
10.6 Victorian Charter of Human Rights and Responsibilities

File: 50/15/01-02
 Responsible Officer: Manager – Community Planning and Advocacy

Purpose

1. The purpose of the report is to inform Council of Council's obligations under the *Victorian Charter of Human Rights and Responsibilities Act 2006* which come into force on 1 January 2008.

Background

2. The Victorian *Charter of Human Rights and Responsibilities Act 2006* came into effect on 1 January 2007, with a second implementation date of 1 January 2008 when public authorities, including local government, are obliged to act compatibly with the Charter.
3. The Charter (refer Attachment 1 for explanatory document) establishes a 'dialogue model' between various arms of government, including public authorities, which seeks to ensure that human rights are taken into account when developing, interpreting and applying Victorian law and policy. The Charter will also affect decision making by Local Governments and their local laws, policies and procedures.

The Human Rights Protected by the Charter

4. The Charter is an agreed set of twenty democratic rights and freedoms protected by law. The rights set out in the Charter cover four main aspects;
 - (a) freedom:
 - (i) freedom from forced work;
 - (ii) freedom of movement;
 - (iii) freedom of thought, conscience, religion and belief;
 - (iv) freedom of expression;
 - (v) right to peaceful assembly and freedom of association;
 - (vi) property rights;
 - (vii) right to liberty and security of person;
 - (viii) fair hearing;
 - (ix) rights in criminal proceedings;
 - (x) right not to be tried and punished more than once; and
 - (xi) protection from retrospective criminal laws;

- (b) respect:
 - (i) right to life;
 - (ii) protection of families and children; and
 - (iii) cultural rights, including recognition of the distinct cultural rights of the Aboriginal people of Victoria;
 - (c) equality:
 - (i) recognition and equality before the law; and
 - (ii) entitlement to participate in public life (including voting);
 - (d) dignity:
 - (i) protection from torture and cruel, inhuman or degrading treatment;
 - (ii) protection of privacy and reputation;
 - (iii) humane treatment when deprived of liberty; and
 - (iv) appropriate treatment of children in the criminal process.
5. The human rights contained in the Charter are modelled on the UN *International Covenant on Civil and Political Rights*, and similarly recognise only the rights of people and not corporations or other entities.
 6. Whilst the Commonwealth Government is a party to the UN *International Covenant on Economic, Social and Cultural Rights*, the Charter does not enshrine these provisions in law. It is to be noted that the Courts are preparing for the introduction of these rights and the decisions of the Courts will need to refer to international precedents in the absence of Australian examples.
 7. Part Four of the Charter provides for an expanded role and the renaming of the Equal Opportunity Commission of Victoria, including;
 - (a) the presentation to the Attorney-General of an annual report that examines the operation of the Charter;
 - (b) to review and report in writing to the Attorney-General on the effect of statutory provisions and common law on human rights;
 - (c) upon request by a public authority, to review that authority's programs and practices for compliance with their human rights obligations;
 - (d) to provide community education about human rights and the Charter; and
 - (e) to assist the Attorney-General in conducting the four and eight year reviews of the Charter.

Consultations

8. The Charter resulted from extensive community consultation held during 2005 and strong public support for a Charter. It will be necessary for Council to develop a dialogue with its community and engage community members in an informative exchange of ideas as the influence of the Charter becomes clearer over time. The Charter will have an effect on key aspects of Council's work and this will require a consultation plan to come into effect after the impacts have been considered and responded to.

