

# Explainer: Protests during COVID-19

*UPDATED September 2021*

During the COVID-19 pandemic, public health orders have limited the extent to which Victorians can gather together publicly to speak up on issues they care about. While Victoria's Charter of Human Rights and Responsibilities protects protest rights, these rights may be lawfully limited in a state of emergency. Here are some answers to the frequently asked questions about protest rights during the pandemic.

## **Do we have a right to protest?**

People's ability to gather peacefully and speak out on matters that they care about is a fundamental aspect of democracy.

Victoria's Charter of Human Rights and Responsibilities sets out the basic rights, freedoms and responsibilities of all people in Victoria. There are a number of rights in the Charter that support the ability to protest and enable people to organise, gather peacefully, speak up on issues and march, rally or publicly demonstrate, including rights to:

- [peaceful assembly and freedom of association \(section 16\)](#)
- [freedom of expression \(section 15\)](#).

## **Can the human rights that support protest be limited?**

The rights to peaceful assembly, freedom of association and freedom of speech are critically important; however, they are not absolute. Even outside of the COVID-19 pandemic, the human rights that support protest are limited by other laws.

- Freedom of speech is limited by laws prohibiting offensive language, misleading and deceptive conduct, and racial and religious vilification.
- Peaceful assembly is limited by laws prohibiting violence, trespass and property damage.

The Charter also allows for human rights, including protest rights, to be limited if the limitations are necessary, justified and proportionate (section 7(2) of the Charter).

## **How does the state of emergency affect protest rights?**

Once a state of emergency is declared, the Chief Health Officer (CHO) has emergency powers under section 199(2) of the *Public Health and Wellbeing Act 2008* to issue orders preventing a serious risk to public health. Victoria's Health Minister first declared a state of emergency to combat COVID-19 on 16 March 2020, and Victoria has been subject to a state of emergency ever since.

Any protest activity should comply with the public health directions in place at any given time.

For example, from time to time the CHO and his delegates have used their emergency powers to issue public health directions that limit the reasons people can leave home, the distance from home they can travel, the places in which masks are required to be worn and the number of people who can gather publicly.

### **Current Directions in Victoria**

There are currently different COVIDSafe Settings in place across Victoria which restrict public gatherings.

#### **Stay at Home Directions (Restricted Areas)**

Under the [Stay at Home Directions \(Restricted Areas\)](#) there is a requirement for any person who resides in a restricted area to stay at home during the stay at home period. The current [restricted areas](#) include metropolitan Melbourne and the City of Ballarat. Under these directions there are only five permitted reasons for a person residing in these areas to leave their usual place of residence. Leaving home to protest is not one of the permitted reasons.

People leaving their homes are also required to remain within a 5km radius of their home, unless the nearest essential goods and services are more than 5km away.

When leaving home for one of the five permitted reasons, a person must ensure they do not gather with other people. During the stay at home period, a person must not arrange to meet, or organise, or intentionally attend a gathering, with any other person for a common purpose at a public place, unless an exception applies.

The exceptions include attending a gathering for the purposes of engaging in an activity permitted under the Restricted Activity Directions (Restricted Areas). Under the Restricted Activity Directions, only eligible public events may be exempt from a requirement in the stay at home directions. Exempt events need written approval from the CHO or Deputy CHO. Eligible public events described in the Restricted Activity Directions do not extend to ad hoc public gatherings in a public place.

#### **Stay Safe Directions (Regional Victoria)**

Under the [Stay Safe Directions \(Regional Victoria\)](#), limited public gatherings are allowed in Regional Victoria. A group of up to 10 people in Regional Victoria may publicly

gather, provided that all people ordinarily reside in Regional Victoria. Infants under one year of age do not count towards this limit.

A person in Regional Victoria must not arrange to meet, or organise or intentionally attend a gathering of, more than 9 other persons who ordinarily reside in Regional Victoria, or arrange to meet, or organise or intentionally attend a gathering of, any persons who ordinarily reside in the Restricted Area, for a common purpose at a public place, unless an exception applies.

The exceptions include attending a gathering for the purposes of engaging in an activity permitted under the Restricted Activity Directions (Regional Victoria), or if all persons normally reside at the same premises.

