

# CASE STUDIES



**Human Rights Acts in  
Queensland, Victoria and the  
Australian Capital Territory  
are delivery dignity and  
fairness for people everyday**



**HUMAN RIGHTS ACT**  
**FOR NEW SOUTH WALES**



# A PLACE TO CALL HOME

A Victorian man suffering from physical disabilities and limited mobility continued to live in his family home after his mother had been admitted to an elderly care unit and placed under a financial administration order. In order to prevent the home being sold, the man's advocate raised the right to property under the Victorian Charter of Human Rights and Responsibilities Act. In consideration of this right an agreement was reached so that the man could continue living in the house as a tenant paying rent.



Following the death of her father and incarceration of her mother, a 23 year old woman became the guardian of her three younger siblings. She maintained their public housing tenancy and had rental payments deducted from her Youth Allowance payments. She went overseas on a study tour and her Youth Allowance was cancelled causing her to accrue significant rental arrears that she didn't receive notice of. The Victorian Department of Housing applied for a possession order after having issued a notice to vacate.

The woman's advocates argued that the Department had failed to consider the rights of the young woman and her siblings protected in the Victorian Charter of Human Rights and Responsibilities Act. Instead of making a possession order, the Victorian Civil and Administrative Tribunal made an order that the young woman pay \$10 per week towards her rental arrears in addition to her rent.



# PROTECTING OUR CHILDREN

A young Victorian girl had been abused. Her advocates used the Victorian Charter of Human Rights and Responsibilities Act, and in particular the right to the protection of family and children, to argue that she shouldn't be required to give evidence against the alleged perpetrators. They said that this right should be given proper consideration when determining whether a young person should be required to provide testimony. As a result the girl was not required to give evidence.



A Victorian student with a learning disability was threatened with expulsion by his school due to his behavioural issues. His advocate outlined to both the school and to the Department of Education and Early Childhood Development the student's relevant human rights as protected in the Victorian Charter of Human Rights and Responsibilities. As a result of the communication, the boy was provided with support, which reduced his behavioural issues and consequently, he was allowed to stay on at the school.



A teenager on remand in youth detention wanted to see his family for his birthday but because of restrictions due to COVID-19, family visits were postponed at the centre. Through conciliation in the QLD Human Rights Commission, the detention centre and the young person's mother agreed on a plan to maintain family contact during the pandemic. The young person talked to his family for one hour on a video call for his birthday, and once the restrictions eased his family was able to visit him in person.



In 2017, proceedings were brought by teenagers against the Victorian government for breaches of the Victorian Charter in relation to their detention at an adult prison. The teenagers were frequently isolated for up to 23 hours a day in cells that were designed for adult men, regularly handcuffed for routine activities, capsicum sprayed during a prison disturbance, developed risks of depression, anxiety, cognitive problems, hypersensitivity and paranoia, or exacerbation of existing mental health problems.

The Supreme Court of Victoria held that this conduct breached the rights of the child to protection in their best interests and rights of persons deprived of liberty to be treated with humanity and respect for the inherent dignity of the human person. The Court further held that the limitation on the human rights imposed on the teenagers was not demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

# DOMESTIC VIOLENCE

The Victorian Charter of Human Rights and Responsibilities Act was used in a matter relating to the payment of rent and repairs to a property. The woman involved had been forced to flee the property due to domestic violence. The advocate successfully used the Charter in arguing for the reopening of the matter after the limitation period had expired to protect the woman's rights.



The Queensland Human Rights Act was used to assist a woman who sought a review of a Department of Education's decision to decline her application to home school because she had not provided her address. The woman and her children had moved to a new location to escape domestic violence and the woman did not disclose her address in order to keep her family safe.

Queensland's Civil and Administrative Tribunal determined that the Education Act should be interpreted in a way that least infringes the child's right to education, the family's right to privacy, their right to protection of children and family and their right to equal protection of the law without discrimination. Accordingly, the Tribunal set aside the Department's decision and substituted it with a decision to grant the application to home school.





