
Human Rights Policy

1.0 Purpose

As a public authority under the *Charter*, Bendigo Kangan Institute (the Institute) is required to proactively consider relevant rights set out under the *Human Rights and Responsibilities Act 2006* (Vic) (the *Charter*) when making decisions. This extends to all aspects of our education delivery, including but not limited to the way we treat people, decisions to apply a condition on a student's enrolment, suspend or exclude a student and in the ways we enable community members to be involved in public decisions and use Institute facilities.

2.0 Scope

This policy applies to all persons acting on behalf of the Institute, including employees, volunteers and contractors. The Charter extends to all people and organisations that perform a public function, including third-party providers.

3.0 Legislative Context

Charter of Human Rights and Responsibilities Act 2006 (Vic) Act Number 43/2006

Equal Opportunity Act 2010 (Vic)

Australian Human Rights Commission Act 1986 (Cth)

Education and Care Services National Law Act 2010 (Vic)

Carers Recognition Act 2012 (Vic)

Equal Opportunity Act 2010 (Vic)

Gender Equality 2020 (Vic)

Modern Slavery Act 2018 (Cth)

See Section 4.3 'Charter Relationship to Other Laws'

4.0 Policy Statement

The rights, freedoms and responsibilities shared by everyone in Victoria are set out in the *Charter*. Human rights under the *Charter* apply to all people in Victoria at all times.

Bendigo Kangan Institute acknowledges the importance of the *Charter* in promoting a culture where everyone's human rights are protected in the delivery of government services. The Institute also recognises the relationship between the *Charter* and other State and Federal laws and initiatives that are focused on advancing human rights.

As a public authority for the purposes of the Charter, the Institute respects human rights and works to integrate the consideration of human rights into Institute decision-making, consistent with the Charter.

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In addition, Bendigo Kangan Institute recognises, promotes and values the rights of both staff and students who are carers or are individuals requiring the support of a carer under the *Carers Recognition Act 2012* (Vic) in its role as a public care service agency, and will also integrate the consideration of this act into Institute decision-making.

The Institute recognises that at times, it is required to balance rights and interests. It recognises that in doing so, any restriction on human rights must be lawful, proportionate and have the least restriction on human rights possible to achieve a legitimate purpose.

5.0 Key relevant Charter rights and Carers Recognition Act principles

The *Charter* sets out 20 civil and political rights, including the:

- *Right to recognition and equality before the law (Part 2 section 8) – an entitlement to equal protection of the law and freedom from unlawful discrimination;*
- *Right to life (Part 2 section 9);*
- *Right to freedom from forced work (Part 2 section 11);*
- *Right to freedom of movement (Part 2 section 12);*
- *Right to privacy and reputation (Part 2 section 13);*
- *Right to freedom of thought, conscience, religion and belief (Part 2 section 14);*
- *Right to freedom of expression (Part 2 section 15);*
- *Right to peaceful assembly and freedom of association (Part 2 section 16);*
- *Right to protection of families and children (Part 2 section 17);*
- *Right to take part in public life (Part 2 section 18);*
- *Cultural rights (Part 2 section 19) – the right of all persons with a particular culture, religious, racial or linguistic background to enjoy their culture;*
- *Property rights (Part 2 section 20) – the right to not be unlawfully deprived of property; and*
- *Right to liberty and security of person (Part 2 section 21).*

The *Carers Recognition Act 2012* (Vic), Part 2 - Care relationship Principles sets out the following principles relating to rights of carers, to the rights of persons being cared for and the principles relating to care relationships including:

- That a carer should be:
 - a) be respected and recognised
 - (i) as an individual with their own needs; and
 - (ii) as a carer; and
 - (iii) as someone with special knowledge of the person in their care;
 - b) be supported as an individual and as a carer, including during changes to the care relationship; and
 - c) be recognised for their efforts and dedication as a carer and for the social and economic contribution to the whole community arising from their role as a carer; and
 - d) if appropriate have their views and cultural identity taken into account, together with the views, cultural identity, needs and best interests of the person for whom they are a carer, in matters relating to the care relationship, including when decisions are made that impact on the carer and the care relationship; and

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- e) have their social wellbeing and health recognised in matters relating to the care relationship; and
- f) have the effect of their role as a carer on their participation in employment and education recognised and considered in decision making.

