

Charter of Human Rights & Responsibilities- Background



Policy Statement

Corryong Health is committed to ensuring that all its policies, procedures, acts and decisions are in accordance with the Charter of Human Rights & Responsibilities Act 2006 Vic ('the Act')

Policy Applies To

All Staff

Purpose and Scope

The Act applies to all decisions and act of public authorities and therefore is applicable to Corryong Health.

Description of Obligation

Subject to the provisions below, it or, in making a decision, to fail to give proper consideration to a relevant human right.

NB: The provision above does not apply if, as a result of a statutory provision of a provision made or by under an Act of the Commonwealth or otherwise under law, the public authority could not reasonably have acted differently or make a different decision.

NB: The provision above does not require a public authority to act in a way, or make a decision, that has the effect of impeding as preventing a religious body (including itself in the case of a public authority that is a religious body) from acting in conformity with the religious doctrines, beliefs or principles in accordance with which the religious body operates.

Human Right

Human right means the civil and political rights set out in Part 2 of the Act, which are as follows:

Recognition and equality before the law

- Every person has the right to recognition as a person before the law
- Every person has the right to enjoy his or her human rights without discrimination
- Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination
- Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination

Right to life

Every person has the right to life and has the right not to be arbitrarily deprived of life

Protection from torture and cruel, inhuman or degrading treatment

A person must not be:

- Subjected to torture; or
- Treated or punished in a cruel, inhuman or degrading way; or
- Subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent

Freedom from forced work

- A person must not be held in slavery or servitude
- A person must not be made to perform forced or compulsory labour

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- For the purposes of the Charter, forced or compulsory labour does not include:
 - Work or service normally required of a person who is under detention because of a lawful court order or who under a lawful court order, has been conditionally released from detention as ordered to perform work in the community; or
 - Work or service required because of an emergency threatening the Victorian community or a part of the Victorian community; or
 - Work or service that forms part of normal civil obligations

Freedom of movement

Every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it has the freedom to choose where to live.

Privacy and reputation

A person has the right:

- Not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- Not to have his or her reputation unlawfully attacked

Freedom of thought, conscience, religion and belief

- Every person has the right to freedom of thought, conscience and belief, including:
 - The freedom to have or to adopt a religion or belief of his or her choice; and
 - The freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private
- A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Freedom of expression

- Every person has the right to hold an opinion without interference
- Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether:
 - Orally; or
 - In writing; or
 - In print; or
 - By way of art; or
 - In another medium chosen by him or her
- Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary:
 - To respect the rights and reputation of other persons; or
 - For the protection of national security, public health or public morality.

Peaceful assembly and freedom of association

- Every person has the right of peaceful assembly
- Every person has the right to freedom of association with others, including the right to form and join trade unions

Protection of families and children

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- Families are the fundamental group unit of society and are entitled to be protected by society and the State
- Every child has the right, without discrimination, to such protection as in his or her best interests and is needed by him or her by reason of being a child.

Taking part in public life

- Every person in Victoria has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives
- Every eligible person has the right, and is to have the opportunity, without discrimination:
 - To vote and be elected at periodic State and municipal elections that guarantee the free expression of the will of the electors; and
 - To have access, on general terms of equality, to the Victorian public service and public office

Cultural rights

- All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practice his or her religion and to use his or her language
- Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community:
 - To enjoy their identity and culture; and
 - To maintain and use their language; and
 - To maintain their kinship ties; and
 - To maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

Property rights

A person must not be deprived of his or her property other than in accordance with law.

Right to liberty and security of person

- Every person has the right to liberty and security
- A person must not be subjected to arbitrary arrest or detention
- A person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law
- A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against him or her.
- A person who is arrested or detained on a criminal charge:
 - Must be promptly brought before a court; and
 - Has the right to be brought to trial without unreasonable delay; and
 - Must be released if not promptly brought to court and tried without delay
- A person awaiting trial must not be automatically detained in custody, but his or her release may be subject to guarantee to attend:
 - For trial; and
 - At any other stage of the judicial proceeding; and
 - If appropriate, for execution of judgement

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- Any person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of his or her detention, and the court must:
 - Make a decision without delay; and
 - Order the release of the person if it finds that the detention is unlawful
- A person must not be imprisoned only because of his or her inability to perform a contractual obligation

Humane treatment when deprived of liberty

- All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person
- An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary
- An accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.

