



Parliament of South Australia

**INQUIRY INTO THE POTENTIAL FOR
A HUMAN RIGHTS ACT FOR SOUTH AUSTRALIA**

**FORTY-NINTH REPORT OF THE SOCIAL DEVELOPMENT
COMMITTEE**

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First Session of the Fifty-Fifth Parliament

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Abbreviations

ACTHRA	<i>Human Rights Act 2004</i> (Australian Capital Territory, ACT)
AHRC	Australian Human Rights Commission
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women 1979
CERD	International Convention on the Elimination of All Forms of Racial Discrimination 1965
CRC	Convention on the Rights of the Child 1989
Cth	Commonwealth
CRPD	Convention on the Rights of Persons with Disability 2008
HRCRC	Human Rights and Coercion Reduction Committee (Office of the Chief Psychiatrist, SA Health)
HRA	Human Rights Act
ICCPR	International Covenant on Civil and Political Rights 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights 1966
JPCHR	Joint Parliamentary Committee on Human Rights
OPCAT	Optional Protocol to the Convention against Torture
PC Act	<i>Parliamentary Committees Act 1991</i>
PJCHR	Parliamentary Joint Committee on Human Rights (Cth)
QHRA	<i>Human Rights Act 2019</i> (Queensland, QLD)
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples 2007
UN UDHR	United Nations Universal Declaration of Human Rights
VCHRA	<i>Charter of Human Rights and Responsibilities Act 2006</i> (Victoria, VIC)

Establishment and Functions of the Committee

The Social Development Committee (the Committee) is established under section 13 of the *Parliamentary Committees Act 1991*.

Functions of the Committee as set out in section 15 of the Act are—

- (a) to inquire into, consider and report on such of the following matters as are referred to it under this Act:
 - (i) any matter concerned with the health, welfare or education of the people of the State;
 - (ii) any matter concerned with occupational safety or industrial relations;
 - (iii) any matter concerned with the arts, recreation or sport or the cultural or physical development of the people of the State;
 - (iv) any matter concerned with the quality of life of communities, families or individuals in the State or how that quality of life might be improved;
- (b) to perform such other functions as are imposed on the Committee under this or any other Act or by resolution of both Houses.

Presiding Member	Hon Ian Hunter MLC
Members	Hon Mira El Dannawi MLC
	Hon David Pisoni MP
	Ms Penny Pratt MP
	Hon R. A. Simms MLC
	Ms Dana Wortley MP

The Committee is assisted by:

Secretary	Ms Robyn Schutte
Research Officer	Ms Mary Ann Bloomfield

Scope of the Inquiry

Terms of reference referred on the Social Development Committee's (the Committee) own motion on 30 October 2023 that:

The Committee inquire into and report on the the potential for a Human Rights Act for South Australia with particular reference to:

- a) the effectiveness of current laws and mechanisms for protecting human rights in South Australia and any possible improvements to these mechanisms;
- b) the operation and effectiveness of human rights legislation in other jurisdictions;
- c) the strengths and weaknesses of adopting a Human Rights Act in South Australia;
- d) the potential human rights protections in any Act;
- e) the potential implications of any Act for the making of laws, courts and tribunals, public authorities and other entities;
- f) Any other related matters.

Conduct of the Inquiry

The Committee advertised widely for submissions into the inquiry, including through metropolitan and regional print outlets and a Media Release was distributed on 8 December 2023 in time for *International Human Rights Day* on 10 December 2023.

In addition, the Committee directly invited submissions from a wide range of government and non-government organisations and special interest organisations and individuals.

The inquiry was also promoted through the SA Parliament website and the SA Parliament Facebook page.

The Committee received 325 written submissions. Fifty-eight of these submissions were from individuals. Five were jointly authored submissions from individuals.

Seventy-two submissions were received from non-government organisations, associations, legal and advocacy groups.

Seven submissions were received from university departments and nine submissions were received from government, local government and statutory office holders.

The remaining submissions were received through an online proforma, totaling 174 submissions.

The Committee held 12 hearings of oral evidence at Parliament House, Adelaide.

Oral evidence was given by representatives of 19 organisations and from five individuals.

