



Victorian Equal Opportunity  
& Human Rights Commission

# Human rights in Victoria

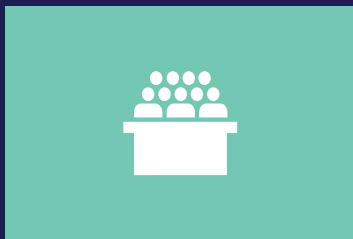
SUMMARY OF THE 2018 CHARTER REPORT



The full **2018 report on the Operation of the Charter of Human Rights and Responsibilities** can be found on our website, at [humanrightscormission.vic.gov.au](http://humanrightscormission.vic.gov.au).

## How the Charter of Human Rights and Responsibilities Act 2006 protects human rights in Victoria

The Charter places responsibilities on the three key areas of government.



### Public authorities

Public sector workers, government departments, local government, ministers and police must take human rights into account in their day-to-day work. They must act compatibly with human rights and consider human rights before making decisions.



### Parliament

The Victorian Parliament must assess any new laws to see whether they are consistent with human rights. Parliament must explain what human rights the law impacts, if any, and how the anticipated impact on human rights is reasonable and justified.



### Courts and tribunals

Courts and tribunals must interpret Victorian laws to uphold human rights as far as possible with a law's purpose.

The everyday requirement to consider human rights is where the Charter does its real work – the Charter has its greatest impact when people's rights are placed at the centre of decision-making.



For more information about Victoria's human rights system, see **Chapter 1** of the full report.

## Key findings

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**The purpose-built indicator framework we have developed allowed us to more accurately measure and understand Victoria's human rights culture.**
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**What went well: 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.**
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**Areas for improvement: Public sector leaders can further model and promote human rights. Public authorities can better support staff to embed human rights and use tools like complaints policies to identify and implement improvements.**
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**There is still a way to go with the implementation of recommendations from the 2015 review of the Charter, with more than half of the recommendations not yet progressed by the Victorian Government.**

## A culture of human rights

The law alone is not enough to protect human rights.

Public authorities make decisions daily, big and small, that affect the lives of Victorians. These decisions are influenced by the culture of the organisation in which they work. If the workplace culture is positive towards human rights, it is more likely Victorians will enjoy the human rights to which they are entitled.

**A positive human rights culture is 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.**

In 2018 the Commission worked with public authorities to develop an indicator framework to measure and improve our human rights culture in Victoria. Thirty-five public authorities participated in a survey on human rights culture to pilot the framework.



The survey results are outlined in Chapter 2 of the full report.

**// 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**

**Increased understanding of how the Charter works for VPS staff**



**15%**

# Our indicator framework identified six key influences for a strong human right culture



These six influences form a key part of our 'Human rights culture indicator framework', as detailed in Chapter 2 of the full report.

# Human rights influence on law-making

All Bills introduced into Parliament must be accompanied by a statement which explains what human rights the law impacts and why any limitations on rights are reasonable and justified. Also, the Scrutiny of Acts and Regulations Committee reports on the compatibility of all Bills with the Charter. In exceptional circumstances, Parliament can enact legislation that ‘overrides’ the Charter.

In 2018 Parliament actively engaged with the Charter and contemplated human rights issues during parliamentary debates and through the law-making process.



In 2018, there was **one statement of partial incompatibility**, in relation to the Justice Legislation Miscellaneous Amendment Bill 2018. The Bill introduced mandatory minimum sentences for anyone who causes serious injury to emergency workers and custodial workers. If an offender successfully appeals a mandatory minimum sentence, the Director of Public Prosecutions may appeal that decision. However, if an offender is unsuccessful, they have no right to appeal that decision. The Attorney-General acknowledged this is partially incompatible with the right to a fair hearing. The Bill was passed with the controversial provisions intact.

In 2018, Parliament enacted **one override declaration**, in relation to the Corrections Amendment (Parole) Bill 2018. It amended the *Corrections Act 1986* to prevent the Adult Parole Board from granting parole to prisoners convicted of killing police officers unless the prisoner is in imminent danger of dying or is seriously incapacitated. The Bill was specifically directed at Dr Craig Minogue, sentenced in 1988 for killing a police officer. 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 Bill was passed through Parliament.



For more information on how the Charter shaped Victoria’s law-making in 2018, see Chapter 3 of the full report.

