian Government was considering the IBAC Committee's recommendations, along with related developments, and will respond in due course.

Chapter 4 – Remedies and oversight – the role of the courts

Recommendation 27

The provisions and process for obtaining a remedy under the Charter be clarified and improved by:

- a. amending the Charter to enable a person who claims a public authority has acted incompatibly with their human rights, in breach of section 38 of the Charter, to either apply to the Victorian Civil and Administrative Tribunal for a remedy or rely on the Charter in any legal proceedings. The amendment should be modelled on section 40C of the *Human Rights Act 2004* (ACT). The Tribunal’s jurisdiction to determine whether a public authority has breached section 38 of the Charter should be similar to its jurisdiction in relation to unlawful discrimination under the *Equal Opportunity Act 2010* (Vic). If the Tribunal finds that a public authority has acted incompatibly with a Charter right, it should have power to grant any relief or remedy that it considers just and appropriate, excluding the power to award damages.
- b. if the Charter is raised in another legal proceeding, the court or tribunal should retain the ability to make any order, or grant any relief or remedy, within its powers in relation to that proceeding. It should remain the case that a person is not entitled to be awarded any damages because of a breach of the Charter, in accordance with existing section 39(3) of the Charter.
- c. amending the Charter to make it clear that a person who claims that a decision of a public authority is incompatible with human rights, or was made without proper consideration of relevant human rights, can seek judicial review of that decision on the ground that the decision is unlawful under the Charter, without having to seek review on any other ground.

27(a) Status
Under consideration

27(b) Status
Complete

27(c) Status
Under consideration

Government response to 27(a) and 27(c)
Under further consideration

Progress – as reported in the 2017 Charter Report

- 27(a) This recommendation remains under consideration.
- 27(b) No action required
- 27(c) This recommendation remains under consideration.

Progress during the 2018 calendar year

- 27(a) This recommendation remains under consideration.
- 27(b) No action required
- 27(c) This recommendation remains under consideration

Chapter 5 – Interpreting and applying the law

Recommendation 28

Section 32 of the Charter be amended to:

- a. require statutory provisions to be interpreted, so far as it is possible to do so consistently with their purpose, in the way that is most compatible with human rights
- b. require, where a choice must be made between possible meanings that are incompatible with human rights, that the provision be interpreted in the way that is least incompatible with human rights
- c. make it clear that section 7(2) applies to the assessment of the interpretation of what is most compatible, or least incompatible, with human rights
- d. set out the steps for interpreting statutory provisions compatibly with human rights, to ensure clarity and accessibility.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status
Pending

Government response
Supported in principle

Recommendation 29

The Charter define the concepts of ‘compatibility’ and ‘incompatibility’ to make it clear that an act, decision or statutory provision is compatible with human rights when it places no limit on a human right, or it limits human rights in a way that is reasonable and demonstrably justifiable in terms of section 7(2). The Charter should use the two terms consistently, in relation to scrutiny of legislation (sections 28 and 30), the interpretation of legislation (sections 32, 36 and 37) and the obligations of public authorities (section 38).

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status
Pending

Government response
Supported

Recommendation 30

Section 7, containing the general limitations clause, be excluded from the Charter's definition of 'human rights' and the definition of 'human rights' refer to all the rights in Part 2, not only the civil and political rights.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 31

The internal limitation on freedom of expression in section 15(3) be repealed, so the general limitation provision in section 7(2) can be applied as the Charter's common test to balance competing rights and interests.

Status

Not supported

Government response

Not supported

Recommendation 32

Sections 36 and 37 of the Charter be amended to use the words 'declaration of incompatible interpretation' and 'cannot be interpreted compatibly with a human right', for consistency with terminology used in related sections, including section 32.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 33

Section 35 of the Charter be amended to remove the notice requirement for proceedings in the County Court and to give a judicial officer or tribunal member power to require a notice to be issued for a Charter issue of general importance or when otherwise in the interests of justice (at their discretion). Further, an explanatory note should be added to section 35 to make clear that proceedings do not have to be adjourned while notice is issued and responded to. The Attorney-General and the Commission should retain their right to intervene in all proceedings.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported in part

Recommendation 34

Sections 34 and 40 of the Charter be amended to explicitly give a judicial officer or tribunal member power to place conditions on interventions to support case management. Conditions may include, for example, timetabling, setting how the interveners may participate in proceedings, and confining the matters that submissions may address.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 35

The Attorney-General and the Victorian Equal Opportunity and Human Rights Commission publish guidance on how they will consider and process Charter notifications and their cost policies as an intervener (when they do not already do so). The Attorney-General and the Commission should make this guidance available to the public and promote it in the legal sector.

