

HUMAN RIGHTS Policy & Procedure

QA REFERENCE	M't P&P No 20
INTRODUCED	3 rd March 2015
LAST REVIEWED	15 th September 2020
NEXT REVIEWED	15 th September 2023
RESPONSIBILITY	The OLG led by the Manager Performance and Risk is responsible for the review and currency of this policy and associated procedures.
APPROVED	Approved by the Chief Executive Officer on 15 th September 2020
ENDORSED	Endorsed by the Operational Leadership Group on 15 th September 2020
RATIFIED	Ratified by the Board of Directors by resolution at a meeting of the Board on 4 th November 2020. <i>This policy is valid from the date of introduction and remains in force, as amended from time to time, until such time as formally revoked by resolution at a meeting of the Board of Directors.</i>
REFERENCES	
Related Legislative Acts and other sources of Authority	<ul style="list-style-type: none"> • Age Discrimination Act 2004 (Cth) • Australian Human Rights Commission Act 1986 • Charter of Human Rights and Responsibilities Act 2006 • Crimes Act, 1914 (Cth) • Crimes Act, 1958 (Vic) • Disability Discrimination Act, 1992 (Cth) • Equal Opportunity Act, 2010 (Vic) • Health Records Act, 2001(Vic) • Human Rights and Equal Opportunity Commission Act, 1986 (Cth) • Modern Slavery Act, 2018 (Cth) • Occupational Health and Safety Act, 2004 (Vic) • Privacy Act 1988 (Cth) • Racial & Religious Tolerance Act, 2001 (Vic) & Amendment Bill 2019 • Racial Discrimination Act, 1975 (Cth) • Sex Discrimination Act, 1984 (Cth) • Whistle-blowers' Protection Act, 2001 (Vic) • Workplace Relations Act, 1996 (Cth)
Related Standards, Guidelines and other References	<ul style="list-style-type: none"> • <u>Child Safe Standards</u> • <u>Commonwealth Ombudsman</u> • <u>Human Services Standards</u> • <u>Mandatory Reporting</u> • <u>Office of the Disability Services Commissioner</u> • <u>Victorian Equal Opportunity and Human Rights Commission</u> • <u>Victims of Crime support</u> • <u>Victorian Ombudsman Handling Complaints</u>

Related MASP Policy and Procedure Documents	<ul style="list-style-type: none"> • Access and Equity - M'T P&P No 27 • Anti-Bullying, Discrimination & Sexual Harassment - HRM P&P No 30 • Child Safe – M't P&P No 22 • Clients at Risk and our Duty of Care - CWG P&P No 02 • Code of Conduct HRM P&P No 12 • Complaints and Appeals - tenants and prospective tenants - P&T P&P No 03 • Complaints Management - M't P&P No 01 • Disciplinary Procedures HRM P&P No 17 • Preventing and Dealing with Occupational Violence - HRM P&P No 13 • Privacy and Confidentiality - M't P&P No 16 • Privacy and Information Security • Whistleblower - HRM P&P No 23 • Workplace Equal Opportunity - HRM P&P No 08
Related MASP Instructions and Guidelines	<ul style="list-style-type: none"> • Nil noted
Related MASP Forms and Templates	<ul style="list-style-type: none"> • Nil noted
ACRONYMS/DEFINITIONS	
<ul style="list-style-type: none"> • MASP • OLG • P&R 	<ul style="list-style-type: none"> • Mallee Accommodation and Support Program Ltd • Operational Leadership Group • Performance and Risk

PURPOSE

The Human Rights Policy and Procedure provides a guide for MASP staff to perform their roles in line with ethical standards and relevant legal requirements. We protect and uphold fundamental human rights within all supports and services, operating with due care and in accordance with the Victorian Charter of Human Rights.

MASP Strategic Plan 2019-2022 Strategic Priority 1 “Our systems and processes enable and empower people from diverse communities” applies.

SCOPE

This policy applies to

- board directors;
- all employees, including: managers and supervisors; full time or casual; students on placement and volunteers;
- how MASP provides services to clients and how it interacts with other members of the public;
- all aspects of employment, recruitment and selection; conditions and benefits; training and promotion;
- on-site, off-site or after-hours work; work-related social functions; wherever and whenever staff may be as a result of their MASP duties;
- staff treatment of clients, of other staff, and of other members of the public encountered in the course of their MASP duties.

