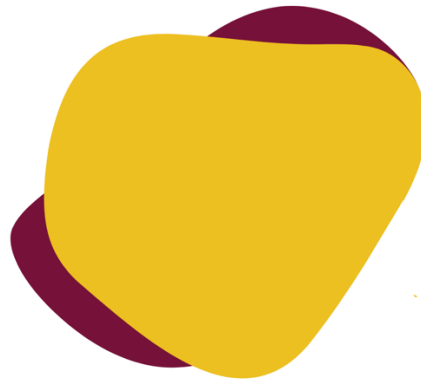




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Designing a Human Rights Framework for South Australia

Final Report

February 2022

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This Report follows an Expert Workshop held on International Human Rights Day
10 December 2021, hosted by the Rights Resource Network SA



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Executive Summary

The [Rights Resource Network SA](#) is a volunteer-run collaboration that shares information and research among academics, community organisations and individuals who have a shared interest in protecting the human rights of South Australians. The Network has an inclusive membership structure. Over 350 members subscribe to our newsletters and communications, including peak community organisations, academics and legal experts.

On International Human Rights Day, Friday 10 December 2021, a group of 36 expert delegates, nominated by Rights Resource Network SA members, met to consider how to design a Human Rights Framework for South Australia (the **2021 Expert Workshop**). Expert Delegates included representatives from all three South Australian Universities, senior members of the South Australian medical and legal profession, senior officers from SACOSS, Shelter SA, Aged Rights, YACSA, LELAN, Civil Liberties Australia and the Working Women's Centre. Observers from political parties and other peak representative bodies were also in attendance.

The key outcome of the Workshop was the agreement among delegates that:

South Australia needs a Human Rights Framework, including a Human Rights Act, to secure the dignity and equality of all South Australians and to facilitate our active participation in the democratic life of our State.

This event followed a similar workshop held on 10 December 2020 where a diverse range of Rights Resource Network SA members expressed broad support for advancing a human rights framework for South Australia, including a legislative framework for rights protection that would:

- offer a consistent approach to identifying how internationally recognised human rights relate to lives of South Australians;
- incorporate human rights principles into policy design and development;
- emphasise the dignity and participation of all members of the South Australian community in the design and development of policies and laws that impact their lives; and
- include mechanisms within the parliamentary process for rights considerations to be more prominent in lawmaking and policy making in this State.

The 2021 Expert Workshop was convened to advance this objective and develop a plan for future research and advocacy in 2022.

The 2021 Expert Workshop was conducted under Chatham House Rules. The following key outcomes and actions reflect the general consensus of those delegates actively participating in discussions. They should not be attributed directly to any individual delegate without seeking further confirmation of their views or position. It should be noted that persons participating as Observers are not in a position to endorse the contents of this Report.



Key Outcomes

Key outcomes from the 2021 Expert Workshop discussions include the following:

1. Australia is the only common law country with neither a constitutional nor federal legislative bill of rights to protect its citizens, although there is now ongoing debate and action in several states and territories. South Australia remains without any comprehensive human rights legislation, or any consistent framework for promoting and protecting human rights.
2. South Australia needs a Human Rights Framework, including a Human Rights Act, to secure the dignity and equality of all South Australians and to facilitate our active participation in the democratic life of our State.
3. A South Australian Human Rights Framework would help us to:
 - a. Articulate a set of common values and principles that define and preserve our modern democracy
 - b. Address the inequality and discrimination, and lack of access to fundamental services, experienced by many vulnerable groups within our community
 - c. Clearly define the expectations we have of each other and our State institutions
 - d. Improve community engagement with and trust in public institutions
 - e. Assist members of parliament to respond to and resolve concerns raised by their constituents in a consistent, effective and efficient way
 - f. Increase accessible and easy to understand resources for members of the public to consult when they believe their rights have been infringed
 - g. Improve the quality, effectiveness and accessibility of government services and government decision-making
 - h. Reduce waste and inefficiencies by identifying practical alternatives to rights-abrogating practices or policies
 - i. Improve the quality of parliamentary lawmaking by increasing access to information about the intended objectives and impacts of proposed legislation
 - j. Improve public understanding of existing legal rights and remedies and provide new pathways to challenge unfair or inadequate decision-making or treatment
 - k. Identify and address complex and systematic social disadvantage including homelessness, domestic violence and the disproportionate rate of Aboriginal people in custody
 - l. Clarify and consolidate existing statements and charters of rights that currently exist in South Australian law and policy with respect to certain groups or services.



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4. A South Australian Human Rights Framework should include, as a starting point, those rights contained in the Universal Declaration of Human Rights and articulated in further detail in the seven core human rights Conventions to which Australia is a party¹.
 - a. Any list of rights included in a South Australian Human Rights Framework should pay particularly close attention to the rights of First Nations peoples and the rights of children, and should include economic, social and cultural rights as well as civil and political rights. This should include, for example, the right to health care, the right to education and the right to shelter.
 - b. Consideration should also be given to extending any list of rights to include environmental rights and to accommodate group rights as well as individual rights.
 - c. For a South Australian Human Rights Framework to be effective, it is integral that the South Australian community be given the opportunity to learn more about the rights contained in the Universal Declaration of Human Rights and how they might relate to their own lives.
 - d. It is also critical to identify champions within the public service to develop the Human Rights Framework and promote a culture of human rights.
5. Some features of a South Australian Human Rights Framework can be achieved without legislative change and should be actioned immediately. These include:
 - a. Prioritising and highlighting the existing Scrutiny Principles for the Legislative Review Committee which already include a reference to reviewing whether certain delegated legislation trespasses unduly on personal rights and liberties, and allocating additional secretariat resources to this Committee to undertake more systematic scrutiny of rights-impacting regulations and proposed legislation.
 - b. Publishing the Explanatory Statements or Explanatory Notes that are currently drafted and circulated to members of parliament when a new Bill is introduced and including a description of the extent to which the Bill trespasses unduly on personal rights and liberties and/or impacts or complies with human rights standards.
 - c. Establishing a Select Committee of the Parliament to consult with South Australians about whether the state would benefit from the introduction of a Human Rights Framework for South Australia or refer this issue to the South Australian Law Reform Institute to consult with the community and provide a report with recommendations.

¹ *International Covenant on Economic, Social and Cultural Rights* done at New York on 16 December 1966 ([1976] ATS 5); *International Covenant on Civil and Political Rights* done at New York on 16 December 1966 ([1980] ATS 23); *International Convention on the Elimination of all Forms of Racial Discrimination* done at New York on 21 December 1965 ([1975] ATS 40); *International Convention on the Elimination of all Forms of Racial Discrimination* done at New York on 21 December 1965 ([1975] ATS 40); *Convention on the Rights of Persons with Disabilities* done at New York on 13 December 2006 ([2008] ATS 12); *Convention on the Elimination of All Forms of Discrimination Against Women* done at New York on 18 December 1979 ([1983] ATS 9); *Convention on the Rights of the Child* done at New York on 20 November 1989 ([1991] ATS 4); *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* done at New York on 10 December 1984 ([1989] ATS 21)



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- d. Working with the members of the Rights Resource Network SA and the Parliamentary Friendship Group on Human Rights to increase the frequency and accessibility of human rights training and human rights information for parliamentarians and their staff.
 - e. Identifying human rights champions within the public service and embed rights into Key Performance Indicators for public servants and integrate human rights considerations within cabinet approval processes for proposed policy and legislation.
6. Other features of a South Australian Human Rights Framework should be set out in stand-alone legislation (such as a Human Rights Act or Charter of Rights) that should be developed in close consultation with the South Australian community. Key features of such legislation should include:
- a. A list of protected human rights and responsibilities (as discussed above at point 3) and an acknowledgement that human rights can be subject to proportionate and reasonable limits when necessary to protect or promote other human rights.
 - b. A requirement that all public servants, government officials, members of parliament and judicial officers undertake regular human rights training, with a focus on the most prevalent human rights issues confronting South Australia (including those relating to First Nations peoples, children, and persons with disabilities).
 - i. This could be supported by a Human Rights Advocate or Commissioner within the Public Service or a separate Statutory Office of Human Rights Commissioner with a mandate to undertake this type of training and public awareness.
 - c. A requirement that human rights principles are considered in all forms of government decision making and parliamentary law-making. This could include:
 - i. Establishing a Parliamentary Committee on Human Rights or an Independent Expert Panel on Human Rights to review existing and proposed laws for compliance with human rights standards and provide advice to Parliament.
 - ii. Requiring Bills and legislative instruments to be introduced with a Statement of Compatibility with Human Rights setting out the extent to which they comply with (or otherwise) the rights listed in the Charter.
 - d. Clear pathways for individuals and groups to challenge government decisions on the basis that government authorities have failed to consider human rights principles, or acted in a way that unjustifiably burdens or breaches individuals' or groups' human rights.
 - i. This could take the form of a 'duty of due regard' modelled on that contained in section 1 of the *Equality Act 2010* (UK).
 - ii. It could also take the form of an independent complaints body such as a Human Rights Commission or Human Rights Advocate.



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- e. Meaningful remedies for individuals and groups that can show that their human rights have been ignored or unjustifiably burdened or breached.
 - i. This could include establishing a legal cause of action for breaches of human rights or establishing enforceable remedies following successful complaints proceedings before a Human Rights Commission or similar body.
- f. Regular, public and independent review of South Australia's progress towards improving human rights outcomes and preventing human rights abuses.
 - i. This could include opportunities for community organisations to evaluate the human rights performance of government departments or provision of government services.
 - ii. It could also involve consideration of the establishment of an independent Human Rights Commission or Human Rights Advocate.



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Key Actions

A range of actions are necessary to advance a Human Rights Framework in South Australia. As a starting point, the Rights Resource Network SA will:

1. Publish and circulate this Final Report to all parliamentarians and all Network members to provide a foundation for future advocacy and collaboration within the South Australian community.
2. Issue a Joint Statement asking all political parties and independent members of Parliament to commit to advancing a South Australian Human Rights Framework if re-elected in 2022.
3. Facilitate further forums for developing a coordinated, evidence-based advocacy campaign for a South Australian Human Rights Framework.
4. Seek to identify human rights champions and advocates within Government.
5. Continue to identify and articulate practical benefits associated with a South Australian Human Rights Framework when engaging with related policy issues and law reform proposals.
6. Collect and share information and resources relevant to human rights protection in South Australia and in other Australian jurisdictions.



Current Legal Landscape in South Australia

There is no human rights legislation or constitutionally entrenched Bill of Rights at the federal level in Australia. Instead, Australia relies upon a combination of constitutional limitations on legislative power,² specific legislative provisions (such as anti-discrimination laws)³ and common law principles⁴ to protect and promote the individual rights of its people.

Under this model, the parliament effectively has the 'final say' on any conflicting rights issues: provided it stays within the legislative limits set out in the *Constitution*, it can override common law protections and amend statutory provisions. The courts' role in enforcing or upholding individual rights is far more limited and indirect than in jurisdictions with constitutional or legislative Bills of Rights. These features of the Australian legal system, which were complemented in 2011 by the establishment of a Parliamentary Joint Committee on Human Rights, have been described by Williams and Burton (2013) as an 'exclusively parliamentary model of rights protection'.⁵

Although specific human rights legislation exists in the Australian Capital Territory, Victoria and Queensland⁶, at the state level in South Australia there is no human rights legislation or parliamentary Human Rights Committee to scrutinise proposed new laws for compliance with human rights. However, there are features of the current South Australian law-making system that seek to promote and protect human rights. These include:

- Independent statutory commissions and office holders with mandates to review government action and respond to complaints that include a focus on individual rights
- Parliamentary committees that scrutinise proposed laws and policies, sometimes against rights-based criteria
- Policy commitments to observing certain individual rights in policy making and service delivery
- Specific legislative provisions designed to protect or promote certain individual rights.

Table 1 at the end of this Report contains a summary of the existing South Australian laws that include explicit protections for human rights, or that include within their purpose or objectives the aim of protecting or promoting specific individual rights.

² For example, section 51 of the Constitution sets out the subject areas in which the federal parliament can validly enact laws; section 116 of the Constitution places limits on the federal parliament's power to make laws with respect to religion; and section 92 of the Constitution prohibits the making of laws that would impermissibly interfere with interstate trade.

³ For example the *Race Discrimination Act 1975* (Cth), the *Sex Discrimination Act 1984* (Cth).

⁴ For example, Australian common law recognises the 'principle of legality', which can be applied by the courts as a tool for interpreting ambiguous legislation, *Re Bolton; Ex parte Beane* (1987) 162 CLR 514, 523; *Coco v The Queen* (1994) 179 CLR 427, 437 (Mason CJ, Brennan, Gaudron and McHugh JJ).

⁵ Williams, George and Lisa Burton, (2013) 'Australia's Exclusive Parliamentary Model of Rights Protection' 34(1) *Statute Law Review* 58.

⁶ Table 1: What Human Rights Frameworks look like in nearby Jurisdictions, Pg 62-67



Human Rights Work of Statutory Office Holders and Commissions in South Australia

At the 2021 Expert Workshop delegates also heard from three independent statutory office holders and commissioners whose work regularly includes interacting with or promoting human rights or investigating human rights abuses or breaches.