As a care support organisation, Bendigo Kangan Institute will take all practical measures to ensure that employees and agents have an awareness and understanding of the care relationship principles (*Carers Recognition Act 2012 Part 3, 11 (1) a*)), and take all practicable measures to ensure that its employees and agents reflect the care relationship principles in developing, providing or evaluating support and assistance for persons in care relationships.

BKI also recognises the principles relating to persons being cared for and principles relating to care relationships (Principles Part 2 provisions 8 and 9).

5.1 Our *Charter* and *Carers Recognition Act 2012* Obligations

5.1.1 Human rights are not absolute and may be subject to reasonable and lawful limitations that are justified in the context of a democratic society.

5.1.2 It is unlawful for the Institute and its staff to act in a way that is:

- Incompatible with a human right that is outlined in the *Charter*, or
- In making a decision, fail to give proper consideration to a person's human rights.

5.1.3 When exercising discretion (i.e. making a choice), we must give proper consideration to human rights and only limit human rights lawfully, reasonably and in the least restrictive way.

5.1.4 The Institute recognises an action that has an adverse impact on enjoyment of human rights can be an unreasonable limitation on a human right.

5.1.5 The Institute (and those who act on its behalf) must give proper consideration to relevant human rights as part of its decision-making processes. This requires:

- A genuine and real assessment;
- Understanding in general terms the possible impact of our decisions and actions on a person's human rights;
- The balancing of any competing interests or obligations; and
- Taking into account relevant information before a decision or action is made.

5.1.6 When reviewing organisational policies, Bendigo Kangan Institute must consider their compatibility with the *Charter* and the *other acts impacting on rights of individuals*.

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5.2 Common Institute decisions that enliven human rights considerations

5.2.1 In all Institute decisions, Institute staff must consider human rights and determine whether a decision or action limits a human right. Any limitation to a human right set out under the *Charter* must be lawful, reasonable and proportionate in the circumstance.

5.2.2 Any decision that limits a human right must be based on evidence. There are some common Institute decisions that will enliven human rights or lead to some human rights being limited in favour of other human rights. The below summarises key considerations to be applied to common Institute decision-making.

Charter right / obligation	Examples of decisions that enliven right	Considerations
Section 38 – Public authorities must act compatibly with human rights and give proper consideration to human rights when making decisions.	All Institute decisions	- Understand what rights might be affected by a proposed decision or action. - Identify whether a right under the Charter is going to be limited. - Consider the purpose of the limitation, the impact, whether there are other alternatives and the lawfulness of the decisions / actions. - Justify any limitation by balancing competing (or more important) interests and rights and ensuring limitations are reasonable and proportionate. Record Keeping: Where a decision / action is likely to have a serious impact on a person, consider recording the decision that is going to be made and the reasons for that decision / action, using the above points.

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Section 8 – the right to equality before the law. This right has been interpreted to require government authorities to make reasonable adjustments where a person has a disability, including where behaviour is attributed to a disability. This extends to decisions to ban or restrict a person's contact with the Institute.	Restricting contact between BKI and a member of the public or student. Suspending or excluding a student from a course. Withholding access to education to a person with a disability or other protected attribute.	- Restricting contact may be a reasonable limitation to the right to equality before the law where a person's behaviour presents as a threat to safety to others, other alternatives have been considered and a ban is temporary and subject to review at reasonable intervals. - Restricting contact must only follow a human rights assessment and consultation with Governance, Risk and Compliance. - Apply BKI's <i>Accessibility and Wellbeing Policy</i> and <i>Student Code of Conduct Policy and Procedure</i> and <i>Employee Code of Conduct</i> to any decisions to suspend or exclude students or suspension or termination of staff. - BKI must make available reasonable adjustments to persons with a disability seeking access to education. Our <i>Accessibility and Wellbeing Policy</i> sets out BKI's appropriate to ensuring a person with a disability receives access to education.
Section 10 – Right to protection from torture and cruel, inhuman or degrading treatment	Taking disciplinary action against a student in front of others. Removing the right to complain about a service. Conducting searches.	- The manner in which disciplinary action is taken against a student is important to determining whether a reasonable limitation to section 10 has occurred. - Removing the right to complain about a service must only be exercised if it is determined reasonable and proportionate. Other alternatives exist and should be explored in the first instance such as but not limited to: reducing contact, implementing strategies, declining further comment on a particular topic (as opposed to all grievances), demonstrating openness to assessing new concerns. Consult Governance Risk and Compliance. - Contact with a person or their belongings may constitute criminal behaviour, i.e., assault.

