

Parliament of Victoria

Legal and Social Issues Committee

Briefing notes

Date and time: Monday 23 June 2025, 11.30 am

Location: Knight Kerr Room, Parliament House

Present	Ella George MP (Chair) Annabelle Cleeland MP (Deputy Chair) Christine Couzens MP John Lister MP	Cindy McLeish MP Jackson Taylor MP Rachel Westaway MP
In attendance	Committee Secretariat staff	Lauren Matthews, Director of Programs, VEOHRC Aimee Cooper, Head of Legal, VEOHRC

Victorian Equal Opportunity and Human Rights Commission

Context of the Victorian Charter of Human Rights and Responsibilities

The Charter outlines human rights and the responsibilities of Parliament, courts and tribunals, and public authorities. It includes 20 rights which are all mutually inter-dependant.

Victoria, Queensland and ACT are the only Australian states/territories with human rights legislation. There is no federal human rights legislation.

Under the Charter, a number of statutory provisions relate to the human rights functions of Parliament:

- a Statement of Compatibility is required for all bills presented to Parliament (s 28).
- the Scrutiny of Acts and Regulations Committee (s 30) is responsible for examining laws and regulations for compatibility with the Charter.
- Parliament may issue an override (s 31) to say that the Charter does not apply to a law or provision.

Under the Charter, rights can be lawfully limited in accordance with s 7(2), which are addressed in statements of compatibility.

The Charter rights are derived from international treaties to which Australia is party, particularly the United Nations Universal Declaration of Human Rights (1948) (Declaration) and

United Nations International Covenant on Civil and Political Rights (1966) (ICCPR) which includes Article 18, freedom of thought, religion and conscience. International treaties and jurisprudence relevant to a human right may be considered in interpreting a statutory provision under s 32(2) of the Charter.

In determining the scope of Charter rights, the Commission provided the following checklist:

- The Charter
- Charter Bench Book ([here](#))
- Case law
- International treaties
- Other jurisdictions
- International norms and standards.

Application of s 7(2): limiting rights

The Charter recognises that rights can be limited where reasonably justified, necessary and proportionate. *When rights are limited in line with 7(2) it is compatible with the Charter and not a breach of human rights.* The following examples demonstrate lawful limitations of rights:

- a police arrest limiting the right to liberty
- court order to hand over documents limiting the right to privacy
- road work blockage limiting freedom of movement.

Limitation of rights are often for the protection of other rights. There is no hierarchy of rights, and decisions are made by applying the below:

Section 7(2) The Charter human rights can be limited where reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including:

- (a) the nature of the right; and
- (b) the importance of the purpose of the limitation; and
- (c) the nature and extent of the limitation; and
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

s 7(2)(a) relates to the values that the right upholds, and s 7(2)(b–d) considers if the limitation is necessary, reasonable and proportionate to what it is trying to achieve.

Private enterprises like churches, or cults, are not bound to uphold the Charter. All people in Victoria are rights holders and obligated to follow the law. However, if a private contractor provides functions of a public nature on behalf of the state, then the Charter obligations of the state are extended to the private contractor. The private sector may also voluntarily uphold the Charter.

When considering legislative reform, VEOHRC suggests using s 7(2) as a guiding framework to test if the limitation is reasonable, proportionate and least rights restrictive. It also recommends considering the following questions:

1. What are the human rights that are engaged?
2. Would the legislation be limited any of those rights?
3. If we are limiting a human right, are we justified? Is it proportionate? Are there any alternatives or changes we can make to reduce the limitation on human rights?

Scope of s 14: freedom of thought, conscious, religion and belief

s 14 is broad in scope and protects a range of beliefs and practices, including non-religious beliefs such as cultural, philosophical and personal. Therefore, it is not necessary to engage with the legal definition of religion.

The Australian High Court has ruled on what is a religion previously in a matter that did not relate to the Charter.¹

The right to have or adopt a belief under s 14(1)(a) is an absolute right and not subject to any limitation under international law. This includes the right to choose, replace, or retain a religion or belief.

The right to demonstrate belief under s 14(1)(b) can include wearing of specific clothing, ceremonial acts, speaking a particular language, dietary regulations etc. There must be a nexus between the religious belief and a practice for it to be covered, and this connection must be 'intimately linked'. The House of Lords found minimum requirements for the right to demonstrate belief.² The person asserting the right needs to show the belief is important, coherent and *consistent with basic standards of dignity*. Cannot be trivial and needs to be understood.

VEOHRC advised that this is fact specific, interrogating the belief underlying the actions. The right to demonstrate a belief can be limited under s 7(2) by questioning if it is justified given the harm.

Right not to be coerced or restrained to have or adopt or recant a religion or belief under s 14(2) includes indirect coercion e.g. restrictions on education, medical benefits, and employment.

