

VICTORIA POLICE

NATIONAL HUMAN RIGHTS CONSULTATION

VICTORIA POLICE SUBMISSION

This submission by Victoria Police to the National Human Rights Consultation addresses the three questions raised by the Committee for community consultation. The information presented is based on Victoria Police experience in integrating the aspirations of the Charter on Human Rights and Responsibilities Act 2006 (Vic): – 1. Which human rights (including corresponding responsibilities) should be protected and promoted? 2. Are these human rights currently sufficiently protected and promoted? 3. How could Australia better protect and promote human rights?

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Executive Summary

Victoria Police welcomes the National Human Rights Consultation and supports in principle the introduction of a federal charter of human rights that is consistent with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the Victorian Charter'). This submission is aimed at addressing the three primary questions posed by the National Human Rights Consultation Committee ensuing from their terms of reference. Consequently, this submission is divided into three parts:

1. Which human rights and responsibilities should be protected?
2. Are human rights sufficiently protected and promoted?
3. How could Australia better protect and promote human rights?

In response to the first question posed, Victoria Police believes that the human rights articulated in the Victorian Charter provide a platform upon which a federal charter could be built. This submission provides a brief explanation of how the rights articulated in the Victorian Charter support the development of police standards both in an operational policing environment as well as a business activity environment.

When addressing the second question posed, this submission highlights how Victoria Police put the aspirations of the Victorian Charter to practice. The submission articulates how Victoria Police readied itself for the Charter implementation and is continuing to audit and assess services. Most importantly, it highlights the organisation's continued development of human rights practice-informed quality assurance as part of the broader human rights practice within the context of policing.

The final part of this submission addresses the third question posed by the Committee and articulates what Victoria Police believe is the fundamental requirement to the protection and promotion of human rights – education. Education is required not merely to 'train' people on what rights are contained in a Charter, but to promote an understanding of human rights practice in all aspects of police business (Corporate, Operational and Accountability Processes). The submission provides information of the education and information programs offered and undertaken by Victoria Police employees as a part of promoting and building a culture of human rights within the organisation. All the programs address the context of human right practice for sworn members of the police force in all the roles, as well as public service officers in their various roles.

1. Which human rights and responsibilities should be protected?

1.1 Introduction

This section addresses the issue of which human rights and corresponding responsibilities should be protected and promoted. Victoria Police believes that robust domestic human rights legislation provides ‘on the ground’ policing practitioners with overarching mechanisms to integrate the aspirations articulated in international human rights instruments into their work practices.

Victoria Police further believes that when human rights are articulated in domestic law they provide an overarching platform upon which human rights practice standards for policing can be demonstrated and, where deficient, be built.

1.2 Rights contained in Victoria’s *Charter of Human Rights and Responsibilities Act 2006*

Victoria Police provided submissions to the Victorian Government’s independent Human Rights Consultation Committee in support of the introduction of the *Charter of Human Rights and Responsibilities Act 2006* (‘the Victorian Charter’) and has been an advocate in favour of it since.

As noted by Luke Cornelius, Assistant Commissioner Ethical Standards Department, Victoria Police, at the launch of the Victorian Charter:

Police have a key role to play in ensuring that laws are applied to enhance social cohesion, safety and the rights of citizens in our community. Increasing transparency regarding the rights which are bound to extend will build confidence in the community that our powers are exercised under the rule of law and in the community interest. A clear expression of rights and responsibilities will also firmly establish community expectations about how we should treat one another and, in particular, how police should treat all with whom we have contact.

The rights articulated in the Victorian Charter are akin to those rights articulated in many other human rights legislation from around the world, such as the United Kingdom’s *Human Rights Act 1999* and New Zealand’s *Bill of Rights Act 1990*. Most of these are predominantly based on the provisions contained in the International Covenant on Civil and Political Rights (‘ICCPR’) with local interpretations. Victoria Police believes that the rights and responsibilities currently articulated in the Victorian Charter provide a platform upon which a federal charter could be modelled.