Children in the criminal process

- An accused child who is detained or a child detained without charge must be segregated from all detained adults
- An accused child must be brought to trial as quickly as possible
- A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age

Fair hearing

- A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing
- A court or tribunal may exclude members of media organisations or other persons or the general public from all or part of a hearing if permitted to do so by a law other than the Charter
- All judgements or decisions made by a court or tribunal in a criminal or civil proceeding must be made public unless the best interests of a child otherwise requires a law other than the Charter otherwise permits

Rights in criminal proceedings

- A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law
- A person charged with a criminal offence is entitled without discrimination in the following minimum guarantee
 - To be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication that he or she speaks or understands; and
 - To have adequate time and facilities to prepare his or her defence and to communicate with a lawyer or advisor chosen by him or her; and
 - To be tried without unreasonable delay; and
 - To be tried in person, and to defend himself or herself personally or through legal assistance chosen by him or her, if eligible, through legal aid provided by Victoria Legal Aid and under the Legal Aid Act 1978 (Vic); and
 - to be told if he or she does not have legal assistance, about the right, if eligible, to legal aid under the Legal Aid Act 1978 (Vic); and

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- to have legal aid provided if the interests of justice require it, without any costs payable by him or her if he or she meets the eligibility criteria set out in the Legal Aid Act 1978 (Vic); and
- to examine, or have examined, witnesses against him or her, unless otherwise provided for by law; and
- to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses for the prosecution; and
- To have the free assistance of an interpreter if he or she cannot understand or speak English; and
- To have the free assistance of assistants and specialised communication tools and technology if he or she has communication or speech difficulties that require such assistance; and
- Not to be compelled to testify against himself or herself or to confess guilt
- A child charged with a criminal offence has the right to a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation
- Any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in respect of it reviewed by a higher court in accordance with law

Right not to be tried or punished more than once

A person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.

Retrospective criminal laws

- A person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in
- A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed
- If a penalty for an offence is reduced after a person committed the offence but before the person is sentenced for that offence, that person is eligible for the reduced penalty.

Nothing in the provisions above affects the trial or punishment of any person for any act or omission which was a criminal offence under international law at the time it was done or omitted to be done.

Definitions and Abbreviations

'the Act' means the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

'Public authority' includes:

- (a) Employees and board members of public hospitals'
- (b) A public official within the meaning of the Public Administration Act 2004 (Vic);
- (c) An entity established by a statutory provision that has functions of a public nature; or
- (d) An entity whose functions are or include functions of a public nature, when it is exercising those functions on behalf of the State or a public authority (whether under contract or otherwise).

References, Legislations & Acts

- Charter of Rights and Responsibilities- Monash Health

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- Health Legal
- Charter of Rights and Responsibilities- Policy & Procedure

Standards

Standards:	Accreditation section
National Safety & Quality Healthcare Standards V2 https://www.safetyandquality.gov.au/standards/nsqhs-standards	1, 2, 5
NDIS Practice Standards https://www.ndiscommission.gov.au/sites/default/files/documents/2018-07/NDIS%20Practice%20Standards.pdf	Core Module 1
National Aged Care Standards https://agedcare.health.gov.au/quality/aged-care-quality-standards	1
Royal Australian College of General Practitioners Standards (5 th Ed) Key: C=Core Q= Quality G=General https://www.racgp.org.au/FSDEDEV/media/documents/Running%20a%20practice/Practice%20standards/5th%20edition/Standards-for-general-practice-5th-edition.pdf	

Key Aligned Documents

Governance

DEPARTMENT:	Agency Wide	POLICY NUMBER:	Prompt Doc No: UMH0061495
PRINCIPAL RIGHTS HOLDER:	Chief Executive Officer	RESPONSIBLE COMMITTEE:	Clinical Governance Operations
DATE APPROVED:	18/11/2021	REVIEW & UPDATE BY:	02/10/2023
VERSION NUMBER:	2.1	AMENDMENT:	Standards updated