Guardian for Children and Young People - Penny Wright

Penny Wright is the Guardian for Children and Young People and Training Centre Visitor. The Guardian promotes and advocates for the rights and best interests of children and young people in care in South Australia. The Training Centre Visitor promotes the rights of young people detained at the Kurlana Tapa Youth Justice Centre. Before being appointed Guardian in 2017, Ms Wright had a broad and interesting career which included being a Senator for South Australia between 2011 and 2015, and working as a lawyer, Tribunal Member, mediator and lecturer.

Ms Wright explained that she has two distinct statutory roles: as Guardian for Children and Young People she advocates and protect sthe rights of children and young people in care, however she is not the legal guardian of the children and young people. In her role as Training Centre Visitor, Ms Wright promotes the rights of young people detained at the Kurlana Tapa Youth Justice Centre by conducting regular visits and audits of facilities and access to services at the Centre.

Currently in South Australia there are approximately 4,600 children and young people in care. Many children in care, detention or both have experienced abuse, trauma, neglect. They often suffer from mental health illnesses, which can often lead to detention. Pre- existing mental health struggles can trigger or exacerbate mental illnesses such as schizophrenia and psychosis.

During the course of any given year the number of children and young people in detention can fluctuate between 20-40 detainees.

Currently Ms Wright is particularly concerned about mental health rights and access to mental health services for children and young people both in care and in detention. She emphasised that many children who are in care or detention have behavioural issues that stem from mental health issues and external issues of abuse and/or neglect. Ms Wright associated this with the lack of access to mental health services for children in detention. Children in detention have access to fewer mental health services than adults.

Ms Wright noted that her mandate is limited to the time when detainees are actually in the Youth Detention Centre. Once the individuals leave the centre (for any reason) there is no longer a mandate and there is limited possibility to assist.

Other human rights problems noted in the presentation include:

- Not enough staff to provide transport to medical appointments.
- Not enough staff with specific mental health medical skills.
- Not enough staff with sufficient training after hours and on weekends.
- There is a high risk to staff and other detainees who may become targets of/affected by the behaviours driven by the mental health of some detainees.



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- There seem to be an increasing number of detainees suffering from psychosis, meaning that Kularna Tapa is not an appropriate place for these children and young people to be held.

Case studies highlighted the need for immediate actions by operational staff (youth workers) to ensure the safety of individuals in a mental health crisis and those around them.

Case Study 1

A young person in Kularna Tapa was in a mental health crisis, self-harming (not unusual for children in these spaces). The young person needed multiple actions to prevent injury/death by the staff. Note the staff are operational, therefore not medically qualified, with limited training to respond to a mental health crisis. This increases the distress to staff, fellow children, and the young person themselves. Ligature prevention clothing is often used to reduce risk, but this raises another concern to the dignity of the young people involved. These items are not used for adult facilities but there are no alternatives provided for children at Kularna Tapa; therefore, they have no option for children.

Case Study 2

Young people with significant mental health issues can be detained on remand for a year, including long periods locked in their room, heavily restricted from interacting with others, with no access to therapeutic options. This is a human rights issue. Children have the right to access adequate treatment and support if they have an illness as a citizen. Adults have a designated therapeutic secure setting with medically trained staff/practitioners. It enables them to receive necessary treatment and be treated fairly within the justice system. There needs to be the equivalent for children.

Thoughts from Expert Delegates

- Access to appropriate mental health care is a fundamental right, of course, but this neglects the question of the social and economic conditions that support psychological wellbeing and reduce psychosocial stress. Without action on those conditions, no amount of expenditure on mental illness treatment will be enough.
- The intersection of poverty and mental health and wellbeing is paramount to consider. Especially considering how social and economic conditions thoroughly impact one's ability to access the services and cares that are available currently. It is impossible to dismiss economic factors from discussions of tackling mental health.



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South Australian Ombudsman - Wayne Lines

Wayne Lines is the sixth Ombudsman appointed since the Office was established in 1972. Ombudsman SA deals with complaints about South Australian state and local government and aims to promote fairness, integrity, transparency, accountability and good public administration in South Australia. Before being appointed Ombudsman, Mr Lines worked in legal practice for 25 years, including 16 years in the Civil Litigation Section of the Crown Solicitor's Office, where he undertook diverse work and represented government in various courts and tribunals. He was appointed South Australian WorkCover Ombudsman in 2008 and South Australian Ombudsman in December 2014. Mr Lines is a member of the [Australian and New Zealand Ombudsman Association \(ANZOA\)](#), a professional association and peak body for ombudsmen.

The Ombudsman is an independent statutory officer whose task is to respond to complaints of public maladministration. The office does not have any specific jurisdiction to investigate issues of human rights, given that there is no SA Human Rights Act. However much of the Ombudsman's work is focused on protecting and promoting human rights. Mr Lines explained that one of the central concepts that defines the Ombudsman's work is to protect and promote the rights of individuals by providing a forum for people to question and challenge the actions of governments.

The Ombudsman will intervene when the actions of governments contravene the accepted standards of government administration in relation to the welfare of its citizens. In addition, the Ombudsman has a right and a mandate to act in the public interest.

In SA the Ombudsman's office fields about 4,000 complaints a year, but only has resources to deal with approximately 2% of the complaints received, so has to perform a triage process to determine in the first instance if human rights have been contravened.

There are many occasions when the human rights consideration within the subject matter of the complaint will determine whether resources can be allocated or not.

Aboriginal People and Use of Spit Hoods

The Ombudsman has investigated a case involving the use of segregation as a control measure in detention. The use of segregation in this context was found to be inappropriate and in breach of international human rights standards. For an Aboriginal detainees in particular, the cultural requirements had not been considered.

The use of spit-hoods in detention also came under the Ombudsman's remit and was found to be in contravention of human rights conventions. The Ombudsman has also issued reports criticising extended isolation orders for adult prisoners.

The UN Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were used to determine these complaints. The result provided 20 recommendations in the report, including the removal of 'spit hoods', which led to them being abolished through legislation.

Persons with Disability

Another case study relates to a public servant with a disability and the timeframe for applying for a permanent disablement claim to the superannuation fund. The timeframe stipulated was found to be unreasonable given the disability of the person involved.

These studies show the breadth of cover of the Ombudsman and how human rights are considered in relation to that broad array of issues.



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Mental Health Commissioner - John Mannion

John Mannion was appointed as one of South Australia's Mental Health Commissioners in April 2021. Mr Mannion works with Commissioners Heather Nowak and David Kelly to lead the implementation of the state's Mental Health Strategic Plan and contribute to the Mental Health Services Plan. Mr Mannion is a registered mental health nurse and has worked in acute and community mental health services in the United Kingdom and Australia and led the establishment of the Breakthrough Mental Health Research Foundation in 2018.

The Office of the Mental Health Commissioners has a very small staff resource with 3 employees creating a total of 1.3FTE. The office does not have a mandate to investigate specific complaints, but rather advocates independently for the overall mental health rights of South Australians.

COVID-19 has created some new challenges and has provided a focus on early intervention and prevention.

The current focus is on youth challenges. The Commission recognises that understanding the lived experience is vital to developing responses and help measures. Future state planning should be guided by this information.

Current challenges faced by young people have been identified as stress, mental health and body image. In addition, striving to understand what young people feel they ought to be achieving and what they believe others think they ought to be achieving creates added pressure.

Young people identified that these challenges existed pre-COVID and have only been exacerbated by the constraints placed on them by the pandemic. It was acknowledged that there is still a strong sense of stigma around mental health issues and that places an additional burden on people who are already struggling. From a human rights perspective, all Australians have a right to services, to meaningful engagement, and to a be free of stigma.

At present, men are disproportionately represented in the statistics (suicide in particular), but men involved in group studies identified that it is not a new campaign that is needed, but rather space and capacity to both speak and listen to others.

The Suicide Prevention Bill recently passed by parliament is a good start, and data sets are now being recorded which will provide invaluable information going forward. This will enable the provision of the most helpful and least restrictive assistance, respecting human rights rather than violating them.

Future challenges?

Mr Mannion identified the following future challenges in the area of mental health and human rights in South Australia:

- There is a need for more mixed workforces (ie medical practitioners and lived experience workers) to help shape and guide services.
- There is a need to embed lived experience perspectives and human rights with the mental health service plan, and within the *Mental Health Act*,
- There is a need to embed the Commissioners' role in a legislative framework.



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Equal Opportunity Commission

Key highlights from the South Australian Equal Opportunity Commission's 2020-2021 Annual Report were shared with Delegates including the following.

The Office of the Commissioner for Equal Opportunity (OCEO) is responsible for the administration of the *Equal Opportunity Act 1984* (the Act). Pursuant to section 11 of the Act, the Commissioner must foster and encourage amongst members of the public informed and unprejudiced attitudes with a view to eliminating discrimination on the grounds to which this Act applies. The Commissioner may institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination on the grounds to which this Act applies. The Commissioner may also make recommendations to the Minister as to reforms, whether of a legislative nature or otherwise, that the Commissioner believes will further the objects of this Act.

In the EOC's 2020-2021 Annual Report, Commissioner Jodeen Carney observed that:

- During 2020 and 2021 the Equal Opportunity Commission completed two important reviews undertaken in response to well-publicised incidents and concerns about sexual and other harassment and discrimination in the Parliamentary workplace and the legal profession.
- The reviews serve as sobering reminders that despite the existence of equal opportunity laws since 1984, and other reforms designed to make workplaces safer and fairer, many workplaces in our State are not free from sexual and other harassment, discrimination, and bullying.
- While the two reviews continue to contribute to the work of this office, it is important to note that sexual and other harassment and discrimination are not the most common areas of complaints received. As has been the case for the last 12 years, in 2020-21 disability remains - by far - the single-most common ground for discrimination complaints, representing a quarter of all accepted complaints, predominately in the areas of provision of goods and services and employment.
- Many people living with disability are discriminated against when going about their daily lives. The types of discrimination they face, and the frequency with which they encounter it is shameful. Changing attitudes and removing barriers must be a priority for governments now and in the future. It is a priority for me.
- The Attorney-General's Department commenced work on the establishment of a specialist legal assistance unit to support South Australians living with disability which will operate in the Legal Services Commission. It will offer tailored legal advice, and give people with disability the confidence that free, accessible legal advice is at hand. This is an important initiative.
- People living with disability are significantly underrepresented in the workplace, and employers should be encouraged to open their minds and their workplaces. In collaboration with JFA Purple Orange and Business SA, work commenced on the first Practice Guideline to be issued by this office. The Guideline, produced for South Australian employers to encourage and assist them to employ people with disability, and to better understand anti-discrimination laws, was released in August.



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Does South Australia Need a Human Rights Framework?

Our Expert Delegates answered this question with a resounding **YES!**

South Australia needs a Human Rights Framework to secure the dignity and equality of all south Australians and to facilitate our active participation in the democratic life of our state.

Many South Australians enjoy high standards of living and are able to participate meaningfully in public life without undue restrictions on their liberty or rights. However, recent responses to the COVID-19 pandemic have highlighted how fragile our security and freedom can be. South Australians expect decision makers in government and in parliament to carefully consider the impact new laws and policies will have on their rights, interests and wellbeing, as well as the rights of others, and the broader public interest. Many of our public leaders strive to include these considerations in their decision making, but we have very few formal, legal mechanisms to ensure that these kinds of rights considerations occur in a systematic, consistent and evidence-based way.

For most of us, most of the time, our rights are respected and protected. But every now and then, and a lot more often since the COVID-19 pandemic, we see something and experience something that has a big impact on our freedom, our wellbeing, and our rights. We can't leave our home, we can't open our business, we can't go to work, or we can't walk our dog, we are excluded from being part of a group. Our rights are restricted, and even if we vigorously agree with the need for the restrictions, we feel it strongly.

For some South Australians, this feeling of restriction and exclusion occurs regularly, and the standard of living that others take for granted is routinely denied them. Some South Australians don't have a safe place to come home to, can't get the health care they need and don't get the chance to be involved in decisions that affect them. Laws are enacted, policies implemented, and decisions made that affect our lives but that don't require consideration of our rights. These gaps in human rights protection impact on all of us, influencing the way we see ourselves and the way we plan for the future.

Unlike many other states and territories in Australia, South Australia does not have a Human Rights Act or a Charter of Rights. It has laws with specific protections for specific things, such as the *Equal Opportunity Act 1984* (SA), but there is no requirement for the parliament or the government to consider the full range of our human rights when making laws and policies, and very limited pathways for us to take action in court if our human rights are breached. The Rights Resource Network SA thinks it is time that we talked about this gap in human rights protection in our state, and we want you to be part of this discussion.

Members of the Rights Resource Network have shared their reasons for supporting a Human Rights Framework for South Australia.

As I become more aware of my social contexts, I become more aware of the many ways our existing social systems are not meeting my needs or the needs of others around me.



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The lack of clear, authoritative, binding statement(s) regarding the rights of peoples and responsibilities of government and commercial entities to meet those rights has meant there is no consistent guidance for either group when devising social interventions, evaluating them, or proposing new services. A common framework provides a central resource, and supported by statutory bod(ies) provides a common process for design, revaluation, and dispute resolution across government and commercial sectors. This clarity improves individual access to redress, but also a common understanding of who has what responsibilities.

Adopting a Human Rights framework and ensuring Parliament are accountable to obligations may see bills either progress or not progress on the basis of human rights. It is marginalised people - women, children, young people, older people, refugees, CALD people etc - that suffer most when policy does not priorities rights. A human rights framework could see a decriminalisation of sex work bill pass or the legislation allowing mandatory youth treatment orders abandoned.

