

PROTECTION OF RIGHTS

People in the community have rights under the law. These rights come from different sources. In Victoria, rights can be thought of as **legal rights**, which come into play when a person is involved in the legal system, for example if he or she has been charged with a criminal offence, or he or she is being sued for a civil claim.

Rights can also be thought of as **human rights**, which all people have in their everyday lives by reason of being a human being, and in their interactions with other human beings and organisations in our society. In Victoria, both Victorian statute law and common law are sources of legal and human rights. Common law is law that has been developed over many years of previous court decisions. Rights can also come from international law.

Legal and human rights are important at various stages of a person's interaction with the legal system. In the area of the criminal law, for example, a person being questioned by police has certain legal rights, which are different to an accused person in the trial process, which are different again to the rights of a prisoner in the state's custody under sentence.

In the civil sphere, people who are parties to a case will have certain rights during the proceedings, which are different to the rights of a successful claimant who has a right to a remedy. This fact sheet focuses on the protection of rights that arise in relation to the work of the County Court in hearing and making decisions in criminal and civil cases.

LEGAL RIGHTS

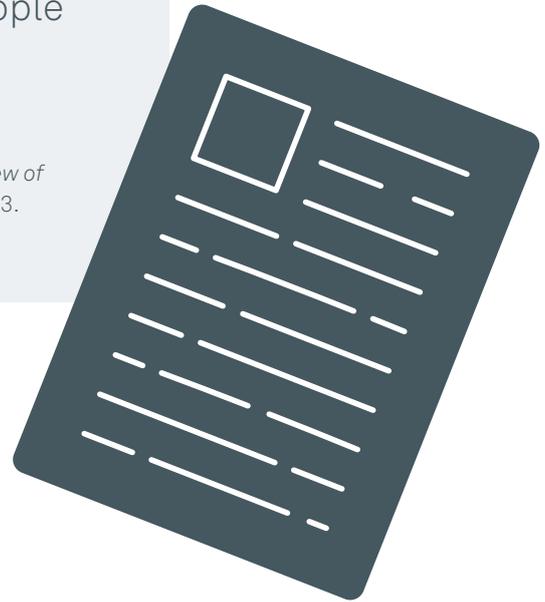
CRIMINAL PROCEEDINGS		CIVIL PROCEEDINGS
ACCUSED	VICTIMS AND FAMILY MEMBERS	PLAINTIFF AND DEFENDANT
Right to apply for bail	Right to be heard and kept informed	Right to access courts
Right to silence	Right to make a victim impact statement	Right to a trial before a jury
Right to challenge jurors	Right to request an order for compensation	Right to question or cross-examine witnesses
Right to a fair trial (including a right to seek legal representation)	Right to request inclusion on the victims register (limited)	Right to make an interlocutory application
Right to a trial by a jury		Right to be given reasons for decisions
Right to be given reasons for decisions		Right to appeal a decision of a court
Right to appeal a decision of a court		Right to pursue a remedy or relief for breach of rights or a wrong
Right not to be tried twice for the same offence (double jeopardy)		

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What are human rights?

‘Human rights are the basic rights that belong to everyone, regardless of age, race, sex or disability, income or education. They are about treating people fairly and with dignity, and ensuring individual rights are respected.’

Michael Brett Young, From *Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (2015), 3.



HUMAN RIGHTS

In Victoria, the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* sets out 20 key human rights. It requires public authorities, such as courts, Parliament, and government to respect the human rights of all Victorians.

The Charter protects human rights in three main ways:

1. Public authorities, including local government and Victoria Police, must act in ways that are compatible with human rights, such as taking relevant human rights into account when they are making decisions.
2. Human rights must be taken into account when making new laws.
3. Courts must interpret and apply all laws compatibly with human rights.

Section 7(2) of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* states that Charter rights may be limited in certain circumstances, but this must be reasonable, necessary, justified and proportionate.

An independent review of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* in 2015 resulted in 52 recommendations to make the Charter more accessible, effective and practical and to strengthen the culture of human rights in Victoria. You can read the report and the government’s response to it [here](#).

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The Victorian Equal Opportunity and Human Rights Commission lists each of the 20 rights on its [website](#). Some of the rights that particularly relate to the work of the County Court are (as described by the Commission):

Your right to recognition and equality before the law (section 8) Everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination.

Your right to protection from torture and cruel, inhuman or degrading treatment (section 10) 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.