Progress – as reported in the 2017 Charter Report

During 2017 the Attorney-General developed Charter Intervention Guidelines, including costs policies as an intervener. The Commission's Charter Intervention Guidelines are available on its website.

At the time of writing this report, the Attorney-General's Charter Intervention Guidelines have been made available on the DJR website and Commission website. The guidelines have also been distributed to the legal sector and other stakeholders, including Victoria Legal Aid, the Federation of Community Legal Centres Victoria, the JCV, the Victorian Bar, the Law Institute of Victoria and the Victorian Ombudsman.

Progress during the 2018 calendar year

Completed in 2017.

Status

Complete/Ongoing

Government response

Supported

Chapter 6 – Firming the foundations – more effective parliamentary scrutiny

Recommendation 36

The secretariat of the Scrutiny of Acts and Regulations Committee arrange for human rights induction training for members of the Committee and the Victorian Equal Opportunity and Human Rights Commission offer a human rights briefing to all new parliamentarians.

Progress – as reported in the 2017 Charter Report

Committee members are provided with human rights briefing materials at the start of each parliament.

The Commission is yet to formalise a process for providing human rights briefings to all new parliamentarians.

Progress during the 2018 calendar year

Committee members are provided with human rights briefing materials at the start of each parliament.

The Commission is yet to formalise a process for providing human rights briefings to all new parliamentarians.

Status
Pending

Government response
Supported

Recommendation 37

The process for human rights scrutiny of Bills by the Scrutiny of Acts and Regulations Committee (SARC) be improved and public engagement in the process be enhanced by:

- a. the Victorian Government considering how best to ensure that the Committee has sufficient time to scrutinise Bills that raise significant human rights issues
- b. the Committee establishing an electronic mailing list to notify individuals and organisations of Bills that it is considering and to invite submissions
- c. the Committee referring to the content of submissions made to it in its Alert Digests on Bills.

Progress – as reported in the 2017 Charter Report

The government will identify options for providing SARC with sufficient time to consider Bills that raise significant human rights issues.

The committee scrutinises all Bills that are introduced into parliament each sitting week and reports back to parliament on those Bills in the following

Status
Pending

Government response
Supported in principle

sitting week. The list of bills introduced each sitting week is available on the parliament's website. The committee refers to submissions that it receives on bills and may publish them on its website.

The government notes that while SARC's internal processes and procedures are a matter for it to consider, the government intends to write to SARC and draw to its attention parts (b) and (c) of the Recommendation.

Progress during the 2018 calendar year

The review of any legislative options for providing SARC with sufficient time to consider Bills that raise significant human rights issues will be included as part of the consideration of possible legislative changes to improve the operation of the Charter, as per the response to Recommendation 12.

SARC's internal processes and procedures are a matter for it to consider. Nevertheless, the government will revisit parts (b) and (c) of the Recommendation.

Recommendation 38

The Victorian Government refer amendments to non-Victorian laws that apply in Victoria under a national scheme, and to Regulations under those laws, to the Scrutiny of Acts and Regulations Committee for consideration.

Progress – as reported in the 2017 Charter Report

The recommendation for referral to SARC will be encouraged as part of the whole-of-government policy on national schemes to be developed under Recommendation 47.

Progress during the 2018 calendar year

The recommendation for referral to SARC will be encouraged as part of the whole-of-government policy on national schemes currently being developed under Recommendation 47.

Status

In progress

Government response

Supported

Recommendation 39

Section 29 of the Charter be amended to specify the Scrutiny of Acts and Regulations Committee's failure to report on the human rights compatibility of any Bill that becomes an Act does not affect the validity, operation or enforcement of that Act or any other statutory provision.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Status

Pending

Government response

Supported

Progress during the 2018 calendar year

See Recommendation 12.

Recommendation 40

To ensure that House amendments can be subject to human rights scrutiny and to make the Charter and the *Parliamentary Committees Act 2003* (Vic) consistent, the Scrutiny of Acts and Regulations Committee should be given clear power to consider and report on provisions of Acts that it did not consider when a Bill was before parliament (within a limited time).

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 41

The human rights analysis in statements of compatibility be improved by:

- a. amending section 30 of the Charter to clarify that the Scrutiny of Acts and Regulations Committee may report to parliament on statements of compatibility
- b. the Victorian Government publishing draft statements of compatibility when exposure drafts of Bills are released for public comment.

Progress – as reported in the 2017 Charter Report

- a. See Recommendation 12.
- b. In many situations draft Statements of Compatibility are already released with exposure drafts of Bills. If asked, the HRU advises that releasing draft Statements of Compatibility with exposure drafts of Bills is best practice. HRU will consider whether it is appropriate to send out further guidance on this matter, for example, by a practice note.

Progress during the 2018 calendar year

- a. See Recommendation 12.
- b. During 2018, HRU continued to advise that releasing draft Statements of Compatibility with exposure drafts of Bills is best practice, whenever human rights advice was provided across government and in training sessions.