Lawful limitations

VEOHRC are not aware of any cases that are directly relevant to the Inquiry. However, provided examples of cases in other jurisdictions where lawful limitations were applied to the rights of religious freedom.

Case example: *Ex Parte Williamson* (House of Lords, UK)

- Following a ban of corporal punishment in UK schools, a group of religious schools argued that the ban was incompatible with doctrines in the Bible and therefore unlawfully limited their right to freedom of religion.
- House of Lords determined that the limitation was justified and the right to freedom of religion and belief was not unlawfully breached.

Case example: *R v AM* (Supreme Court, ACT)

- A woman breached a domestic violence intervention order, claiming her 'conscientious belief' that she had an obligation to confront people who harmed her. She argued the intervention order therefore breached her right.
- The court determined that the limitation on her right was justified and that her belief lacked the 'serious, cohesion and importance that is necessary' and conflicted with her parents' rights to privacy, security of person and freedom of association.

¹ In 1983 it determined Scientology was a religion when ruling on the Church of Scientology and payroll tax exemption. See: *Church of the New Faith v Commissioner of Pay-Roll Tax* (Vic). This involved proving cohesive belief over time. https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1983/40.html?context=1;query=Church%20of%20the%20New%20Faith%20v%20Commissioner%20of%20pay;mask_path=

² This was determined from *Ex Parte Williamson*. Details of this case are included in the attached presentation.

When considering lawful limitations, VEOHRC noted:

- the importance of appropriate consultation when drafting legislation to address coercive control.
- where an adult is consenting, i.e. follows or willingly believes in a religion, group or movement but experienced harm as a result of their behaviours and/or practices, focus on a *reasonable person anticipating harm*³, and proportionate limitation. Focus on circumstances.
 - For example, anti-vilification laws limit the right to free speech, but in that conduct some things need to be unlawful due to potential harm. In the *Change or Suppression (Conversion) Practices Prohibition Act 2021* consent is irrelevant. VEOHRC referred Members to the [statement of compatibility](#).

³ The reasonable person test in law considers how an ordinary, rational adult in the same position would have acted or perceived the conduct, without adopting the specific viewpoints or beliefs of the person experiencing the behaviour.

Charter of Human Rights and Responsibilities

Legislative Assembly Legal and Social Issues Committee Briefing on Section 14

Lauren Matthews, Director of Programs

Aimee Cooper, Head of Legal

23 June 2025



We acknowledge the
Traditional Custodians
of the various lands
throughout Victoria
and pays respect to
elders past and
present.

The session will

1. Outline the context in which section 14 arises
2. Outline the scope of section 14 of the Charter
3. Leave time for questions