In the COVID-19 context that sees lifelong impacts looming for young people, I believe the accountability of governments to reform legislation with a priority on respecting, protecting and fulfilling rights is fundamental to a genuine recovery for young people. Also, in my volunteer work relating to sex work law reform we have seen opportunities to protect and fulfill the rights of marginalised workers missed because Parliament is not under an obligation to take action to progress towards equal access to human rights.

Addressing Arguments against a Human Rights Framework

All Expert Delegates shared the view that a Human Rights Framework would benefit the lives of South Australians and our public institutions. However, in other forums, some have argued that a Human Rights Framework, and in particular a Human Rights Act, is unnecessary or problematic. For example, it could be argued that:

- A Human Rights Act would have the effect of elevating certain rights over others (rights omitted could be considered as not retained);
- South Australia already has strong legal protections for rights in existing legislation;
- the parliamentary political system itself is the best guarantor of human rights;
- the language and framing of statements of human rights and Human Rights Acts is vague and aspirational and allows too much room for government subversion.

The Rights Resource Network SA respects these positions and considers that it is critically important to reflect upon how to address these potential risks in the design of any South Australian Human Rights Framework or Act. The Network also considers it critical to engage with all perspectives on the issue of rights protection, openly and with a view to embracing a range of innovative solutions for consideration by the South Australian community. To this end, the experiences of jurisdictions such as Queensland, ACT and Victoria are instructive: in these places the risks and criticisms set out above have not transpired and have not diluted the effectiveness or currency of Human Rights legislation.



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The Human Rights Framework supported by Expert Delegates would directly address the above criticisms by:

- Adopting an *inclusive* list of protected human rights, based on Australia's international commitments but developed and articulated following consultation with the South Australian community;
- Ensuring that any list of protected human rights, and all other components of the Human Rights Framework or Human Rights Act, are *subject to regular parliamentary and community review* (for example through the use of a review provision) so that additional rights could be added or existing rights reformulated to better meet the needs of the South Australian community;
- Drawing upon and *consolidating existing South Australian legislation* that includes statements of rights or human rights principles or that permits Charters of Rights to be developed as part of Government policy;
- *Identifying and addressing gaps* in existing legal protections for human rights, in close consultation with the South Australian community, and providing *clear, accessible legal pathways* and *enforceable remedies* for breaches of rights;
- Building on existing best practice by incorporating a '*duty of due regard*' to make it clear that government officers and service providers must consider the human rights of individuals when making decisions that impact their lives; and
- *Preserving and promoting parliamentary sovereignty* and robust political debates on rights issues by recognising that most rights can be subject to reasonable and justifiable limitations, and ensuring that parliament is able to develop, introduce and even enact rights-impacting laws provided they do so in full public view, and following consideration of the full range of rights impacts arising from their proposals.

These features of the Framework are discussed further below.



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Benefits of a South Australian Human Rights Framework for our Community

Our Expert Delegates have identified a number of benefits of a Human Rights Framework for the lives and wellbeing of South Australians and for the effective, efficient functioning of our public institutions. They considered that a South Australian Human Rights Framework would help us to

- Articulate a set of common values and principles that define and preserve our modern democracy
- Address the inequality and discrimination, and lack of access to fundamental services, experienced by many vulnerable groups within our community
- Clearly define the expectations we have of each other and our State institutions
- Improve community engagement with and trust in public institutions
- Improve the quality, effectiveness and accessibility of government services and government decision-making
- Reduce waste and inefficiencies by identifying practical alternatives to rights-abrogating practices or policies
- Improve the quality of parliamentary lawmaking by increasing access to information about the intended objectives and impacts of proposed legislation
- Improve public understanding of existing legal rights and remedies and provide new pathways to challenge unfair or inadequate decision-making or treatment
- Identify and address complex and systematic social disadvantage including homelessness, domestic violence and the disproportionate rate of Aboriginal people in custody
- Clarify and consolidate existing statements and charters of rights that currently exist in South Australian law and policy with respect to certain groups or services.

These ideas were expressed eloquently by some of delegates as follows:

It is crucial we have a framework that is focussed on people's needs cognizant of their rights, promoting the human rights of each person and each group of people marginalised and with less power, to ensure the balance of power is assured in this space. To ensure that democracy is working and that we do not accidentally breach people's human rights through ignorance of systems, conditions leading to disenfranchisement and poverty, and the power structure. To improve the social determinants of health and mental health, and to create a framework which is not afraid to tackle the biggest issues of racism, the widening wealth gap, abuse of minority groups, and growing corruption through government decisions reducing the checks and balances in the system behind closed doors. [Mary Allstrom, Delegate Nomination Form]



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SA absolutely needs a human rights framework. I am concerned that without a rights Act and given the absence of parliamentary scrutiny in our system, we may continue to enact legislation that directly impacts those most vulnerable (women, young people, children, migrants etc). Although NGOs (and others) can submit often during the current processes of consultation there is no mechanism that makes the Government accountable to ensure bills prioritise human rights. [Georgia Thain, Delegate Nomination Form]

Upholding all human rights through an ethical infrastructure that is applied consistently, drawing on a single codified set of human rights, is the best way to create a society that is sustainable and liveable, and that enjoys the greatest possible freedom. [Kristine Klugman, President, Civil Liberties Australia]

Expert Delegates also observed that an advantage of a human rights framework is that it can shift the context of risk assessments and planning cycles to longer-term points of view and do so in an organic way. That may be one of the most important potential benefits of an obligation to consider human rights in policy-making and in day-to-day operations of government

Expert Delegates also shared their views about what difference they would like a South Australian Human Rights Framework to make.

A difference that would provide a clear benefit for everyone in the community in the life they have

I would like the Human Rights framework to change attitudes in public decision-making by adding to the criteria that need to be taken into account when making decisions. this would include decisions about individuals as well as policy and legislation

Development of Human Rights culture/awareness in (1) Parliament, (2) public service, (3) executive government when making delegated legislation, (4) society at large, (5) the courts. Human rights considerations should be at the forefront of decisions.

Creation of a mechanism that can evolve as our needs and requirements change over time ie such as they have changed in recent COVID 19 times

The difference would be wide reaching through codifying best practice policy making which helps avoid unintended consequences of new legislation while also hopefully saving the recourses during policy processes

Lawmakers and policy makers to pay attention to international Human Rights standards. Government decision makers to pay attention to international standards. Scrutiny of laws/policies in light of intentional HR Standards. Greater alignment of laws with HR standards.

Increase and safeguard greater socio-economic equality.

Providing a coherent resource for people to find information on their rights and how those rights work in practice. Many people expect rights they see in TV/Movies apply here.

To make sure no South Australian is experiencing homelessness, living on the streets, living in substandard accommodation in their car, that policies and laws are not punitive and result in a loss of access to rights.

As a means for marginalised groups to identifying the rights violations they are subject to and perhaps have others recognise them.

Guidance for lawmakers to ensure new laws are consistent with human rights, and a way for human rights to be enforced in a centralised form.



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What I would like to aim for is that all SA's have access to the basic conditions required for health and psychological wellbeing, but whether that is feasible or appropriate for a rights framework, I am not sure.

The one overarching principle that unifies all human rights is that of human dignity. It is in the preamble of every major instrument. That is the principle that needs to be enshrined in Australia.

To be inclusive of groups emerging as having their rights not respected – people experiencing slavery in SA.

Build accountability in public office

Equitable and robust protection for all people. Universal access to the benefits of society. Improvement in people's lives.

Easy access for people to learn about their rights

A human rights framework should bring an empathetic and collectivist approach to

combating systematic issues. Accessibility and intersection ability should be key elements

Used to guide government policy and decisions

To help all people to understand that the broad array of human rights should be at the centre of the conversation (legislation), not as an add on after the fact

To ensure that the marginalised have a framework for enabling rights to be enforced – also it will educate the community about what the rights look like and what to expect from a society.

Keep legislators accountable

To help people to have a legal basis to take action

Provide the rights for self-determination of Aboriginal and Torres Strait-islander people

All people know what their human rights are and what to do if they think their rights have been violated.

Specific perspectives were also shared from some Expert Delegates as follows:

SACOSS: Ross Womersley

A Human Rights Framework should acknowledge that we are all humans and all have rights. As stated by the United Nations, we all have established fundamental human rights that should be universal and exist across all populations, and all community groups. Such a Framework should also help to ensure accountability of political leaders in relation to human rights, and ensure that political leadership in this area is properly scrutinised. A further reason why we should have a Human Rights Framework is because it gives South Australia the ability to recognise the sources of inequality that result in diminished human rights.

Office of the Commissioner for Aboriginal Children and Young People - Virginia Leek & Asham Owen

A Human Rights Framework should help to diminish the targeting of Aboriginal people and their children in the child protection system and make sure that the best interests of the child are central to all legislative mechanisms. It would also help to increase placement of children in our community by acknowledging that culture is important in raising children and there is a deep human rights cost if this is taken away from them.

Daney Faddoul - Human Rights Law Centre

A Human Rights Framework would help to create an effective human rights discourse in the South Australian community. This could in turn help to prevent human rights violations by ensuring that anyone who believes their rights have been violated has a pathway to justice. A Human Rights



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Framework could also ensure that human rights principles are at the heart of development of all laws. It also could support, or be supported by overarching national anti-discrimination law.

It is important to recognise, that in order to bring the community along with a call for a Human Rights Framework, advocates need to talk about how a Human Rights Framework would benefit everyone, not just marginalised communities. This could be achieved by focusing on some common shared principles, such as the right to health and education, when engaging publicly on rights issues, relating these concepts to everyday experiences for all South Australians, including in the context of COVID-19.

In addition to this feedback, the Rights Resource Network has previously identified the following benefits of a South Australian Human Rights Framework and shared this information with all South Australian parliamentarians in September 2021:

A Human Rights Framework would

Raise the profile of Parliamentarians doing great work at the moment

A Human Rights Framework would greatly assist in codifying and supporting existing best practice within South Australian government and in the Parliament, as well as providing South Australians with confidence that their basic human rights – and corresponding responsibilities – are taken into account when laws are enacted, or decisions made about their lives. In addition, a Human Rights Framework could improve the efficiency and effectiveness of existing policy making processes and deliberative strategies and save resources by guarding against the introduction of new laws or policies with unintended consequences.

Save money and keep vulnerable community members safe

Rights-enhancing laws and policies that have been subject to meaningful community and expert consultation save money because they are (a) more likely to achieve their stated policy aims and (b) less likely to have unintended consequences or disproportionate impacts on certain groups within our community.

When laws and policies are made in the absence of these key features, or when causes of injustice or inequality go unattended to in our community, the economic costs can be significant. For example, KPMG estimated that the cost of violence against women and their children in Australia in 2015-16 was between \$22 billion and \$26 billion.⁷ In South Australia, there were 3,164 family and domestic abuse related offences recorded in the first quarter of the financial year from 2020-2021. During 2019-2020 the South Australian Police reported 8,855 family and domestic abuse-related offences, up 7.4% from the previous year.⁸ These grim statistics show that the current legislative and policy settings designed to tackle domestic and family violence are not yet having the desired impact, and could benefit from expert and community review.

⁷ KPMG *Cost Of Violence Against Women And Their Children In Australia* (May 2016) available at <https://www.dss.gov.au/sites/default/files/documents/08_2016/the_cost_of_violence_against_women_and_their_children_in_australia_-_summary_report_may_2016.pdf>.

⁸ <<https://www.police.sa.gov.au/about-us/annual-reporting/annual-report-2019-20/agencys-performance#agencyspecific>>



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When a rights-based approach to law reform is adopted, system-wide savings and benefits can be felt. For example, when the Productivity Commission conducted a review of the *Disability Discrimination Act 1992* (Cth) (DDA),⁹ it found that reductions in discrimination can lead to an increase in the productive capacity of the economy and enhance the participation and employment of people with disabilities in the workforce. This in turn leads to incentives to students with disabilities to improve their educational outcomes, making them more productive members of the community.¹⁰

Improve the effectiveness of our COVID-19 response

The COVID-19 pandemic has also underscored the need to continuously invest in building relationships of trust between lawmakers, law enforcers and community members, particularly when delegating lawmaking power to executive officers.¹¹ A Human Rights Framework can help ease the burden on individual officers who are currently tasked with two potentially competing duties (1) delivering accurate, timely expert advice and (2) assessing how that advice should be acted upon having regard to the impact on other important rights and interests. The second of these two tasks involves a proportionality assessment that could be strengthened and clarified through the use of human rights principles that have been tried and tested in many other comparable jurisdictions in Australia and overseas.¹²

Recent research into COVID-19 contact tracing also suggests that improving rights protections within laws and policies, including those relating to the use and disclosure of personal information, can increase compliance with protective health measures, decreasing the risk of community transmission of COVID-19 and contributing to significant cost savings.¹³

Assist in designing good quality legislation for complex social problems

The recent community consultations on the draft Suicide Prevention Bill and the Suicide Prevention Plan also illustrate the benefits of a rights-based approach to developing legislative frameworks to address complex social problems. Submissions from community groups including the Rights Resource Network¹⁴ have highlighted the benefits of aligning the proposed legislative framework with the principles set out in the *Convention on the Rights of Persons with Disabilities*

⁹ Productivity Commission, Review of the Disability Discrimination Act 1992, Productivity Commission Inquiry Report Vol 1, Report No 30, (30 April 2004) 134.