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Section 13 – the right to privacy and reputation	Sharing personal information with a third-party. Conducting Closed Circuit Television (CCTV) surveillance.	Sharing personal information with a third-party: • If the law allows BKI to share information about a person with a third-party, consider whether that person has consented to the disclosure or otherwise, could provide the information about them directly. • Sharing personal information with law enforcement authorities is permitted to support the investigation and detection of crime. • Implied consent may be provided to share information with a regulatory or oversight body where the person makes a complaint to such body. • Our <i>Privacy and Freedom of Information Policy</i> guides how the Institute uses and discloses personal information. Conducting CCTV: • If BKI proposes to conduct CCTV, it should display warnings and notices of its intention. • Any CCTV should only be conducted if there is evidence to support the basis and/or there is a reasonable suspicion of a criminal offence and there is a lawful reason to do so. • CCTV should not be unreasonably intrusive, excessive or of areas where a reasonable person would expect privacy.
Section 14 - Right to freedom of thought, conscience, religion and belief	Decisions that impact access to prayer rooms, such as construction. Setting a dress code that may be incompatible with religious requirements. Requiring a person to disclose their religion or belief.	Where a decision impacts the practice of religion, consider whether there are alternative options or exceptions that should be applied to enable a person to practice their religion. Any limitation on the expression of religion must also support the right to equality before the law; a limitation should be applied consistently to all religions and may only be for legitimate and lawful purposes, informed by evidence.
Section 15 – Freedom of expression	Regulation of content and format of public expression Imposing a dress code	Decisions to limit freedom of expression may be justifiable where freedom of expression constitutes discrimination, offensive conduct or hate speech, which often attract higher legal protection. There is a need to consider the individual circumstances of the situation. Considerations around OHS requirements of work and practical tasks should also include respect for religious dress, as far as possible.

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Section 15 – Peaceful assembly and freedom of association	Limiting the ability of people to come together for a common purpose. Treating people differently based on membership to a group or association, such as a recognised union.	People can come together for a common purpose where the purpose is lawful and does not present an unreasonable disruption to Institute activities. People have the right to engage in membership associations and groups in accordance with established association rules. It is useful to consider what rules may apply; a limitation on the freedom of association may be appropriate where there has been a breach of relevant rules.
Section 18 – Taking part in public life	Declining to consider or respond to complaints. Reducing opportunities to engage in recognised mechanisms for diplomacy.	Public authorities must provide reasonable means for complaints and for people to engage in established democratic processes. Strategies can be implemented where a person exhibits challenging behaviour and contact can be limited on an issue where the person has received a response to their concern, a complaint handling process has been finalised and the person has been notified that the Institute will not respond to matters that do not raise further new issues. Restrictions to the right to take part in public life should be taken only after consideration of the impact to broader human rights, including the right to equality before the law.
Section 19 – Cultural rights	Declining an employee's request for leave. Limiting or prohibiting communication in languages other than English.	Managers should not decline an employee's request without seeking to understand the reasons why an employee is seeking access to leave, such as where leave is being requested to take part in cultural practices. People can communicate in languages other than English. For the purposes of the Institute's role as an education and training provider, the Institute teaches in English and expects students to engage in English language for the purposes of their courses, in line with pre-training review processes. Relevant staff should be aware of applicable processes and apply them consistently.
Section 20 – Property rights	Taking personal property away from students.	Blanket rules Generally, blanket rules or policies that seek to ban students bringing items to the Institute should be avoided. For example, the private trade and sale of items is not of itself problematic. However, where a trade or sale could be misconstrued as the

