

The Ombudsman for Human Rights: A Casebook

August 2021

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**The Victorian Ombudsman pays respect to First Nations custodians of Country throughout Victoria. This respect is extended to their Elders past, present and emerging. We acknowledge their sovereignty was never ceded.**

# Letter to the Legislative Council and the Legislative Assembly

To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973* (Vic), I present to Parliament  
*The Ombudsman for Human Rights: A Casebook*.

A handwritten signature in black ink, appearing to read 'Deborah Glass', with a stylized flourish at the end.

Deborah Glass OBE  
**Ombudsman**

4 August 2021



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# Foreword

**“ It was blatant discrimination ... they made no consideration of her needs. ”**

*Bystander, complaining about treatment of a woman in a wheelchair at a COVID-19 test site.*

Human rights issues can crop up every day, for every one of us. As the human rights investigator for Victoria, my office knows that human rights breaches do not only take place in war-torn dictatorships far from our peaceful shores.

But commonly, the human rights failures we see are not deliberate – those in authority simply fail to consider or fail to balance some of the fundamental principles that underpin our basic freedoms.

Victoria has had human rights legislation since 2006, protecting 20 fundamental rights and freedoms, giving us a legacy we should be proud of. But all too often human rights are poorly understood both by the public agencies who are obliged to consider them and by the public they are intended to protect.

This casebook presents a snapshot of the thousands of matters involving people’s human rights that we see each year. They illustrate the rights of children and families, kinship carers, injured workers, activists and prisoners, of everyday Victorians. Their stories illustrate the reach of human rights in our society and their impact on decision-making, and the balancing act public agencies sometimes need to carry out to get it right.

Take for instance a family whose public housing home was so damaged they could not sleep there, a woman in a wheelchair in a COVID-19 testing queue, or the three thousand residents of public housing tower blocks in inner Melbourne who were subject to a hard lockdown with no warning in July 2020.

Seemingly small decisions can have a big impact. A family’s right to a safe home was compromised by asbestos removalists damaging their house, which left them with nowhere to stay the night. A woman whose daughter is on life support relies on an electricity discount to pay for the machines keeping her daughter alive. She was told the discount did not apply because the machines were not on the Department’s list of approved models.

Human rights are not absolute. This has been starkly borne out by the COVID-19 pandemic, when many of the rights and freedoms taken for granted all our lives have been, and continue to be, suddenly curtailed.

Lockdowns, border closures and compulsory mask-wearing restrict our freedoms of movement and expression, but these rights must be balanced against our own – and others’ – health and wellbeing and right to life. This can be a difficult balancing act, including for my office. We do not investigate all complaints alleging human rights breaches, but we did investigate the unique circumstances of the public housing lockdown.

In that case the balancing act failed: the public health advice supported a lockdown but not an immediate one, and the residents’ right to humane treatment when deprived of liberty was unreasonably limited.

We also see the balancing act working. The right of a passionate community activist to take part in public life was balanced against the rights of Councillors, staff and community members to whom he was aggressive. The Council’s response, including a time-limited ban on him attending Council meetings, was proportionate and reasonable.

A decision to fence off access to popular rock-climbing places in the Grampians National Park also demonstrated the balance working. Parks Victoria had to weigh up the rights of rock-climbers with the cultural rights of Aboriginal peoples, to protect the area while cultural heritage surveys were prepared and communities consulted.

**“ Human rights are not absolute. This has been starkly borne out by the COVID-19 pandemic, when many of the rights and freedoms taken for granted all our lives have been, and continue to be, suddenly curtailed. ”**

Human rights are often associated with the rights of prisoners, underlining the basic principle that those deprived of their liberty should not also be deprived of fairness, and should be treated humanely. This principle is all the more important given the disproportionate number of people in prison who have mental health issues or an intellectual disability – and as the cases show, for whom prisons can be particularly unsafe.

Recent cases illustrate our rights in a pandemic, which has exposed some uncomfortable truths about freedoms we used to take for granted. There can be little doubt COVID-19 has forever changed the public’s conception of government, human rights and what is possible in Australia. We see limitations on those freedoms that would not long ago have been unimaginable. But even during a global pandemic, human rights cannot be ignored. Had dignity been considered when a woman needed the toilet while awaiting transit to hotel quarantine, she would not have had to urinate in a plastic water bottle on a moving bus.

The Charter of Rights Act gives us a framework for assessing the restrictions on our freedoms, pandemic-related or not – and helps the public sector make better decisions. It is more important than ever that the public understands how their rights may - or may not – be breached, and the requirement of government to get the balance right.

The act of considering human rights is no more or less than putting people at the heart of decision-making. Your rights, my rights, families’, neighbours’ or strangers’ rights, they all matter, though the scales may still tilt.

Deborah Glass  
**Ombudsman**

# What are Human Rights?

Human rights are basic freedoms and protections that belong to all of us - whatever our state of health or wealth, background, or any other status.

Victoria is one of only three jurisdictions in Australia with dedicated human rights legislation. The *Charter of Human Rights and Responsibilities Act 2006* (Vic) protects 20 basic rights and freedoms.

Under the Charter of Rights Act, it is generally unlawful for public authorities, including Victorian Government departments, local councils and other public organisations, to:

- act in a way that is incompatible with a human right; or
- fail to give proper consideration to a relevant human right when making a decision.

Public authorities must comply with both of these requirements for a decision to be lawful.

The Charter of Rights Act recognises that human rights are not absolute and may be limited in certain circumstances. However, for a limitation to be reasonable (and therefore lawful) it must be 'demonstrably justified in a free and democratic society based on human dignity, equality and freedom'.

When people think of human rights, they might imagine protection from inhumane treatment. While these rights exist, more often people exercise their human rights every day by:

- enjoying a private home life
- expressing opinions and participating in aspects of public life
- freely practising culture and religion
- choosing where to live and who to associate with
- using public spaces and being able to move freely; and
- providing consent to medical treatment.

Everybody has human rights and wants to be treated with dignity when engaging with public authorities. The Charter of Rights Act can also help public authorities make fairer decisions, balance competing interests and guarantee basic freedoms. Put simply, the Act is a tool to humanise the bureaucracy.

When making decisions and providing services, public authorities should promote and protect human rights.

In 2017, the (then) Department of Justice and Regulation collaborated with the Ombudsman, Victorian Equal Opportunity and Human Rights Commission ('VEOHRC') and Independent Broad-based Anti-Corruption Commission ('IBAC') to produce a Good Practice Guide: *Managing Complaints Involving Human Rights*.





The Guide summarises the scope of the rights and freedoms in the Charter of Rights Act as follows:

**The right to recognition and equality before the law:** everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

**The right to life:** every person has the right to life and to not have their life arbitrarily taken. The right to life includes a duty on government to take appropriate steps to protect the right to life.

**The right to protection from torture and cruel, inhuman or degrading treatment:** people must not be tortured. People must also not be treated or punished in a cruel, inhuman or degrading way. This includes protection from treatment that humiliates a person. People must not be subjected to medical treatment or experiments without their full and informed consent.

**The right to freedom from forced work:** a person must not be forced to work or be made a slave. A person is a slave when someone else has control over them.

**The right to freedom of movement:** everyone has the right to move freely within Victoria, to enter and leave and to choose where to live.

**The right to privacy and reputation:** everyone has the right to keep their lives private. A person's family, home or personal information cannot be interfered with, unless the law allows it.