# Human rights in courts and tribunals

Taking a case to a court or tribunal is an important way for individuals and groups to assert their human rights and obtain remedies if they have been breached. Decisions by courts and tribunals also help authorities interpret and apply Charter rights.

In 2018, Victorians seeking protection of their human rights in court cases continued to use the Charter as an effective litigation tool.

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## The Charter was raised or considered in more than 40 cases in Victoria's higher courts.

There were two key themes in human rights litigation in 2018:

1. The **right to a fair hearing** (see *Roberts v Harkness* and *AB & EF v CD*)
2. The **right to equality before the law** (see *PBU & NJE v Mental Health Tribunal* and *Owners Corporation v Black*)

Where a court case deals with human rights, the Commission may intervene to assist the court to understand and apply the Charter. The Commission intervened in two matters in 2018:

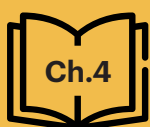
### Cemino v Cannan & Ors

The Supreme Court considered whether a magistrate acted unlawfully when he refused a request from a young Aboriginal man who wanted to be sentenced before the Koori Court. The Supreme Court confirmed that courts must consider the cultural rights of Aboriginal people under the Charter when making decisions about access to the Koori Court. This better enables Aboriginal Victorians to have cases heard in a culturally appropriate forum.

### AB & EF v CD ('Lawyer X')

This case considered whether the public interest in hiding the identity of a police informant outweighed the rights of people who may be able to use that information to appeal their convictions.

The Supreme Court was eventually satisfied a fair hearing could take place. It appointed a legal representative as 'friend of the court' to represent the interests of the convicted people. The court found that although there was a clear public interest in maintaining the informant's anonymity, there was a competing and more powerful public interest in favour of disclosing it.



For more information on how courts and tribunals engaged with the Charter and considered human rights in 2018, see Chapter 4 of the full report.

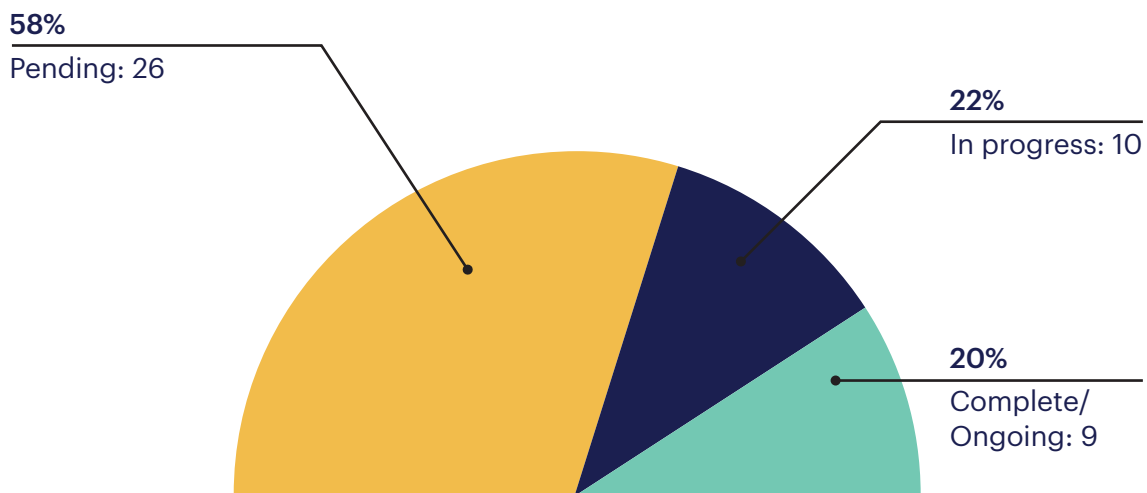
# Implementing the 2015 Review recommendations

In 2015, an independent review of the Charter made 52 recommendations to improve the operation of the Charter and the protection it offers all Victorians. The Victorian Government accepted in full or in principle 45 of the recommendations.

Three years on, the Commission is concerned that most recommendations supported by the Victorian Government are yet to progress. We urge the government to progress the necessary changes.

## Implementation progress

### 2015 review recommendations accepted in full or in principle



For more information on the recommendations and the Victorian Government's progress, see Chapter 5 of the full report.

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