¹⁰ Productivity Commission, Review of the Disability Discrimination Act 1992, Productivity Commission Inquiry Report Vol 1, Report No 30, (30 April 2004) 134.

¹¹ See for example Mark Evans 'Public trust in the government's COVID response is slowly eroding. Here's how to get it back on track' *The Conversation* (12 July 2021) available at <<https://theconversation.com/public-trust-in-the-governments-covid-response-is-slowly-eroding-heres-how-to-get-it-back-on-track-163722>>

¹² See for example the federal Parliamentary Joint Committee on Human Rights Guide to Human Rights available at <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources>

¹³ See e.g.; Moulds, S, Corsini, N, Ryder, J & Forsythe, D (2021) Stopping the spread: community views and legal considerations to support faster easier contact tracing, University of South Australia, available at <http://researchoutputs.unisa.edu.au/11541.2/147402>

¹⁴ For example, see Rights Resource Network SA Submission on the draft Suicide Prevention Bill (February 2021) https://32219faa-b014-40a7-a896-f4f58aaf7984.filesusr.com/ugd/8cf77c_1afb52c9f8c14e4aa84e68bf2dadcb74.pdf



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to consider responsibilities regarding housing, education and mental health care and help reduce contributing factors to suicide such as social media and bullying, and impediments to accessing employment or health care due to disability.

A Human Rights Framework could also be used to develop resource-efficient, locally targeted solutions to policy challenges associated with improving access to education services for children with disabilities. This is because a Human Rights Framework could outline a consistent *process* for consulting with the community (focusing on those with lived experience and those whose human rights are directly affected) as well as a consistent *set of criteria* for developing and evaluating different policy options (based on concepts of dignity and equality and the principles set out in internationally recognised instruments such as the *Convention on the Rights of Persons with Disabilities*).

Develop sustainable approaches to improving access to economic and social rights

A Human Rights Framework could also provide an opportunity for the Parliament to develop sustainable responses to ongoing policy challenges associated with ensuring South Australian communities have access to basic social and economic rights, including access to safe drinking water and access to secure housing. The South Australian Council for Social Services has highlighted the urgent need to address access to safe water in regional communities in South Australia and documented the range of health and economic costs associated with the failure to protect and promote this basic human right.¹⁵ A Human Rights Framework could provide a parliamentary-based mechanism to inquire into this issue and develop sustainable, evidence based responses that build upon local expertise and involve peak representative bodies and community organisations in identifying and implementing solutions.

As the United Nations Office of the High Commissioner for Human Rights has observed, there is a strong connection between these very practical resource challenges faced by the South Australian community and the changing climate caused largely by human-made greenhouse gas emissions, which will increase the frequency of extreme weather events and natural disasters, rising sea levels, floods, heat waves, droughts, desertification, water shortages, and the spread of tropical and vector-borne diseases.¹⁶ A Human Rights Framework could provide the scaffolding by which policy and legislation which impact greenhouse gas emissions and those which attempt to mitigate the effect of climate change, are evaluated. South Australia could lead the world by putting climate change front and centre in its consideration of policy and legislation from a human rights perspective.

Rebuild trust between South Australians and our public institutions

In addition to these specific benefits, a Human Rights Framework could provide a catalyst for rebuilding trust between South Australians, their elected representatives and the public institutions that protect and preserve our democracy. Having worked together to try and combat

¹⁵ South Australian Council for Social Services, Website, 'SA Fails Water Fundamentals, August 2021 available at <https://www.sacoss.org.au/sa-fails-water-fundamentals>

¹⁶ As affirmed by the [Intergovernmental Panel on Climate Change \(IPCC\)](#), and [Human Rights Council resolution 1/21](#). (<https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/AboutClimateChangeHR.aspx>)



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the spread of COVID-19, and endured the collective suffering caused by lockdowns and other pandemic responses, South Australians are hungry for the opportunity to articulate and express a set of common values or aspirations that define our community and identify us as South Australians.

A Human Rights Framework provides a vehicle for identifying and articulating these common values or aspirations, by reflecting on the universal values of human dignity, equality, freedom and the rule of law and providing scope for localised articulations of rights and responsibilities. For example, the Parliament of Queensland sets out in their *Human Rights Act* that the people of Queensland value an inclusive, free and democratic society based on human dignity, equality, freedom, and the rule of law and acknowledge a special importance of Aboriginal peoples and Torres Strait Islander peoples of Queensland. A similar statement could help encapsulate the common values of the South Australian community and provide an important basis for ongoing education and communication about our system of parliamentary democracy.

A Human Rights Framework for South Australia would provide groups in the community with a voice in the important decisions and law-making which are affecting them the most. Such an approach would also lead to clearer, more accessible, more consistent information about proposed laws and their impacts on the South Australian community.

For example, a Human Rights Framework could include the requirement to issue a clear, plain English Explanatory Statement when introducing a new law. This Statement would help South Australians to understand what the law is all about and provide a consistent foundation for participating in public discussion about its merits. Currently South Australians are heavily reliant on the media to explain what new laws are going to do, and this information is not always accurate or holistic. In addition, often by the time the media is reporting on a new law it is too late to make significant changes.

A Human Rights Framework would help make it easier for South Australians to have an informed, open, transparent conversation about the law and what impact it has on their lives, which in turn will help improve their connection with parliamentarians and their trust in the Parliament as an institution.¹⁷ This in turn could improve the quality of submissions and other representations to Parliament about proposed laws or changes to existing laws, by providing a clear, accurate foundation from which individuals or organisations can express an informed view.

¹⁷ See e.g Moulds, S, 'Its time to talk about rights protection in South Australia' *InDaily*, 3 March 2019. <https://indaily.com.au/opinion/2019/03/01/its-time-to-talk-about-rights-protection-in-south-australia/>



The Human Rights Standards that Should Feature in a South Australian Human Rights Framework

Our Expert Delegates considered that:

A South Australian Human Rights Framework should include, as a starting point, those rights contained in the Universal Declaration of Human Rights and articulated in further detail in the seven core human rights Conventions to which Australia is a party.

Any list of rights included in a South Australian Human Rights Framework should pay particularly close attention to the rights of First Nations peoples and the rights of children, and should include economic, social and cultural rights as well as civil and political rights.

Consideration should also be given to extending any list of rights to include environmental rights and to accommodate group rights as well as individual rights.

For a South Australian Human Rights Framework to be effective, it is integral that the South Australian community be given the opportunity to learn more about the rights contained in the Universal Declaration of Human Rights and how they might relate to their own lives.

The starting point for many human rights frameworks is the Universal Declaration of Human Rights and the seven core human rights treaties developed and monitored by the United Nations which include:

- *International Covenant on Economic, Social and Cultural Rights* done at New York on 16 December 1966 ([1976] ATS 5)
- *International Covenant on Civil and Political Rights* done at New York on 16 December 1966 ([1980] ATS 23)
- *International Convention on the Elimination of all Forms of Racial Discrimination* done at New York on 21 December 1965 ([1975] ATS 40)
- *International Convention on the Elimination of all Forms of Racial Discrimination* done at New York on 21 December 1965 ([1975] ATS 40)
- *Convention on the Rights of Persons with Disabilities* done at New York on 13 December 2006 ([2008] ATS 12)
- *Convention on the Elimination of All Forms of Discrimination Against Women* done at New York on 18 December 1979 ([1983] ATS 9)
- *Convention on the Rights of the Child* done at New York on 20 November 1989 ([1991] ATS 4)
- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* done at New York on 10 December 1984 ([1989] ATS 21)

It is important to note that during the development of many of these instruments, particularly the UN Declaration of Human Rights, conflicts arose over the primacy of 'political' rights as against 'economic' rights. These conflict were not resolved at the international level until the in the UN



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were not resolved until the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights were finalised in 1976. This resolution brought with it a renewed focus on Indigenous rights, education rights and social justice which we value so highly today, and which really matter for the lives of South Australians. These rights protect things like the right to clean water, the right to adequate housing and shelter, the right to education and the right to health. Delegates considered it critical that these rights be included in any South Australian Human Rights Framework.

Delegates also noted that there are other statements of rights that have been accepted by the international community, including the Universal Declaration on the Rights of Indigenous Peoples.

The Universal Declaration on the Rights of Indigenous Peoples is the most crucial source of rights protecting Indigenous people around the world. On 13 September 2007 144 countries voted in favour of the adoption of this declaration. The declaration helps to ensure the minimum standard of survival and the right to dignity and wellbeing for Indigenous people all around the world. The 46 Articles of this declaration convey the importance of treating Indigenous people as equals. However, the Declaration also explains that Indigenous people deserve recognition as having unique and diverse cultures.

The adoption of this declaration into international law is especially momentous for the Aboriginal and Torres-Strait Islander people of Australia because some of them were involved in the drafting of the document. One particular right outlined in this declaration is Article 3, the right of Indigenous Peoples to self-determination. Self-determination in this context refers to the ability to freely determine political status and freely pursue economic, social and cultural development and the right to preserve one's cultural identity. The rights contained in this Declaration should encourage the South Australian government to address human rights from the perspectives of First Nations peoples. It was agreed that there needs to be a deep conversation with Aboriginal people about the right to self-determination within this Framework.

The Office of the Commissioner for Aboriginal Children noted that the rights of Indigenous children have been severely impaired over time, despite legislation recognising self-determination type rights. There is also still disturbing overrepresentation of Indigenous children in child protection and justice systems. It was noted, for example, that a third of the children in care are Indigenous and their rights are being abrogated. Of the 300 children in detention in South Australia, 50% are Indigenous. Indigenous children are 32 times more likely to end up in detention. Delegates agreed that if South Australia is to implement a Human Rights framework, it should have a strong focus on the rights of Indigenous children, self-determination of Indigenous people and the voice of the children. As one Expert Delegate explained:

*The rights of Aboriginal nations should have explicit recognition, consultation, and consideration in the framework and its operation. There are many benefits to all members of SA society for active engagement with Aboriginal cultures and peoples.*¹⁸

Expert Delegates also expressed support for an inclusive approach to listing human rights in a South Australian Human Rights Framework, with a range of views shared about the extent to

¹⁸ RRNSA Survey Response



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which emerging rights, or rights outside of those reflected in international human rights Declarations or Conventions, should be included in a South Australian Human Rights Framework.

Key themes discussed by Expert Delegates during this part of the workshop included the need to ensure any list of protected rights adequately acknowledges:

- Environmental rights, including the right to a healthy natural environment, the right to a clean environment and the rights of nature
- Worker's rights as a significant enabler to so many other rights being enforceable and realisable
- Right to good public education
- Right of the child to be heard in decisions concerning their rights or welfare
- The need to balance these rights and potential limitations for public interest like public health

Delegates noted that a Human Rights Framework should uphold the rights of people living with a disability, but noted that many people within the South Australian community face challenges accessing basic human rights, including housing, education and employment, particularly when seeking to access these rights in non-segregated settings. It was suggested that the rights and needs of those with disabilities must be considered fully when government policies or responses are first developed, rather than as an afterthought.

Expert Delegates also discussed the potential tension that arises from the understanding that on the one hand, human rights are universal and universally recognised under international human rights law, and on the other hand, the need to engage with and consult local communities about what human rights mean for them in their daily lives.

Delegates considered the potential for some community members to manipulate or misunderstand the objectives behind a Human Rights Act, advocating for the right to be unvaccinated, or the right to enter a pub without showing a vaccine certificate on the phone. Covid-19 has impacted community understandings of 'rights' which are always a balancing act between the community's collective rights and individual rights.

Expert Delegates agreed that universally recognised human rights, such as those contained in the Universal Declaration of Human Rights, should be the starting point of any list of rights in a South Australian Framework, but also agreed that community consultation should occur as the Framework is developed and refined.

For example, Delegates highlighted the importance of co-design, for example, engaging with the community about what does the right to health mean or what does the right to education mean, having regard to their lived experience of disadvantage or exclusion. The Framework going forward needs to be agile to deal with those differences.

It was agreed that consultation needs to be a fair and equitable process and using proper research methods, to reach the range of people with lived experience. It was also agreed that a long-term strategy is required to have active and informed community engagement on these issues. Delegates warned against focusing only on spokespersons or leaders, who can be



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privileged members of marginalised groups, and making sure that everyone in the group is listened to and taken into account.

The Australian Capital Territory *Human Rights Act 2004* (ACT) was suggested as a possible model. The ACT model (also discussed in **Table 2** at the end of this Report) has a relatively comprehensive list of protected human rights that includes civil and political rights, as well as some economic, social and cultural rights. The rights included in this Act are:

- Recognition and equality before the law
- Right to life
- Protection from torture and cruel, inhuman or degrading treatment
- Protection of the family and children
- Privacy and reputation
- Freedom of movement
- Freedom of thought, conscience, religion and belief
- Peaceful assembly and freedom of association
- Freedom of expression
- Taking part in public life
- Right to liberty and security of person
- Humane treatment when deprived of liberty
- Children in criminal process
- Fair Trial
- Rights in criminal proceedings
- Compensation for wrongful conviction
- Right not to be tried or punished more than once
- Retrospective criminal laws
- Freedom from forced work
- Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities
- Right to education
- Right to work and other related rights

The Act specifies that that the rights outlined are subject to the limits set out in other laws and that can be demonstrably justified in a free and democratic society. To clarify the limits of rights with regard to Territory laws the Act includes an explanation of how Human Rights are to be applied to Territory laws and a process for scrutiny of proposed laws. The Act also imposes a range of obligations of public authorities to observe human rights standards in decision making and service delivery.