**The right to freedom of thought, conscience, religion and belief:** people have the freedom to think and believe in what they want, for example, practice a religion. They can do this in public or private, as part of a group or alone.

**The right to freedom of expression:** people are free to have an opinion and say what they think. They have the right to find, receive and share information and ideas. This right might be limited to respect the rights and reputation of other people, or for the protection of public safety and order, public health or public morality.

**The right to peaceful assembly and freedom of association:** people have the right to join groups or unions and to meet peacefully.

**The right to protection of families and children:** families are entitled to protection. Children have the same rights as adults with added protection according to their best interests.

**The right to taking part in public life:** every person has the right to take part in public life, such as the right to vote or run for public office.

**Cultural rights:** people can have different family, religious or cultural backgrounds. They can enjoy their culture, declare and practice their religion and use their languages. Aboriginal persons hold distinct cultural rights.

**Property rights:** people are protected from having their property taken, unless the law says it can be taken.

**The right to liberty and security of person:** everyone has the right to freedom and safety. The right to liberty includes the right to not be arrested or detained except in accordance with the law, and to be brought before a court promptly and tried without unreasonable delay.

**The right to humane treatment when deprived of liberty:** people have the right to be treated with humanity and respect for their dignity if they are detained.

**Rights of children in the criminal process:** a child charged with committing a crime or who has been detained without charge must not be held with adults. They must also be brought to trial as quickly as possible and treated in a way that is appropriate for their age.

**The right to a fair hearing:** a person has a right to a fair hearing. This means the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

**Rights in criminal proceedings:** there are a number of minimum guarantees that people have when they have been charged with a criminal offence. These include the right to be told the charges in a language they understand; the right to an interpreter; the right to have time and the facilities (such as a computer) to prepare their case or to talk to a lawyer; the right to have the trial heard without delay; the right to be told about Legal Aid if they do not already have a lawyer; the right to be presumed innocent until proven guilty; and the right not to have to testify against themselves or confess their guilt.

**Right not to be tried or punished more than once:** a person will only go to court and be tried once for a crime. This means that if the person is found guilty, they will only be punished once. If they are found to be innocent, they will not be punished.

**Retrospective criminal laws:** a person has the right not to be prosecuted or punished for things that were not criminal offences at the time they were committed.

# The Ombudsman's role in protecting Human Rights

The Ombudsman is Victoria's human rights complaint handler and investigator and looks to see if a public authority has breached human rights or not considered them properly.

People do not need to mention human rights in their complaint for the Ombudsman to consider them.

In dealing with complaints, the Ombudsman can decide if:

- human rights are relevant
- the public authority has limited a person's enjoyment of their human rights
- the limitation is unreasonable in the circumstances.

As the result of a formal investigation, the Ombudsman may form an opinion that a public authority has unreasonably limited a person's human rights and therefore acted contrary to law. The Ombudsman can make recommendations and present her findings to the Parliament and public.

In most cases, however, the Ombudsman will try to resolve complaints informally and make suggestions to public authorities to fix problems and promote human rights, including:

- changing the decision or action being complained about
- acknowledging a mistake and apologising
- providing a better explanation for a decision or action
- waiving unfair fees or making payments where appropriate.

Each year, the Ombudsman deals with more than 3,000 complaints with an obvious human rights issue.

The most common human rights complaints made to the Ombudsman relate to:

- humane treatment when in custody
- protection of families and children
- property rights
- recognition and equality before the law and
- protection from cruel, inhuman or degrading treatment.

As the case studies below show, complaints about human rights can involve a broad range of public authorities, from local Councils and Child Protection to VicRoads and Prisons.

In addition to the Ombudsman, there are other independent organisations that deal with human rights, including IBAC and VEOHRC.

In relation to its oversight of Victoria Police, IBAC has a role to ensure police officers and protective services officers have regard to the human rights set out in the Charter of Rights Act. The Ombudsman cannot deal with police.

VEOHRC has a monitoring role under the Charter of Rights Act, and:

- provides information about the Charter of Rights Act through a free and confidential enquiry service
- delivers a range of education and consultancy services on human rights and responsibilities
- intervenes in court or tribunal proceedings to provide an expert view on questions of law relating to human rights
- prepares an annual report on how the Charter of Rights Act is operating in practice
- conducts reviews of a public authority's programs and policies to determine their compatibility with human rights, upon that authority's request
- advises the Attorney-General on the operation of the Charter, and upon request, reviews the effect of statutory provisions and the common law on Charter rights.

# Human Rights in action: Ombudsman cases

It would be easy to think that breaches of human rights only happen overseas, in times of war and crisis. While this is true, human rights issues also commonly affect people in their everyday lives in Victoria.

The Ombudsman's case studies below reflect this; and can be divided into three broad categories:

- 1. Human Rights in the Community:** exploring some of the 'everyday' scenarios that engage human rights
- 2. Human Rights in a Pandemic:** looking at some of the COVID-19 related complaints that were made to the Ombudsman in the last 18-months
- 3. Human Rights in Closed Environments:** considering how public authorities treat people deprived of their liberty.

The names of people in the case studies have been changed to protect privacy, but their stories are real.

# Human Rights in the community

People interact with public authorities every day, to receive services and support, and participate in public life. When decisions are made that affect our lives, we expect them to be fair and reasonable and based on principles of dignity and respect. We also expect public authorities to take positive steps to promote our human rights and protect our fundamental freedoms.

As a broad concept, human rights guide the way in which the State should treat its citizens; however, sometimes one person's rights might need to be balanced against another's or the public interest.

The Charter of Rights Act seeks to promote a culture where people working in state and local government protect and consider everyone's human rights in service delivery, policy, decisions and legislation.

The Ombudsman receives thousands of complaints every year about the decisions and actions of public authorities and how they affect people's lives. Using our enquiry powers, we can prompt an authority to promote human rights.

The case studies below show how small decisions can have a big impact; and by exercising discretion and being guided by human rights, public authorities can make better decisions. They look at people's right to be recognised by the law and protected from discrimination, to life, privacy, home and property, to the protection of families and children and cultural rights.

Some of the case studies also show how a public authority can properly consider human rights and finely balance the rights of one person or group against another's.

## Rights in focus

Section 8 of the Charter of Rights Act recognises that every person has the right to be recognised as a person before the law, to enjoy their human rights without discrimination, and to effective protection against discrimination.

The term 'discrimination' features in the *Equal Opportunity Act 2010* (Vic) and relates to certain protected characteristics such as race, disability, parental status and religious belief or activity. Protection against discrimination also applies to 'indirect' discrimination where an unreasonable requirement, condition or practice disadvantages people with a particular protected characteristic.

**Hoda's case** shows the consequences of delays in receiving a birth certificate to prove legal identity; and **Tom and Maria's case** shows how the Department took positive steps to promote rights to equality and protection from discrimination.

Section 9 of the Charter of Rights Act recognises that every person has the right to life and the right not to be 'arbitrarily deprived of life.' To promote the right to life, public authorities should also take positive steps to protect life as occurred with **Leslie's case**.

Section 13 of the Act recognises that every person has the right not to have their 'privacy, family, home or correspondence unlawfully or arbitrarily interfered with'.

In **Sophia's case**, we found her worker's compensation agent had unreasonably interfered with her right to privacy by subjecting her to unjustified surveillance. We made recommendations to the Government to improve protections for injured workers.

