

## Chapter 7

# Freedom of Expression

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Section 15 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Victorian Charter), which provides for freedom of expression, is modelled on Art 19 of the International Covenant on Civil and Political Rights.<sup>1</sup> It consists of three subsections. Section 15(1) establishes the right to hold an opinion without interference. The right to freedom of expression is set out in s 15(2), which states that '[e]very person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether 'orally', 'in writing', 'in print', 'by way of art' or 'in another medium' chosen by the individual. Section 15(3), in turn, purports<sup>2</sup> to qualify s 15(2). It states that '[s]pecial duties and responsibilities are attached to the right of freedom of expression, such that 'the right may be subject to lawful restrictions reasonably necessary' for the achievement of certain specified goals. Those goals are 'to respect the rights and reputation of other persons'<sup>3</sup> and 'for the protection of national security, public order, public health or public morality'.<sup>4</sup>

This chapter will focus on the right to freedom of expression under s 15(2), to the extent that it is constituted by 'the freedom to ... impart information and ideas of all kinds'.<sup>5</sup> In Part I, it considers when activity will (and will not) fall within s 15(2). Next, in Part II, it examines the operation of 'limiting' provisions contained in s 15(3), and how those provisions interact with the Victorian Charter's general 'limiting' provision, s 7(2). There then follows, in Part III, comparison of the protection provided to freedom of expression under s 15(2) and that provided by the implied freedom of political communication under the Australian Constitution, and by the principle of legality, so as to ascertain what additional protections are provided by s 15(2). Finally, in Part IV, it highlights a significant limitation of the protection provided to freedom of expression by s 15(2) of the Victorian Charter (which is also shared by the implied freedom of political communication, and the principle of legality).

1 See Explanatory Memorandum, *Charter of Human Rights and Responsibilities Act 2006* (Vic), p 13.

2 See the text accompanying nn 59-73 below.

3 Section 15(3)(a).

4 Section 15(3)(b).

5 For judicial consideration of what is constituted by the right the right to 'seek' and 'receive' information (and especially whether that right imposes a corresponding obligation on the government to provide information) see *XYZ v Victoria Police* [2010] VCAT 255 at [516]-[539] (Bell J, President). See also *Smeaton v Victoria WorkCover Authority* [2009] VCAT 1195 (Bell J, President).

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