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		Institute making a representation as to its quality or make or associated with the Institute, it can be reasonable to implement some limitations. The Institute should consult the student community before implementing any blanket ban. Reasonable confiscation Confiscation of student property may be reasonable in circumstances where the manner in which property is being used is: • Contrary to applicable rules; • Disruptive to a learning environment; • A risk to the safety or wellbeing of students, staff or other people; • Contrary to a reasonable direction given by the Institute about the use of an item; and/or • Illegal or otherwise of a nature that causes significant and reasonable concern by others. Disability and equality Institute staff should also consider the relationship between property rights and the right to equality before the law. Where a person with a disability relies on items to de-escalate behaviour or maintain a sense of wellbeing, the Institute should consider the disproportionate impact on implementing limitations on the person and whether exceptions should apply through reasonable adjustments. Force Staff should not remove items or property by force. A refusal to hand over an item can be considered under the Institute's <i>Student Code of Conduct Policy and Procedure</i>. Liability Once confiscated, responsibility for the security and safe keeping on personal property rests with the Institute. If a person's confiscated property is lost, damaged or destroyed while not having been properly secured by staff, the Institute may be liable to compensate the person.
Section 21 – Right to liberty and security of person	Decisions to reduce security coverage at the Institute. Decision to place a person in any locked or restricted areas.	Everyone has the right to freedom and safety. Right to liberty includes the right to not be arrested or detained except in accordance with the law. All people on Institute campuses have the right to leave when they want, unless they are breaking the law. The right to security means reasonable steps must be taken to ensure physical safety of people who are in danger of physical harm. This extends to ensuring reasonable security coverage. The <i>United Nations Convention on the Rights of the Child</i> (an international treaty) also operates to require that children be:

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		• treated fairly; • have the right to have a say about decisions affecting them; and • have the right to be safe no matter where they are.
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5.3 Charter relationship to other laws and initiatives

Other laws and initiatives operate alongside the *Charter* to advance the protection of human rights. These include:

Laws / initiatives	Charter right	Institute Response	Team leading response
<i>Modern Slavery Act 2018</i> (Cth)	Right to freedom from forced work (Part 2 section 11)	Regular Modern Slavery risk assessment Anti-modern slavery initiative Annual Modern Slavery Statement.	Governance, Risk and Compliance (GRC) Procurement & Facilities
<i>Equal Opportunity Act 2010</i> (Vic), <i>Gender Equality Act 2020</i> (Vic), <i>Sex Discrimination Act 1984</i> (Cth),	Right to equality before the law (Part 2 section 8)	Recruitment Policy Accessibility and Wellbeing Policy Human Rights Policy Student Code of Conduct Policy and Procedure	People Operations Student Services GRC Registrar
<i>Racial Discrimination Act 1975</i> (Cth), <i>Disability Discrimination Act 1992</i> (Vic) and <i>Age Discrimination At 1992</i> (Cth) <i>Spent Convictions Act 2021</i> (Vic) <i>Convention on the Rights of the Child</i> <i>Carers Recognition Act 2012</i> (Vic)		Annual Gender Equality statement and action plan Diversity and Inclusion Plan. Reconciliation Action Plan Child Safety Policy and Procedure	PCS (People Operations) PCS (People Operations) PCS (People Operations) GRC (Child Safety)
<i>Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019</i> (Vic)	The right to life (s 9)	Occupational Health Safety and Wellbeing Framework	PCS (Occupational Health & Safety)

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<i>Child Safe Standards Child Wellbeing and Safety Act 2005 (Child Safe Standards) Commission for Children and Young People Act 2012 (Reportable Conduct) Crimes Act 1958 (Grooming, Failure to Disclose, Failure to Protect) Children, Youth and Families Act 2005 (Mandatory Reporting) Occupational Health and Safety Act 2004 (duty of care)</i>	Protection of families and children (s 17)	<i>Child Safety Policy and Procedure, Action Plan Working with Children Procedure</i>	GRC (Child Safety) PCS (People Operations)
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5.4 Online Resources

People can access more information about each of the *Charter* rights, how they offer protection and how rights can be lawfully and reasonably limited at the Victorian Equal Opportunity and Human Rights Commission's [website](#). People can also access resources about the Universal Declaration of Human Rights and the rights of children on the Australian Human Rights Commission's [website](#).