Interfering with a person's home by damaging or destroying property may engage this right. Public authorities can promote this by ensuring the homes they maintain are safe and liveable, as occurred in **Kim's case**.

Section 17 of the Charter of Rights Act recognises that families are the 'fundamental group unit of society' and are entitled to be protected by the State. This section also recognises that every child has the right to be treated in a way that is in their best interests. The term 'family' extends beyond just parents and children.<sup>1</sup>

In **Usha's case**, Child Protection protected the family's rights by keeping the children together and supporting their grandmother to care for them.

Section 19 of the Act recognises that every person with a 'particular cultural, religious, racial or linguistic background' must not be denied the right to enjoy their culture, declare and practice their religion and use their language.

In **Luka's case**, the Public Advocate had to balance his right to speak his language while protecting the interests of his elderly mother.

Section 19 also recognises that Aboriginal people hold distinct cultural rights and, among other things, must not be denied the right to maintain their distinctive spiritual, material and economic relationship with the land and waters.

In **Kelly's case**, Child promoted the best interests of the children and their distinct cultural rights by providing support to keep their family together.

Section 16 recognises that every person has the right to peacefully assemble and the freedom to associate with others. Section 18 protects people's right to vote and participate in public affairs, including public debates and forums, engaging with local councils and providing feedback to elected representatives.

In the cases of **Sam** and **Jonathon**, we found the Councils' decisions to limit the attendance of community forums and temporarily restrict a person from attending Council meetings in person were reasonable and justified in the circumstances. The Councils were able to show they had given proper consideration to human rights.

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***Respect for human rights is an essential element of a modern democracy and it is the responsibility of every Victorian public servant to uphold the principles expressed in the Charter.***

***Since its Swedish origins over 200 years ago, the role of an Ombudsman has been to independently investigate complaints about the actions of government agencies and make recommendations for improvement. In doing this, an Ombudsman investigates issues of an overtly human rights nature - from the denial of public housing or education, to the treatment of people in closed environments.***

***Complaints are free feedback to government about how someone thinks it is doing its job, and using the Charter as a tool to enable, respond to, and learn from those complaints will assist public authorities to protect the human rights of the community they serve***

- Deborah Glass  
Good Practice Guide: Managing Complaints  
Involving Human Rights (May 2017).

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<sup>1</sup> See eg Director of Housing v Sudi (Residential Tenancies) [2010] VCAT 328, [33].



## Leslie's right to life

### What was the problem?

Jane's daughter Leslie used three life-support machines to keep her alive. To help cover the cost of running the machines, Jane received a discount on her electricity bills under a scheme set up by the (then) Department of Health and Human Services.

One day, Jane's power company said she would have to pay the full electricity rate because Leslie's machines were not on the Department's list of approved models. Without the discount, Jane could not afford to keep the machines running.

*'It was horrible having to make about twelve phone calls, and every-time you get onto someone they put you onto someone else' - Jane*

### What did we look at?

The Department's scheme to help people pay for life saving equipment promotes the right to life. Even though Leslie's specific machines were not on the Department's approved list, they met the criteria that should have qualified Jane for the discount.

We made enquiries with the Department and asked it to reconsider Jane's eligibility for the discount.

### What was the outcome?

The Department ultimately decided that Jane was eligible for the discount. It helped Jane prepare an application and later contacted her power company to reinstate her concession. It also back-paid Jane for the period she had been without the discount, so she was not left out-of-pocket.





## Hoda's right to have her baby recognised before the law

### What was the problem?

Hoda paid for express delivery of her daughter's birth certificate in April 2019 shortly after her birth. The Registry of Births, Deaths and Marriages was experiencing technical problems after it upgraded its systems. There were delays, and this meant the Registry could not tell Hoda when the certificate would be ready. The delay caused financial problems for Hoda:

*'Due to not having this document we have not been able to receive payments from Centrelink that we have been eligible for. My daughter has also been unwell and we have had to pay to see the doctors four times due to her not being on our Medicare ... PLEASE HELP!' - Hoda*

The Registry told Hoda there may be an error on her application, and a manager would contact her. When Hoda did not receive a call back, she paid for a new application and called the Ombudsman. By that time, she had been waiting two and a half months for her daughter's birth certificate.

### What did we look at?

Birth certificates prove legal identity and not having one can cause significant disadvantage. It can be difficult to access supports and services.

In 2015, the Victorian Government accepted a recommendation to create a new right to have a name and be registered as soon as practicable after birth. However, this new right hasn't been introduced yet.

Noting the impact on Hoda and her family, we made enquiries with the Registry to resolve the problem.

### What was the outcome?

The Registry quickly fixed the issue and posted Hoda the birth certificate by express post. It also refunded Hoda the cost of her second application.



## Tom and Maria's rights to equality

### What was the problem?

Maria lived in public housing with her father and teenage brother Tom, who has autism.

Due to an anti-social neighbour, Maria's family had to request a priority transfer to move houses, which the (then) Department of Health and Human Services agreed to in 2018.

By July 2020, Maria's family was still waiting to be moved. Maria called our office during Melbourne's second COVID-19 lockdown. She said her neighbour was still harassing her family and the lockdown had made things worse.

Maria said her neighbour installed cameras pointing into her family's yard and yelled abuse about Tom's autism over the fence. Tom became too afraid to go outside, and his health and wellbeing started to suffer. Maria said she made several complaints to the Department but there was no response.

*'It's affecting all of our mental health ... because of [COVID-19] lockdown, it has gotten ever harder' - Maria*

### What did we look at?

Taking Tom's disability into account when prioritising the family's transfer would promote his rights to equality and protection from discrimination.

Although some transfers can take time, we made enquiries to find out what the Department was doing about Maria's complaints and when the family might be able to move.

### What was the outcome?

Following our enquiries, the Department moved Maria's family to a nearby suburb and apologised for not responding sooner. The Department told us it had improved its processes, so complaints like Maria's would not go unaddressed again.



## Kim's right to a safe home

### What was the problem?

Kim lived with her young children in a public housing property that contained asbestos, which the (then) Department of Health and Human Services had arranged to remove.

One day, Kim and her children left home so the asbestos could be safely removed, expecting to be able to return that evening. When she came home, however, she found her house damaged and the job half-finished. The asbestos removalists had not replaced the plaster on the ceiling or walls, leaving electrical wires sticking out. They had also broken the toilet.

Kim first called the Department, who tried to contact the contractors that undertook the repairs. However, by time she called us at 5pm, the contractors had not been in touch.

*'I'm in the middle of having a panic attack ...I've been put in a situation with nowhere to sleep tonight, we don't have any friends or family around here, we don't even have somewhere to go to the toilet' - Kim*

### What did we look at?

As her social landlord, the Department was responsible for promoting Kim's right to a safe home. We immediately contacted the Department and asked them to call Kim as soon as possible to fix the problem.

### What was the outcome?

The Department quickly arranged a contractor to go to Kim's home that night to fix Kim's toilet and ensure the electrical wiring was safe. By that time, Kim had already booked a motel room to make sure her family had somewhere safe to stay.

The next day, new contractors plastered the holes in the walls and ceiling and capped the exposed wiring. Kim moved back home with her children and a manager agreed to update Kim each day until the final repair works were complete. The Department also refunded Kim for the cost of the motel room and reminded the original maintenance contractors of their responsibility to leave homes in a liveable condition and properly communicate with tenants.