Advertisements calling for submissions placed in paid media as follows:

Saturday 9 December 2023

The Advertiser

Monday 11 and Tuesday 19 December 2023

InDaily

Advertisements in paid country publications (18):

Friday 8 December 2023

Cooper Pedy Times

Tuesday 12 December 2023

Yorke Peninsula Country Times

The Victor Harbor Times

Wednesday 13 December 2023

Murray Pioneer

Border Times

Border Chronicle

Gawler Bunyip

Mt Barker Courier

Angaston Leader

Naracoorte Community News

Border Watch Wednesday

The Transcontinental

The Plains Producer

Thursday 14 December 2023

Port Lincoln Times

The Islander

The Recorder

Murray Valley Standard

Whyalla News

Acknowledgements

The members of the Social Development Committee (the Committee) thank all of the organisations and individuals who took the time to provide evidence to this inquiry. The written submissions and oral evidence of the witnesses was very detailed and informative, which assisted the Committee greatly with its work on this important subject.

A full list of the written submissions, oral evidence hearings and witnesses are at the back of this report.

Executive Summary

The Social Development Committee (the Committee) heard South Australia has a proud history of progressive social reform and has at times been a leader in Australia in realising rights for minority, marginalised and vulnerable groups within its borders.¹

Over the past few decades South Australia's rights-based agenda has diminished and, as pointed out to the Committee, it is now an 'outlier' where human rights are concerned.² The Committee received evidence that, there have been human rights breaches in this State and with few or no legislated protections to remedy breaches, there will continue to be inadequate justice for complainants.³

The Committee also heard, South Australia has not kept up with several of the other states and territories, namely Victoria, the Australian Capital Territory and Queensland, nor with the majority of other OECD countries and advanced democracies, in the progression of human rights and the modernisation of discrimination law.

Some submissions claim, human rights in South Australia are only partially protected through various laws, which have numerous "gaps" and have been found to be "limited in scope and enforceability."⁴

These various laws are also "lacking any consistent framework or discourse to tie them together or to promote a broader community or public service understanding of their content and relevance to the lives of South Australians."⁵

Some submissions contend that this "piecemeal approach" denies South Australians with "legally enforceable rights" and fails to provide protection for fundamental human rights set out in the instruments and treaties of the United Nations.⁶ To address this, human rights legislation needs to be enacted at the domestic level.⁷

The Committee was pleased with the breadth and depth of the submissions it received to this inquiry. More submissions were in favour of a Human Rights Act for South Australia, than were not, with submissions supporting implementation, numbering 131. Only four submissions were against a Human Rights Act for South Australia.

¹ Dr Sarah Moulds, Director, Rights Resource Network SA, *Hansard*, 8 April 2024: 7.

² Ms Cornelia Koch, Senior Lecturer, Public Law and Policy Research Unit (PLPRU), The University of Adelaide, *Hansard*, 28 October 2024: 157.

³ JFA Purple Orange, *Written submission No. 69*, February 2023: 8 – 9.

⁴ Amnesty International Australia, *Written submission No. 97*, 12 February 2024: 4 - 5.

⁵ Rights Resource Network SA, *Written submission No. 2*, December 2023: 3.

⁶ Amnesty International Australia, *Written submission No. 97*, 12 February 2024: 4.

⁷ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 10.

One-hundred and eighty-eight submissions were non-committal, that is they were neither specifically opposed, nor supportive of a Human Rights Act for South Australia. Of these submissions, 174 were submitted online by proforma.

Numerous submissions provided views on the strengths and benefits of a Human Rights Act in broad terms, while others provided views in the context of specific groups or concerns.

These included strengths relating to improving the lives of South Australian children and young people, people with disabilities and mental ill-health, Aboriginal and Torres Strait Islander people, LGBTQIA+ people, and people experiencing poverty or homelessness.

Many submissions agreed a Human Rights Act for South Australia should, as a starting point, contain the rights already identified in the *United Nations Universal Declaration of Human Rights* (UDHR) and the seven UN Human Rights Treaties, to which Australia is a signatory, including the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).^{8, 9, 10}

Some submissions recommended that South Australia draw on the experience of the three other states and territories who have already implemented a Human Rights Act or Charter, as well as from New Zealand, the United Kingdom and Canada.^{11, 12, 13}

The Committee was particularly interested to learn from noted academics and organisations that there are new understandings of how rights contained in the ICESCR are justiciable and can therefore be enforced.

This provides greater scope for South Australia to follow in the footsteps of the UK, the ACT and Queensland by including rights such as the right to a healthy environment, the right to education and the right to access health services.^{14, 15, 16}

⁸ Rights Resource Network SA Inc., *Written submission No. 2*, 22 December 2023: 10.

⁹ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 7.

