

## **THE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES: IMPLICATIONS FOR THE UNIVERSITY**

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The *Charter of Human Rights and Responsibilities Act 2006* came into effect in Victoria on 1 January 2008. The Charter can be viewed at <http://www.legislation.vic.gov.au/>

The Charter is modelled largely on the International Covenant of Civil and Political Rights. It makes it unlawful for a public authority to act in a way that is incompatible with the human rights listed in the Charter, or in making a decision, to fail to give proper consideration to a relevant human right (section 38 (1)). While the Charter does not expressly mention universities, Victorian universities fall within the definition of a 'public authority' in the Charter.

This means that University staff must act in a way that is consistent with the human rights set out in the Charter and must take those rights into account in their day-to-day operations. The University's policies and practices must also be consistent with the Charter rights.

The Charter also provides that so far as it is possible to do so consistently with their purpose, laws must be interpreted in a way that is compatible with human rights (section 32 (1)). Section 7 (2) of the Charter provides that a human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society. When a new law is introduced into Parliament, it must be accompanied by a Statement of Compatibility with human rights.

The human rights included in the Charter are:

- Recognition, protection and equality of the law without discrimination on the basis of an attribute contained in the *Equal Opportunity Act 1995*
- right to life
- protection from torture and cruel, inhuman or degrading treatment
- freedom from forced work
- freedom of movement
- right not to have privacy unlawfully or arbitrarily interfered with and right not to have reputation unlawfully attacked
- freedom of thought, conscience, religion and belief
- freedom of expression
- peaceful assembly and freedom of association
- protection of families and children
- right to take part in public life
- right to enjoy cultural rights
- non-deprivation of property rights except in accordance with law
- right to liberty and security of person
- right to humane treatment when deprived of liberty
- rights of children in the criminal process
- right to a fair hearing
- rights in criminal proceedings and rights under criminal law
- right not to be tried or punished more than once.

Areas of University activity that might be particularly relevant to Charter rights include:

- decisions about alleged student misconduct or academic progress (relevant to Charter right to a fair hearing);
- public statements/comment by academics (relevant to Charter right to freedom of thought and freedom of expression and the right to participate in public affairs);
- publishing personal details about students (relevant to Charter right not to unlawfully interfere with privacy);

- scientific research (relevant to Charter right not to be subjected to medical or scientific experimentation or treatment without full, free and informed consent;
- differential treatment of students (relevant to Charter right to equality before the law without discrimination on basis of an attribute set out in the *Equal Opportunity Act 1995*).

The Charter does not create a new right to take legal action for a breach of the Charter. However, it allows a person to raise a human rights' argument in a court or tribunal in an existing legal proceeding. Further, the Victorian Ombudsman has the power to investigate whether any administrative action is incompatible with a human right set out in the Charter. He may do so on his own initiative or as a result of receiving a complaint.

The Victorian Government is conducting a review of the *La Trobe University Act* and of the founding Acts of Victoria's public universities. This review will include a consideration as to whether the Acts align with the Charter.

A more extensive explanation of the Charter can be found on the website of the Victorian Equal Opportunity & Human Rights Commission at <http://www.equalopportunitycommission.vic.gov.au>

*This paper is not an exhaustive statement of the law. Staff who wish to obtain detailed advice on a specific matter should contact Legal Services.*

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