## Usha's right to have her family and grandchildren protected

### What was the problem?

Usha was the full-time carer of her two eldest grandchildren, Suneeta aged eleven and Priya aged eight. Their parents weren't able to look after them and Usha had cared for them for several years.

At one stage, Usha asked Child Protection for help with the costs of caring for Suneeta and Priya. However she was told she was not eligible because their parents had voluntarily placed them in her care.

Sometime later, three more grandchildren were born and Child Protection placed them with Usha. From then, Usha was entitled to fortnightly kinship care payments from Child Protection to help cover the costs of looking after the youngest children – but not Suneeta and Priya.

Usha asked Child Protection again for help with Suneeta and Priya but was told they weren't eligible for kinship care funding. Usha came to us as she was struggling to afford the care of all five of her grandchildren.

*'The way I have been treated as a result of trying to do what is best for my grandchildren has caused me a lot of stress and anguish ... I hope that I can raise awareness and stop this from happening to other kinship carers in the future.'* - Usha

### What did we look at?

The right to protection of families and children means public authorities, such as Child Protection, should act in the best interests of children. Without help, Usha was struggling to keep her family together and care for her eldest grandchildren.

We made enquiries with Child Protection and asked a senior officer to review the case and report back to us on whether Suneeta and Priya's could receive kinship payments.

### What was the outcome?

Child Protection advised it had recognised Usha as Suneeta and Priya's kinship carer and actioned payments. This meant Usha could receive ongoing financial support to care for all five of her grandchildren and that she would receive a lump sum of approximately \$130,000 to account for the years she went without financial support.



## Kelly's right to have her family and children protected

### What was the problem?

In 2016, Kelly became the kinship carer of her friend's five children after their mother passed away. Kelly also had seven children of her own.

By 2020, Child Protection was preparing to apply for Kelly to be granted permanent care orders over her friend's children. However, Kelly was struggling due to lack of space in her public housing home. Her home only had four bedrooms and despite modifications made to increase the size of the home, by way of garage conversion, it was still not suitable for the size of her family.

Kelly and Child Protection were not able to identify other housing options. Child Protection offered support to help pay Kelly's rent if she found a private rental. Kelly couldn't find a private rental and instead tried to buy a house but was unsuccessful in her home loan application.

Kelly loved her friend's children and wanted to keep them together, so she asked Child Protection to consider helping her purchase a home. Child Protection said it couldn't do that but offered to buy them a caravan instead. Kelly's yard was too small to fit a caravan.

Kelly called us during one of the COVID-19 lockdowns. Things at home had become worse and Kelly was extremely stressed. She was particularly worried about her teenagers, who increasingly needed their own space. Kelly had also recently given birth to a new baby.

*'I didn't know my friend was going to die. No-one in her family are suitable or willing to take them on. I did, they are my friend's kids' - Kelly*

### What did we look at?

Kelly was worried that if her friend's children couldn't live with her, they would be moved to other families and separated. As the children were Aboriginal, we considered the children's rights to protection alongside their distinct cultural rights to have their kinship ties maintained. We made enquiries with Child Protection to see what could be done to help.

### What was the outcome?

Following our enquiry, Child Protection, together with the Department's Office of Housing were able to identify a permanent suitable home so the whole family could stay together.



## Kylie's right to maintain her connection to her Aboriginal community and culture

### What was the problem?

Kylie is a young Aboriginal woman from regional Victoria living in out-of-home residential care, provided over time by three different Community Service Organisations engaged by Child Protection. Kylie's mother contacted us because she was worried about her daughter's care.

### What did we look at?

When we checked Kylie's records in 2018, we noticed she hadn't been given a plan to help her maintain her connection to her community and culture, despite the law requiring she have one within sixteen weeks of being in out-of-home care. Having a plan would have promoted Kylie's cultural rights and her best interests.

### What was the outcome?

We investigated and found that proper cultural planning did not occur during Kylie's first or second residential care placements.

It wasn't until her third placement with the Victorian Aboriginal Child Care Agency ('VACCA') that Kylie had a plan developed to support her connection to culture and community and engage in cultural healing.

One of the care providers agreed to strengthen ties with VACCA to improve cultural planning processes.<sup>2</sup>

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<sup>2</sup> See Victorian Ombudsman *Investigation into complaints about assaults of five children living in Child Protection residential care units*, October 2020.



## Balancing the right to freedom of movement with Aboriginal cultural rights

### What was the problem?

In August 2020, Parks Victoria put up temporary mesh fencing across access tracks at two areas of the Grampians National Park (Gariwerd) including popular rock-climbing spots. Signs were displayed telling people not to enter due to the rediscovery of Aboriginal artefacts.

A group of rock-climbers contacted our office to complain. Local tourist and climbing industries depended on the rock-climbing attractions and were suffering due to the access restrictions. The group said the restrictions were not necessary.

### What did we look at?

Fencing off public spaces can restrict people's freedom of movement; however, this may be reasonable and justified in some cases.

We understood Parks Victoria had to balance the rights of rock-climbers with the cultural rights of Aboriginal peoples, including the Djab Wurrung and Jardwadjali communities. We made enquiries to find out more.

### What was the outcome?

In response to our enquiries, Parks Victoria explained it put up temporary mesh fences and signage to protect the area while cultural surveys were prepared and community consultation occurred. This was part of the new 'Greater Gariwerd Landscape Management Plan'.

We decided the temporary fences did not appear to breach human rights; and we told the rock-climbers they could continue to provide feedback on the new Landscape Management Plan.



## Luka's cultural rights to speak to his mother in their native language

### What was the problem?

Anja was an elderly woman with dementia who required high care. The Public Advocate was appointed her guardian to make decisions about where she lived and who would have access with her. Anja's guardian decided to place her in a respite care facility as her son, Luka could no longer meet her needs at home.

After Luka visited Anja at the respite care facility, Anja accessed a keypad and was left unsupervised. She was later found at home and was returned to the facility by ambulance. This was distressing for Anja.

When Luka visited his mother again at the facility, the Public Advocate asked him to only speak to her in English. Luka complained about this and suggested an interpreter could translate for staff.

*'My mother and I speak in our mother language ... to force us to speak English is wrong' - Luka*

### What did we look at?

We recognised that preventing Luka from speaking his native language with his mother limited their cultural rights. We asked the Public Advocate why this was necessary.

### What was the outcome?

Anja's guardian at the Public Advocate explained there had been occasions when Anja became upset and agitated during Luka's visits, and staff were worried about what he was saying. There was also concern he may have encouraged Anja to leave the facility by providing her with the keypad number.

In the end, the Public Advocate agreed to Luka speaking with his mother in their first language but asked him to switch to English if his mother became upset, so staff could assist Anja as required.





## Simon's right to consent to medical treatment

### What was the problem?

Simon was involved in a fight with a man who tried to steal his wallet and keys. The man's partner called triple zero, and after paramedics saw to his injuries, they measured Simon's blood pressure and cleaned his wounds. They recommended Simon go to hospital, but he told them he was okay and signed a form to say he refused transport.

Later, Simon received an invoice for \$519 from Ambulance Victoria for 'treatment without transport'. Simon was surprised by the invoice and felt it was unfair. He did not call the ambulance, and paramedics had only taken his vital signs and cleaned his wound.

