Scope of the right

Section 18 specifies three different but overlapping rights.

Every person in Victoria has the right to participate in the conduct of public affairs, but only ‘eligible’ persons have the right to vote and be elected at elections, and to access the public service and public office.

The Charter does not define the meaning of ‘eligible,’ but criteria for being eligible to participate in different aspects of public life are set out in state and federal legislation. For example, the Constitution Act 1975 (Vic) states that to be eligible to vote in Victoria, a person must be an Australian citizen over the age of 18 and sets out criteria that may disqualify a person from voting. The eligibility to vote also includes residency requirements set out in the Electoral Act 2002 (Vic).

The Constitution Act 1975 (Vic) sets out the criteria for being eligible for election to the Legislative Assembly or the Legislative Council.

The UN Human Rights Committee (HRC) has commented that any limitations placed on the right to take part in public life must be based on ‘objective and reasonable criteria’. The High Court of Australia recently supported this approach when it struck down a piece of legislation that prohibited all prisoners from voting. In Roach v Electoral Commissioner [2006] HCA 43, the Court found that the blanket prohibition on prisoner voting was not ‘proportionate,’ and that disqualification must be based on ‘substantial’ reasons, such as conviction of a serious criminal offence.

What does ‘participate in the conduct of public affairs’ cover?

Section 18 outlines the right of every person in Victoria to participate in the conduct of public affairs. The Explanatory Memorandum states that this clause is to ensure that every person has the opportunity to participate in public life and that every person is able to participate without discrimination.

Participation in public affairs may be direct or indirect. ‘Public affairs’ is not defined in the Charter, but the UN Human Rights Committee (HRC) has described public affairs as a ‘broad concept which relates to the exercise of political power...[and] covers all aspects of public administration, and the formulation and implementation of policy.’

Examples of participating in public life may include:

• being a member of a legislative body or holding executive office
• deciding on public issues through referendum or other electoral processes
• taking part in popular assemblies to make decisions about local issues
• being part of a community consultation with government
• being able to attend and ask questions at a local council meeting
• participating in public debate and dialogue with representatives (either as an individual or as part of an organisation).

Note: Participation in ‘public life’ means participation in the political affairs and public administration of the State. The word ‘public’ life in this context does not mean ‘community’ life or ‘social’ life. Participation in one’s community may engage other rights under the Charter such as the right to freedom of movement (section 12) or equality rights (section 8). The right to take part in public life does not mean the right to access public space through the use of public transport.
Case example

Community advocacy and engagement with council

One of the goals of a local council’s Action Plan was to ensure that ‘[a]ll residents have the opportunity to participate equally in the planning and consultation processes which shape our community’. However, when a local man with a disability wanted to attend a council meeting to pose a question to councillors about the discriminatory nature of one of the council’s local laws, he found no services available to help him attend.

He was a local resident, ratepayer and community advocate for people with disabilities. He also has a disability which meant he needed assistance to attend Council meetings in the evening.

The man was concerned about public question time procedures for council requiring all questions to be submitted in writing. He raised the question of whether the local law requiring this was consistent with the Charter, in that it discriminated against residents who rely on other forms of communication. The requirement that all questions are put in writing means that residents who cannot write have no chance of asking questions during council meetings. This effectively excludes them from participating equally in the consultation processes shaping the council area.

In response to the concerns raised, the council helped the resident attend a council meeting by providing carer support, a hearing loop and the cost of a taxi. In response to the issues of procedure he was raising, the council reiterated its strong commitment to ensuring that everyone in the community is able to participate in the affairs of the council and said it would consider ways the council could facilitate access to meetings and question time by persons with disabilities.

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights.

Section 18 could be engaged by activities that:

- limit the ability to take part in municipal and parliamentary elections
- require individuals to meet certain conditions in order to be eligible to participate in municipal and parliamentary elections
- regulate how individuals vote in elections (for example, the method of voting)
- regulate eligibility and access to employment in the public service or appointment to public office
- establish requirements for membership of public bodies
- regulate the conduct of elections and the electoral process
- regulate the suspension and conduct of local government
- regulate the suspension and removal of statutory office holders
- regulate electoral processes including funding of and expenditure by political parties and the drawing of electoral boundaries
- affect communication of information and ideas about public and political issues.
Section 18 of the Charter of Human Rights and Responsibilities Act 2006 says that:

(1) 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.

(2) Every eligible person has the right, and is to have the opportunity, without discrimination
(a) to vote and be elected at periodic State and municipal elections that guarantee the free expression of the will of the electors; and
(b) to have access, on general terms of equality, to the Victorian public service and public office.

The right to take part in public life is modelled on Article 25 of the International Covenant on Civil and Political Rights, a treaty to which Australia became a party in 1980.

Under the Charter, all rights may be subject to reasonable limits (section 7(2)). The nature of the right is relevant when considering what is reasonable.