Financial Implications

9. There is likely to be a financial cost to Council incurred through staff education and training in order to embed human rights into service delivery and policy development. Some of the key areas that will be affected by the Charter include:
 - (a) planning;
 - (b) enforcement and prosecution;
 - (c) contracted services;
 - (d) employment practices; and
 - (e) potentially any grants made by a Council including access to community facilities.
10. The Charter makes a number of amendments to the *Public Administration Act 2004* (Vic) requiring, in effect, that public officials respect and promote human rights, including by making decisions and providing advice consistent with human rights and actively implementing, promoting and supporting human rights. Advice at a recent information session indicated that Councils will need to incorporate Human Rights into their decision making processes and embed this as a discipline in the same way that other legislation is a consideration.
11. Charter training guides suggest that all staff of a public authority develop and use a human rights checklist to ensure their decisions and actions are compliant with the Charter.
12. It is likely that reference to the next budget deliberations will be made subject to information on training from the Victorian Equal Opportunity and Human Rights Commission (VEOHRC). It is also required that all policies, procedures and Local Laws be examined to ensure they are not in conflict with the Charter. This will also require additional resources.

Economic Implications

13. It is not envisaged that Council's obligation to act compatibly with the Charter will have any significant economic implications, as existing laws and policies generally respect human rights.
14. Experience from the UK and ACT indicates that effects of Human Rights legislation have been patchy, with a high concentration in areas outside of Council's jurisdiction, such as disability services, mental health, corrections and

housing. This will need particular consideration with respect to contractors and the development of contracts by Council.

Environmental Implications

15. It is not envisaged that the Charter will have any significant environmental implications although this will need to be carefully assessed by the relevant areas of Council. An example of the potential impact could be the right to access open space.

Social Implications

16. Implementation of the Charter is likely to have positive social implications in the following ways:
- (a) when provision of services is reviewed and where necessary improved to be compatible with human rights, the changes will bring direct benefit to members of the community;
 - (b) because all new Council policy is assessed for its impact on human rights it will support a society that respects human rights to a greater degree than before the Charter;
 - (c) community health and well-being will be enhanced where people who are marginalised or socially excluded will have their human rights protected;
 - (d) the inclusion of cultural rights will assist individuals within diverse communities to maintain and enjoy their distinctive cultural, religious, racial and/or linguistic backgrounds; and
 - (e) in recognising that Aboriginal persons have distinct cultural rights which include enjoyment of their identity and culture, maintenance and use of their language, maintenance of kinship ties, and maintenance of their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs, the Charter will support Council's initiatives to combat racism and discrimination.
17. In addition, a key impact of the Charter is the right of people to have information provided in their own languages in cases of an offence and prosecution. This will require the Environmental, Planning and Regulatory services of Council to have correspondence in relation to these actions translated. Departments will need to ensure that budgets reflect this requirement i.e. increased translation costs accommodated.

Council Plan, Strategy and Policy Implications

18. The Charter is intended to be an integral part of policy development and service delivery. Officers should identify the impact of policy proposals and service delivery upon Charter rights early in the process of policy development and prior to service delivery.

Legal Implications

19. The Act includes under the definition of public authority, “a Council within the meaning of the *Local Government Act 1989* and Councillors and members of Council staff within the meaning of the Act” (p. 6 of the Act).
20. Division Four – Obligations on Public Authorities of the Charter outlines the obligations of a public authority, including that it is unlawful for a public authority:
 - (a) to act in a way that is incompatible with a human right; or
 - (b) in making a decision, to fail to give proper consideration to a relevant human right.
21. It should also be noted that s.3(1) of the Charter defines an ‘act’ to include not only a positive act but also a failure to act and a proposal to act. Section 38(2) states that the obligation does not apply if the public authority could not have acted differently or made a different decision due to a statutory provision or otherwise under law.
22. The Charter does not create an independent cause of action from a breach of a person’s human rights. If they feel their human rights have been breached, a person may:
 - (a) seek a declaration that a public authority has acted incompatibly with human rights;
 - (b) make a complaint directly to Council claiming a breach of human rights;
 - (c) go to court or apply to a tribunal under another law and add a claim that a public authority or council acted unlawfully because they breached the Charter; and
 - (d) request the Ombudsman to consider the actions of a public authority and decide whether they breach the Charter.
23. A person is not entitled to be awarded any damages because of a breach of the Charter.