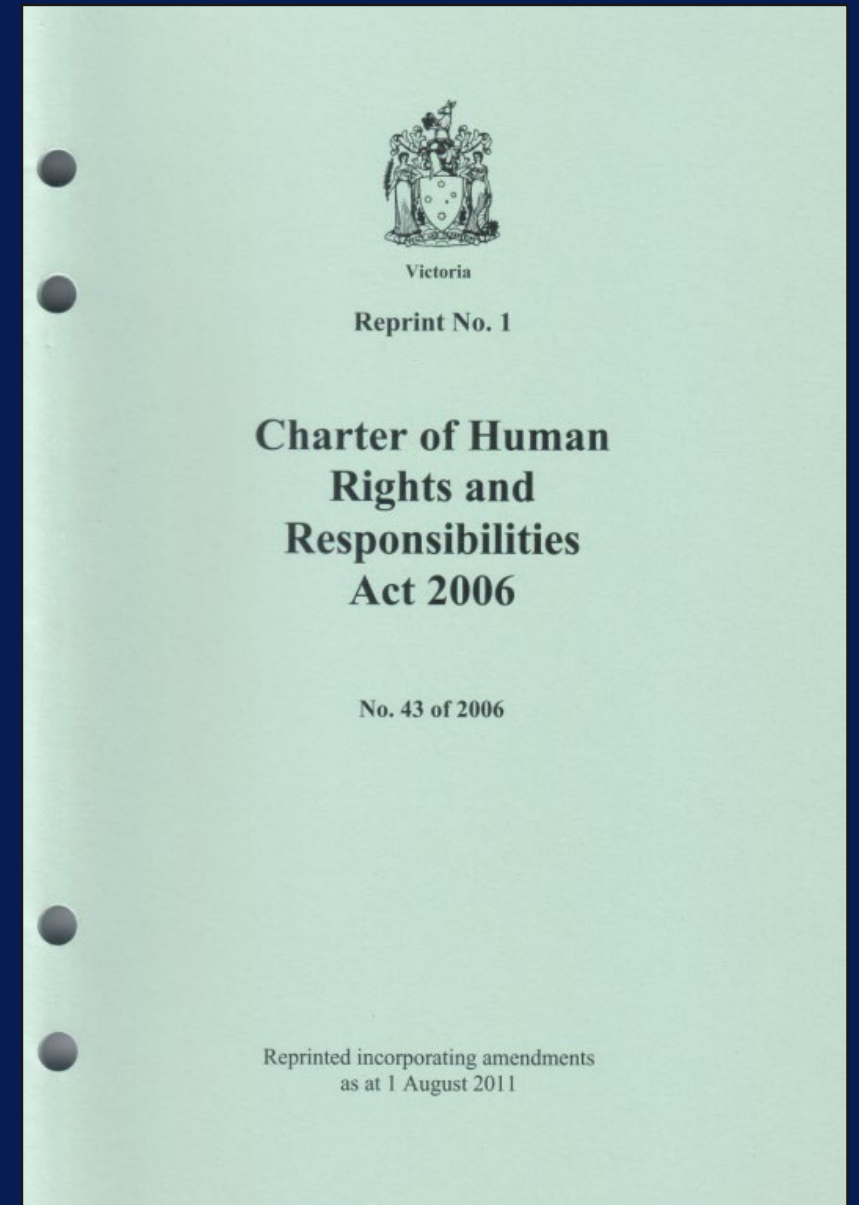
Victorian Charter

The Charter

Set out **human rights**

Set out **responsibilities** of

- Parliament
- Courts and tribunals
- Public authorities



Charter and Parliament

Statements of Compatibility

(Section 28)

SARC Reports (Section 30)

Override by Parliament (Section 31)



International Bill of Human Rights

Universal Declaration on Human Rights
(1948)

International Covenant on
Civil & Political Rights
(1966)

International Covenant on
Economic, Social & Cultural Rights
(1966)

Race
(1965)

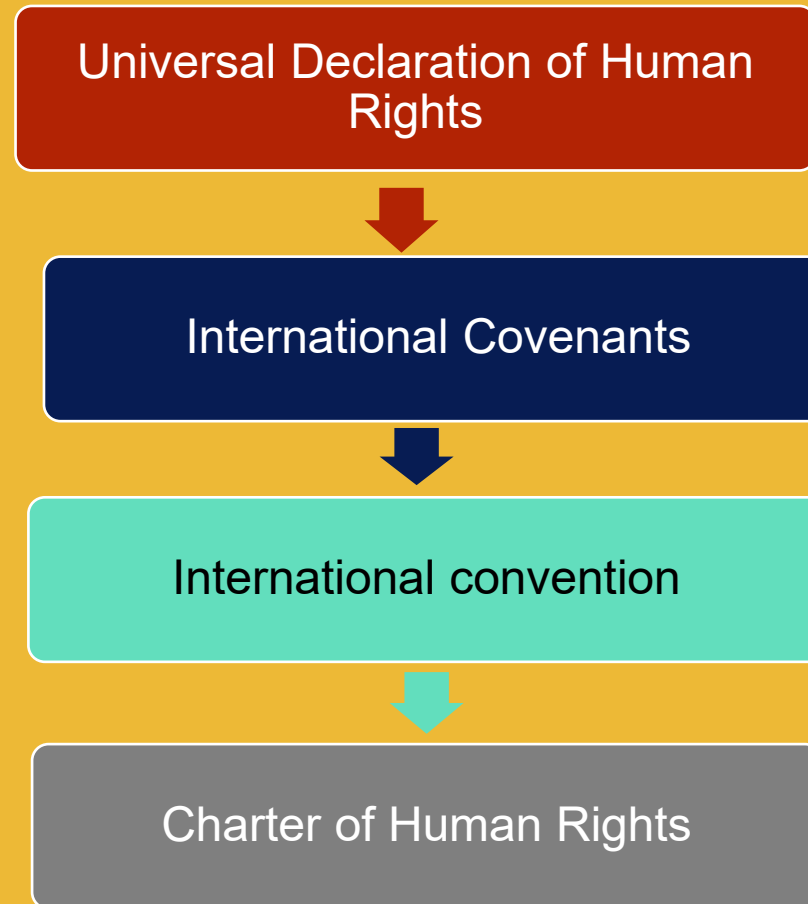
Women
(1979)

Torture
(1984)

Children
(1989)

Disability
(2006)