41 (a) Status

Pending

41 (b) Status

Complete/Ongoing

Government response

Supported

Recommendation 42

The Victorian Government facilitate the identification of human rights impacts of legislative proposals and options for addressing them by consulting the Human Rights Unit in the Department of Justice & Regulation at an early stage of developing legislation and drafting statements of compatibility.

Progress – as reported in the 2017 Charter Report

Early engagement and consultation with the HRU when developing legislation is strongly encouraged. The importance of timely consultation with HRU is emphasised whenever human rights advice is provided across government, in training sessions, and by members on the Charter Leaders Group.

Progress during the 2018 calendar year

During 2018, HRU continued to emphasise the importance of timely consultation whenever human rights advice is provided across government, in training sessions, and by members on the Charter Leaders Group.

Status

Complete/Ongoing

Government response

Supported

Recommendation 43

Members of parliament are encouraged to provide a short statement on the human rights compatibility of their proposed House amendments to parliament, when time permits.

Progress – as reported in the 2017 Charter Report

In many situations, this is also current practice. If asked, the HRU advises departments and Ministers to update the human rights analyses when House amendments are proposed.

Progress during the 2018 calendar year

During 2018, HRU continued to advise departments and Ministers to update the human rights analyses when House amendments are proposed.

Status

Complete/Ongoing

Government response

Supported

Recommendation 44

Human rights scrutiny of statutory rules and legislative instruments be made more transparent and effective by:

- a. publishing all human rights certificates in an online repository maintained by the Scrutiny of Acts and Regulations Committee
- b. amending section 30 of the Charter to require the Scrutiny of Acts and Regulations Committee to consider all statutory rules and legislative instruments and report to parliament if it corresponds with a Minister about the human rights impact of any statutory rule or legislative instrument or considers the statutory rule or legislative instrument limits human rights.

Progress – as reported in the 2017 Charter Report

- a. While SARC's internal processes and procedures are a matter for it to consider, the government intends draw to SARC's attention part (a) of the Recommendation.
- b. See Recommendation 12.

Progress during the 2018 calendar year

- a. SARC's internal processes and procedures are a matter for it to consider. Nevertheless, the government will revisit part (a) of the Recommendation.
- b. See Recommendation 12.

44(a) Status
Pending

44(b) Status
Pending

Government response
Supported

Recommendation 45

Local laws be made subject to the Charter by amending item 2(f) of Schedule 8 to the *Local Government Act 1989* (Vic) to refer to the human rights in the Charter, making incompatibility with the human rights in the Charter a factor for the Minister's consideration when deciding whether to recommend revocation of a local law.

Status

In progress

Government response

Supported in principle

Progress – as reported in the 2017 Charter Report

An exposure draft Bill to amend the *Local Government Act 1989*, incorporating provisions to give effect to Recommendation 45, was made publicly available on 12 December 2017. For the Recommendation to be fully implemented, the Bill will need to be passed by parliament.

At the time of writing this report, the Local Government Bill 2018 had been introduced by the Government.

Progress during the 2018 calendar year

The Local Government Bill 2018, which sought to implement this recommendation, was introduced into the Legislative Assembly and passed. However, the Bill lapsed in the Legislative Council, with dissolution of the Victorian Parliament for the 2018 election.

The Victorian Government will revisit this recommendation from the Review, as part of the legislative program for the 2018-2022 term.

Recommendation 46

The provision for override declarations in section 31 of the Charter be repealed. The explanatory materials for the amending statute should note that parliament has continuing authority to enact any statute (including statutes that are incompatible with human rights), and the statement of compatibility is the mechanism for noting this incompatibility. If legislation is passed that is incompatible with human rights, the responsible Minister should report to parliament on its operation every five years.

Status

Not supported

Government response

Not supported

Chapter 7 – Emerging issues

Recommendation 47

The Victorian Government adopt a whole-of-government policy that, in developing a national scheme, the Charter should apply to the scheme in Victoria to the fullest extent possible. Alternatively, the national scheme should incorporate human rights protections equivalent to, or stronger than, the Charter. In developing a national scheme, the Government should consider separately the question of protection and promotion of human rights through scrutiny of legislation, the interpretation of legislation, whether regulators and others involved in administering a national scheme in Victoria are public authorities, and oversight and compliance mechanisms.

Progress – as reported in the 2017 Charter Report

DJR proposes to develop this whole-of-government policy on national schemes, in consultation with relevant government departments, to acquit this Recommendation.

Progress during the 2018 calendar year

DJCS has commenced developing a whole-of-government policy on national schemes, which will be in consultation with relevant government departments.