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# PEOPLE WITH DISABILITY

A woman who had mobility issues made a complaint to the QLD Human Rights Commission about the limited number of accessible parking spots at a bus terminal, and being issued with a number of fines for parking in other places. She said that on two occasions the bus driver refused to engage the ramp, requiring her to struggle up and down the bus stairs. The complaint was resolved on the basis that the transport service agreed to conduct an internal review of its policies and procedures about the use of ramps, and to provide a copy to all bus drivers employed by it. Employees were also required to attend training on the Anti-Discrimination Act and the Human Rights Act, and an internal training module on human rights and improving services to people with disability was introduced.



A man living in an ACT residential aged care facility relied on a wheelchair to move around. Staff at the facility became concerned the man was a danger to himself and others when using his chair so they removed the batteries so the chair would not work. The man's advocate asserted that this breached his right to freedom of movement protected by the ACT's Human Rights Act. In response, and in recognition of the man's rights, the facility worked with the man and his advocate to find other, less restrictive, ways to ensure he was able to move about freely but safely. This included support for him to use the footpaths safely so he could travel from his home to the nearby shops when he wanted to.



A single mother living with cerebral palsy was at risk of having her one year old daughter taken from her by the Victorian Child Protection Service. The mother sought to demonstrate that, with the appropriate assistance of carers and the use of aids, she was both emotionally and physically competent to care for her daughter. An advocate was able to use the Victorian Charter principles to explain the woman's human rights to the Child Protection Service, through mediation in the Children's Court. These rights included recognition and equality before the law and protection of families and children. The Child Protection Service accepted that the mother had demonstrated her daughter was safe in her care and is no longer involved in their lives

## CULTURAL RIGHTS



The ACT Human Rights Commission intervened in a court case regarding the infringement of the cultural rights of an Aboriginal child detained at the Bimberi Youth Justice Centre. The child said that her human rights were breached when she was segregated from other children detained in the centre and when the centre staff confiscated artwork and the Koori Mail newspaper from her cell. The case settled with the ACT Government apologising to the girl for her experience in custody and for staff removing the artwork and copies of the Koori Mail from her cell.



Aboriginal children are over-represented in child protection systems and are often removed from their family and placed in the care of non-Aboriginal families. Victoria's Commission for Children and Young People relied on the cultural rights obligations in the Charter to support its recommendations for government and community service organisations to better identify and record Aboriginal and Torres Strait Islander status in the child protection system and to make sure that Aboriginal and Torres Strait Islander children in out-of-home care have meaningful access to their culture.



In Queensland, an Indigenous community leader and his family asserted their distinct cultural rights in a complaint against the Queensland Police Service (QPS). The cultural rights of Aboriginal and Torres Strait Islanders are expressly protected by Queensland's Human Rights Act, including the right to maintain distinctive spiritual, material, and economic relationship with the land and waters with which they hold a connection. Adrian Burragubba and his family were camping, practising their culture, and performing traditional ceremonies on a pastoral lease area when police officers claimed they were 'trespassing'. The police required them to pack up their equipment and leave within an hour.

A complaint conciliated in the QLD Human Rights Commission resulted in the QPS agreeing to provide a statement of regret which was able to be shared publicly and which acknowledged that the events had caused embarrassment, hurt and humiliation for Mr Burragubba and his extended family. The QPS also committed to take cultural sensitivities into account in the future.



The Victorian Parliament passed legislation to create a framework for native title agreements to be made between the state and traditional owner groups. The first agreement under this legislation was made between the Government and the Gunai Kurnai people, recognising them as traditional owners of land in the Gippsland region. The most progressive element of the legislation is that it affords traditional owners essential cultural rights as protected by the Charter. Specifically, it recognises the rights of traditional owners to enjoy their culture and identity and to maintain a spiritual relationship with the land and its resources.