¹⁰ South Australian Council of Social Services (SACOSS), *Written submission No. 94*, February 2023: 13.

¹¹ Human Rights Law Centre, *Written submission 126*, 1 March 2024: 21.

¹² Professor Matthew Stubbs, Adelaide Law School, The University of Adelaide, *Written submission No. 57*, 16 February 2024: 3 - 4.

¹³ Dr Michelle Fernando, Dr Michele Jarldorn, Dr Kerrilee Lockyer, Matt Ryan, Professor Jennifer McKay AM, Kerry Maxfield, Taylor Jobling, Associate Professor Joe McIntyre, Justice and Society Unit, University of South Australia (UNISA), *Written submission No. 52*, 16 February 2024: 3.

¹⁴ Healthy Environment ACTHRA s. 27C; Education UKHRA Pt. II, Art. 2, ACTHRA s. 27A, QHRA s. 36; Health Services QHRA s. 37.

¹⁵ Dr Julie Debeljak, Monash University, *Written submission No. 9*, 2 February 2024: 11 – 17.

¹⁶ Scott Walker, Research Fellow, Professor Melissa Castan, Director, Associate Professor Ronli Sifris, Deputy Director (Academic), Castan Centre for Human Rights Law, Monash University, *Written submission No. 109*, February 2024: 8 – 9.

Many submissions recommended the rights contained in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP),^{17, 18, 19} the *United Nations Convention on the Rights of the Child* (UNCRC) and *Optional Protocol to the Convention against Torture* (OPCAT),²⁰ the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD),^{21, 22} and the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) be included in a South Australian Human Rights Act.^{23, 24, 25}

The evidence suggests the benefits of a Human Rights Act for South Australia will give rise to:

- greater citizen participation in government decision-making;
- improve the law-making processes within the South Australian Parliament;
- improve government decision-making and the administering of law;
- address inequalities and discrimination in people’s access to fundamental services;
- improve the public’s understanding of their rights and what to expect from public authorities;
- reduce inefficiencies and waste in Government;
- improve existing legislation and legal rights; and
- provide a remedy, or a cause of action when a person’s human rights are breached.^{26, 27}

Numerous submissions argue that a ‘dialogue model’ of Human Rights Act be implemented, which will provide avenues for:

1. preventative action, by requiring parliament to include statements of compatibility in proposed legislation; departments and service providers, to consider human rights to prevent human rights abuses;
2. cause of action, so that if there is an abuse of human rights, people can take action; and
3. right to remedy, by providing redress to an action.²⁸

¹⁷ Ashum Owen, Wakwakurna Kanyini, *Hansard*, 14 October 2024: 149.

¹⁸ JusticeNet SA, *Written submission No. 43*, 16 February 2024: 2.

¹⁹ Dr Michelle Fernando et al., UNISA, *Written submission No. 52*, 16 February 2024: 3.

²⁰ Ms Shona Reid, Guardian for Children and Young People, Training Centre Visitor (TCV), Child and Young Person’s Visitor (CYPV) and Youth Treatment Order Visitor (YTOV), *Written submission No. 298*, 13 March 2024: 4 - 5.

²¹ Lived Experience Leadership & Advocacy Network (LELAN (SA)), *Written submission No. 299*, February 2024: 10 – 12.

²² Australian Lawyers for Human Rights (ALHR), *Written submission No. 118*, February 2024: 37 - 38.

²³ Full Stop Australia, *Written submission No. 125*, February 2024: 6 - 7:

²⁴ Working Women’s Centre SA, *Written submission No. 87*, 16 February 2024: 6.

²⁵ South Australian Abortion Action Coalition (SAAAC), *Written submission No. 86*, February 2024: 4.

²⁶ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 8.

²⁷ ALHR, *Written submission No. 118*, February 2024: 33 – 34.

²⁸ Ms Nikita White, Lead Campaigner Human Rights Act, Amnesty International Australia, *Hansard*, 26 August 2024: 100.

The ‘dialogue model’ will preserve parliamentary sovereignty, but will also require the SA Parliament, public authorities and the judiciary, to give consideration to how proposed legislation or policy will impact human rights, at the early stages of its development, before it is implemented and during administering law.²⁹

Submissions also consider it will be important to have a stand-alone parliamentary scrutiny committee such as a Joint Human Rights Scrutiny Standing Committee to examine all Bills and subordinate legislation for compliance with human rights.³⁰

The Committee understands one of the key outcomes for any Human Rights Act to achieve, will be the interpretation of laws so as to be consistent with human rights.³¹ This will be incumbent upon the judiciary to carry out, by considering case-law and jurisprudence from other jurisdictions including from overseas.