Other issues

Council Readiness

24. In order to implement the requirements of the Charter Council will need to:
 - (a) undertake compliance training for all staff;
 - (b) appoint Human Rights Ombudsman or Mediators to develop procedures to address complaints;
 - (c) include Charter issues in reports when required and this inclusion will need to present the impacts on rights both positive and negative;

- (d) build a Human Rights culture which leads to consideration of these rights in decision making;
 - (e) review contracts register and local laws;
 - (f) develop a Human Rights checklist for use in decision making and policy development and be able to justify decisions on human rights grounds; and
 - (g) promote a dialogue on the Human Rights Charter and keep up with developments.
25. The impact on local governments will be significant and it is understood that across the state, Councils will not be fully prepared for the January enactment date. Council's Community Planner, Housing is liaising with the Commission to gain a full understanding of the expectations. At this stage it is understood that a realistic time period will be allowed for the work to be undertaken to address the Charter and implement its provisions over the coming year.
26. A related report on the UNESCO Coalition Against Racism is being presented separately, as the two reports are distinct in background and implications for Council.
27. The Charter will be reviewed in four years and in eight years time. The review is to consider whether the Charter should include additional human rights, including the human rights contained in the *International Covenant on Economic Social and Cultural Rights*, the *Convention on the Rights of the Child* and the *Convention on the Elimination of all Forms of Discrimination against Women*.

Conclusion

28. The Human Rights Charter will support much of Council's work and provide a strong framework for the review of existing policies such as the Multicultural Policy. Additional training to support understanding and implementation of the legislation across the organisation may require a budget allocation or re-allocation of priorities within the Human Resources area to accommodate it.
29. Further investigation is required to determine the impacts of the Charter on Council's governance, regulatory and operational roles and functions. As the legislation affects the whole of Council it will be important for all areas of the organisation to consider the new obligations and take the necessary action to ensure compliance.
30. Officers from Community Planning and Advocacy attended a session on developing a Human Rights Plan for Councils in November 2007. This will inform the response across the organisation; however it is critical that all areas of Council undertake a process to assess the impacts of the Charter and make any necessary changes to policy, procedures and practice.
31. The specialist role of the Governance Branch in understanding the Charter and providing advice to the organisation needs to be supported through additional access to legal counsel and training.

RECOMMENDATION

32. That Council:

- (a) notes the information presented in the report;
- (b) undertake training in the Charter and its implications including:
 - (i) training for Council;
 - (ii) training for Senior Management; and
 - (iii) training for officers that make decisions impacted by the Charter;
- (c) prepare a Yarra Human Rights Plan to be brought to Council in the first quarter of 2008 following training across the organisation; and
- (d) provide information to the community on the *Human Rights and Responsibilities Act 2006* and communicate Council's approach to address this by 1 January, 2008.

HUMAN SERVICES AND COMMUNITY DEVELOPMENT COMMITTEE RECOMMENDATION

Moved: Councillor Maltzahn

Seconded: Councillor Farrar

33. That Council:

- (a) notes the information presented in the report;
- (b) undertake training in the Charter and its implications including:
 - (i) training for Council;
 - (ii) training for Senior Management; and
 - (iii) training for officers that make decisions impacted by the Charter;
- (c) prepare a Yarra Human Rights Plan to be brought to Council in the first quarter of 2008 following training across the organisation and that the plan consider economic, social, cultural and group rights and other so called second and third generation rights;
- (d) provide information to the community on the *Human Rights and Responsibilities Act 2006* and communicate Council's approach to address this by 1 January, 2008; and

- (e) write to the State Government expressing its strong support for the Human Rights Charter being expanded to better reflect the full spectrum of human rights by including so called second and third generation rights.

CARRIED

COUNCIL RESOLUTION

Moved: Councillor Fristacky

Seconded: Councillor Farrar

1. That the Human Services and Community Development Committee recommendation be adopted.

CARRIED

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Attachment 1 – Charter of Human Rights Explained