6.0 External Review

There are three avenues of review should a person feel that the Institute has failed to properly take into account their human rights when making a decision that affects them or has acted incompatibly with the rights set out under the *Charter*. These are:

- Making a complaint to the [Victorian Ombudsman](#);
- Lodging an appeal of an administrative decision to the Victorian Civil and Administrative Tribunal's [Human Rights List](#); or
- Making a Reportable Conduct report to the [Commission for Children and Young People](#) in accordance with the Institute's *Child Safety Procedure*.

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7.0 Roles and Responsibilities

Role	Responsibilities
Chief Governance and Quality Officer	- Oversees the Institute's Human Rights Policy and associated operations from a governance and compliance perspective. - Approves policy and material changes.
Head of Legal, Governance Risk and Compliance	- Provides advice to business units on the application of the <i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic) to Institute decisions and actions and in response to complaints. - Policy Custodian. - Conducts and/or supervises human rights reviews on an as needs basis. - Provides and/or facilitates training in the Charter.
All staff	- Considers rights set out under the <i>Charter</i> when making decisions, taking actions and designing policies and programs. - Attends relevant training.

8.0 Supporting Policy, Documents and Forms

All policies, procedures and resources are available on the Institute's intranet (internal), [here](#). A subset policies and procedures are available externally on the [Bendigo TAFE website](#) and the [Kangan Institute website](#).

Title
<i>Child Safety Policy and Procedure</i>
<i>Compliance Framework</i>
<i>Feedback Framework, Policy and Procedure (Compliments and Complaints)</i>
<i>Health Safety and Wellbeing Policy</i>
<i>Practical Placement Policy</i>
<i>Privacy and Freedom of Information Policy</i>
<i>Records Management Policy</i>
<i>Student Code of Conduct Policy and Procedure</i>
<i>Student Welfare and Accessibility Policy</i>

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9.0 Definitions

Word / Term	Definition
Public authority	For the purposes of the <i>Charter</i> a public authority is – (a) A public official within the meaning of the <i>Public Administration Act 2004</i> (Vic) ¹; (b) An entity established by a statutory provision that has functions of a public nature; (c) An entity whose functions are or include functions of a public nature, when it is exercising those functions on behalf of the State or a public authority (whether under contract or otherwise).

9.0 Version Control and Change History

Ver.	Issue Date	Document Custodian	Description of Change	Approval Authority
1.0	18 Aug 2022	Head of Legal, Governance, Risk and Compliance	New policy	Chief Governance and Quality Officer (Acting)
2.0	7 May 2024	Head of Governance, Risk and Compliance	Updated policy integrating <i>Carers Recognition Act 2012</i> obligations recognition and minor updates to CCTV surveillance.	Chief Operating Officer

10.0 Document Owner and Approval Body

Document Custodian	Approval Authority	Approval Date	Issue Date	Scheduled Review Date
Head of Legal, Governance, Risk and Compliance	Chief Governance and Quality Officer (Acting)	09 Aug 2022	18 Aug 2022	18 Aug 2023
Head of Governance, Risk and Compliance	Head of Governance Risk and Compliance (Provisional Approval)	04 April 2024	7 May 2024	7 May 2027
Delegated to Acting Governance and Risk Manager	Chief Operating Officer to approve formally in next review			

¹ A public official under the **Public Administration Act 2004** includes employees of the public service, including the Head of a government department or an Administrative Office (such as the Secretary to the Department of Justice or the Chairman of the Environment Protection Authority) and the Victoria Public Sector Commissioner. It also includes the directors and staff of public entities, court staff, parliamentary officers and holders of certain statutory or prerogative offices.