The ACT legislation also permits reasonable limits on most protected rights. The legal test for determining the permissible limits on rights is to determine if a law limiting rights is proportionate. This involves asking whether a law that is limiting rights has a legitimate objective and is the most suitable way to meet this objective. In the ACT's Act, the Supreme Court is responsible for making these judgments.



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The *Human Rights Act 2004* is currently under review to determine the effectiveness of its complaints process.¹⁹ An Article written by the President of the ACT Human Rights Commission, Dr Helen Watchirs, referred to the lack of an easily accessible complaints mechanism in the ACT as a matter of significant concern²⁰. The President explains that, if an individual wishes to make a complaint about an abuse of their human rights, they must take legal action in the Supreme Court²¹. This can mean legal remedies are effectively out of reach for many community members²². As a result, the President has recommended the establishment of an Independent Human Rights Complaints Mechanism to help address this concern²³. The ACT's *Human Rights Act 2004*, along with other human rights legislation, is discussed further at **Table 2** at the end of this Report.

¹⁹ Watchirs, H. (2021) Why it's time to make human rights complaints accessible in the ACT , Riotact, Available at: https://the-riotact.com/why-its-time-to-make-human-rights-complaints-accessible-in-the-act/519097?utm_source=newsletter&utm_medium=daily&utm_campaign=2021-12-09

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.



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How would a Human Rights Framework Work?

A Human Rights Framework or a Human Rights Act?

The Rights Resource Network SA has identified several options available to South Australian lawmakers and policy makers that would improve the protection and promotion of human rights in South Australia. This is why we talk about a 'Framework' rather than a Human Rights Act or Charter of Rights. Whilst the two ideas are not mutually exclusive, the term 'Framework' includes a broader range of actions, processes and practices that aim to be *preventative* in nature and contribute to the further development of a culture consistent with human rights standards among key public decision makers and public institutions.

At the 2020 Human Rights Day event, the participants discussed the fact that a Human Rights Framework can offer a consistent approach to identifying how internationally recognised human rights relate to lives of South Australians. Such a Framework can be enshrined in law, imbedded into lawmaking and policymaking practice and/or feature in training programs for public servants. A Human Rights Framework moves the focus away from lawyers and litigation, and emphasises delivering practical outcomes for the community, and efficiency gains and cost savings for agencies, lawmakers and policy makers.

Not everyone supports the language of Framework. Some Network members consider it more appropriate to advocate for human rights legislation, in the form of a *Charter of Rights and Responsibilities* or a *Human Rights Act*.

Immediate Non-Legislative Steps Toward a Human Rights Framework

In the Rights Resource Network's recent letter to South Australian Members of Parliament we noted that there are important steps to improving existing human rights protections in South Australia that can be taken **right now**, without the need for legislative change. These include:

- Prioritising and highlighting the existing Scrutiny Principles for the Legislative Review Committee which already include a reference to reviewing whether certain delegated legislation trespasses unduly on personal rights and liberties,²⁴ and allocating additional secretariat resources to this Committee to undertake more systematic scrutiny of rights-impacting regulations and proposed legislation.
- Publishing the Explanatory Statements or Explanatory Notes that are currently drafted and circulated to members of parliament when a new Bill is introduced and including a description of the extent to which the Bill trespasses unduly on personal rights and liberties and/or impacts or complies with human rights standards.
- Establishing a Select Committee of the Parliament to consult with South Australians about whether the state would benefit from the introduction of a Human Rights Framework for

²⁴ Parliament of SA, Legislative Review Committee Information Guide: Report of the Legislative Review Committee (2020).



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South Australia or refer this issue to the South Australian Law Reform Institute to consult with the community and provide a report with recommendations.

- Working with the members of the Rights Resource Network SA and the Parliamentary Friendship Group on Human Rights to increase the frequency and accessibility of human rights training and human rights information for parliamentarians and their staff.

We also noted that an alternative or complementary option for improving rights scrutiny of proposed laws would be to implement the recommendations contained in the Select Committee on the Effectiveness of the Current System of Parliamentary Committees Report²⁵ which includes an unanimous recommendation to establish a Scrutiny of Bills and Delegated Legislation Committee that would incorporate the current role of the Legislative Review Committee but also undertake scrutiny of proposed legislation having regard to: whether the bill is sufficiently clear; whether the bill is proportionate; whether the bill unduly trespasses on rights and liberties; whether the bill includes administrative powers defined with sufficient precision; whether the bill has adequate safeguards and adequate review of decisions; whether any delegation of legislative powers is appropriate; and whether the exercise of legislative powers is subject to sufficient parliamentary scrutiny.

Enacting Human Rights Legislation in South Australia

Other options for a Human Rights Framework for South Australia include enacting specific legislation, such as a Human Rights Act or Charter of Rights and Responsibilities. South Australia is one of the few Australian jurisdictions without a Human Rights Framework or human rights legislation. This means that we can learn from the experience of jurisdictions in Australia (including the ACT, Victoria and Queensland) and overseas when developing human rights legislation to suit our community.²⁶

There have been attempts to introduce Human Rights legislation in South Australia, including most recently in 2019 by the Hon Mark Parnell MLC, from the South Australian Greens²⁷. The Charter of Human Rights and Responsibilities Bill 2020 looked to establish a Human Rights legislative framework in South Australia which would include a comprehensive list of Human Rights, an established a process for interpretation of current and future law and impose legal obligations on public authorities to comply with human rights standards. The SA Bill proposed the appointment of an Equal Opportunity and Human Rights Commissioner as an oversight and complaints body. The Bill has not been passed.

At the 2021 Expert Workshop, delegates considered the range of potential legislative options that could be considered in South Australia. These can be summarised as follows.

²⁵ Parliament of South Australia, Report - Select Committee on the Effectiveness of the Current System of Parliamentary Committees (September 2021), Recommendation 1.

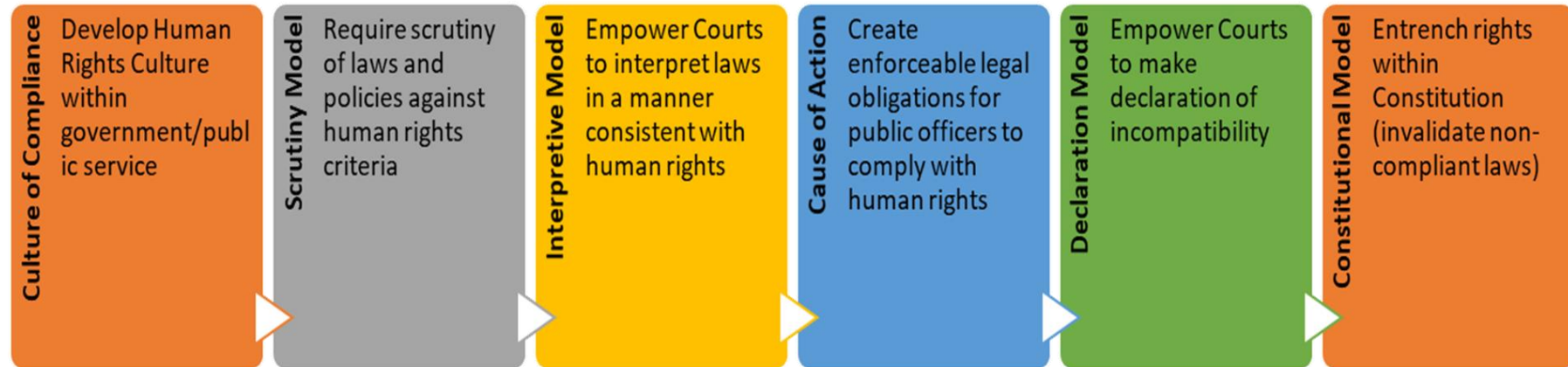
²⁶ See **Table 2**: What do Human Rights Frameworks look like in nearby Jurisdictions

²⁷ Charter of Human Rights and Responsibilities Bill 2020 (SA)



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Delegates considered the impact different legislative options would have on the executive, legislative and judicial branches of government. These considerations helped Delegates to identify some of the key features needed in a South Australian Human Rights Act or Charter of Rights. Some of these features include:

Impact on Government and public service

- There needs to be more engagement between public service and the community about how public authorities currently consider human rights, and what gaps might exist. Increased engagement between the community and public service on human rights issues has the potential to increase governmental accountability.
- Currently, South Australian legislation that refers to specific rights or rights-based principles is inconsistent and sometimes contradictory. There is no single statement of what human rights are, and how they should be protected by or considered by government and the public service.
- The concept of ‘duties of due regard’ can be useful especially with regard to children’s rights and rights of those with disabilities. Although there has been push back in the UK about extending these duties beyond a limited category of rights, these ‘duties of due regard’ could open a door for public debate around minority treatment and could be a starting point for South Australia. The duty contained in section 1 of the *Equality Act 2010* (UK) provides that:

An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

Impact on Parliament

- There needs to be more rights-based scrutiny of legislation during the pre-introduction phase.
- Preparing and publishing statements of compatibility with human rights should become part of the bill making process.
- Although there is a need for more compatibility between legislation and human rights, the concept of proportionality also needs to be more widely discussed so that decision makers and the community are aware of the justifiable limits that can be imposed on people’s rights.
- However, it is important to recognise that in other jurisdictions the effectiveness of statements of compatibility and parliamentary scrutiny models has been limited. For example, bills can be passed before rights committees have handed down their assessment of the Bill’s compatibility with rights standards or principles.



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Impacts on courts

- Courts and tribunals need to be empowered to enforce compliance with human rights standards by government decision makers.
- However, it should be recognised that courts can have trouble enforcing human rights standards if they are expressed in broad terms.
- It is also important to note that Courts and Tribunals are often the last resort for ordinary people who are faced with complex issues that engage their human rights. Judicial processes may not be accessible for many people, and therefore other avenues for resolution of human rights complaints are needed, including for example a Human Rights Commission or Commissioner. This could take the form of a separate Statutory Office of Human Rights Commissioner or be incorporated into an existing statutory office such as the Equal Opportunity Commission.

Community focused groups

- When trying to educate the community about their rights, literacy levels may be a significant hurdle.
- There is an apparent level of hesitation from community members to speak up about their rights, particularly amongst refugees, asylum seekers and people experiencing homelessness.
- There needs to be a push to do more advocacy work on behalf of the people who are affected significantly by breaches of rights.
- The government should invest in more educational programs in schools that address basic human rights.
- Education is needed for service providers as to the authority they have to make decisions and the importance of decisions being made with the other person's dignity in mind.
- Face-to-face communication of rights is the best way to ensure that those affected by government decisions understand, particularly for service providers.
- Until there is appropriate enforceability of rights standards for decision makers there won't be any change.
- A lot of people do not align themselves with rights language, therefore, to be accessible to everyone, the language used to convey rights will need to be modified.

Other key elements of the legal framework for rights protection in South Australia that received strong support from Delegates were:

- Recognition of both individual and group rights

Where membership or participation in a group affects their rights or those of others, that should be explicit and open to (re)negotiation. Minority groups should have the benefit



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of closer scrutiny where a majority or more socioeconomically advantaged group are affecting the rights of minority groups. ²⁸

- Recognition of limitations on the exercise of individual rights where necessary to protect and promote the rights of others

Limitations on some on the list of rights may be required whilst for others there should not be limitations, so each one should be thought through - that is applying a principle which takes into account both the individual's rights and the equal rights of all. A good example here is the covid vaccination, those people currently who do not believe in being vaccinated do so for a variety of reasons, one of those is due to their belief that it is against their civil liberties, they believe in the right to choose for themselves, but that is not taking into account the impact of their individual decision on the rights of others, this is an example of a reason for limitations on certain rights. At the other end of the spectrum is the protection from torture and cruel, inhumane or degrading treatment, when lawfully detained or deprived of liberty, some might argue that torture for the greater good should be allowed in certain circumstances, however this is one human right that should not have limitations, and be assessed as exclusive. ²⁹

Where one freedom impacts another inalienable human right. For instance with the right to freedom of thought, conscious, religion and belief (i.e. from the ACT Human Rights Act 2004) to make sure that as long as that freedom does not incur an imposition on another freedom, for instance, if your religious belief is you do not recognise or believe in giving rights to LGBTIQ people that you cannot discriminate against those people in any way in the pursuit of your belief in any form (example of the shop owners during the gay marriage debate not making wedding cakes for gay couples in NSW). The UDHR Article 29 states "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others..." However care will need to be taken with how limitations are assessed, so they do not run the risk of further discriminating against poorer people or any people with less power due to their status. ³⁰

- Application of rights protections to all levels of government, the bureaucracy and private businesses and corporations

Human rights protection and fulfillment is for every level of government and every community to adhere to. What feels most pertinent at the moment for South Australia is ensuring our Parliament is required to adhere to these standards when enacting or reforming legislation. ³¹

- Incorporation of rights standards (and ethical reasoning) in decision-making processes.