Your right to freedom of movement (section 12) People can stay in or leave Victoria whenever they want to as long as they are here lawfully. They can move around freely within Victoria and choose where they live.

Your right to privacy and reputation (section 13) Everyone has the right to keep their lives private. Your family, home or personal information cannot be interfered with, unless the law allows it.

Your right to protection of families and children (section 17) Families are entitled to protection. Children have the same rights as adults with added protection according to their best interests.

Property rights (section 20) People are protected from having their property taken, unless the law says it can be taken.

Your right to liberty and security of person (section 21) 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. The right to security means that reasonable steps are to be taken to ensure the physical safety of people who are in danger of physical harm.

Your right to humane treatment when deprived of liberty (section 22) People have the right to be treated with humanity if they are accused of breaking the law and are detained.

Rights of children in the criminal process (section 23) A child charged with committing a crime or who has been detained without charge is not to 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. Children are entitled to opportunities for education and rehabilitation in detention.

Your right to a fair hearing (section 24) 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 (section 25) There are a number of minimum guarantees that you have when you have been charged with a criminal offence. These include the right to be told the charges against you in a language you understand; the right to an interpreter if you need one; the right to have time and the facilities (such as a computer) to prepare your own case or to talk to your lawyer; the right to have your trial heard without too much delay; the right to be told about Victoria Legal Aid if you don't already have a lawyer; you are presumed innocent until proven guilty; and you don't have to testify against yourself or confess your guilt unless you choose to do so.

Right not to be tried or punished more than once (section 26) A person will only go to court and be tried once for a crime. This means 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 (section 27) A person has the right not to be prosecuted or punished for things that were not criminal offences at the time they were committed.

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THE PROTECTION OF RIGHTS: COUNTY COURT CASES

Legal and human rights must be respected and upheld in all cases that come before the County Court, as they can potentially be affected by its operation. County Court cases can have an impact on the protection of rights in Australia.

One example is a case called *Doe v The Australia Broadcasting Corporation & Others* [2007] VCC 281 (3 April 2007). This was a civil case that arose out of criminal proceedings.

Human right to privacy and reputation

Ms Doe was raped by her husband. He was charged and convicted. On the day the offender (her husband) was sentenced, the Australia Broadcasting Corporation (ABC) broadcasted three news reports about the case, which collectively identified the offender and the victim (Ms Doe) by their names and the nature of their relationship.

This was a breach of Victorian statute law, which prohibited the publication of material that would be likely to identify the victim of a sexual assault. The ABC employees who were responsible admitted the breach and apologised. The claimant brought proceedings in the civil jurisdiction of the County Court. She sought damages for breach of a duty under statute law, negligence and breach of privacy and compensation for breach of confidence.

The Court had to consider a number of different issues in this case. A key issue was in relation to whether there was a tort of breach of privacy, available in Victoria and whether the ABC was liable for a breach of Ms Doe's privacy in this case. A tort is a wrongful act or a breach of a right that leads to legal liability, meaning it is a right that could be enforced in the civil jurisdiction of the court. The Court decided that there was a tort of breach of privacy, and that Ms Doe's privacy was breached. This decision is significant in the development of the law of privacy in Victoria and protected one of the human rights recognised in Victorian law in the *Charter of Human Rights and Responsibilities Act 2006* (Vic): the right to privacy and reputation.

Another example is a case called *Nigro v Secretary, Department of Justice* [2013] VSCA 213 (16 August 2013) (2013) 304 ALR 535. This was a case in the County Court's civil jurisdiction relating to post-sentence supervision.

Human right to freedom of movement

Three offenders were subject to post-sentence supervision orders imposed by the County Court. They appealed the orders to the Victorian Court of Appeal seeking to have them overturned and to be released from supervision in the community. The conditions on their orders restricted their freedom of movement and association (section 12); therefore, the case raised the issue of how the Charter interacted with the statute governing the imposition of post-sentence supervision orders. The Victorian Equal Opportunity Commission was a party to the proceedings and argued that the operation of the Charter limits a judge's discretion to impose a supervision order such that it should be exercised in a way that is compatible with an offender's human rights. The Court of Appeal rejected that argument saying that judicial discretion to impose a post-sentence supervision order is not limited in this way. Such a limitation would be inconsistent with the purpose of the post-sentence supervision regime which required that once an offender is found to pose an unacceptable risk, conditions of a supervision order limiting freedom of movement can be imposed. This case is an example of the practical limitations faced by the *Charter of Human Rights and Responsibilities Act 2006* (Vic).