*'I did not call the ambulance. I told them I was ok. I think this is very unfair'*  
- Simon

### What did we look at?

We decided to investigate Simon's case with Ambulance Victoria and review other invoices for 'treatment without transport'.

We considered full, free and informed consent to medical treatment should reasonably include information about the costs of such treatment.

### What was the outcome?

Ultimately Ambulance Victoria cancelled Simon's invoice and agreed to refund other people who came forward with similar unfair bills for 'treatment without transport'. Ambulance Victoria also accepted other recommendations to make these charges fairer and agreed to waive fees where a 'Good Samaritan' calls for an ambulance that an injured party doesn't want or need.<sup>3</sup>

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<sup>3</sup> See Victorian Ombudsman *Investigation of a complaint about Ambulance Victoria*, May 2019.



## Sophia's right to privacy and protection from unjust surveillance

### What was the problem?

Sophia worked in aged care and suffered from back pain after injuring herself moving a client's bed. She received workers compensation payments through an agent on behalf of WorkSafe Victoria. After an independent medical assessment, Sophia was cleared to return to work on limited hours if she performed mainly administrative duties. The agent hired a private investigator to secretly report on Sophia's mobility. The report said Sophia appeared 'incapacitated' and walked with a limp.

Sophia felt she was being watched and asked the agent about it. The agent said it had not arranged surveillance and encouraged Sophia to 'contact police' if she was concerned. The agent later suspended and tried to terminate Sophia's weekly payments; and the matter went to conciliation.

Although the agent ended up reinstating Sophia's payments, it arranged for her to be seen by several other Independent Medical Examiners, who said Sophia had no capacity for work. A few months later, the agent arranged for another private investigator to confirm Sophia's incapacity. The surveillance lasted three days. During this period, Sophia did not leave her home. She felt she was being watched and was scared to go outside.

We learned about Sophia's case in 2018 when we did a random audit of compensation claims during an investigation about WorkSafe agents.

### What did we look at?

WorkSafe and its agents should only restrict the right to privacy where it is reasonable and necessary to do so. According to WorkSafe's manual, surveillance is only allowed where there is 'adequate evidence' the injured worker may be misrepresenting their injury, claiming excessive injuries, malingering or involved in committing fraud. Agents must also have:

- found less intrusive methods to be 'ineffective or inadequate'
- assessed that surveillance outweighed 'to a substantial degree' the intrusion on the worker's privacy
- considered the limitation on the right to privacy under the Charter of Rights Act to be justified.

### What was the outcome?

We found there was no evidence on Sophia's file to justify further surveillance. The agent did not accept our finding. In response to Sophia's treatment - and other cases we identified during our investigation - we made recommendations to the Government to improve protections for injured workers, including clarifying the meaning of 'adequate evidence' to justify surveillance and increasing WorkSafe oversight.

The Government agreed to implement our recommendations to improve protections for injured workers like Sophia.<sup>4</sup>

<sup>4</sup> See Victorian Ombudsman Investigation *WorkSafe 2: Follow-up investigation into the management of complex workers compensation claims*, December 2019.



## Sam's right to peaceful assembly at a community forum

### What was the problem?

Sam was unhappy about her local Council's proposal to turn a local park into a stadium. During the consultation process, the Council had to reschedule the first community forum when too many people arrived at the venue. The second forum had to finish early when a fire alarm went off. A third and final public forum went ahead, but was limited to 75 people, and attendees had to show photo ID and sign in.

Sam was suspicious when the second event ended early, and felt the third forum did not give people a reasonable opportunity to express their views. She said the Council should have arranged a larger venue and the requirement to show photo ID was discriminatory.

*'I believe there has been a significant breach of the Victorian Charter of Human Rights' - Sam*

### What did we look at?

Community consultation processes can engage rights to freedom of expression, peaceful assembly and participation in public life. But placing reasonable limits on consultation may be justified. To assess this, we reviewed Sam's and the Council's communications.

### What was the outcome?

Although Sam felt her human rights had been breached, we didn't think this was the case. We accepted the Council's explanation for postponing and limiting the community forums. Although only 75 people were able to attend the third event, the Council was able to live stream it. We considered this promoted rights to participate in public life.



## Jonathon's right to take part in public life at local meetings

### What was the problem?

Jonathon, a passionate community activist, was banned from attending Council meetings for 12 months because of his aggressive behaviour toward Councillors, staff and other community members. When he tried to enter a meeting after the ban, the Council called the police and arranged private security.

Jonathan felt the ban was unjustified and that it had happened for political reasons. He said the Council had not followed proper process and had breached his human rights.

*'My concern is that Council has not followed due process prior to taking action against me' - Jonathon*

### What did we look at?

We considered the ban limited Jonathon's rights to participate in public life, freedom of expression and peaceful assembly. To assess whether the limitations were reasonable, we reviewed Jonathon's communication with the Council as well as minutes and footage of meetings he attended.

### What was the outcome?

Ultimately, we found the ban was reasonable and justified due to Jonathon's behaviour. Importantly, the ban did not prevent Jonathon having his questions answered and was time-bound, subject to review, and allowed Jonathan to seek permission to attend meetings in certain circumstances.

The Council was able to show it had given proper consideration to Jonathon's human rights and balanced them against the rights of others.



## Rosa's right not to be arbitrarily deprived of her property

### What was the problem?

Rosa called her local Council after her two dogs went missing and was told they were at the pound.

The pound had not been able to contact Rosa or give her a 'notice of seizure', because her dogs were not registered or microchipped. Rosa was told she had to pay a \$435 fee within eight days to get her dogs back. Rosa was experiencing financial hardship and asked the Council for extra time to pay. She was given four extra days.

With the help of a charity, Rosa managed to raise the money and went to pick up her dogs on the last day of her extended deadline. She got caught in traffic and arrived ten minutes after the pound had closed the register. Staff said they had waited for her, but it was now too late and she would have to complain to the supervisor.

By the time Rosa called the next day, the pound had already sent her dogs to a pet rescue agency to be rehomed.

*'Times have been tough the last few years ... I'm a single mum ... I had the money and everything was there, I just got there late' - Rosa*

### What did we look at?

By the time Rosa contacted us, the dogs had been rehomed. We considered Rosa's property rights and whether the Council had followed the proper process.

### What was the outcome?

The Council told us the pet rescue agency had already rehomed Rosa's dogs, and the new owners were not willing to give them back. It acknowledged it made a mistake and offered Rosa an ex gratia payment. It also agreed to change its policies and train staff to prevent the issue happening again.

# Human Rights in a pandemic

The COVID-19 pandemic has impacted us all in different and significant ways. It has also changed how government services are provided to the community. The public service moved online, face-to-face contact with the community ceased, interstate borders were closed, and hotels and homes became places of detention – to protect public health and wellbeing.

Importantly, human rights continue to apply even in a pandemic.

Some of the COVID-related complaints we received were about the Public Health Directions issued by the Chief Health Officer, including:

- not being allowed to travel more than five kilometres from home
- not being allowed to enter or leave Victoria
- having to wear masks
- bans on public gatherings (including protests).

We considered complaints about the Directions and made enquiries. It is neither unlawful nor unreasonable to curtail fundamental rights and freedoms when there are compelling reasons for doing so. A public health emergency can undoubtedly provide compelling justification. We decided to focus our attention on complaints that involved exceptional circumstances where we felt we could fix problems quickly.