²⁸ RRNSA Survey Response

²⁹ RRNSA Survey Response

³⁰ RRNSA Survey Response

³¹ RRNSA Survey Response



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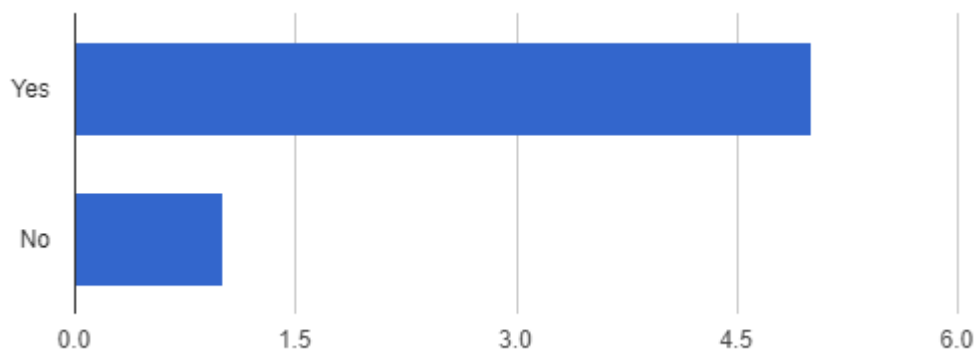
- Reporting frameworks that encourage developing maturity across rights.
- Collaborative exercises to encourage cooperation towards better rights integration.
- A clear framework of dispute resolution, complaints investigation, and relevant routes to Courts and Tribunals.
- Existing legal remedies should be available, with some consideration for specific offences or interventions where existing offences etc might be inadequate or of doubtful relevance.
- Requirement of transparency in government decision-making.
- Ability to scrutinise and track the progress of legislative impacts on human rights.
- Involvement of key stakeholders like peak bodies to ensure the community has capacity to deliver on human rights protection and fulfillment.
- Penalties for breaches that are sufficient to discourage human rights abuses in the first place.
- Use of human rights standards and targets and mechanisms for monitoring and acknowledging ongoing improvements.
- Independent commission or custodian, integrated with existing agencies for the first 3-5 years and transitioning to an advisory and enforcement entity similar to other human rights bodies and consistent with other agencies such as the Ombudsman and the Auditor-General.
- A specialist entity developing expertise and relationships around the implementation and evaluation of efforts to integrate the framework into systems and training.



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When it comes to remedies for breaches of human rights, the majority of Delegates supported actionable or enforceable remedies by courts:



This feedback aligns with the criteria developed by Civil Liberties Australian in their *Rights in Sight* document which explains that a federal Charter or Human Rights Act should:

Ensure that all new legislation and amendments take into account the Parliament's obligation to uphold human rights included in the HRA.

Create a rule of statutory interpretation that courts will interpret legislation in a way compatible with the rights included in a HRA: and, if they find legislation inconsistent with a HRA, make a declaration to Parliament that further consideration of that law is needed.

Create a duty for government decision makers to properly consider, and act consistently with, human rights in all their decisions and actions.

Form the foundation of an ethical infrastructure to underpin society, based on human rights, ensuring a consistent approach to: compliance monitoring; holding people and organisations to account; conciliation; remedy; damages; and education through mechanisms independent of Government, including Human Rights Commissioners, Integrity Chiefs, Ombudsmen and Tribunals and Courts.

Ensure there are ways that are independent of Government to referee rights in tension with each other.

Some Delegates also warned that even in jurisdictions with human rights legislation, such as Queensland, the rights outcomes can be disappointing. For example, even when serious rights concerns are raised by stakeholders and the Queensland Human Rights Commission about a proposed law, the Bill can still move forward because the Minister claimed the limitations to rights were acceptable. One Delegate said:

It felt like a tick a box approach as even though grave concerns were raised it seemed to make no difference. Dialogue on rights happened - which was a positive, but only to a point and I couldn't see any actual protection of rights in that process.



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Having considered these options, our Expert Delegates considered that the key features of any South Australian Human Rights Act or Charter of Rights should include:

A list of protected human rights and responsibilities (as discussed above at point 3) and an acknowledgement that human rights can be subject to proportionate and reasonable limits when necessary to protect or promote other human rights.

A requirement that all public servants, government officials, members of parliament and judicial officers undertake regular human rights training, with a focus on the most prevalent human rights issues confronting South Australia (including those relating to First Nations peoples, children, and persons with disabilities).

This could be supported by a Human Rights Advocate or Commissioner within the Public Service, or a separate Statutory Office of Human Rights Commissioner.

A requirement that human rights principles are considered in all forms of government decision making and parliamentary law-making. This could include: (a) establishing a Parliamentary Committee on Human Rights or an Independent Expert Panel on Human Rights to review existing and proposed laws for compliance with human rights standards and provide advice to Parliament and/or (b) requiring Bills and legislative instruments to be introduced with a Statement of Compatibility with Human Rights setting out the extent to which they comply with (or otherwise) the rights listed in the Charter.

Clear pathways for individuals and groups to challenge government decisions on the basis that they have failed to consider human rights principles, or acted in a way that unjustifiably burdens or breaches their human rights. This could take the form of a 'positive duty' – a European approach. It could also take the form of an independent complaints body such as a Human Rights Commission or Human Rights Advocate.

Meaningful remedies for individuals and groups that can show that their human rights have been ignored or unjustifiably burdened or breached. This could include establishing a legal cause of action for breaches of human rights or establishing enforceable remedies following successful complaints proceedings before a Human Rights Commission or similar body.

Regular, public and independent review of South Australia's progress towards improving human rights outcomes and preventing human rights abuses. This could include opportunities for community organisations to evaluate the human rights performance of government departments or provision of government services.

The Expert Delegates agreed that these proposed features of any specific legislation should be explored through consultation with the South Australian community, including with vulnerable community groups, to ensure an effective proportionate, balanced approach to rights protection is achieved.



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Human Rights Advocacy and Strategy

As one Expert Delegate reminded us, many of us are already involved in human rights work:

Through advocating for individuals on a daily basis, through supporting our staff support clients to have their basic needs met, before supporting them to support clients with a focus on higher order needs so they can live a decent life. Through influence in strategic forums, and mentoring and coaching of students on placement. Through walking alongside people who do not have power. By modelling transparency, inclusiveness and adherence to human rights in decision making as a leader in an NGO. By ongoing learning regarding how the lack of human rights can impact particular populations, so ongoing learning in detail about the vulnerable groups in our society, so as not to allow ignorance to creep into one's thinking in any form. Applying principles of human rights and regularly reflecting on whether one has not been adhering to those principles in the daily delivery of services, in decision making and in living a life. This is the practice which I aspire to.

On International Human Rights Day, Thursday 10 December 2020, members of the Rights Resource Network SA heard from a panel of experts on what a South Australian human rights framework could look like, and what legal, structural, and policy-related changes that would demand or could create.

Participants were invited to reflect on these themes in a practical way through thematic workshops on key rights issues facing South Australia. Workshop topics included: poverty and access to social security; age of criminality and Aboriginal incarceration; housing and homelessness; family violence and family safety; right to protest and environmental protection; and citizens' engagement with parliament and policy. These workshops were led by academic researchers and local community organisations, and supported by student volunteers. Each workshop developed a series of actions for the Network to consider taking forward – either by joining together to form new alliances and collectives, or through supporting the continued leadership of existing organisations.

One of these actions was to advance a human rights framework for South Australia, including a legislative framework for rights protection that would:

- incorporate human rights principles into policy design and development;
- emphasise the dignity and participation of all members of the South Australian community in the design and development of policies and laws that impact their lives;
- include mechanisms within the parliamentary process for rights considerations to be more prominent.

It was agreed that the Rights Resource Network should continue to play a role in:

- raising awareness about rights issues and the need for a human rights framework for South Australia;
- sharing information on rights issues in South Australia;



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- developing materials with a focus on the legal or legislative components of rights issues in South Australia; and
- providing opportunities for collaboration across members of the network on particular rights issues, having regard to the important leadership role already undertaken by peak bodies including South Australian Council of Social Services (SACOSS), Aboriginal Legal Rights Movement (ALRM), Civil Liberties Australia (CLA), Mental Health Coalition SA (MHCSA) and South Australian Rainbow Advocacy Alliance (SARAA).

At the 2021 Expert Workshop, Delegates were keen to work together and collaborate to advocate for a Human Rights Framework for South Australia.

Delegates also identified individual advocacy strengths, including access to key decision makers and connections with existing community organisations. Some respondents, such as Civil Liberties Australia, identified existing advocacy campaigns (such as those underway in the ACT and at the national level) as being important, complementary sites for engagement and support.

Civil Liberties Australia also shared some key lessons from its experience advocating for Human Rights legislation at the federal level. Key lessons included the following observations:

- Governments do not generally think there is an imminent need for support of a human rights framework.
- The support for a human rights framework may be wide within the community but overall commitment to campaigning for its creation is shallow.
- Those in support can be unwilling to divert parliamentary resources from their primary cause to the human rights framework cause.
- The pitch for a framework needs to demonstrate why it fits within Australia's existing political agenda.
- A Federal human rights framework would need to have a focus on the reconciliation of conflicts fairly and consistently. This can only occur if there is a single authoritative source of law governing this.
- One way to get the commitment would be to show what the benefits are of having a framework. It is far too easy to be too theoretical which means people often lose sight of the big picture.

These lessons were endorsed by the observations of Daney Faddoul, Campaign Manager, Human Rights Law Centre, who shared case studies of how the Victorian charter has had a meaningful impact and practical examples of how it works. Daney also observed that any future advocacy campaign for a South Australian Human Rights Framework should:

- Be coordinated and consistent in what we are arguing for by making sure we are communicating the same key messages
- Engage senior executives in relevant government departments as a first step
- Be supported by a list of talking points communicated within the group to have clear talking points.

The Human Rights Law Centre also has extensive resources developed to assist in formulating accessible and persuasive messages about the protection and promotion of human rights, for



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example the [Charter Messaging Guide](#) and the [Charter opinion poll released in September](#). The September 2021 Opinion Poll found that:

- *There has been a dramatic increase in support for a Charter of Human Rights compared to before the COVID-19 pandemic, new data reveals.*
- *An opinion poll of over 1,000 people across Australia found that 83 percent believed there should be a document that sets out in clear language the rights and responsibilities that everyone has here in Australia, an increase from 66 percent in 2019.*
- *Seventy-four percent agreed that a Charter of Human Rights would help people and communities to make sure the government does the right thing, compared to 56 percent two years earlier. There was a similar surge in support for the idea of a Charter of Human Rights, with 46 percent supporting a Charter and only 10 percent opposed, compared to 33 percent support and 10 percent opposition in 2019.³²*

Experts also noted that Shelter SA and Amnesty International (South Australia) already have substantial experience in this area, with Amnesty currently in a draft process for federal human rights act campaign.

Delegates also noted that there is a need to increase the weight given to public, rather than private, solutions to general societal problems and broad socio-economic policy dilemmas, as well as to reduce and reverse reliance on the private sector. It was suggested that there is a need for more mechanisms that broaden economic policy discussions to take account of public human rights priorities, linking certain economic solutions to human rights obligations effectively and convincingly - or, conversely, demonstrating with some precision how other economic solutions contravene human rights obligations.

Delegates also reminded us to take an inclusive approach to collaboration and advocacy, to make sure we are hearing the voices of those that might have been historically excluded from these types of debates:

Young people are often overlooked especially when looking at non-young people specific issues. It is important to remember that young people are whole people that don't exist in a 'young person' vacuum. Impacts of legislation on the rights of young people specifically should always be considered.³³

Expert Delegates at the 2021 Workshop expressed support for the following actions and next steps:

³² Charter of Rights Media Release, [COVID-19 sees huge increase in support for a Charter of Human Rights: poll — Charter of Rights](#), 6 September 2021.

³³ RRNSA Survey Response



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Advocacy strategies for 2022

Mentimeter



As a starting point, the Rights Resource Network SA will:

Publish and circulate this Final Report to all parliamentarians and all Network members to provide a foundation for future advocacy and collaboration within the South Australian community.

Issue a Joint Statement asking all political parties and independent members of Parliament to commit to advancing a South Australian Human Rights Framework if re-elected in 2022.

Facilitate further forums for developing a coordinated, evidence-based advocacy campaign for a South Australian Human Rights Framework.

Continue to identify and articulate practical benefits associated with a South Australian Human Rights Framework when engaging with related policy issues and law reform proposals.

Collect and share information and resources relevant to human rights protection in South Australia and in other Australian jurisdictions.



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About Our Delegates

Each delegate that has nominated to be part of this Expert Workshop inspires us with their fierce determination to protect and promote the human rights of South Australians.

Here are some of their stories.

Mary Allstrom, Regional Manager - Primary Mental Health Services, Neami National has previously worked as a guardian, advocate, and investigator with the Public Advocate's Office from 2001-2007. Mary was also a Consumer Adviser for Public Mental Health Services from 2007-2010, and has advocated for refugees, people with autism spectrum disorder and mental health issues for many years. Mary has also been a volunteer with the Citizens Advocacy group for a couple of years and supported the Circle of Friends, as well as advocating for friends living with mental illness.

Caitlin Batty, Trainee to the Hon Tammy Franks MLC, has direct experience working and advocating for disabled people, especially disabled young people, in an often-combative environment. Caitlin has also volunteered with ActionAid Australia on their current #SheWearsTheCost campaign, raising awareness and calling for accountability for Nike and the JustGroup in terms of their treatment of garment workers.

Carolanne Barkla, Chief Executive Aged Rights Advocacy Service. Carolanne has a passion for working in partnership with older people. She has over 20 years' experience as a registered nurse, lawyer, and executive, spanning health, aged care, legal, not-for-profit peak body, policy, sector development and social justice.