1.3 Development of standards in operational policing

With the introduction of the Victorian Charter, Victoria Police has embarked on significant internal operational and corporate practice audits that inform policy, as well as human rights education programs. The results of the practice audits and assessments form part of the organisational quality assurance for all organisational practice. The aspirations of the Victorian Charter provided a platform for the development of minimum human rights standards as understood and articulated at every level of the organisation.

Furthermore, Victoria Police worked with internal and external stakeholders to enable a common understanding of human rights within the context of policing. For example, Victoria Police provided human rights training for officers from the Victorian Office of Police Integrity.

Victoria Police considers education as one of the cornerstones to successful human rights practice. As such, Victoria Police entered into a robust program of internal and external education of its employees over a diverse range of experience and expertise. This was initiated with the view that while the education of all members of such a large organisation can be resource and time consuming, it is vital for the inculcation of an organisational human rights culture.

As part of this education program, the critical aspect of the human rights acculturation within Victoria Police was to engage volunteers from the organisation. All the volunteers were supported by their departments and regions, because they had capabilities as ‘opinion leaders’. Most importantly, members of the Victoria Police executive provided leadership roles at every level of the human rights program activities.¹

Candidates from areas such as the ‘Centre for Foundation Training – Academy’, responsible for the training of new police recruits, and candidates from the ‘Centre for Investigation Training’, responsible for training police detectives, were selected and encouraged to take part in the education programs. By including candidates such as these, new standards with respect to police member training have been developed that give greater emphasis to the human rights and responsibilities aspects already existent in member training. The new standards also incorporate and encourage articulation of policing roles within a human rights framework.

1.4 Development of standards in police business activities

As noted above, Victoria Police initiated a vigorous education program on human rights for employees (police officers and public service officers). By targeting both categories of

¹ Regional Assistant Commissioners took leadership for assessment of Victoria Police compliance with the aspirations of the UN Convention on the Rights of the Child. The Director of Legal Services provided leadership for legal audits and the verification process of applicability with investigators/detectives. Chief Commissioner Overland has now taken over from Chief Commissioner Nixon on representing the organisation on the Human Rights Leadership Forum.

personnel, Victoria Police was able to assess and audit operational activities, as well as support corporate functions.

The Victoria Police approach focuses on engaging staff from operational and corporate areas in the practice audits and adaptation of human rights practice standards into everyday business activities and policy, therefore fostering a practical human rights framework to influence decision-making.

Candidates for the education programs included personnel responsible for drafting and initiating regional business action plans, as well as candidates responsible for reviewing and implementing personnel policies relating to employee work related issues. These business activity standards were also reviewed and considered with a robust human rights influence underpinning the process.

2. Are these rights currently sufficiently protected and promoted?

2.1 Introduction

It is the aim of this submission to address this question with specific reference to the status and standing of those human rights explicitly protected in Victoria with the introduction of the Charter. The submission will address how Victoria Police has sought to integrate a human rights framework within the organisation to improve service satisfaction both externally and internally. It will demonstrate how the rights articulated in the Charter have in the past been, and are currently being, protected and promoted by Victoria Police.

2.2 Human rights protections in other legislation

Victoria is the first state in Australia to enact a domestic regime of human rights protection. While the introduction of the Charter may result in rights being promoted and protected differently in Victoria than they are in any other states, human rights have been long been protected and promoted in Victoria through the application of Victorian and Commonwealth legislation and common law.

As noted by Luke Cornelius, Assistant Commissioner Ethical Standards Department, Victoria Police, at the launch of the Victorian Charter:

Since its inception, policing in the Westminster tradition has sought to protect human rights and bring to book those who infringe the rights of others. Police serve these ends by exercising discretion in the interests of justice, where justice is served by the exercise of discretion which respects the rights of those who come to our care or attention. This is what it means to exercise power subject to the rule of law.

The following table ('Table 1') lists the domestic legislation that currently protects and promotes many of rights in the Victorian Charter. (Note: the list is not exhaustive.)