Status

In progress

Government response

Supported

Recommendation 48

The principles in the Preamble to the Charter be amended to:

- a. recognise the need for public authorities to take steps to respect, protect and promote human rights
- b. recognise the importance of individuals and communities being able to have a say about policies, practices and decisions that affect their lives
- c. refer to self-determination having special importance for the Aboriginal people of Victoria, as descendants of Australia's first peoples.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 49

The Victorian Government work with Victorian Aboriginal communities to promote, protect and respect self-determination and the empowerment of Aboriginal people. This work could be pursued through existing forums, such as the Premier's meetings with members of the Aboriginal communities.

Status

In progress

Government response

Supported

Progress – as reported in the 2017 Charter Report

The government continues to work with Aboriginal communities to promote, protect and respect self-determination and the empowerment of Aboriginal people. During 2017 the government undertook significant consultation in relation to the Advancing the Treaty Process with Aboriginal Victorians Bill 2018, which reflects the shared aspiration of the Government and Aboriginal Victorians to negotiate a treaty or treaties that will tangibly help to improve the lives of Aboriginal Victorians. The Bill will be the roadmap to treaty negotiations (for example, through facilitating the establishment of a Treaty Authority and treaty negotiation framework).

At the time of writing this report, the Advancing the Treaty Process with Aboriginal Victorians Bill 2018 had been introduced by the government and passed as law.

Progress during the 2018 calendar year

In October 2018, the Victorian Government reaffirmed its commitment to progressing Aboriginal self-determination through the Victorian Aboriginal Affairs Framework 2018-2023 (VAAF). The VAAF is an overarching framework for working with Aboriginal Victorians, organisations and the wider community to drive action and improve outcomes. The VAAF acknowledges that government must transform its systems and structures to support self-determination.

The *Advancing the Treaty Process with Aboriginal Victorians Act 2018* was passed on 21 June 2018 and commenced operation on 1 August 2018. The Act recognises and celebrates the unique status, rights, cultures and histories of Aboriginal Victorians, and establishes a roadmap towards treaty negotiations.

The Victorian Treaty Advancement Commissioner continues to work with Aboriginal Victorians to establish a democratically-elected Aboriginal Representative Body, which will be known as the First Peoples' Assembly of Victoria. The Assembly is expected to be established during 2019.

Recommendation 50

Section 17 of the Charter include a new provision that every person born in Victoria has the right to a name and to be registered as soon as practicable after birth

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Recommendation 51

Discrimination' in the Charter be defined as 'direct and indirect discrimination' on the basis of a protected attribute in the Equal Opportunity Act 2010 (Vic).

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported

Chapter 8 – The need for a further review

Recommendation 52

The Charter be amended to require the Attorney-General to cause there to be a further review of the Charter four years after the commencement of the proposed complaints and remedies provision. The review should consider the operation of the Charter and how it could be improved, including the application of economic, social and cultural rights and the range of remedies available when human rights are breached.

Progress – as reported in the 2017 Charter Report

See Recommendation 12.

Progress during the 2018 calendar year

See Recommendation 12.

Status

Pending

Government response

Supported in principle

Endnotes

- 1 *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, s 44.
- 2 *Ibid* s 45.

The human rights culture indicator framework

| Influence | Engaged leadership | Attitudes and values of employees | Transparency and accountability |
|-----------|---|--|---|
| Indicator | <ul style="list-style-type: none"> Formal and informal leaders demonstrate their commitment to human rights and the Charter Leadership forums (including business/branch planning forums) include discussion on human rights Metrics on human rights are embedded in Executive Performance reviews | <ul style="list-style-type: none"> People feel safe to raise issues and call out problems The organisation is genuinely diverse and inclusive – staff reflect the communities they serve | <ul style="list-style-type: none"> Organisations understand what is required for “good human rights practice” Organisations know what they have achieved and what still needs to be done to embed a positive human rights culture Organisations understand and comply with human rights reporting mechanisms, including by reporting annually to the Commission by electing to complete the survey |

| | Community engagement and participation | Operational capability – knowledge and resourcing | Systems and processes |
|--|--|---|--|
| | <ul style="list-style-type: none"> • Community participation has informed key ‘work’ (end users contribute to the design of service) and feedback is regularly sought from the community • Improvements and interventions are made based on community feedback • Tools and information are available for community about their human rights • Structured / formal reflection on accessibility • Diverse cross section of community accessing services • Complaint mechanisms are available and accessible to the community | <ul style="list-style-type: none"> • Victorian Public Service staff understand the Charter and how to apply it in their work • Relevant human rights days and achievements are articulated and celebrated • Organisation has dedicated resources (both time and funding) to embed human rights • Champions or Influencers of human rights are empowered and resourced | <ul style="list-style-type: none"> • The Charter is included in legal compliance frameworks • Organisation embeds human rights in complaints, policies, branch / business planning documents, code of conduct and employment standards, risk management plans, internal grievance systems, processes, including inter agency agreements, research applications, procurement processes, contracts, recruitment, position descriptions and performance reviews • Organisation delivers available, accessible, adaptable, acceptable, inclusive and quality services |