Some complaints raised broader issues, which we investigated at a systemic level. This included the treatment and conditions of detention of over 3,000 public housing tower residents following an immediate hard-lockdown. We also investigated the administration of the Government's Business Support Fund for small businesses that were impacted by COVID shutdowns.

The case studies below look at people's rights to protection from degrading treatment, freedom of movement, liberty and humane treatment when deprived of liberty.

## Rights in focus

Section 10(b) of the Charter of Rights Act recognises that people in Victoria must not be treated in a cruel, inhuman or degrading way. This will depend on all the circumstances of the case, including the severity and duration of the treatment.<sup>5</sup>

To protect against ill-treatment, public authorities should promote dignity and respect. As a result of **Tereza's case** all COVID-19 testing sites were reminded of their obligations to promote the right to dignity and make 'reasonable adjustments' for people with disabilities.

Section 12 of the Charter of Rights Act recognises that every person who is lawfully in Victoria has the right to move freely within Victoria, to enter and leave Victoria and to choose where to live. This right was engaged by the very nature of many of the Public Health Directions that restricted people's movement to slow the spread of the virus.

In **Lena's case**, VicRoads provided her with a Victorian driver's licence to allow her to enjoy her right to freedom of movement and enter New South Wales for a medical appointment during a COVID-19 lockdown.

**Jessica's** and **Joseph's cases** show the financial and mental health impact of restrictions on freedom of movement caused by delays issuing travel permits and clearance from isolation during COVID-19.

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<sup>5</sup> *Certain Children v Minister for Families and Children* (No 2) [2017] VSC 251 [250].

Section 21 of the Charter of Rights Act recognises that every person has the right to liberty and security and must not be subject to arbitrary arrest or detention or deprived of liberty - except in accordance with procedures established by law.

The right to liberty is not limited to a person's involvement with the criminal justice system. It includes all deprivations beyond mere restrictions on freedom of movement. The difference between deprivation of liberty and restriction on freedom of movement is one of degree or intensity, not nature or substance.<sup>6</sup>

Section 22 of the Act recognises that all people deprived of their liberty must be treated with humanity and respect for their inherent dignity.

The Supreme Court of Victoria has observed that this right mandates 'good conduct' towards people who are detained.<sup>7</sup>

The investigation into the **rights of residents during a COVID-19 hard-lockdown** and **Tamika's case** show the importance of being treated humanely when deprived of liberty.

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*We may be tempted, during a crisis, to view human rights as expendable in the pursuit of saving human lives. This thinking can lead to dangerous territory.*

*It is not unlawful to curtail fundamental rights and freedoms when there are compelling reasons for doing so; human rights are inherently and inseparably a consideration of human lives*

- Deborah Glass  
Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020

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<sup>6</sup> *Kracke v Mental Health Review Board* [2009] VCAT 646, [664]. For discussion of the distinction in the context of the COVID-19 pandemic, see *Loiolo v Giles* [2020] VSC 722 and *Nottingham v Ardern* [2020] NZCA 144.

<sup>7</sup> *Castles v Secretary, Department of Justice* [2010] VSC 310, [99].



## Residents' rights to humane treatment during a COVID-19 hard lockdown

### What was the problem?

On 16 March 2020 the Victorian Government declared a State of Emergency in response to the COVID-19 pandemic. On 4 July 2020, the Victorian Deputy Chief Health Officer locked down nine public housing towers in North Melbourne and Flemington following an outbreak of COVID-19.

The Victorian Premier announced the lockdown during a press conference at about 4pm. Hundreds of uniformed police officers were then deployed to the public housing estates. Perimeters were formed around the towers and residents who tried to leave were told they had to remain inside.

These towers were home to about 3,000 people. Some came from war-torn countries and had experienced trauma at the hands of their former governments and police forces. The Ombudsman received calls from residents in the towers and concerned family members about the way the lockdown unfolded. The lockdown happened so fast that many residents knew nothing about it when large numbers of police appeared.

The Victorian government had announced lockdowns before, but this was the first where those affected were not given any prior notice. The absence of any warning meant residents in the towers were not able to obtain necessary food and medication before they were locked down. One of the nine towers remained in lockdown for 14 days.

*'Why can't we be treated like other people?' – a resident*

### What did we look at?

Humane treatment when deprived of liberty requires authorities to meet the essential needs of detained people, including access to food and medicine.

The Ombudsman recognised there was a global health emergency and that governments needed to act swiftly to protect lives. We made enquiries to try to resolve people's immediate needs as complaints arose. The Ombudsman also launched an investigation to see if any lessons could be learnt for future use of public health emergency powers. We queried whether the speed of the lockdown was done for health reasons.

### What was the outcome?

The Deputy Chief Health Officer, who signed the detention directions relating to the lockdown, told our investigation she had discussed the need for targeted health measures to contain the outbreak of COVID-19 at the public housing towers. But she did not provide advice that it was necessary to commence the lockdown that day. She said she had assumed it would begin in about 36-hours' time to allow for better preparation.<sup>8</sup>

<sup>8</sup> See Victorian Ombudsman *Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020*, December 2020.



The Ombudsman found that temporarily detaining residents in the towers was a reasonable measure to contain the outbreak of COVID-19. However, the decision to impose these restrictions with immediate effect was not based on direct health advice. Implementing an immediate lockdown without ensuring residents had enough food and medication breached the residents' rights to humane treatment when deprived of liberty. The Ombudsman also found the Deputy Chief Health Officer was not given enough time to consider human rights before signing the detention directions.

The Victorian Government did not agree with our finding and declined the Ombudsman's recommendation to apologise to the residents.

In 2021, the Government amended the law, and incorporated our recommendation that detained people be given greater rights of review and be promptly issued a notice explaining the terms of their detention. The Government also agreed to work with residents of the towers and multicultural communities to give them a greater say in decisions about public housing.



## Tamika's right to humane treatment while awaiting transit to a COVID-19 quarantine hotel

### What was the problem?

Tamika lived in New South Wales and flew into Melbourne in early 2021. At the time, the Victorian Government required all travellers from New South Wales to spend 14 days in hotel quarantine due to a COVID-19 outbreak.

Tamika and her child were detained for five hours at Melbourne Airport while they were assigned a quarantine hotel. Tamika said she needed to use the toilet as she was walking to the bus but staff did not allow her to return to the airport and told her to wait until she arrived at the hotel. When the bus arrived, Tamika saw there was no toilet on it.

Tamika tried to hold until she arrived at the hotel but couldn't. She found an empty water bottle and had to relieve herself in it while the bus was moving. We received a complaint from Tamika after she left quarantine. She said she did not expect being treated this way.

*'I have never been so humiliated' - Tamika*

### What did we look at?

During the pandemic, people in quarantine are often being detained by the State. While it is important to manage infection risks, people must be treated humanely and with dignity.

We made enquiries with the (then) Department of Health and Human Services and COVID-19 Quarantine Victoria to find out what happened in Tamika's case.

### What was the outcome?

In response to our enquiries, the Department of Health and Human Services called Tamika about her complaint and COVID-19 Quarantine Victoria provided a written response regarding her experience. Although buses used in the quarantine program do not have bathrooms and stops are not permitted to prevent infection risks, people should be able to use facilities at the airport before being transported. We monitored complaints to our office to make sure this did not happen again.



