The Charter of Human Rights and Responsibilities

> Section 20 – Property rights

**Scope of the right**

Section 20 is relevant when three criteria are met.

1. The interest interfered with is ‘property’.
2. The interference is a ‘deprivation’ of property.
3. The deprivation is not ‘in accordance with the law’.

The term ‘property’ is not defined in the Charter. It includes both real and personal property and any right or interest regarded as property under Victorian law. For example, the following will be included under section 20:

- personal possessions
- land
- contractual rights
- leases
- shares
- patents.

Property could also apply to non-traditional and less formal rights in relation to property, such as a licence to enter or occupy land and the right to enjoy uninterrupted possession of land.

Under this right, the government must refrain from depriving people of their property otherwise than in accordance with the law.

Section 20 may also give rise to a positive obligation on public authorities to take action to prevent an unlawful deprivation of a person’s property by someone else.

Section 20 does not provide a right to compensation.

This provision is distinct from the provision in the Australian Constitution, which provides property guarantees in relation to property acquired under federal law.

**Case example**

Planning decisions in accordance with the law – *Swancom Pty Ltd v Yarra CC* [2009] VCAT 923

In this case, the Victorian Civil and Administrative Tribunal considered the property rights in section 20 of the Charter.

This matter involved an application by Swancom (operators of the Corner Hotel) to amend an existing planning permit to extend trading hours in its beer garden from 11.30pm until 3am, and to increase patron numbers from 750 to 1300.

The Tribunal held that the application to extend hours and patron numbers should fail, after balancing various competing policies and objectives against considerations of net community benefit and sustainable development. The Tribunal agreed with the local council that they were bound by the Charter in exercising their review jurisdiction on planning applications. The Tribunal held that whilst the refusal of the application might arguably interfere with Swancom’s broader property rights, section 20 of the Charter only provides that a person must not be deprived of property ‘other than in accordance with law’. The Tribunal was of the opinion that the imposition of reasonable restrictions on the use or development of the land under the regulatory framework is in accordance with the law, and therefore is not unlawful or arbitrary.
Examples of when this right could be relevant in practice

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

Section 20 could be engaged by activities that:

• provide for acquisition, seizure or forfeiture of a person’s property under civil or criminal law.
• confer on a public authority a right of access to private property
• limit or terminate property rights (for example, by legislation which establishes a limitation period)
• restrict the use of private property (for example, under planning laws)
• restrict or regulate established patterns of access (especially for commercial or business purposes) to public property
• implement government control over its own property (for example, resumption of land)
• impound or suspend registration of a motor vehicle.

Section 20 of the Charter of Human Rights and Responsibilities Act 2006 says that:

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

The property right in the Charter is modelled on Article 17 of the Universal Declaration of Human Rights.

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.