Cascading of rights



Charter rights

s 8 Right to recognition and equality before the law

s 9 Right to life

s 10 Right to protection from torture and cruel, inhuman or degrading treatment

s 11 Right to freedom from forced work

s 12 Right to freedom of movement

s 13 Right to privacy and reputation

s 14 Right to freedom of thought, conscience, religion and belief

s 15 Right to freedom of expression

s 16 Right to peaceful assembly and freedom of association

s 17 Right to protection of families and children

s 18 Right to take part in public life

s 19 Right to protection of cultural rights

s 20 Property rights

s 21 Right to liberty and security of person

s 22 Right to humane treatment when deprived of liberty

s 23 Rights of children in the criminal process

s 24 Right to a fair hearing

s 25 Rights in criminal proceedings

s 26 Right not to be tried or punished more than once

s 27 Right to protection from retrospective criminal laws

Scope of rights checklist:

The Charter

Charter Bench Book

Case law

International treaties

Other jurisdictions

International norms and standards

Charter Bench Book

Judicial College of Victoria

<https://www.judicialcollege.vic.edu.au/eManuals/CHRB/index.htm#57496.htm>



United Nations

Treaties and instruments

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>



Limiting rights

Under Section 7(2) of the Charter human rights can be limited where reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including:

- (a) the nature of the right; and
- (b) the importance of the purpose of the limitation; and
- (c) the nature and extent of the limitation; and
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

Applying the Charter

Rights?

Limiting?

Justified?



Section 14: freedom of thought, conscience, religion and belief

Section 14

1) Every person has the right to freedom of thought, conscience, religion and belief, including—

- (a) Freedom to have or adopt a religion or belief of that person's choice; and
- (b) Freedom to demonstrate that person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

The concept of belief is not limited to religious or theistic beliefs and includes cultural, non-religious belief, atheistic, agnostic, philosophical, academic, social or personal belief.



Right to have or adopt belief



14(1)(a) Freedom to have or adopt a religion or belief of that person's choice (an absolute right not subject to any limitation)

Section 14 of the Charter draws on Article 18 of the ICCPR.

The freedom to 'have or to adopt' a religion or belief includes freedom to choose a religion or belief, replace a current religion or belief with another or adopt atheistic views, as well as the right to retain one's religion or belief.

It is very broad, embracing freedom of thought on all matters.

Right to demonstrate belief



14(1)(b) Freedom to demonstrate that person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

Express recognition of a right to demonstrate belief individually or in community with others.

There must be a nexus between the religious belief and a practice for it to be covered.

A person asserting the right needs to show the belief is sufficiently important, coherent and consistent with basic standards of dignity.

Right not to be coerced or restrained

14(2) A person must not be coerced or restrained in a way that limits that person's freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Based on Article 18(2) of the ICCPR

Includes indirect coercion e.g. restrictions on education, medical benefits, employment.



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Section 14: lawful limitations

Limiting rights

Under Section 7(2) of the Charter human rights can be limited where reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including:

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- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

Case example: Ex Parte Williamson

Facts:

- A statutory ban was introduced preventing the use of corporal punishment in schools.
- A group of religious schools and parents brought a claim arguing that this breached their freedom of religion because corporal punishment was a doctrine advocated in the Bible.



Case example: Ex Parte Williamson

House of Lords:

- Is the use of corporal punishment compatible with today's standards of human integrity? **Yes**
- Is the use of corporal punishment sufficiently linked to religion or belief? **Yes**
- Does the statutory ban on corporal punishment in schools limit the right to manifest religion or belief? **Yes**

Case example: Ex Parte Williamson

Was the limitation justified? Yes

- There is a legitimate aim of protecting children
- The means chosen are appropriate and not disproportionate
- Parliament was entitled to decide that corporal punishment in schools should be banned, and gave careful consideration to the issues before introducing the statutory ban

Decision: The right to freedom of religion and belief was not unlawfully breached by the statutory ban.

Case example: R v AM

Facts:

- A woman was charged with breaching a domestic violence protection order by attending her parents' house.
- She claimed that her conscientious belief was that she had an obligation to confront, in a non-violent manner, persons who had inflicted harm on her.



Case example: R v AM

ACT Supreme Court: Was the belief captured by the right to freedom of religion and belief? No

- Her belief lacked the ‘serious, cohesion and importance that is necessary’.
- Her belief also seemed to conflict with her parents’ rights to privacy, security of person and perhaps freedom of association under the Human Rights Act.

Case example: R v AM

ACT Supreme Court: Was any limitation justified? Yes

“It is clear to me that public safety and order are clearly purposes of Domestic Violence Orders and, as such, they are justified as restraints on the actions of others.”

The background of the slide is a dark, muted brown color. It is decorated with numerous out-of-focus, circular light spots in various colors including teal, light green, pale yellow, and soft blue. These spots are scattered across the entire frame, creating a bokeh effect. In the center of the image, the word "Questions?" is written in a large, bold, white sans-serif font.

Questions?

Contact us

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