APPENDIX A (CONTINUED)

| Influence | Engaged leadership | Attitudes and values of employees | Transparency and accountability | |
|--------------------|--|---|---|--|
| Measure | <ul style="list-style-type: none"> External commitment measured by how often and in what context human rights and the Charter are promoted externally (e.g. whether referenced in every speech, report and web page or just the human rights ones) Internal commitment measured by how often and in what context human rights and the Charter are promoted internally (e.g. in leadership forums or executive meetings or via internal staff communications) Measure whether executives' performance reviews include metrics for embedding a positive culture of human rights | <ul style="list-style-type: none"> Measure inclusive and diverse culture Measure attitudes and values with questions: "In my workgroup, human rights are valued", "My organisation encourages employees to act in ways that are consistent with human rights" available in Part 1 of the People Matter Survey Measure how examples of behaviours or decisions consistent with human rights and the Charter are shared at team planning forums or significant staff-wide forums Measure whether human rights values have been expressly incorporated into organisation specific values | <ul style="list-style-type: none"> Percentage of all organisations completing annual survey to public authorities Qualitative case studies of role-models | |
| Data source | <ul style="list-style-type: none"> Question in the annual survey to public authorities Community interviews | <ul style="list-style-type: none"> People Matter Survey Question in the annual survey to public authorities | <ul style="list-style-type: none"> Number of respondents to annual survey to public authorities Identified through the Charter Education Program | |

| | Community engagement and participation | Operational capability – knowledge and resourcing | Systems and processes |
|--|---|---|---|
| | <ul style="list-style-type: none"> • Have a process to identify groups in the community to consult with and how often they were consulted on key work and the development of key policy positions, and whether feedback regularly sought from the community • How did the community engagement or participation impact on the decision/policy? • Measure whether information about the Charter and human rights is clear and accessible to the public • Increased awareness in community about Charter and how to use it in a complaints process • The number of community submissions to the Scrutiny of Acts and Regulations Committee • Qualitative case studies | <ul style="list-style-type: none"> • Measure the percentage of staff completing Charter education programs • Measure engagement with awareness raising activities, such as human rights days celebrated • Measure awareness of the Charter and application to work: “I understand how the Charter of Human Rights and Responsibilities applies to my work” available in Part 1 of the People Matter Survey • Measure the number of dedicated resources (both time and funding) responsible for embedding positive human rights culture • Human rights and the Charter are embedded in professional development • Measure whether staff performance reviews include metrics for embedding a positive culture of human rights | <ul style="list-style-type: none"> • Human rights are embedded into decision making tools and/or processes, which are used across the organisation and are applied consistently and meaningfully from contracting through to service delivery • Measure whether the Charter is included in legal compliance frameworks • Measure human rights breaches in risk management registers • Measure service improvements that stem from complaints (internal or external) • Measure number of investigations undertaken by external independent bodies • Volume of complaints, number of complaints resolved within the specified timeframe and any changes in complaint themes • Qualitative case studies – constructive stories about the value the Charter has brought are told regularly and ongoing |
| | <ul style="list-style-type: none"> • Question in the annual survey to public authorities • Community interviews • Identified through the Charter Education Program • Scrutiny of Acts and Regulations Committee reports | <ul style="list-style-type: none"> • Question in the annual survey to public authorities • People Matter Survey | <ul style="list-style-type: none"> • Question in survey to public authorities • Identified through the Charter Education Program |

APPENDIX B

List of survey participants

Note: Small agencies tended to have less than 200 full-time equivalent employees and budgets for FY18 of less than \$50 million. Even though some of the departments and department divisions are relatively small in terms of the number of full-time equivalent employees and budget, a separate grouping was considered appropriate based on the unique core functions for which they are responsible.

| Organisation | Categorisation |
|--|---------------------------|
| Casey City Council | Council – Outer Metro |
| Whittlesea City Council | Council – Outer Metro |
| Darebin City Council | Council – Metro Melbourne |
| East Gippsland Shire Council | Council – Regional |
| Greater Geelong City Council | Council – Regional |
| Golden Plains Shire Council | Council – Rural |
| Moira Shire Council | Council – Rural |
| Port Phillip City Council | Council – Inner Melbourne |
| Stonnington City Council | Council – Inner Melbourne |
| Yarra City Council | Council – Inner Melbourne |
| Commission for Children and Young People | Agency – Small |
| Disability Services Commissioner | Agency – Small |
| Independent Broad-based Anti-corruption Commission | Agency – Small |
| Inspector-General for Emergency Management | Agency – Small |
| Office of the Public Advocate | Agency – Small |