## Tereza's right to protection from degrading treatment at a COVID-19 test site

### What was the problem?

Tereza uses a wheelchair and went to a drive-through COVID-19 testing site on a hot day in January 2021. After waiting nearly four hours for a test, she asked staff to use the toilet. As the site's toilets were not wheelchair accessible, Tereza asked to be able to leave and re-join her spot in the line. She was told she would have to return to the start of the line if she left.

Tereza had to leave the queue and did not get her COVID-19 test. A bystander later contacted us to complain about how Tereza was treated.

*'It was blatant discrimination ... they made no consideration of her needs'*  
- bystander

### What did we look at?

Those operating COVID-19 testing sites on behalf of the State should promote the right to dignity and make 'reasonable adjustments' for people with disabilities.

After hearing about Tereza's case, we asked the Department of Health to respond to the bystander's complaint and made our own enquiries.

### What was the outcome?

In response to our enquiries, the Department explained that in-home testing can be available for people with disabilities or chronic illness, and that testing sites should still make 'reasonable adjustments'.

In Tereza's case, the Department said staff at the site should either have hired a disability accessible toilet, offered to test Tereza ahead of others or helped her get to an accessible toilet without losing her spot in the queue.

As a result of our enquiry, the Department contacted all COVID-19 testing sites and reminded them of their obligations.



## Jessica's right to timely freedom of movement into Victoria during a COVID-19 border closure

### What was the problem?

Jessica's daughter was moving from New South Wales to Victoria in January 2021 to start a new job. Jessica and her husband decided to help her move and booked annual leave from their employment. On 1 January 2021, the Victorian government closed its border with New South Wales due to a rise in COVID-19 cases.

Everyone who wanted to enter Victoria from New South Wales needed a permit, so Jessica applied.

When Jessica did not receive the permit in the expected time, she called again. The (then) Department of Health and Human Services said it could not find her application and she would need to re-apply. Several days passed, and Jessica had not heard back from the Department.

Because of the delay, Jessica's daughter missed the start date for her new casual job, and Jessica and her husband had to book additional annual leave.

### What did we look at?

We knew the Department had a high number of permit applications to process and some delays were to be expected. We considered it was reasonable that the permit system restricted people's right to freedom of movement.

However, in Jessica's case, the processing delays had financial implications for the family - so we made enquiries with the Department.

*'Life has been so manic trying to get my daughter to Victoria' - Jessica*

### What was the outcome?

As a result of our enquiries, the Department called Jessica and provided her and her family with their permits.



## Lena's right to freedom of movement to attend a medical appointment during a COVID-19 lockdown

### What was the problem?

In early 2021, Victoria introduced border restrictions with New South Wales. Lena lived in Wodonga, which shares a border with Albury in New South Wales. Because of a heart condition, Lena needed to travel to Albury for an upcoming appointment with her cardiologist.

Generally, residents of Wodonga were allowed to cross the border into Albury for medical treatment. Lena, however, did not have sufficient proof she lived in Wodonga because she still had a New South Wales driver's licence.

VicRoads refused her request to convert it to a Victorian licence because the national licensing database recorded her licence as suspended. Lena told VicRoads this was an error and confirmed this with New South Wales authorities.

### What did we look at?

Refusing to issue Lena a Victorian driver's licence, VicRoads effectively limited her right to freedom of movement. Lena was worried about missing her appointment so we made quick enquiries with VicRoads to see if the mistake could be fixed.

*'I'm playing piggy in the middle and stuck not being able to go to Albury for cardiology appointments' - Lena*

### What was the outcome?

As a result of our enquiries, VicRoads contacted New South Wales authorities and confirmed Lena's licence was not suspended.

VicRoads then contacted Lena to issue her a licence and provided the direct number of a manager in case she had any further problems. As a gesture of goodwill, VicRoads also waived the licence conversion fee.



## Joseph's right to liberty limited by delays in issuing a COVID-19 clearance certificate

### What was the problem?

Joseph tested positive for COVID-19 during Melbourne's second wave. He had been self-isolating at home for three days when the result came through. The (then) Department of Health and Human Services told him to stay home until he was given a clearance certificate, which would normally be issued within fourteen days, depending on how long symptoms lasted.

After sixteen days of self-isolation, Joseph called us because he was having trouble getting through to the Department. He needed to find out when his clearance interview would be happening, so that he could leave his house.

Joseph said he had been symptom-free for ten days and had to get back to work. He understood the Department was busy, but said the long period of isolation was taking a toll on his mental health. He asked for our help to get the Department to return his calls.

*'They tell me they are going to call me back, but I still haven't received a call. This is affecting my wellbeing, it's upsetting ... I've been waiting for so long'*  
- Joseph

### What did we look at?

We considered that the delay in arranging Joseph's clearance certificate engaged his rights to freedom of movement and liberty. We contacted the Department and asked it to call Joseph as soon as possible.

### What was the outcome?

In response to our enquiries, the Department called Joseph and interviewed him about his symptoms. He was then issued a clearance certificate.



# Human Rights in closed environments

For most people, the word 'detention' conjures images of prisons, police cells or immigration or youth detention centres. Places of detention or 'closed environments' are more common than people may realise.

Victoria has over 50 laws allowing people to be detained. They include laws relating to crime, public health, mental health, disability and child protection.

As we have seen during COVID-19, even hotel rooms and homes can become places of detention.

People in 'closed environments' have to rely on those detaining them for everything, including access to food and medical care, fresh air and exercise, meaningful human contact and purposeful activity.

In the criminal justice system, the purposes of a sentence of imprisonment are primarily to protect society and reduce reoffending. To achieve this, time in prison should, as far as possible, be used to help people reintegrate into society upon release to lead a law-abiding and self-supporting life. Treating offenders with respect and dignity surely increases their chances of rehabilitation, which in turn, helps keep the community safe.

The following case studies look at people's rights to life and equality, cultural rights, protection from cruel and degrading treatment and humane treatment when deprived of liberty.

Some cases also look at the right to a fair hearing and particular rights in criminal proceedings.

## Rights in focus

Section 24 of the Charter of Rights Act recognises that people charged with a criminal offence or are party to a civil proceeding have the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Although disciplinary hearings in prison are different, as **Scott's case** shows, people should still receive procedural fairness and be able to understand and respond to allegations against them.

Section 25 of the Act recognises the right to be presumed innocent until proven guilty according to law. Also a person charged with a criminal offence has certain entitlements, including the right to have adequate time and facilities to prepare a defence and to have legal aid in certain circumstances.

In **Ali's case**, Victoria Legal Aid promoted his rights by arranging for an officer to update him on his application for assistance. Similarly, in **Antonio's case**, a prison officer promoted his rights by delivering his computer to his new prison in time for his bail application.

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*It is said that no one truly knows a nation until one has been inside its jails.*

*A nation should not be judged by how it treats its highest citizens, but its lowest ones.*

- Nelson Mandela  
Long Walk to Freedom, 1995

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## Li's right to feel safe

### What was the problem?

Li was a young man with an intellectual disability who was held in prison to await trial. Li had been in prison before and Corrections Victoria told him he would stay in the same unit as last time.

During his last stay in prison, however, Li had been in a fight with another prisoner who allegedly had a knife. Li feared the man could still be in the unit and was worried about his safety.

*'[I feel] my life is danger ... I can't take it anymore' - Li*

### What did we look at?

Prisons are responsible for the safety of people in their custody and for protecting the right to life, which could be engaged where a prisoner is at risk of significant harm.