The Committee learned the ‘dialogue model’ will support courts to issue statements of incompatibility, where they find a law is inconsistent with human rights, but not have the ability to change those laws.³²

Many submissions agreed with the principle that there are ‘*No rights without remedy*’^{33, 34} and suggest that South Australia should adopt a Human Rights Act with an independent or direct cause of action provision and an “accessible, affordable, timely and effective” complaints process.³⁵ This could be provided through a dedicated Human Rights Commissioner with a complaints, conciliation, advisory and education mandate.³⁶

Many submissions noted that by requiring the public sector and other public authorities to act with human rights in mind and providing the *preventative* mechanisms in administering the law, better decisions made ‘upstream’ will avoid costly remedy and cost blow-outs ‘down-stream.’³⁷

The Committee heard the Commonwealth has recently inquired into the potential for a Federal Human Rights Act with the Parliamentary Joint Committee on Human Rights (PJCHR), reporting in May 2024 with seventeen recommendations, including that the Commonwealth Government introduce legislation to establish an Australian Human Rights Act.³⁸

²⁹ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 15.

³⁰ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 5.

³¹ Professor Matthew Stubbs, *Written submission No. 57*, 16 February 2024: 4.

³² Rights Resource Network SA, *Written submission No. 2*, December 2023: 7.

³³ Civil Liberties Australia (CLA), ALHR and ACTCOSS in CLA, *Written submission No. 32*, February 2024: 6.

³⁴ Ms Nikita White, *Hansard*, 26 August 2024: 96 – 97.

³⁵ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 18.

³⁶ See: Dr Penelope Mathew, President and Human Rights Commissioner, ACT Human Rights Commission, *Written submission No. 111*, 21 February 2024.

³⁷ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 6.

³⁸ Parliamentary Joint Committee on Human Rights (PJCHR), *Inquiry into Australia’s Human Rights Framework*
https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf

The Committee also notes the Australian Human Rights Commission's (AHRC) 2022 and 2023 *Free and Equal Position papers* were heavily referenced in the evidence provided to the inquiry. The Committee acknowledges the AHRC's position that the Commonwealth, States and Territories all adopt Human Rights Acts or Charters to give effect to Australia's commitment and obligations under international human rights law.³⁹

The Committee notes more broadly, human rights law has a long history, with the first modern articulation of rights embraced by the international community in the wake of atrocities committed during World War II. The *Universal Declaration of Human Rights* was adopted by the United Nations General Assembly in 1948, and it is the foundational instrument upon which the numerous other human rights treaties have been developed.⁴⁰

The Committee recognises the importance of this foundational instrument and its proclamation of the *inherent dignity and equal and inalienable rights of all members of the human family*.⁴¹

The Committee notes the work of the Rights Resource Network SA in *Designing a Human Rights Framework for South Australia, 2022* 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.⁴²

Recommendations

1. The Committee recommends that the Government consolidate the various rights and protections afforded to citizens in the many legislative instruments listed at p.14-20 into one comprehensive Human Rights Act.
2. The Committee recommends that the Government transition the Equal Opportunities Commission to a Human Rights Commission.
3. The Committee recommends that the Government conduct a comprehensive consultation with the South Australian Community on the model of Human Rights Act to be adopted.

³⁹ Australian Human Rights Commission (AHRC), *Revitalising Australia's Commitment to Human Rights: Free and Equal Report 2023*, Sydney, December 2023: 34. Access at: <https://humanrights.gov.au/free-and-equal>

⁴⁰ UN General Assembly, Resolution 217A (III), *Universal Declaration of Human Rights*, 10 December 1948.

⁴¹ UN General Assembly, *Universal Declaration of Human Rights*, Preamble, 10 December 1948.

