

The charter you wanted

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YESTERDAY was a landmark in Australian democracy as the Victorian Charter of Human Rights and Responsibilities became law.

Fundamental community rights, such as freedom of speech and religion and the right to a fair trial and to vote will be protected. It also sets out safeguards for families and children.

We often assume we have these rights because they are essential to living in a free and democratic society. But until now they have not been a clear part of our law. The charter, which has received royal assent, is a first for an Australian state.

The Victorian charter is based on successful laws in New Zealand and Britain. Like the UK law, the Victorian charter will improve how government works. Public servants, ministers and Parliament must take account of community freedoms, values and responsibilities when they apply the law, develop new policies or make new laws.

The idea is that it is better to prevent human rights problems arising rather than focusing on fixing problems in the courts. The charter does this by imposing an obligation on all public authorities in Victoria to comply with the freedoms listed in the law. This might be when a department deals with someone with a mental illness or when the police make an arrest.

The charter requires that all laws introduced in the Victorian Parliament be accompanied by a statement of compatibility. This must say whether the proposed law complies with the charter. It will bring human rights problems to public attention before a law is passed. Government will be made more accountable and transparent by the charter highlighting issues that some governments might not want to come to public attention.

But it will not fetter the sovereignty of Parliament. If the numbers are there, Parliament can pass the law even if it does not comply with the charter. The charter is a rare example of government agreeing to bind itself. Far from giving politicians more power, the change requires that current powers and those of any future government be exercised fairly on behalf of the community.

THE law is also unusual because it came out of a community process that listened to an unprecedented number of Victorians. I chaired that process last year when thousands of Victorians were asked whether they thought their freedoms needed to be better protected and, if so, how. Formal submissions were made by 2524 people. This was 10 to 20 times the number received in similar processes in other states.

People told us that they wanted the system of government improved. They saw the system as being in need of repair. The community was equally forceful in saying it did not want anything like the United States Bill of Rights. As a result, the charter is not set in stone in the Victorian Constitution. It is an ordinary Act of Parliament that can be changed over time. There is even a requirement it be reviewed in four and eight years to check it is working.

A major difference with the US Bill of Rights is that courts do not have the final say. Judges can interpret and apply laws to be consistent with the charter, but cannot strike down a law.

The charter will not lead to a major increase in litigation. This has not happened in other nations with the same type of law. Anyone who hopes that the charter will lead to a "lawyer's picnic" will be disappointed. If a court sees a problem with a law, the most it can do is to refer it to Parliament to

decide whether it should be amended. It means our elected representatives can continue to make decisions on our behalf.

The charter will also play an important role in education. People told us repeatedly they did not know how government worked and wanted one law that could be easily read and understood. THEY saw this law as being used in schools so that children gained a better understanding of democracy.

Other states are already considering copying the Victorian law. Tasmania has already started its own process and Western Australia and New South Wales may not be far behind.

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