### **Can the Chief Health Officer prevent people from protesting?**

The current directions in place across Victoria restrict people from gathering publicly, limiting rights to movement, peaceful assembly and association. Whilst the directions do not expressly make it unlawful to protest, it is unlawful to gather publicly under the Stay at Home Directions unless an exception. It is also unlawful to publicly gather in groups of more than 10 under the Stay Safe Directions, unless an exception applies or the gathering falls within the permitted activities in the Restricted Activity Directions.

The CHO is empowered to issue these directions but, as a public authority under the Charter, the CHO must also act consistently with the human rights in the Charter. This means that any restrictions on human rights in the CHO's directions need to be justified, proportionate, necessary and timebound.

The current directions state that their purpose is to address the serious public health risk posed to the state of Victoria by the spread of COVID-19 and that the directions are reasonably necessary to eliminate or reduce the serious risk posed to public health. This can be seen as the CHO using the protection of peoples' right to life ([section 9 of the Charter](#)) and public health as a justification for limiting Charter rights.

Both the state of emergency and the CHO's directions are timebound – the state of emergency for COVID-19 is in place for a maximum of four weeks at a time and 21 months in total, and the CHO's public health directions are usually limited for a period of approximately three weeks.

### **What role do the police have in limiting protest?**

Victoria Police has a role in enforcing the CHO's directions under the emergency powers. As a public authority, Victoria Police is required to act in accordance with human rights under the Charter, including while they are enforcing the CHO's directions.

A \$5,452 fine can be issued for anyone found breaching restrictions on gathering in the home or outside. These fines are subject to a review process.

## **Why could the Black Lives Matter protest go ahead, but anti-lockdown protests were stopped?**

The Black Lives Matter protests were held in June 2020, before Victoria went into stage 4 lockdown, and protest organisers undertook to stage the protests in a manner that would comply with the CHO directions in place at the time. In June 2020, Victorians could leave home for any reason but the [Stay Safe Directions](#) required people to take reasonable steps to maintain a distance of 1.5 metres from other people and restricted gatherings outside to a maximum of 20 people. Black Lives Matter [organisers encouraged](#) protesters not to breach the restrictions and asked people to wear masks, bring hand sanitiser and remain 1.5 metres apart, ensuring distance between each group of 20 people.

At the time, [Victoria Police stated](#) that it would prefer that the protest be postponed and warned protest organisers that they would be fined if the CHO Directions were not complied with, and announced it would not fine people who attended the rally. Victoria Police later issued fines to three protest organisers for staging the protest in a manner that did not comply with the CHO Directions.

## **Does the Parliament need to issue an override declaration for the CHO to limit Charter rights?**

The Charter has continued to apply in Victoria during the COVID-19 pandemic and continues to apply during the current lockdown. The CHO and his delegates have the power to issue directions that lawfully limit Victorians' human rights in the Charter, so long as those limitations are necessary, justified and proportionate.

An override declaration is not required for the CHO to limit human rights. An override declaration is a separate mechanism under section 31 of the Charter, which allows the Victorian Parliament to expressly declare that the Charter has no application to a particular Act or a provision of an Act.

## **How can I express my opposition to the lockdown or my views on other issues?**

It is critically important in a democracy that people can join together and speak up on issues of communal importance.

While public gatherings in Victoria are currently not permitted, there are other ways in which people can protest and express their views, which do not violate the public health orders and respect the human rights of other Victorians. These include signing a petition, contacting your local Member of Parliament and gathering online to discuss your concerns.

## **Who can I contact if I feel that my human rights have been breached?**

If you have questions about the Charter, you can contact the Victorian Equal Opportunity and Human Rights Commission on 1300 292 153 or via [enquiries@veohrc.vic.goc.au](mailto:enquiries@veohrc.vic.goc.au).

If you are concerned that your human rights have been breached, you may wish to make a complaint to the Victorian Ombudsman on 9613 6222 or via [complaints@ombudsman.vic.gov.au](mailto:complaints@ombudsman.vic.gov.au).

If you have concerns about the behaviour of Victoria Police when they are enforcing public health orders, you may wish to contact the Independent Broad-based Anti-corruption Commission (IBAC) on 1300 735 135 or via [info@ibac.vic.gov.au](mailto:info@ibac.vic.gov.au).