



Victorian Equal Opportunity  
& Human Rights Commission

20 December 2018

John L Perkins  
13 Mitford Street  
St Kilda VIC 3182

By email: [johnperkins@secular.org.au](mailto:johnperkins@secular.org.au)

Dear Mr Perkins

### Your complaint

Thank you for your complaint of 28 November 2018 about the Victorian Equal Opportunity and Human Rights Commission (**the Commission**) and your time on the phone on 30 November 2018.

You have complained that the Commission has failed to answer the question: 'does a child have rights under the *Charter of Human Rights and Responsibilities Act 2006* (**the Charter**) and, if so, what are they?'

The Commission agrees it is fair and reasonable to answer this question, as part of its statutory role to provide information about the Charter and human rights. Yes, children have rights under the Charter. Children essentially have all rights in the Charter, apart from those which they do not meet eligibility criteria (such as the right to vote). I have enclosed a document which provides more information.

I understand from your previous correspondence about the Commission's intervention in *Arora v Melton Christian College (Human Rights)* (**Arora**), and subsequent proceedings you initiated in the Victorian and Civil Administrative Tribunal (**VCAT**), that you consider it a breach of human rights for parents, or organisations, to encourage or require children to practice a religion. The Commission does not have a position on this issue. I have provided a copy of your correspondence to the Commission's leadership team to consider when setting the Commission's future strategic and advocacy priorities. You can view our current priorities in our strategic plan and business plan, which is available on our website: <https://www.humanrightscommission.vic.gov.au/home/about-us/strategic-plan>.

When considering strategic work and advocacy, the Commission considers the extent to which its involvement would have an impact in promoting the protection of human rights and eliminating discrimination, sexual harassment and victimisation. Other factors, such as regulatory constraints, limitations on resources, jurisdiction of other regulators and the size of the issue will mean the Commission is not in a position to advocate in relation to every matter that is brought to its attention.

[humanrightscommission.vic.gov.au](https://www.humanrightscommission.vic.gov.au)  
Enquiry Line 1300 292 153 or (03) 9032 3583

Level 3, 204 Lygon Street, Carlton, Vic 3053  
Telephone 1300 891 848 Fax 1300 891 858 TTY 1300 289 621 Interpreters 1300 152 494  
Email [information@veohrc.vic.gov.au](mailto:information@veohrc.vic.gov.au)

You will recall *Arora* related to a Christian school preventing a child from wearing a patka, a child's version of a traditional Sikh turban. The Commission intervened to assist VCAT with questions of law that arose during the proceeding. The legal issues that arose related predominantly to the *Equal Opportunity Act 2010*. I understand that you consider it a breach of human rights for a child to be required to wear a patka at all. The Commission did not intervene to require the child to practice any religion, but to clarify the school's obligation to treat all children equally. The Commission remains of the view it was appropriate to intervene in this matter, but respects your right to disagree with its intervention.

I appreciate you taking the time to raise your concerns with the Commission. I trust this letter and the enclosed information answers your question. If you remain dissatisfied, please contact me within three weeks of the date of this letter and I will attempt to resolve your concerns.

If you have concerns I cannot resolve, you may wish to again contact the Victorian Ombudsman on the details below.

Victorian Ombudsman

[www.ombudsman.vic.gov.au/complaints](http://www.ombudsman.vic.gov.au/complaints)

Telephone: (03) 9613 6222 / Toll free: 1800 806 314 (regional only)

The Commission will co-operate fully with any investigation undertaken by the Victorian Ombudsman.

If you have any queries about this letter please contact me on 03 9032 3449 or [Emily.Yates@veohrc.vic.gov.au](mailto:Emily.Yates@veohrc.vic.gov.au)

Yours sincerely

Emily Yates  
Senior Legal Adviser

## **Attachment – Application of the Charter to children**

The *Charter of Human Rights and Responsibilities Act 2006* (Charter) enshrines 20 civil, political and cultural rights into Victorian law. The Charter operates by placing obligations on public authorities. The rights protected under, and promoted by, the Charter reflect the fundamental values of freedom, equality, respect and dignity.

While specific Charter rights apply only to children, such as the protection of children in section 17(2), they hold these rights in addition to all other Charter rights except for those which they are ineligible.<sup>1</sup>

The complete list of rights is:

- Right to recognition and equality before the law
- Right to life
- Right to protection from torture and cruel, inhuman or degrading treatment
- Right to freedom from forced work
- Right to freedom of movement
- Right to privacy and reputation
- Right to freedom of thought, conscience, religion and belief
- Right to freedom of expression
- Right to peaceful assembly and freedom of association
- Right to protection of families and children
- Right to take part in public life
- Right to protection of cultural rights
- Property rights
- Right to liberty and security of person
- Right to humane treatment when deprived of liberty
- Rights of children in the criminal process
- Right to a fair hearing
- Rights in criminal proceedings
- Right not to be tried or punished more than once
- Right to protection from retrospective criminal laws

### Protection of children under section 17(2)

Section 17(2) provides all children with the right 'to such protection as is in his or her best interests and is needed by him or her by reason of being a child'. The right is granted to all children without discrimination. The protection provided by section 17(2) is limited to that which is required by children 'by reason of being a child.'

Under this right, the Government must adopt special measures to protect children, and the best interests of the child must be taken into account in all actions affecting a

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<sup>1</sup> For example, the right to vote in section 18(2)(a).

child. What will be in each child's 'best interests' will vary according to their personal circumstances.

#### More information

Fact sheets providing more information about each Charter right listed can be downloaded from

<https://www.humanrightscommission.vic.gov.au/component/k2/item/649-the-charter-individual-rights>.

Information on the Commission's interventions in legal proceedings relating to the Charter, listed by human right, can be found at

<https://www.humanrightscommission.vic.gov.au/human-rights/the-role-of-the-commission-under-the-charter/interventions/item/821-submissions-listed-by-human-right>.