

Statement of compatibility with Human Rights and Responsibilities Charter

Introduction

Human rights are basic rights and freedoms enjoyed by every person, regardless of gender, culture, religion, social background or otherwise. Such rights may be categorised into civil and political rights, economic and social rights, and environmental and cultural rights. The *Victorian Charter of Human Rights and Responsibilities Act 2006 (Act)* was enacted to protect and promote specific human rights and aims to ensure that, if limited in any way by Parliament or a public authority, a right is only limited to a reasonable extent, and that the limitation is justified.

Pursuant to the Charter, it is unlawful for a public authority such as Council to act in a way that is incompatible with a human right, or, in making a decision, to fail to give proper consideration to the relevant human right. All statutory provisions, including local laws, must be interpreted in a way that is compatible with human rights.

The purpose of this statement is to assess the compatibility of the *Stonnington General Local Law 2018 (Local Law)* with the Charter.

Local Law

The Local Law is to replace the *Yarra City Council Consumption of Liquor in Public Places Local Law No. 8 2009 (2009 Local Law)*, which will cease operation on 19 October 2019. Whilst the Local Law largely reproduces the 2009 Local Law, it will give effect to amendments and additions designed to respond to changes in the community and to protect the amenity and liveability of the municipality in the face of such changes.

The Local Law has been assessed against the Charter, and is compatible with the human rights protected thereunder.

Right to recognition and equality before the law

Section 8 provides that every person has the right to recognition as a person before, and equal protection of the law without discrimination.

Impacts or limitations on right	Balance of interests	Reasonability of limitation and solutions or measures to reduce limitation
None found.	N/A	N/A

Right to freedom of movement

Section 12 provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

Impacts or limitations on right	Balance of interests	Reasonability of limitation and solutions or measures to reduce limitation

Clause 15 provides for an Authorised Officer to direct a person to leave an area within Council's municipal district declared to be a 'Festival'.	Council must balance a person's right to freedom of movement with public safety and protection of amenity within its municipality.	A direction to leave is only able to be made in circumstances where the person to whom the direction is directed is consuming or possessing liquor contrary to a declaration by Council. Council must regulate the possession and consumption of liquor within its municipal district to protect the safety of the public and maintain the amenity of the district.
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Right to privacy and reputation

Section 13 provides that a person has the right—

- (a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have his or her reputation unlawfully attacked.

Impacts or limitations on right	Balance of interests	Reasonability of limitation and solutions or measures to reduce limitation
None found.	N/A	N/A

Right to freedom of thought, conscience, religion and belief, and freedom of expression

Section 14 provides that every person has the right to freedom of thought, conscience, religion and belief, and the freedom to demonstrate his or her religion or belief in public or in private.

Section 15 protects the right of every person to hold an opinion without interference, and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds

Impacts or limitations on right	Balance of interests	Reasonability of limitation and solutions or measures to reduce limitation
None found.	N/A	N/A

Right to peaceful assembly and freedom of association

Section 16 protects the right to peaceful assembly and freedom of association with others.

Impacts or limitations on right	Balance of interests	Reasonability of limitation and solutions or measures to reduce limitation
None found.	N/A	N/A

Right to take part in public life

Section 18 provides that every person has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives..

Impacts or limitations on right	Balance of interests	Reasonability of limitation and solutions or measures to reduce limitation
None found.	N/A	N/A

Cultural rights

Section 19 recognises the distinct cultural rights of Aboriginal persons and protects the right for all persons with a particular cultural, religious, racial or linguistic background to enjoy his or her culture, to declare and practise his or her religion and to use his or her language.

Impacts or limitations on right	Balance of interests	Reasonability of limitation and solutions or measures to reduce limitation
None found.	N/A	N/A

Property rights

Section 20 of the Charter provides that a person must not be deprived of his or her property other than in accordance with law.

Impacts or limitations on right	Balance of interests	Reasonability of limitation and solutions or measures to reduce limitation
Clauses 10, 15 and 20 provide that an authorised officer may direct a person to cease consumption or dispose of liquor in their possession.	Council must balance this right with the appropriate use and enjoyment of public places and the safety and amenity of the municipality.	Council must ensure that public places are able to be safely used and enjoyed by the community. If a person's consumption or possession of liquor presents a threat to the safety and amenity of the area, Council considers it reasonable to direct that the person cease the consumption or possession.

Right to liberty and security of person

Section 21 protects the right of every person to liberty and security.

Impacts or limitations on right	Balance of interests	Reasonability of limitation and solutions or measures to reduce limitation
None found.	N/A	N/A

Right to a fair hearing

Section 24

A person charged with a criminal offence has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Impacts or limitations on right

Balance of interests

Reasonability of limitation and solutions or measures to reduce limitation

Clause 24 provides that an Authorised Officer may issue an infringement notice to a person whom they reasonably believe to have committed an offence.

This right must be balanced with the need to administer and enforce the Local Law and Council's obligations to protect the community and ensure appropriate use and enjoyment of public places.

This limitation is reduced as the person may apply for an internal review of the decision to serve an infringement notice and/or elect to have the matter heard and determined in court.