Dale Beasley, Secretary, SA Unions has worked as a union official in South Australia almost 11 years across numerous industries, sectors, occupations and professions. Dale heads up SA Unions, representing two dozen trade unions with expertise and leadership on rights protection in South Australia. Dale also has experience working across jurisdictions and have held union offices with leadership responsibility for teams in NT and ACT.

Hon Connie Bonaros MLC, SA Best. Connie Bonaros is a staunch advocate for child protection, criminal and social justice issues, and her long-standing policy platform on problem gambling. Connie's also passionate about grassroots campaigns which continue to drive her to fight for change over nearly two decades.

Christine Carolan, Executive Officer, ACRATH (A Catholic counter trafficking NGO). ACRATH's vision is to work towards the elimination of human trafficking in Australia, the Asia Pacific region. Christine Carolan has been involved in awareness campaigns and policy advocacy in this area for many years.

Dr Alice Clark, Executive Director, Shelter SA. Alice is a widely published social scientist with a PhD from the University of South Australia, who specialises in research, policy analysis and community engagement with demonstrated capacity to form ethical and respectful relationships with vulnerable individuals and minority groups. She is a passionate advocate for individuals and



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on a systems level with a proven ability to influence political systems, government policy and legislation.

Dr Joshua Curtis, Lecturer at Adelaide Law School, has been researching human rights issues since 2005, mainly in Europe, until recently returning to SA after 20 years away. Joshua has co-written a report for the UK Equality and Human Rights Commission on the implementation of international human rights norms in the UK.

Daney Faddoul, Campaign Manager, Human Rights Law Centre, has been involved in the campaign for an Australian Charter of Human Rights & Freedoms, and has useful insights to share including speaking to questions such as Why a Charter? What the national and state focused campaigns have learned about advocacy for a Charter and Lessons for South Australian campaigners. Daney will draw upon a range of HRLC experiences and resources including the [Charter Messaging Guide](#) and the [Charter opinion poll released in September](#).

Dr Matt Fisher, Senior Research Fellow with the Southgate Institute for Health, Society and Equity. Matt is currently working as a research Project Manager with the NHMRC Centre of Research Excellence on Social Determinants of Health Equity. Matt completed a PhD at the University of Adelaide in 2009. His research work is focused on the social and commercial determinants of health and health equity and the ways these interact with public policy and politics.

Tim Green, Amnesty International, Regional President - SA / NT. Tim has a strong interest in consensual advocacy, LGBTIQIA+ rights, disability and social justice.

Dr Laura Grenfell, Associate Professor in Law, Faculty of the Professions, The University of Adelaide. Laura is the Faculty of the Professions' Associate Dean of Diversity and Inclusion. Laura teaches and researches in public law. She has a particular interest in constitutional law, comparative constitutional law, human rights law and post-conflict justice. Laura is also the Director of the Law School's Human Rights Internship Programme.

Brad Hocking, President of the St Vincent de Paul Society (SA) Inc. Brad is the youngest person appointed to the role of state president of the St Vincent de Paul Society in South Australia. Brad has been involved with the society since 2012, serving people in need in his local community as a conference member. Brad also works as a consultant engineer at Copperleaf Technologies. He has a strong focus on innovation and was awarded one of Australia's Most Innovative Engineers Award for 2020 by Engineers Australia.

Ellie Hodges, Chief Executive Officer, Lived Experience Leadership and Advocacy Network (LELAN). Ellie combines her professional, personal and socio-political worlds, centering lived experience and a commitment to action. This is underpinned by a focus on innovation, social justice and leading together. Ellie has worked in the community and mental health sectors for over twenty years as a community development lead, therapeutic practitioner, manager, educator, strategy/policy worker, advisor and consultant.

Skye Katoschke-Moore, Team Leader at JFA Purple Orange. Skye's work seeks to improve housing, transport and justice systems so they better meet the needs and wants of people living with disability. She works with and learns from the disability community so that together they can positively influence how individuals, businesses and governments interact with people living with disability.



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Abbey Kendall, Director The Working Women's Centre SA Inc, who has experience advocating for the prevention of sexual harassment, criminalisation of wage theft, abortion reform, sex work reform, as well as serving as a SACOSS policy council.

Dr Kristine Klugman OAM, President, Civil Liberties Australia. In 2003, and with her long time partner, Bill Rowlings, Kris co-founded and became inaugural President of Civil Liberties Australia. Kris has a PhD in Politics at ANU which analysed the two-way communication flow between MPs and electors. In 1987 she was appointed an OAM for service to education and to the social welfare of the community.

Cornelia Koch, Senior Lecturer in Law, The University of Adelaide, teaches rights frameworks in Australia at University. Most of Cornelia's research is in the area of human rights, most recently with respect to children's rights to bodily autonomy and integrity and the regulation of religious dress and symbols.

Linda Lawsen, University of Adelaide Law Student, Law Clerk and human rights advocate.

Virginia Leek, Principal Policy Officer, Office of the Commissioner for Aboriginal Children and Young People is actively involved in promoting the rights and interest of Aboriginal children and young people including with the UN Convention on the Rights of the Child, the UN Declaration on the rights of Indigenous Peoples and other relevant international human rights instruments affecting children and young people. Virginia has experience with the development of Aboriginal Treaty legislation and policy framework for SA Government and consideration of the Victorian Charter of Human Rights and Responsibilities Act 2006. Virginia also has a strong understanding of international treaty obligations and their implementation.

Loki Cassandra Maelorin, Barrister and Solicitor in the Supreme Court of South Australia

Holly McCoy, Bushfire Community Legal Project, Community Legal Centres (SA) Inc. has previous experience working with vulnerable women (including culturally and linguistically diverse and Aboriginal and Torres Strait Islander women) who have been subjected to domestic and/or family violence, in my role as a solicitor with InDIGO (Women's Legal Service SA). In her current role as a bushfire legal officer, Holly works with regional and isolated community members on Kangaroo Island and Yorke Peninsular.

Catherine McMorris, Chief Executive Officer, Community Justice Centres SA. CJSSA is a not-for-profit organisation, committed to providing a quality professional legal assistance which makes a difference in the lives of individuals, families and communities.

Sorcha Morrison has a background in disability (lived experience, support work and advocacy for the person with disability and carer advocacy). She has also been involved in advocacy groups for female survivors of Domestic Violence and for people living with a disability.

Jana Norman, PhD, School of Humanities | Faculty of Arts, University of Adelaide, is elected board member of The Hut Community Centre in the Adelaide Hills, an organisation that provides direct support for underserved and isolated populations in the community. Jana was the Assistant Policy Director, Policy Coordination, Australian Royal Commission into Aged Care Quality and Safety. Jana's research at the University of Adelaide, including a completed PhD in law, relates to human rights and the environment. In her former role as a minister of religion, Jana was involved



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in convening public forums, actions and community responses addressing a range of human rights issues including First Nations rights; LGBTQ rights; refugee and asylum seeker rights; rights of persons with disabilities; homelessness.

Claire O'Connor SC, Barrister at Villeneuve Smith Chambers. Claire specialises in Human Rights, Women's Issues and Coronial Litigation. She is an well known advocate for social justice and human rights within the South Australian legal profession and has held many different leadership roles including within the Law Society of South Australian and the Council for Civil Liberties.

Hon Mark Parnell, one of the founding members of the Greens in South Australia and has a lifelong history of action for the protection and enhancement of the environment and for the rights of all people to live in a just, humane and healthy world.

Tony Roach, General Manager, Mission and Membership, St Vincent de Paul Society (SA) Inc

Neville Rochow QC, Associate Professor of Law (Adjunct), Adelaide Law School, Barrister has just submitted a PhD thesis entitled: Human Dignity and Constitutional Spatial Theory: Towards An Australian Framework For The Resolution Of Conflicts In Equality Rights And Religious Liberties Claims

Rebecca Ross, Chief Executive Officer, JusticeNet SA. A long time social justice advocate, Rebecca has a wealth of experience across private practice, community legal centres, judicial environments, government and start-ups. Rebecca has also worked as a front line lawyer in regional and remote NT, a registrar and director in courts administration.

Georgia Thain, Policy Officer, Youth Affairs Council of South Australia regularly deals with young people's human rights through policy work at YACSA which is especially relevant in current times given the long-term impacts of COVID-19. Georgia has also volunteered for SIDAC for almost 3-years. As a diverse committee we do a range of activities within the area of human rights like advocacy, individual support, policy work. In 2020 Georgia completed an Augusta Zadow project with funding from SafeWork SA.

Sharyn White, Volunteer – Secretary, Adoptee Rights Australia (ARA) Inc, has led the way in shining a light on human rights abuses inherent in adoption itself, and within the SA adoption legislation. Her advocacy lead to important changes to the Adoption Act SA 1988 to promote the 'rights and welfare' of adoptees. She also volunteers as part of the Rights Resource Network SA by providing rights analysis of proposed and existing legislation relating to adoption.

Brett Williams General Manager - Operations South Australia, Mind Australia. Brett has 20 years of experience in Mental Health as both a clinician in the public mental health system and as a Manager in the NGO sector. Has a lived experience of mental illness and recovery and has supported two family members in their own mental health recovery journeys. Strong advocate for the use of a lived experience workforce at all levels in the delivery of mental health services. Peer led and designed services are far better suited to delivering both effective supports and ensuring that supports are rights based.

Ross Womersley, Chief Executive Officer, South Australian Council of Social Services. Ross has had a long involvement in both the community services and disability sector. Ross joined the South Australian Council of Social Service (SACOSS) as its Executive Director several years ago



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after more than 25 years working as CE of Community Living Project Inc – an innovative community organisation in the south of Adelaide, providing highly personalised support to people who have a disability to enable them to develop good lives in their local community.

Annelise Van Deth, Advocate, Aged Rights and Advocacy Service, works to uphold the human rights of vulnerable persons and this includes upholding rights such as those set out in the relevant international instruments such as the Convention on the Rights of Older persons.

Observers*

Lisa Adams, Office Manager, the Hon Rob Simms MLC

Sara Bray, Ministerial Adviser, The Hon Vickie Chapman MP

Dr Samantha Mead Chief Executive Officer, Australian Medical Association (South Australia) Inc

Lidia Moretti, President - South Australia Division, National Board Member, United Nations Association of Australia

Stella Salvemini, Trainee of the Hon Irene Pnevmatikos MLC

Student Rapporteurs

Matilda Wise

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** It is noted that the persons listed as Observers are not in a position to endorse or support this Report.*



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Table 1: Human Rights Provisions in South Australian Legislation

In South Australia, there are currently a range of legislative mechanisms which aim (explicitly or implicitly) to protect specific rights.

Legislation	Human Rights	Legislative protection
Freedom of Information Act 1991 Public Interest Disclosure Act 2018	The right to access documents held by government agencies unless an exemption applies	These Acts ensure that South Australians have the ability to access personal government records information or information from government departments which may be of public interest such as information regarding the operations of government. These Acts identify their provisions as “rights”.
Work Health and Safety Act 2012	The right to feel safe while at work	This Act helps to protect workers, as far as reasonably practicable, and ensure they are physically and mentally safe and healthy while at work. Although this legislation does not fundamentally identify that its object is to create a “right” it does provide a remedy if these conditions are not upheld. Further it does confer rights to workers to exercise while in the workplace.
Health and Community Services Complaints Act 2004	The right to health Broad range of rights for patients contained in Charter	Contained in Part 3 of the Act, the Charter of Health and Community Services Rights protects: the right to access health and community services; the right to be safe from abuse; the right to high quality services; the right to be treated with respect; right to be informed; right to actively participate; right to privacy and confidentiality; right to comment or complain see s22.