Table 1

Victorian Charter provisions	Comparative domestic legislation
Equality before the law (s 8)	<i>Age Discrimination Act 2004</i> (Cth) <i>Disability Discrimination Act 1992</i> (Cth) <i>Human Rights and Equal Opportunity Commission Act 1986</i> (Cth) <i>Racial Discrimination Act 1975</i> (Cth) <i>Sex Discrimination Act 1984</i> (Cth) <i>Equal Opportunity Act 1995</i> (Vic)
Protection of families and young children (s 17)	<i>Children, Youth and Families Act 2005</i> (Vic) <i>Crimes (Family Violence) Act 1987</i> (Vic) <i>Child Wellbeing and Safety Act 2005</i> (Vic)
Freedom of religion (s 14)	s 116, The Australian Constitution <i>Equal Opportunity Act 1995</i> (Vic)
Taking part in public life (s 18)	The Australian Constitution <i>Electoral Act 1918</i> (Cth) <i>Electoral Act 2002</i> (Vic)
Property rights (s 20)	s 51(31), The Australian Constitution
Cultural rights (s 19)	<i>Racial and Religious Tolerance Act 2001</i> (Vic)
Humane treatment when deprived of liberty (s 22)	<i>Corrections Act 1986</i> (Vic) Corrections (Police Goals) Regulations 2005 (Vic)
Children in the criminal process (s 23)	<i>Crimes Act 1958</i> (Vic) <i>Children Youth and Families Act 2005</i> (Vic)
Rights in criminal proceedings (s 25)	<i>Crimes Acts 1958</i> (Vic) <i>Crimes (Criminal Trials) Act 1999</i> (Vic) <i>Evidence Act 1958</i> (Vic)
Right not to be tried or punished more than once (s 26)	s 394, <i>Crimes Act 1958</i> (Vic) <i>Davern v Messel</i> (1984) 155 CLR 21

While many of the rights in the Victorian Charter are protected through other domestic legislation, the articulation of human rights protections in Victoria in a single piece of legislation provides a clear standard for Victoria Police to hold itself accountable against. Increasing transparency regarding the rights which police are bound to extend is a basis for

building confidence in the community that our powers are exercised under the rule of law and in the community interest and provide a better protection of human rights in Victoria.

2.3 Victoria Police’s legal and practice audits

One of the more vital tasks undertaken by Victoria Police immediately after the enactment of the Victorian Charter was to conduct internal legal and practice audits to assess human rights compliance. These audits were undertaken across the entire organisation and involved not only police policy and practices, but also all legislation that is fundamental to policing.

The legal audit reviewed all Victorian legislation that governed or regulated the way Victoria Police operates, either internally or when providing policing services to the community. The aim of the audit was to identify provisions that were not human rights compliant and report to government with recommended resolutions.

While substantive pieces of legislation were being reviewed, the way in which those legislative provisions were operationalised was also audited. This included an audit of Victoria Police’s internal policies and procedures for human rights compliance. Where potentially incompatible issues were identified, steps were taken to alter or amend policies and procedures where appropriate.

‘Attachment A’ provides a sample of the methodology of a legal audit conducted in 2007 with respect to the operationalisation of the family violence legislation at the time. This legislation has since been repealed.

2.4 Current protection and promotion of the rights contained in the *Charter of Human Rights and Responsibilities Act 2006*

The following table (‘Table 2’) aligns the individual rights in the Victorian Charter with their respective ICCPR articles and mentions some of the proactive projects that Victoria Police has undertaken to review the extent to which policing policy and practice protects and promotes human rights.