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# LGBTQIA+ RIGHTS

Amendments to the law in Victoria allowed same sex couples to access superannuation death benefits from one another. Because the amendments operated prospectively, they discriminated against older people in same sex relationships. An older woman and her advocate wrote to the Human Rights Unit at the Department of Justice advocating for an amendment to the law based on the claim that the amendments should be consistent with the Charter of Human Rights and Responsibilities Act. As a result an amendment to the law was made so that same sex couples could access superannuation death benefits both retrospectively and prospectively.



The Victorian Government developed and published an 'LGBTIQ inclusive language guide' for the Victorian Public Service explaining how to use language respectfully and inclusively when working with, and referring to, LGBTIQ people. Following the publication of the guide, many Victorian public authorities introduced an opt-in scheme for staff to include pronouns in their email signatures. The Guide notes Victorian public authorities' obligation under the Charter of Human Rights and Responsibilities to act in ways that are compatible with human rights.



A gay man with physical disabilities living in the United Kingdom approached a disability service provider to ask if a support worker could accompany him to a gay pub. His request was denied even though the service regularly supported heterosexual people to attend pubs and clubs of their choice. The man and his advocate successfully used his right not to be discriminated against and the right to respect for his private life, rights protected in the UK's Human Rights Act, to challenge the service provider's decision.





# FREEDOM OF ASSEMBLY AND EXPRESSION

In 2013, two men living in public housing used the Victorian Charter to successfully challenge Victorian Government rules that banned political rallies on public housing estates and banned residents from putting political information on noticeboards. The rules also banned door knocking by political representatives and candidates on public housing estates and barred them from booking community facilities.

The two men, supported by the Human Rights Law Centre, advocated with the government to change the new rules, arguing that the rules breached public housing residents' rights to freedom of assembly and expression in the Charter. In response, the government revised the new rules to remove the bans.



A man who was an inpatient at a mental health facility had his phone calls limited by order of his authorised psychiatrist. The psychiatrist thought that the man was making too many calls to government agencies including 000. The psychiatrist ordered that the man be limited to one phone call a day, including to his lawyers, and ordered that his calls be monitored to determine whether they were causing nuisance. Victoria Legal Aid advocated to the psychiatrist that this restriction unjustifiably limited the man's freedom of expression. In response, the psychiatrist agreed to lift the ban on contacting his lawyers and put in place a review period after which the ban on calling other agencies would be reviewed.



# IMPROVING SERVICE DELIVERY AND POLICY FORMATION

The ACT government has published guidelines to instruct government departments on how to consider the human rights protected in the ACT Human Rights Act in the development of legislation and policy. For example, the guide instructs public officials to consider the cultural rights protected by section 27 of the *Human Rights Act 2004* (ACT) when they are developing policies that have the potential to limit the ability of Indigenous or other ethnic groups to continue to take part in distinct cultural practices.



The Victorian Charter requires that whenever a public authority uses contractors or other third parties to perform public functions on their behalf, the public authority must take steps to ensure they operate in a manner that is consistent with human rights. Accordingly, the Department of Justice's Health Unit inserted a requirement into the model Health Service agreements that external service providers must comply with the human rights obligations under the Victorian Charter. Similarly, the Victoria Police have taken steps to ensure the external contractor responsible for the operation of the Melbourne Custody Centre must refrain from acting in a manner that is incompatible with human rights under the Victorian Charter.



The Victorian Charter of Human Rights and Responsibilities 2006 provides a mechanism for Members of Parliament and the community to consider the human rights implications of new laws, and can assist in positive law reform. Under the Charter, all Bills introduced into parliament must be accompanied by a statement outlining the Bill's compatibility with human rights. The parliamentary Scrutiny of Acts and Regulations Committee (SARC) is also tasked with considering all Bills and reporting to parliament on whether the Bill is compatible with human rights.



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## FIND MORE CASE STUDIES



We acknowledge the significant work of the Human Rights Law Centre and its “101 Cases of How Human Rights Acts Make Our Lives Better” undertaken as part of the campaign for a federal Human Rights Act.

Human Rights Act for NSW is convened by Australian Lawyers for Human Rights and the NSW Council for Civil Liberties.





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