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<p>Children and Young People (Safety) Act 2017</p>	<p>Every child has the right, without discrimination, to such protection as is in the child's best interests and is needed by the child by reason of being a child</p>	<p>This Act commits to upholding and promoting a set of outcomes for children which they expect all members of the state to safeguard and comply with. This Act directly addresses these outcomes as “rights” for children and young people.</p>
<p>Mental Health Act 2009</p>	<p>Every person has the right to the enjoyment of the highest attainable standard of physical and mental health.</p>	<p>This Act protects members of the state who suffer from mental health issues and ensures they receive comprehensive treatment to encourage their recovery and they retain their freedoms and dignity.</p> <p>The Act does not categorically state these safeguards are “rights” however it does infer the importance of upholding this standard and imposes penalties on those who breach it.</p>
<p>Disability Inclusion Act 2018</p>	<p>The right not to be discriminated against in any areas of public life, including employment, education, getting or using services, renting or buying a home or accessing public places because of disability.</p>	<p>This Act promotes the social inclusion and protection of members of the state with a disability. It provides safeguards for the delivery of support and representation of those with a disability and informs the government in relation to their disability policies.</p> <p>The object of the Act is to support the United Nations Convention on the Rights of Person with Disabilities and acknowledge that people with disabilities have the same human rights as other members of the community. Therefore the Act does specifically state that its provisions are “rights”.</p>
<p>Young Offenders Act 1993</p>	<p>An accused child who is detained or a child detained without charge must be segregated from all detained adults.</p> <p>An accused child must be brought to trial as quickly as possible.</p> <p>A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.</p>	<p>This Act aims to regulate the conditions and procedures followed by those involved with children who have allegedly committed a crime or been found guilty of committing a crime. This includes provisions around sentencing and arrest and procedural guidance for the Youth Court.</p> <p>This Act does not specifically make any comments about the “rights” of the child leading up to the trial process and after, however it does make mention of a child’s right to legal representation.</p>



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<p>Electoral Act 1985</p>	<p>Every eligible person has the right, and is to have the opportunity, without discrimination— (a) to vote and be elected at periodic State and municipal elections that guarantee the free expression of the will of the electors;</p>	<p>This Act protects the rights of South Australians to vote in State Elections. The Act does explicitly say that all members of the state have a “right” to vote in a state election if they have enrolled.</p>
<p>Fair Work Act 1994</p>	<p>Every person has the right to freedom of association with others, including the right to form and join trade unions.</p>	<p>The Act ensures the facilitation of lawful employment within the state among other protections such as compliance with awards and provisions for industrial disputes. This Act ensures freedom of association for South Australian workers. This Act does not state that South Australians have the “right” to these protections however it does outline the rights of pregnant woman.</p>
<p>Environment Protection Act 1993</p>	<p>Every person has the right to a healthy and sustainable environment.</p>	<p>This Act helps to promote the principles of ecologically sustainable development through the protection of natural resources to meet the needs for the foreseeable future, ensuring that measures are taken to protect and restore the natural environment and enforce harm elimination and minimisation methods. The Act does not evidently articulate that its object is to protect a “right” however it does allude to the importance of these protections.</p>



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<p>Criminal Law Consolidation Act 1935 Summary Offences Act 1953 Magistrates Court Act 1991 District Court Act 1991 Supreme Court Act 1935 Sentencing Act 2017 Bail Act 1982</p>	<p>A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.</p> <p>Any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in respect of it reviewed by a higher court in accordance with law.</p> <p>A person must not be tried or punished more than once for an offence in respect of which the person has already been finally convicted or acquitted in accordance with law.</p>	<p>These Acts touch on a broad range of areas such as sentencing, bail and court etiquette. However, they all include procedures and policies to ensure equality and fairness within the South Australian justice system.</p> <p>None of these Acts make mention of their contents being “rights” however they do create protections that award those who have allegedly committed a crime or have been found guilty of a crime the safety of the law so they are treated fairly.</p>
<p>Police Act 1998</p>	<p>A person must not be subjected to arbitrary arrest or detention.</p> <p>A person must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law.</p> <p>A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person.</p>	<p>This Act helps to govern the power of the Police in our society. One of its aims is to protect the public’s civil freedoms by protecting them from subjection to arbitrary police power.</p> <p>The protections found in the Act are not specified as being “rights” however the Act does insinuate the importance of these protections and imposes a penalty if they are not upheld.</p>



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<p>Safe Drinking Water Act 2011</p>	<p>The right to safe and clean drinking water and sanitation</p>	<p>This Act ensures that all drinking water providers, persons or organisations who provide drinking water to the public, do so in a way that protects the health and safety of all South Australians. This includes establishing auditing procedures, encouraging risk management and specifying the quality expected.</p> <p>This Act does not explicitly state that South Australian's have the "right" to safe drinking water however its purpose as a legislative instrument achieves this.</p>
<p>Correctional Services Act 1982</p>	<p>All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences,</p> <p>An accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.</p>	<p>This Act protects the way in which those who are contained in correctional facilities in South Australia are treated. The Act further helps to govern the way that correctional services are managed and conducted to prevent corruption and inconsistency.</p> <p>This Act includes some comment about the rights of prisoners including the right to visitors and their rights to legal aid assistance. However, the Act does not make any overarching and conclusive statements about the "rights" of prisoners or individuals in South Australia.</p>
<p>Education and Children's Services Act 2019</p>	<p>Every person has the right to education.</p>	<p>This recently created Act firstly establishes a legislative framework to ensure that education given to children across the state is of a high standard. Secondly, the Act helps to enforce the legal requirement that all children of legal age must be enrolled in school.</p> <p>The Act specifically states that every child has the "right" to education.</p>



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<p>Equal Opportunity Act 1984</p>	<p>Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.</p>	<p>This Act is one of the most important South Australian pieces of legislation that protects the civil liberties of individuals living in the state. The purpose of the Act is to prevent South Australians from being discriminated against based on their sex, race, disability, age, sexual orientation or other common grounds. The Act also creates a Commissioner and Tribunal to ensure enforcement of the legislation.</p> <p>The Act surprisingly does not make any overarching comment that its protections are “rights”. However, it does insinuate through the language used that its protections are important legal privileges that South Australians must be granted.</p>
<p>Racial Vilification Act 1996</p>	<p>All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.</p>	<p>This Act prevents South Australians from racial vilification of any kind by organisations or natural persons. It does this by stating that by law any behaviour of this kind is an offence and therefore those who engage in this activity will be punished.</p> <p>This Act does not explicitly state that protection from racial vilification is a “right”, however, it insinuates that this is a protection that all South Australians should have.</p>



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<p>South Australian Public Health Act 2011</p>	<p>Every person has the right to the enjoyment of the highest attainable standard of physical and mental health.</p>	<p>This Act is the main South Australian legislative support which ensures those who receive medical treatment receive the highest quality care through the creation of governing bodies, individuals and polices.</p> <p>The Act does not specifically state that all of the protections found in the Act are “rights”. However, it does insinuate through its guiding principles and object that members of the state should benefit from the promotion of its specified principles.</p>
<p>Aboriginal Heritage Act 1988</p>	<p>First Nations persons hold distinct cultural rights and must not be denied these rights, with other members of their community. One of these rights is to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.</p>	<p>This Act was created to allow Indigenous Australians to enter into heritage agreements for the preservation of sacred sites, objects or remains as these resources are important to the culture and traditions of these communities.</p> <p>The Act specifies that it preserves the “right” of Indigenous people to act in accordance with their traditions in relation to these sites, objects and remains.</p>



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Table 2: What Human Rights Frameworks look like in nearby Jurisdictions

Jurisdiction	Obligations on the Parliament	Obligations on the Government	Obligations on the Courts	Rights included
Australian Capital Territory³⁴ Human Rights Act (2004)	<p>The Attorney-General must prepare a written compatibility statement about each government Bill for presentation to the Legislative Assembly. The Attorney-General is to state whether the Bill is consistent with human rights and, if it is not consistent, how it is not consistent: s 37. A standing committee must report to the Legislative Assembly about human rights issues raised by Bills presented to the Assembly: s 38.</p>	<p>Part 5A, contains: a direct duty on public authorities to comply with the Human Rights Act; and an independent cause of action and right to remedy (but not damages) if a public authority has contravened a human right.</p> <p>These two provisions came into force on 1 January 2009.</p>	<p>If the ACT Supreme Court finds that a statutory provision is not consistent with the rights contained in the Human Rights Act, it cannot 'strike down' or invalidate the provision in question, nor can the Court rule that any government acts made under the provision are unlawful. The Supreme Court may only make a declaration of incompatibility, and notify the Attorney-General of this. The Attorney-General must notify the Legislative Assembly and present a written response: ss. 32, 33. It will then be up to the elected members of the Legislative Assembly to decide what action (if any) to take.</p>	<p>Recognition and equality before the law</p> <p>Right to life</p> <p>Protection from torture and cruel, inhuman or degrading treatment</p> <p>Protection of the family and children</p> <p>Privacy and reputation</p> <p>Freedom of movement</p> <p>Freedom of thought, conscience, religion and belief</p> <p>Peaceful assembly and freedom of association</p> <p>Freedom of expression</p> <p>Taking part in public life</p> <p>Right to liberty and security of person</p> <p>Humane treatment when deprived of liberty</p> <p>Children in the criminal process</p> <p>Right to a fair trial</p>

³⁴ Content derived from [The ACT Human Rights Act | Gilbert + Tobin Centre of Public Law \(unsw.edu.au\)](https://www.unsw.edu.au/gilbert-tobin-centre-of-public-law)



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Jurisdiction	Obligations on the Parliament	Obligations on the Government	Obligations on the Courts	Rights included
Victoria ³⁵ Victorian Charter of Human Rights and Responsibilities Act 2006	When introducing new laws into Victoria's Parliament, a Statement of Compatibility must be tabled in Parliament, indicating how the proposed law is compatible or incompatible with the rights set out in the Charter. The Scrutiny of Acts and Regulations Committee reviews Bills and statutory rules and reports to	The Charter requires public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights in the Charter. Individuals can raise a complaint about human rights directly with any public authority through their	Courts and tribunals must interpret all Victorian laws in a way that upholds the human rights outlined in the Charter, as far as this is possible. The Supreme Court has the power to declare that a law or provision is inconsistent with human rights but does not have the power to strike it down. Public authorities must act compatibly with human rights and give proper consideration to human rights when making	Rights in criminal proceedings Compensation for wrongful conviction Right not to be tried or punished more than once Freedom from retrospective criminal laws Freedom from forced work Rights of minorities

³⁵ Content derived from [Human rights | Victorian Equal Opportunity and Human Rights Commission](#)



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	<p>Parliament as to whether they are compatible with human rights.</p> <p>In exceptional circumstances, Parliament may declare a law as being incompatible with one or more of the rights in the Charter but still pass the law.</p>	<p>internal complaint handling procedures.</p> <p>Public authorities can demonstrate best practice by managing human rights complaints consistently with the Charter and the public sector values. The Good Practice Guide: Managing Complaints Involving Human Rights provides practical guidance to help public authorities effectively deal with complaints about human rights.</p>	<p>decisions. The obligation to give proper consideration to, and act compatibly with, human rights does not apply where: under another law a public authority could not reasonably have acted differently or made a different decision; the act or decision is of a private nature; the act or decision would impede or prevent a religious body from acting in conformity with religious doctrines, beliefs or principles.</p>	<p>Right to freedom of thought, conscience, religion and belief (section 14)</p> <p>Right to freedom of expression (section 15)</p> <p>Right to peaceful assembly and freedom of association (section 16)</p> <p>Right to protection of families and children (section 17)</p> <p>Right to take part in public life (section 18)</p> <p>Cultural rights (section 19)</p> <p>Property rights (section 20)</p> <p>Right to liberty and security of person (section 21)</p> <p>Right to humane treatment when deprived of liberty (section 22)</p> <p>Rights of children in the criminal process (section 23)</p> <p>Right to a fair hearing (section 24)</p> <p>Rights in criminal proceedings (section 25)</p> <p>Right not to be tried or punished more than once (section 26)</p> <p>Retrospective criminal laws (section 27)</p>
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Jurisdiction	Obligations on the Parliament	Obligations on the Government	Obligations on the Courts	Rights included
Queensland³⁶ Human Rights Act 2019 (Qld)	<p>In order to act compatibly with the Human Rights Act, the parliament must scrutinise all proposed laws for compatibility with human rights. This includes through accompanying all new bills introduced into Parliament with a statement of compatibility and requiring portfolio committees to examine bills and report to the legislative assembly about any incompatibility with human rights.</p> <p>The parliament's obligation is to consider the impact of new laws on human rights. It continues to be able to pass laws that are not consistent with human rights.</p>	<p>Public entities – such as state government departments, local councils, state schools, the police and non-government organisations and businesses performing a public function must act compatibly with human right</p> <p>All legislation introduced into parliament must be accompanied by a statement of compatibility. The statement has to be written by the Member of Parliament introducing the bill. It has to state clearly whether or not, in the Member's opinion, the bill is compatible with human rights and the nature and extent of any incompatibility.</p>	<p>Courts and tribunals, so far as is possible to do so, must interpret legislation in a way that is compatible with human rights.</p> <p>There is a mechanism for the court to inform the government if legislation is inconsistent with human rights, but it doesn't affect the validity of the legislation and Parliament has the final say.</p>	<p>Right to recognition and equality before the law (section 15)</p> <p>Right to life (section 16)</p> <p>Right to protection from torture and cruel, inhuman or degrading treatment (section 17)</p> <p>Right to freedom from forced work (section 18)</p> <p>Right to freedom of movement (section 19)</p> <p>Right to freedom of thought, conscience, religion and belief (section 20)</p> <p>Right to freedom of expression (section 21)</p> <p>Right to peaceful assembly and freedom of association (section 22)</p> <p>Right to taking part in public life (section 23)</p> <p>Property rights (section 24)</p>

³⁶ Content derived from Queensland Human Rights Commission Website, [QHRC : Human rights](#)



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	<p>Committees play an important role in Queensland's parliament. Unlike every other state and the federal parliament, Queensland does not have an upper house. Parliamentary committees take on some of the work an upper house would usually do. This includes monitoring or investigating particular issues and scrutinising proposed laws.</p> <p>There are seven portfolio committees in Queensland Parliament. They are made up of members of parliament and it is their job enquire into proposed laws before they are debated by parliament. You can find information about the committees and their functions on the parliament website.</p> <p>Under the Human Rights Act, a committee examining a piece of</p>			<p>Right to privacy and reputation (section 25)</p> <p>Right to protection of families and children (section 26)</p> <p>Cultural rights – generally (section 27)</p> <p>Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)</p> <p>Right to liberty and security of person (section 29)</p> <p>Right to humane treatment when deprived of liberty (section 30)</p> <p>Right to a fair hearing (section 31)</p> <p>Rights in criminal proceedings (section 32).</p> <p>Rights of children in the criminal process (section 33)</p> <p>Right not to be tried or punished more than once (section 34)</p> <p>Retrospective criminal laws (section 35)</p> <p>Right to education (section 36)</p> <p>Right to health services (section 37)</p>
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	proposed legislation will need to report to the parliament about any incompatibility with human rights.			
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