When deciding where to accommodate a prisoner, a panel considers their circumstances and the risk they pose. If prisoners have concerns, they can generally raise them with the prison's General Manager or contact us. Sometimes this can happen at the same time.

After Li called us, we made urgent enquiries with Corrections Victoria to ensure his safety.

### What was the outcome?

Corrections Victoria confirmed the man Li was afraid of was no longer in the same unit, and that Li was being placed in the most appropriate unit given his circumstances.

We shared this information with Li so he could feel safe.



## Pauline's right to have equal access to purposeful activity

### What was the problem?

Pauline called us about her daughter, Sarah, who became blind in prison. After losing her vision, Sarah couldn't read books from the prison library. At the time, the library did not have any working audiobooks, so Pauline bought some. The prison's Diversity Manager reportedly told Pauline she could drop off the audiobooks. However, prison staff had no record of the manager's approval when Pauline arrived.

Pauline called our office for help when she was unable to sort the issue for herself.

*'Every other prisoner in that jail is able to get magazines and books in every week, and I can't even get an audiobook in to my daughter who is blind and suffering terribly' - Pauline*

### What did we look at?

Ensuring Sarah had fair access to purposeful activities would promote her right to equality and protection from discrimination.

We made enquiries with the prison to see if the matter could be resolved informally.

### What was the outcome?

As a result of our enquiry, the prison confirmed Sarah could have the audiobooks and arranged for Pauline to redeliver them.

*'Thank you so much for your help, I've been battling for so long it's not funny'*  
- Pauline



## Michelle's right to humane treatment in prison

### What was the problem?

Michelle needed to move to a 'protection unit' to separate her from prisoners who wanted to cause her harm.

Due to bed shortages, Michelle and three other women were placed in a 'management' unit instead. Management units are generally used for prisoners exhibiting difficult behaviour. Being in this unit meant that Michelle was subject to 22-hour lockdowns, and was not allowed to have a prison job. Prisoners in management units are also routinely handcuffed when they leave their cells.

By the time Michelle called us, she had been in a management unit for over three weeks.

*'I have no way to get a job, which means I can't earn an income. I haven't done anything wrong to end up in here, it's just because there aren't any beds'*

- Michelle

### What did we look at?

We made enquiries with the prison to explore what options were available that would promote Michelle's right to humane treatment.

### What was the outcome?

In response to our enquiries the prison explained that bed shortages were likely to continue. To fix the problem, the General Manager apologised to Michelle and moved her and the other women needing protection into an empty unit nearby. Michelle and the other women could access protection unit programs during the day, and then sleep in their own unit at night.



## Brian's right to protection from degrading treatment after a seizure

### What was the problem?

Brian called our office from the medical unit in prison after he had an epileptic seizure and wet the bed.

Brian said staff provided him with a change of clothes, but there was no clean bedding available. As a result, Brian had to sleep in the wet bedding overnight.

Later, Brian complained to the prison about what happened and called our office for advice. He felt he had not been treated with dignity.

### What did we look at?

Noting Brian's right to be protected from degrading treatment, we made enquiries with the prison about why it did not have spare linen in case of accidents like Brian's.

### What was the outcome?

The prison told us that additional laundry is supposed to be available. The prison agreed to ensure that extra bedding is on hand in the medical unit 24 hours a day. When we closed the complaint, we recommended the prison apologise to Brian.



## Sai's right to culturally appropriate food

### What was the problem?

When Meena was in prison, her two-and-a-half-year-old son Sai lived with her part-time, under a program to reduce the impact of women's imprisonment on young children.

Meena's family is Hindu. When Sai lived at home with his father, he ate traditional Hindu food considered important for his physical and spiritual development.

Meena tried to do the same for Sai when he stayed with her. She prepared traditional meals in the unit kitchen, until the prison's supplier stopped stocking the necessary ingredients.

To fix the problem, Meena offered to pay for the ingredients herself, or arrange for Sai's father to deliver them. The prison refused and instead offered to provide Meena with substitute ingredients, but they weren't appropriate.

*'I am not fussed about what food I get, but this is for my son and I cannot let it go ... he is not a prisoner' – Meena*

### What did we look at?

While prisons understandably restrict items that can be brought in for security reasons, Sai was entitled to have his cultural rights upheld.

Noting the ingredients Meena needed had a long shelf life, did not require refrigeration and could be bought locally in bulk, we asked the prison to consider options.

### What was the outcome?

In response to our enquiries, the prison agreed to place a monthly order at a local supermarket and Meena agreed to pay for the ingredients and delivery. In the end, Sai was able to enjoy traditional food and time with both his parents.



## Scott's right to a fair hearing

### What was the problem?

While Scott was in prison, he was disciplined because illicit drugs were found inside mail addressed to him. Scott said he didn't know the sender and had not asked for the mail to be sent to him. He told prison officers they could check his phone and mail records if they needed proof.

Scott was fined \$50 at a disciplinary hearing. He felt he was not given the opportunity to present his case or call witnesses in his defence. He also said he found it hard to understand things because of his intellectual disability. He felt he should have been offered an independent support person (engaged by the Public Advocate).

Scott called us because he believed his disciplinary hearing at the prison was unfair.

*'I have always had to have a third party in the room because of my disability I don't understand a lot of what happens in the room.'* – Scott

### What did we look at?

People have the right to a fair hearing in civil and criminal proceedings. Although prison disciplinary hearings are different, procedural fairness should still apply. This means people should be able to understand and respond to allegations against them.

We considered Scott should have been offered an independent support person to ensure his hearing was fair. We made enquiries with the prison to find out what happened.

### What was the outcome?

As a result of our enquiries, the prison set aside the hearing outcome and refunded Scott's fine.



## Ali's right to apply for legal assistance

### What was the problem?

Ali was in prison and wanted to appeal his criminal conviction with assistance from Victoria Legal Aid. He had submitted an application for assistance with Victoria Legal Aid. He told us he tried to call Victoria Legal Aid to ask for an update but couldn't get through on the phone and he wasn't able to write.

*'I want to clear my name ... I [have to] get friends to help me as I can't write properly' - Ali*

### What did we look at?

We made enquiries with Victoria Legal Aid to see what had happened to his application for assistance.

### What was the outcome?

In response to our enquiries, Victoria Legal Aid arranged for an officer to update Ali on his application. As Ali's legal matter was complicated, Victoria Legal Aid said Ali's request for assistance would take some time to assess and it would regularly update Ali on progress.



## Antonio's right to prepare his defence in criminal proceedings

### What was the problem?

When Antonio was on remand he purchased a computer for his cell so he could prepare a bail application and arrange legal documents for his lawyer.

Antonio was unexpectedly transferred to another prison and his computer was not sent with him. He asked the prison to transfer the legal documents on his computer onto a USB before he was moved, but the prison cancelled his request at the last minute.

When Antonio arrived at the new prison, he was told he would have to pay \$300 to transfer his computer by a courier, which could take several weeks. When Antonio contacted us, his bail application was only a week away.

*'The most important thing is my computer' – Antonio*

### What did we look at?

Antonio was entitled to be given adequate time and facilities to prepare his defence and communicate with his lawyer. We contacted the prison and asked if it could retrieve his computer as a matter of priority.

### What was the outcome?

In response to our enquiries, the prison said the scheduled courier could not deliver the computer in time, so instead, a prison officer agreed to do it.

Antonio was able to get his documents to his lawyer before the bail application.





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## 2018

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