| Organisation | Categorisation |
|--|----------------|
| Registry of Births, Deaths and Marriages Victoria | Agency – Small |
| Victorian Ombudsman | Agency – Small |
| Victorian Public Sector Commission | Agency – Small |
| Office of the Victorian Information Commissioner | Agency – Small |
| Victorian Multicultural Commission | Agency – Small |
| Consumer Affairs Victoria | Agency – Large |
| Court Services Victoria | Agency – Large |
| Parks Victoria | Agency – Large |
| Peter MacCallum Cancer Centre | Agency – Large |
| Public Transport Victoria | Agency – Large |
| Royal Children’s Hospital | Agency – Large |
| State Trustees Limited | Agency – Large |
| Victoria Legal Aid | Agency – Large |
| Department of Education and Training | Department |
| Department of Justice and Community Safety | Department |
| Department of Premier and Cabinet | Department |
| Department of Health and Human Services, Children and Families division | Department |
| Department of Health and Human Services, Community Services Operations division | Department |
| Department of Health and Human Services, Housing and Infrastructure division | Department |
| Department of Health and Human Services, Regulation, Health Protection and Emergency Management division | Department |

APPENDIX C

List of community organisations

| Organisation |
|--|
| Aboriginal Housing Victoria |
| Association for Children with a Disability |
| Castan Centre for Human Rights Law |
| Centre for Multicultural Youth |
| Djirra |
| Flemington Kensington Community Legal Centre |
| Islamic Council of Victoria |
| Melbourne Social Equity Institute |
| Merri Community Health |
| VALID, Victorian Advocacy League for Individuals with a Disability |
| Victorian Gay and Lesbian Rights Lobby |
| Victorian Melbourne Illness Awareness Council |
| Women's Legal Service Victoria |

APPENDIX D

Scoring sheet

| Engaged leadership (0 – 100 points) | | |
|-------------------------------------|---|--|
| Source | Question | Point allocation |
| Survey question | Has your leadership / Executive promoted the following human rights in internal communications during the 2018 calendar year? | 0 = 0 points 1-5 = 10 points 6+ = 20 points |
| Survey question | Did your leadership / Executive promote your organisation's public sector obligations under the Charter in internal communications during the 2018 calendar year? | Yes = 10 points No = 0 points |
| Survey question | Did your leadership / Executive promote the importance of human rights to its work / functions in internal communications during the 2018 calendar year? | Yes = 10 points No = 0 points |
| Survey question | Has your leadership / Executive promoted the following human rights in external communications during the 2018 calendar year? | 0 = 0 points 1-5 = 10 points 6+ = 20 points |
| Survey question | Did your leadership / Executive promote your organisation's public sector obligations under the Charter in external communications during the 2018 calendar year? | Yes = 10 points No = 0 points |
| Survey question | Did your leadership / Executive promote the importance of human rights to its work / functions in external communications during the 2018 calendar year? | Yes = 10 points No = 0 points |
| Survey question | Do Executives' (E01 or E02) performance review documents in your organisation include any metrics related to promotion and protection of human rights? | 1 = 20 (All) 2 = 15 (Most) 3 = 10 (Some) 4 = 0 (None) |

APPENDIX D (CONTINUED)

| Attitudes and values of employees (0 – 100 points) | | |
|--|--|---|
| Source | Question | Point allocation |
| Survey question | Have examples of behaviours or decisions upholding or promoting human rights been shared at significant forums open to a majority of staff in your organisation during the 2018 calendar year? | 0 = 0 points 1-5 = 10 points 6+ = 20 points |
| Survey question | Use Victorian public sector values or have human rights expressly incorporated into your organisation's specific values | Yes = 20 points No = 0 points |
| Survey question | Does your organisation have a diversity and inclusion action plan that is internally available? | Yes = 20 points No = 0 points |
| People Matter Survey | In my workgroup, human rights are valued | Above Victorian public sector average (≥ 10 percentage points (pp) for total agreement) = 20 points In line with Victorian public sector average (± 9 pp) or where People Matter Survey results are unavailable = 15 points Below whole Victorian public sector (more than 10% under) = 0 points |
| People Matter Survey | My organisation encourages employees to act in ways that are consistent with human rights | Above Victorian public sector average (≥ 10 percentage points (pp) for total agreement) = 20 points In line with Victorian public sector average (± 9 pp) or where People Matter Survey results are unavailable = 15 points Below whole Victorian public sector (more than 10% under) = 0 points |

