



HIGH COURT OF AUSTRALIA

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**IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY**

BETWEEN:

DEMETRIOS CHARISIOU
Appellant

and

THE KING
Respondent

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**OUTLINE OF ORAL SUBMISSIONS OF
THE VICTORIAN EQUAL OPPORTUNITY AND HUMAN RIGHTS COMMISSION**

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PART I INTERNET PUBLICATION

This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

- 1 **Principle of legality:** The rights in Pt 2 of the Charter attract the operation of the principle of legality, irrespective of the operation of s 32(1). Having given specific recognition to human rights for the purpose of protecting and promoting them (s 1(2); Preamble), it should not then be presumed that Parliament intended to abrogate or curtail those rights other than by unmistakable and unambiguous language: **VEOHRC [15]-[18]**.
- 2 **Section 32(1) of the Charter:** Section 32(1) has an imperative and contingent operation:
10 **VEOHRC [20]-[23]**.
 - 2.1 A court must determine the apparent meaning of the statutory provision by applying all *other* relevant principles of statutory construction. A court must determine whether that apparent meaning is “compatible with human rights”.
 - 2.2 A particular construction of a “statutory provision” will be “compatible with human rights” if, to the extent that the provision operates to limit a human right, any such limit “can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom”: **VEOHRC [29]-[34]; A-G [40]-[41]; cf AS [35]; LACW [72]**.
 - 2.3 If the apparent meaning is “compatible”, s 32(1) will have no role to play in the
20 process of construction. If the apparent meaning is not “compatible”, s 32(1) will require the court to adopt a construction that is “compatible”.
- 3 That operation of s 32(1) is subject to three limits: **VEOHRC [24]-[28]**.
 - 3.1 An alternative construction must be “consistent” with the purpose of the provision (what the provision is designed to achieve in fact).
 - 3.2 An alternative construction must be tenable, having regard to the text and context: *Fitzgerald* [2021] 1 NZLR 551 at [58] (Winkelmann CJ), [181] (O’Regan and Arnold JJ) (**JBA (Int) Vol 2, Tab 13**).
 - 3.3 The principle may be displaced by the manifestation of a contrary intention: see especially, ss 28 and 31.

4 Section 32(1) applies to all “statutory provisions” — including those that confer powers on decision-makers: **VEOHRC [19], [35]-[38]**.

- *Grinder* [2025] 1 NZLR 1062 at [50], [57]-[59] (Winkelmann CJ, Ellen France and Williams JJ), [114], [122] (Kós and Miller JJ) (**JBA (Int) Vol 2, Tab 14**).

5 The proposition that the scope of s 32(1) is subject to an implicit limitation, arising from the additional and supplementary obligations imposed by s 38(1) on a subset of decision-makers (public authorities), is without textual or other foundation. It is also inconsistent with authority, where s 32(1) has been used to construe powers conferred on courts: **VEOHRC [39]; cf AG [28]-[29];**

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- *Bare v IBAC* (2015) 48 VR 129 at [323] (Tate JA).
 - *Hogan v Hinch* (2011) 243 CLR 506 at [29], [36] (French CJ), [70]-[72], [78] (Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ).
 - *Victoria Police Toll Enforcement v Taha* (2013) 49 VR 1 at [24]-[27] (Nettle JA), [59], [186]-[216] (Tate JA).
 - *Nguyen v DPP* (2019) 59 VR 27 at [104]-[105] (Tate JA).

6 **The right in s 17(1):** Although s 17(1) refers to the entitlement of “families” to protection by the State, the Charter bestows that right on the individual members of families. This is similar to the cultural rights in s 19, which can only be enjoyed by individuals in community with others. That follows from s 6(1), which provides that *all* persons have the human rights set out in Pt 2. That is consistent with the international jurisprudence, which indicates that s 17(1) is a right that is justiciable when interfered with at an individual (not only systemic) level: **VEOHRC [49]-[50]; cf A-G [35(e)]**.

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Sarala Fitzgerald



Thomas Wood

12 August 2026