Table 2

Victorian Charter provisions	Comparative ICCPR Articles	Victoria Police Audits/Projects/Practices
Equality before the law (s 8)	Articles 2 and 26	<ul style="list-style-type: none"> ▪ Review of recommendations from the La Trobe University ‘Coming Forward’ report² with respect to the impact on policing policy and practice and recommendations for redress within a human rights framework. ▪ Review of the ways in which pregnant employees

		may be able to access part-time employment upon return from maternity leave.
Right to life (s 9)	Article 6	<ul style="list-style-type: none"> Review and implementation of education program regarding police call-outs to situations of imminent suicidal threat.
Protection from torture and cruel, inhuman or degrading treatment (s 10)	Article 7	<ul style="list-style-type: none"> Review of practice of handcuffing suspected persons who were compliant during arrest and throughout their time in custody, including comparative analysis with relevant international precedents.
Freedom from forced work (s 11)	Article 8	<ul style="list-style-type: none"> Study of the interaction this right has with respect to the investigation of human trafficking and the corresponding legislation.
Freedom from movement (s 12)	Article 12	<ul style="list-style-type: none"> Projects on this issue have predominantly concentrated on use of public space by youths.
Privacy and reputation (s 13)	Article 17	<ul style="list-style-type: none"> Review of the interaction of this right with respect to procedures and guidelines which govern the witness protection program.
Freedom of thought, conscience, religion and belief (s 14)	Article 18	<ul style="list-style-type: none"> Audit of education programs with respect to facilitating members' understanding of the expectations of community members from different religions.
Freedom of expression (s 15)	Articles 19 and 20	<ul style="list-style-type: none"> Introductory human rights seminars, facilitated by the Victoria Police Human Rights Project, required open and frank discussion among different ranks and roles with respect to human rights implications to policing responsibilities. A periodical online forum is held allowing all employees to ask questions of the Chief Commissioner and express any concerns or issues.
Peaceful assembly and freedom of association (s 16)	Articles 21 and 22	<ul style="list-style-type: none"> Development of case studies that assist members to assess human rights implications to balance the rights of protesters, police and the community. Introduction of declarable associations policy whereby employees must declare associations with certain categories of persons where this may have implications of the safety of the employee and the integrity of the organisation.
Protection of families and young children (s 17)	Articles 23 and 24	<ul style="list-style-type: none"> Review of what advice is provided to parents concerning children assessed as being 'at risk'. Review of the youth referral to Independent Third Persons program.
Taking part in public life (s 18)	Article 25	<ul style="list-style-type: none"> Staff representative leave may be granted, where appropriate, to employees who are elected representatives of an approved staff association to attend certain meetings, conferences and training courses where attendance will foster and improve industrial relations within Victoria Police.
Cultural rights (s 19)	Article 27	<ul style="list-style-type: none"> Audit of custody management policies and practices with respect to indigenous persons taken into

		<p>custody in the Gippsland region.</p> <ul style="list-style-type: none"> ▪ Review of the impact new and emerging ethnic communities have on the roles and expectations of Community Liaison Officers located in different Police Service Districts.
Property rights (s 20)	There is no direct provision contained in the ICCPR.	<ul style="list-style-type: none"> ▪ Police policy and practice ensures that a person's personal property is returned to them upon release from custody, unless it is seized as an exhibit for production in court.
Right to liberty and security of person (s 21)	Article 11	<ul style="list-style-type: none"> ▪ A Senior Sergeant has implemented a new practice at his police station that entails explicit consideration of human rights implications on the detainee and the community in remand applications.
Humane treatment when deprived of liberty (s 22)	Article 10	<ul style="list-style-type: none"> ▪ Region 5 assessed their policies and procedures that impact on the way in which people are treated when held in police cells. ▪ The Prisoner Management Unit audited the policies and procedures that have been implemented at the Melbourne Custody Centre and their impact on its clients' human rights.
Children in the criminal process (s 23)	Article 24	<ul style="list-style-type: none"> ▪ Projects have looked at specific issues faced by children when involved in the criminal process and, in particular, when they have been deprived of their liberty as a result of their involvement.
Fair hearing (s 24)	Article 14	<ul style="list-style-type: none"> ▪ Practice audit was conducted assessing the way in which Victoria Police policy and practice with respect to police investigations protects a person's right to a fair hearing.
Rights in criminal proceedings (s 25)	Article 14	<ul style="list-style-type: none"> ▪ Delivery of an extensive training program for all police prosecutors with respect to the implication and interaction these rights could have on criminal matters before Victoria's courts.
Right not to be tried or punished more than once (s 26)	Article 14	<ul style="list-style-type: none"> ▪ This right, among others, was subject to the legal audit conducted to inform human rights compliance and consider redress options where relevant.
Retrospective criminal laws (s27)	Article 15	<ul style="list-style-type: none"> ▪ This right, among others, was subject to the legal audit conducted to inform human rights compliance and consider redress options where relevant.