APPENDIX D (CONTINUED)

| Community engagement and participation (0 – 100 points) | | |
|---|---|--|
| Source | Question | Point allocation |
| Survey question | How often did your organisation engage with relevant community groups in relation to human rights when developing key work and policy positions during the 2018 calendar year? | Always = 40 points Often = 30 points Occasionally = 20 points Rarely = 10 points Never = 0 points |
| Survey question | How often did your organisation engage with relevant community groups in relation to human rights to obtain ongoing feedback about key work and policy positions during the 2018 calendar year? | Monthly or more often = 25 points Every 2 – 6 months = 20 points Every 7 – 12 months = 15 points Annually or less frequently = 5 points Never = 0 points |
| Survey question | Does your organisation provide the Victorian community with tools or information about the following aspects of their human rights in dealing with your organisation? | 10 points each for first 3, or 35 points for 4+ (35 points in total) |

APPENDIX D (CONTINUED)

| Operational capability (0 – 100 points) | | |
|---|---|--|
| Source | Question | Point allocation |
| Survey question | Approximately what percentage of staff in your organisation completed Charter (of Human Rights and Responsibilities) training programs during the 2018 calendar year? | If percentage result 30% or higher = 30 points If percentage result lower than 30%, percentage result = number of points (e.g. 28% = 28 points) |
| Survey question | Raised awareness of human rights among staff | Yes = 10 points No = 0 points |
| Survey question | Does your organisation have dedicated resources responsible for embedding a positive human rights culture? | Yes = 10 points No = 0 points |
| Survey question | Are human rights and the Charter embedded in general professional development activities (that is, not specific Charter or human rights training programs)? | Yes = 10 points No = 0 points |
| Survey question | Do staff performance review documents include any metrics related to promoting and protecting human rights? | 1 = 20 (All) 2 = 15 (Most) 3 = 10 (Some) 4 = 0 (None) |
| People Matter Survey | PMS. I understand how the Charter of Human Rights and Responsibilities applies to my work | Above Victorian public sector average (\geq 10 percentage points (pp) for total agreement) = 20 points In line with Victorian public sector average (+/- 9 pp) or where People Matter Survey results are unavailable = 15 points Below whole Victorian public sector (more than 10% under) = 0 points |

APPENDIX D (CONTINUED)

| Systems and processes (0 – 100 points) | | |
|--|--|--|
| Source | Question | Point allocation |
| Survey question | To what extent are human rights embedded into processes or tools used across the organisation: Recruitment, Performance reviews and other human resources processes, Procurement / contracts, Processes involving decision making tools, Legal compliance framework, Risk management register, Business / brand planning documents, Policies | 4 = 50 points (Great extent) 2 or 3 = 25 points (Some or Moderate extent) 1 = 0 points (Not at all) / number of processes or tools applicable |
| Survey question | Does your organisation have a complaints policy? | 1 = 30 points (Yes – publicly available) 2 = 15 points (Yes – but not publicly available) 3 = 0 points No |
| Survey question | Does your complaints policy prompt staff to consider whether the human rights of the complainant have been engaged? | Yes = 10 points No = 0 points |
| Survey question | Does your complaints policy include a timeframe for resolving complaints? | Yes = 5 points No = 0 points |
| Survey question | Does your organisation record whether service improvements are made in response to complaints? | Yes = 5 points No = 0 points |

APPENDIX E

Cases raising or considering the Charter in 2018¹

| Case | Date | Court |
|---|-------------------|-----------------|
| <i>Haigh v Ryan</i> [2018] VSC 474 | 24 August 2018 | Supreme Court |
| <i>Owners Corporation v Black</i> [2018] VSC 337 | 21 June 2018 | Supreme Court |
| <i>PBU and NJE v Mental Health Tribunal</i> [2018] VSC 564 | 1 November 2018 | Supreme Court |
| <i>Cemino v Cannan</i> [2018] VSC 535 | 17 September 2018 | Supreme Court |
| <i>DPP v Rayment</i> [2018] VSC 663 | 2 November 2018 | Supreme Court |
| <i>AB & EF v CD</i> [2017] VSC 350 | 19 June 2017 | Supreme Court |
| <i>AB v CD and EF</i> [2017] VSCA 338 | 21 November 2018 | Court of Appeal |
| <i>AB & CD; EF v CD</i> [2019] HCA 6 | 27 February 2019 | High Court |
| <i>Deputy Commissioner of Taxation v Bourke</i> [2018] VSC 380 | 11 July 2018 | Supreme Court |
| <i>United Firefighters' Union v VEOHRC</i> [2018] VSCA 252 | 4 October 2018 | Court of Appeal |
| <i>Victorian Taxi Families Inc & Anor v Taxi Services Commission</i> [2018] VSC 594 | 12 October 2018 | Supreme Court |
| <i>DPP v Natale (Ruling)</i> [2018] VSC 339 | 26 June 2018 | Supreme Court |
| <i>Bendigo and Adelaide Bank Limited v Laszczuk & Anor</i> [2018] VSC 388 | 10 August 2018 | Supreme Court |
| <i>Doughty-Cowell (Victoria Police) v Kyriazis</i> [2018] VSCA 216 | 29 August 2018 | Court of Appeal |
| <i>DPP v Lyons</i> [2018] VSCA 247 | 27 September 2018 | Court of Appeal |
| <i>Robert v Harkness</i> [2018] VSCA 215 | 29 August 2018 | Court of Appeal |
| <i>Rossi Homes Pty Ltd v Dun and Bradstreet (Australia) Pty Ltd</i> [2018] VSC 314 | 14 June 2018 | Supreme Court |
| <i>Re Greco</i> [2018] VSC 175 | 13 April 2018 | Supreme Court |
| <i>Gullquist v Victorian Legal Services Commissioner</i> [2018] VSCA 259 | 11 October 2018 | Court of Appeal |
| <i>Waddington v State of Victoria & Ors</i> [2018] VSC 746 | 14 December 2018 | Supreme Court |

