

POLICY

Human Rights

Date approved	31 July 2015
Last reviewed	21 October 2022
Next review	October 2025
Responsible officer	Assistant Ombudsman, Executive Office

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This document is a guide only and cannot limit or impede the application of relevant legislation

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POLICY STATEMENT

The *Charter of Human Rights and Responsibilities Act 2006* sets out the rights, freedoms and responsibilities shared by everyone in Victoria. It aims to promote a culture where everyone's human rights are protected in the delivery of government services. Human rights under the Charter apply to all people in Victoria at all times.

Human rights principles have always been central to Ombudsman work. The introduction of the Charter amended the Ombudsman Act and empowered VO to focus on the express articulation of Charter language and ideas in its work, making explicit what has always been implicit. By looking at public administration through the lens of human rights, the Ombudsman is able to encourage a culture of human rights compliance across the public sector.

PROCEDURE

One: VO's Charter Obligations

1. Subject to section 38 of the Charter, it is unlawful for VO staff to act in a way that is incompatible with a human right that is in the Charter; or in making a decision, to fail to give proper consideration to a relevant human right in the Charter.
2. Proper consideration of relevant human rights forms part of the decision-making process at all levels of VO. It requires a genuine and real assessment, and understanding in general terms the possible impact of our decisions and actions on another's human rights and any competing interests or obligations to be balanced.
3. When exercising a discretion under the Ombudsman Act, or any other legislative instrument, VO gives proper consideration to relevant human rights in the Charter.
4. To demonstrate best practice, all VO policies under the Ombudsman Act are reviewed to ensure their compatibility with the Charter, and include a 'statement of compatibility'.

Two: VO's Charter Functions

5. With all enquiries and investigations conducted under the Ombudsman Act where VO considers the substance of a complaint, VO assesses whether the administrative action under consideration is incompatible with a human right set out in the Charter (section 13(2) of the Ombudsman Act). Refer to the policies on 'Enquiries' and

'Investigations' for details of the requirements and processes relating to enquiries and formal investigations.

6. VO considers whether the facts raise a relevant human right irrespective of whether a complainant has specifically raised the Charter.
7. In order to decide whether an administrative action is incompatible with a human right set out in the Charter VO considers:
 - whether the administrative action limits a human right in the Charter; and if so,
 - whether that limitation is 'reasonable' and in accordance with section 7(2) of the Charter.
8. If VO ultimately considers that an administrative action is incompatible with a human right set out in the Charter, the Ombudsman may form an opinion that the administrative action appears to have been taken 'contrary to law' (section 23(1)(a) of the Ombudsman Act).
9. When conducting enquiries or investigations, VO may also have regard to human rights principles contained in international law and the judgments of domestic, foreign and international courts and tribunals. The Ombudsman may for example, form an opinion that an administrative action is 'unreasonable' or 'wrong' (section 23(1)(b) or (g)) where it does not meet the minimum standard established in an international human rights instrument, such as the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948.

ROLES AND RESPONSIBILITIES

Role	Responsibility
Assistant Ombudsman, Executive Office	<i>Owner</i> – Accountable for maintaining the policy drafting, reviews and authorisation from the Executive.
Principal Legal Adviser	<i>Legal compliance</i> – Responsible for ensuring compatibility with the <i>Charter of Human Rights and Responsibilities 2006</i> (Vic) and compliance with other legislation under which VO operates.
Executive Committee	<i>Authorisation</i> – Authorises policies and significant amendments.
All staff, contractors and third parties	<i>Implementation</i> – Responsible for acting in compliance with the policy, standards, procedures and associated documents.

DOCUMENT MANAGEMENT

Compliance

VO maintains a compliance management system. Compliance to this policy, including use of information and systems, is subject to regular monitoring and reporting to the Senior Leadership Committee (Governance Committee). For further details on compliance checks please refer to the compliance management system.

Document approval

This document was approved by the Governance Committee on 31 July 2015.

Document review

This document is due for review upon major changes or three years from the date of the last review.

APPENDIX A: Related documents

Title	Location
<i>Charter of Human Rights and Responsibilities Act 2006</i>	<u>Charter of Human Rights and Responsibilities Act 2006</u>
<i>Ombudsman Act 1973</i>	<u>Ombudsman Act 1973</u>