3. How could Australia better protect and promote human rights?

3.1 Introduction

Victoria Police is confident that human rights protection is synonymous with good policing in liberal democratic societies. With this premise, human rights education programs were

based on auditing current practice to demonstrate good human rights practice and to identify deficiencies where relevant. All the education activities were focused on supporting employees to understand the relevance of human rights to their different roles. Victoria Police has embarked on wide-ranging education programs in an effort to improve its employees' knowledge of human rights and to foster human rights dialogue in the workplace.

3.2 Education

The education programs provided within Victoria Police were focused on patterns of practice, to enable assessment of human rights compliance. Some education programs were offered by Victoria Police in partnership with specialist human rights services and the university sector. For example, the Human Rights Litigation Course was undertaken in collaboration with Human Rights Education Associates, and the Human Rights and Policing Program was delivered in collaboration with Curtin University. All the education programs included a practical human rights project demonstration.

3.3 Human rights projects

Another important aspect of Victoria Police's education programs was the establishment and supervision of specific project groups assigned with addressing a specific issue pertinent to policing in Victoria. The groups were assigned on a regional basis and the volunteers who participated in the projects were asked to address a specific policing issue from a human rights perspective. A number of the projects undertaken by Victoria Police employees have been mentioned in Table 2 (section 2.4).

These projects were designed to not only to raise the awareness of the volunteers, they also allowed those participants to raise awareness among colleagues and management of a specific human rights issue in the workplace and engage in human rights dialogue about their work. As stated by Assistant Commissioner Luke Cornelius when addressing the Victoria Police and Curtin University Human Rights and Policing Program Graduation in May 2009:

Your completion of this program commissions you to carry forward your commitment in the workplace and foster a shared appreciation with your colleagues that regard for and the protection of human rights is in every sense 'policing core business'.

3.4 Inaugural Human Rights Conference

Victoria Police made a conscious decision to supplement the human rights projects and education programs by hosting the Inaugural Australasian Human Rights and Policing Conference which was held over three days in December in Melbourne.

The conference was focused on human rights and policing, drawing guests and speakers from around the globe, including police accountability authorities from Canada, Northern Ireland and New Zealand. Employees who had undertaken the human rights projects or participated in some of the human rights internal education courses were afforded the opportunity to attend the conference, as well as to give presentations and conduct workshops on their particular issue of interest. This opportunity further enhanced their ability to speak and communicate with their colleagues on an authoritative basis with respect to human rights implications on policing.

3.5 Management of expectations and clarification of roles

One of the most significant outcomes of the extensive education programs and audits conducted by Victoria Police is the integration a human rights framework that influences decision-making. Police exercise significant discretions impacting on individual rights on a daily basis. It is accepted that police must exercise those discretions in a reasonable manner proportionate to the circumstances of each situation. The question of proportionality is central to both policing and human rights.

A human rights decision-making framework provides improved ability to manage internal and external expectations of the organisation. The education undertaken by employees has provided a better understanding of human rights by those responsible for the delivery of policing services directly to the community.

An adjunct to the improved management of expectations is the improved clarity of roles for those delivering police services. Victoria Police management are now better able to provide clearer role descriptions with service delivery principles accredited to those roles. This has been beneficial to Victoria Police employees by clarifying and improving their understanding of their roles and expectation with respect to delivery of policing services to the Victorian community.

4. Victoria Police Recommendation

Victoria Police supports in principle the introduction of National Human Rights specific legislation and strongly advocates that that legislation be consistent with the Victorian Charter.