POLICY

MASP values the importance of the awareness of the concept of human rights and specifically the Victorian Charter and the rights it protects. Of particular relevance to clients of which staff must be aware, are the rights in relation to:

- Protection against discrimination
- Humiliating treatment or punishment
- Privacy
- Freedom of expression and belief (some limitations)
- Rights of children to protection (and input about what effects them)
- Cultural rights

PROCEDURE

All human rights, but particularly the ones above must always be taken into consideration when developing policies, programs or services when staff should assess and demonstrate their impact on the Charter of Rights and ensure that any limitations of charter rights are lawful.

What are Human Rights

Human rights are basic entitlements that belong to every one of us, regardless of our background, where we live, what we look like, what we think or what we believe.

Based on the values of freedom, equality, respect and dignity, human rights acknowledge the fundamental worth of each person. The law places responsibilities on government and other public authorities to consider people's rights when developing laws, policies and delivering services.

Human rights are the cornerstone of strong, healthy communities where everyone can participate and be included.

Australia has adopted and supports international human rights law. In 1948 the United Nations (UN) adopted the [Universal Declaration of Human Rights](#), which sets out the basic rights and freedoms that apply to everyone. Australia played an active role in developing the Universal Declaration and the international human rights treaties that followed.

It has become the most important document of its kind and is the basis of many legally-binding international human rights laws.

Human rights law includes two major international agreements: one on civil and political rights (for example, freedom of speech and freedom from torture) and one on economic, social and cultural rights, (for example, the right to health and the right to education). International laws also recognise the rights of specific groups of people, including women, different racial groups, children, people with disabilities and migrant workers.

Some of these treaties are complemented by optional protocols that deal with specific issues or allow people to make complaints.

The Australian Government has agreed to uphold and respect many of these fundamental human rights. These commitments are reflected in our national laws, as well as the policies and programs developed by government.

Victoria's Charter of Human Rights and Responsibilities

Victoria's Charter of Human Rights and Responsibilities (the Charter) outlines the basic human rights of all people in Victoria. It was introduced into Victoria through an act of Parliament, the [Charter of Human Rights and Responsibilities Act 2006](#).

The charter requires that governments, local councils and other public authorities comply with charter human rights and to consider relevant charter rights when they make decisions.

Each new law must be checked against the charter and requires a statement of compatibility to tell parliament how it relates to human rights.

If a law limits the rights set out in the charter, the statement of compatibility should explain how and why. In exceptional circumstances, the parliament can still pass a law that does not uphold human rights by issuing an override declaration.

This process aims to anticipate potential problems and prevent unfair treatment from occurring in the first place.

In cases that come before it, the Supreme Court can issue a declaration of inconsistent interpretation, which requires the minister who proposed the law to revisit it. However, the Court does not have the power to strike down legislation. Parliament has the final say over the laws of Victoria.

The charter came into full effect on 1 January 2008 and aims to build a fairer, more inclusive community by giving specific legal protection to 20 fundamental rights.

Rights under the Charter

The Victorian Charter of Human Rights and Responsibilities contains twenty basic rights that promote and protect the values of freedom, respect, equality and dignity.

The Victorian Government, local councils and other public authorities must not knowingly be in breach of these rights, and must always consider them when they create laws, develop policies and deliver their services.

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 life (section 9)

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

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 from forced work (section 11)

A person must not be forced to work or be made a slave. A person is a slave when someone else has complete control over them.

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 freedom of thought, conscience, religion and belief (section 14)

People have the freedom to think and believe what they want, for example, religion. They can do this in public or private, as part of a group or alone.

Your right to freedom of expression (section 15)

People are free to say what they think and want to say. They have the right to find, receive and share information and ideas. In general, this right might be limited to respect the rights and reputation of other people, or for the protection of public safety and order.

Your right to peaceful assembly and freedom of association (section 16)

People have the right to join groups or unions and to meet peacefully.

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.

Your right to taking part in public life (section 18)

Every person has the right to take part in public life, such as the right to vote or run for public office.

Cultural rights (section 19)

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 (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 must 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 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. 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.

In certain circumstances, some rights may be limited. However, this must be necessary and reasonable and there must be clear reasons for the decision.

For more information about the Charter of Human Rights, any person associated with MASP should call the Human Rights Commission's Enquiry Line on 1300 292 153, forward email to enquiries@veohrc.vic.gov.au or visit their website www.humanrightscommission.vic.gov.au.

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