| | | |
|---|-------------------|------------------------|
| <i>The Queen v Chaarani (Ruling 1)</i> [2018] VSC 387 | 16 July 2018 | Supreme Court |
| <i>Karam v Palome Shoes Pty Ltd</i> [2018] VSC 2016 | 1 May 2018 | Supreme Court |
| <i>Kinnersly v Johnson</i> [2018] VSC 752 | 5 December 2018 | Supreme Court |
| <i>Marke v Victorian Workcover Authority (Review and Regulation)</i> [2018] VCAT 53 | 18 January 2018 | VCAT |
| <i>GHL v Mental Health Tribunal (Human Rights)</i> [2018] VCAT 255 | 23 February 2018 | VCAT |
| <i>MTD obo YTA v Lifestyle Solutions (Aust) Ltd (Human Rights)</i> [2018] VCAT 440 | 29 March 2018 | VCAT |
| <i>THY v Mental Health Tribunal (Human Rights)</i> [2018] VCAT 584 | 19 April 2018 | VCAT |
| <i>LGH v Mental Health Tribunal (Human Rights)</i> [2018] VCAT 535 | 27 April 2018 | VCAT |
| <i>Director of Housing v Follari (Residential Tenancies)</i> [2018] VCAT 657 | 27 April 2018 | VCAT |
| <i>Carey Baptist Grammar School Limited – Exemption (Human Rights)</i> [2018] VCAT 866 | 7 June 2018 | VCAT |
| <i>Benham v Housing First Ltd (Residential Tenancies)</i> [2018] VCAT 1282 | 17 August 2018 | VCAT |
| <i>Marke v Victoria Police FOI Division (Review and Regulation)</i> [2018] VCAT 1320 | 24 August 2018 | VCAT |
| <i>Secular Party of Australia Inc. v the Department of Education and Training (Human Rights)</i> [2018] VCAT 1321 | 27 August 2018 | VCAT |
| <i>FTL v Mental Health Tribunal (Human Rights)</i> [2018] VCAT 1456 | 25 September 2018 | VCAT |
| <i>Dawson v Greyhound Racing Victoria (Review and Regulation)</i> [2018] VCAT 1572 | 16 October 2018 | VCAT |
| <i>Fidge v Municipal Electoral Tribunal (Review and Regulation)</i> [2018] VCAT 1654 | 23 October 2018 | VCAT |
| <i>Country Fire Authority v KTN (Human Rights) (Corrected)</i> [2018] VCAT 1719 | 14 November 2018 | VCAT |
| <i>Goh v Port Phillip CC</i> [2018] VCAT 1515 | 20 November 2018 | VCAT |
| <i>Muldoon v Registrar of Births, Deaths and Marriages (Review and Regulation)</i> [2018] VCAT 1866 | 4 December 2018 | VCAT |
| <i>LDC</i> [2048] VMHT 2 | 9 January 2018 | Mental Health Tribunal |
| <i>Minogue v Victoria</i> [2018] HCA 27 | 20 June 2018 | High Court |

Endnote

- 1 This table includes published decisions reports at www.austlii.edu.au. Not all court and tribunal decision are reported on Austlii (Australasian Legal Information Institute).

Contact us

| | |
|------------------------|--|
| Enquiry Line | 1300 292 153 or (03) 9032 3583 |
| Fax | 1300 891 858 |
| Hearing impaired (TTY) | 1300 289 621 |
| Interpreters | 1300 152 494 |
| Email | enquiries@veohrc.vic.gov.au |
| Website | humanrightscommission.vic.gov.au |
| Follow us on Twitter | twitter.com/VEOHRC |
| Find us at | facebook.com/VEOHRC |

humanrightscommission.vic.gov.au