

CHECKLIST ON WHAT IS A 'PUBLIC AUTHORITY'?

1.

DOES THE ENTITY FIT THE DESCRIPTION OF A PUBLIC AUTHORITY UNDER SECTION 4(1)?

- Is it prescribed by the Regulations to be a public authority?
- Is it a public official? (Consult the definition in the *Public Administration Act 2004*.)
- Is he or she a member of Victoria Police?
- Is it a council or is he or she a councillor or member of council staff?
- Is he or she a minister not exercising functions in connection with parliamentary proceedings?
- Is he or she a member of a parliamentary committee when the committee is acting in an administrative capacity?
- Is it a court or tribunal and acting in an administrative capacity?

If yes: They are captured by the Charter and obliged to act compatibly with human rights under s. 38.

If no: Go to Question 2.

2.

DOES THE ENTITY HAVE FUNCTIONS OF A PUBLIC NATURE (PERHAPS AMONG OTHER FUNCTIONS)?

Consider, among other matters, whether:

- the function is conferred on the entity by or under a statutory provision;
- the function is connected to or generally identified with functions of government;
- the function is of a regulatory nature;
- the entity is publicly funded to perform the function;

- the entity that performs the function is a company (within the meaning of the Corporations Act) all of the shares in which are held by or on behalf of the state.

If no: If the entity does not have functions of a public nature, then it is not a public authority for the purposes of the Charter and is not obliged to act compatibly with human rights under s. 38.

If yes: If the entity has functions of a public nature, go to Question 3.

3.

IS THE ENTITY A STATUTORY BODY ESTABLISHED BY A STATUTORY PROVISION?

If yes: If the entity has functions of a public nature and is a statutory body, then it is a public authority and obliged to act compatibly with human rights under s. 38 of the Charter (in relation to its functions of a public nature and its other functions).

If no: If the entity has functions of a public nature but is not a statutory body, go to Question 4.

4.

IS THE ENTITY EXERCISING THOSE FUNCTIONS ON BEHALF OF THE STATE OR A PUBLIC AUTHORITY?

If yes: If the entity is exercising functions of a public nature on behalf of the state or a public authority, then it is a public authority and obliged to act compatibly with human rights when it is exercising those functions on behalf of the state or a public authority.

If no: If the entity does have functions of a public nature but is not exercising them on behalf of the state or a public authority, then it is not a public authority for the purposes of the Charter and is not obliged to act compatibly with human rights under s. 38.