⁴² Rights Resource Network SA Inc., *Written submission No. 2*, December 2023. Attachment: "Designing a Human Rights Framework for South Australia - Final Report", February 2022: 3.

a) The Effectiveness of Current Laws and Mechanisms for Protecting Human Rights in South Australia and any Possible Improvements to These Mechanisms

Introduction

The *Inquiry on the potential for a Human Rights Act for South Australia* (the inquiry) received evidence that South Australia provides some human rights protections across various legislation, which are effective for “some people, some of the time.”⁴³ The evidence suggests that for others, “rights restriction and exclusion occurs regularly, and the standard of living that others take for granted is routinely denied them.”⁴⁴

The submissions to the inquiry acknowledge existing mechanisms, but also suggest current laws are “limited in scope and enforceability”, providing only partial legal protection through the myriad of different instruments, for some specific individual rights.^{45, 46}

Numerous submissions referred to South Australia’s human rights as an “informal”, “patchwork” of “piecemeal” protections which, are inadequate, and with “gaps” as to what rights are protected and how they are applied.^{47, 48}

The evidence also proposes South Australia is “dragging behind” other states and territories, namely Victoria, Queensland and the Australian Capital Territory, as well as other western democracies, in providing a suite of human rights protections. This includes the protections under international law, as set out in the United Nations conventions and treaties and ratified by Australia.^{49, 50, 51, 52}

There are numerous examples in the evidence received by the Committee, that demonstrate there are laws and mechanisms across a range of areas, that are at best ineffective in protecting human rights, and at worst, may constitute breaches of them.^{53, 54, 55}

⁴³ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 2.

⁴⁴ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 4.

⁴⁵ Australian Lawyers for Human Rights (ALHR), *Written submission No. 118*, February 2024: 7.

⁴⁶ Australian Lawyers Alliance, *Written submission No. 35*, 14 February 2024: 6.

⁴⁷ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 10.

⁴⁸ Amnesty International Australia, *Written submission No. 97*, 12 February 2024: 4 - 5.

⁴⁹ Human Rights Coalition, *Written submission No. 71*, February 2024: 1.

⁵⁰ Ms Cornelia Koch, Senior Lecturer, Public Law and Policy Research Unit (PLPRU), The University of Adelaide, *Hansard*, 28 October 2024: 157.

⁵¹ Australian Lawyers Alliance, *Written submission No. 35*, 14 February 2024: 6.

⁵² Associate Professor Laura Grenfell, Cornelia Koch, Dr Peta Spyrou, Professor Lisa Hill, Emerita Professor Rosemary Owens AO, Public Law and Policy Research Unit (PLPRU), The University of Adelaide, *Written submission No. 51*, 15 February 2024: 5.

⁵³ Ms Helen Connolly, Commissioner for Children and Young People, *Written submission No. 44*, 15 February 2024: 3.

⁵⁴ Save the Children / 54 Reasons, Ms Gai Campbell, Director SA & Victoria, *Written submission No. 63*, 16 February 2024: 1 – 2.

⁵⁵ Mr Harald Ehmman, Member, SA/NT Regional Meeting of Quakers, *Hansard*, 2 December 2024: 187.

South Australia’s human rights processes are described by Associate Professor Laura Grenfell, Deputy Director, Public Law and Policy Research Unit (PLPRU), The University of Adelaide, as “really ad hoc, unpredictable and opaque.”⁵⁶

Some witnesses claim there is a need to improve the effectiveness of current laws as well as provide human rights protections in South Australia.^{57, 58}

South Australian Legislation Containing Rights Protections

South Australia has a number of Acts that provide some protections which are expressly stated, and contain a legally enforceable right, such as in the *Equal Opportunity Act 1984* (the EO Act) or the *Racial Vilification Act 1996* (the Racial Vilification Act).⁵⁹ Other Acts contains implied rights or require government departments to abide by rules and procedures in administering the legislation.

Several Acts contain *principles* or *aims* to provide decision-makers with guidance in performing the Act’s functions but have no enforcement provisions. The *Mental Health Act 2009*, is one example which specifies, those providing mental health services under the Act should be guided by principles commensurate with international treaties and agreements, to which Australia is a signatory.⁶⁰

Some rights protections may be afforded by common law, although the Australian Lawyers for Human Rights (ALHR) argues the rights protected by common law is a “narrow selection” and that “...common law does not provide adequate protection of the internationally recognised fundamental human rights of South Australians.”⁶¹

JFA Purple Orange comments that Australia “relies heavily on common law which can be more prone to unequal application than legislation.”⁶² The common law provides some rights particularly in relation to the following:

- procedural fairness, appeal rights, the right to a hearing and a fair trial;
- privilege against self-incrimination, burden of proof or the presumption of innocence;
- legal professional privilege;
- presumption against delegation or retrospectivity;
- defamation; and executive immunity;
- property.⁶³

⁵⁶ Associate Professor Laura Grenfell, Deputy Director, PLPRU, The University of Adelaide, *Hansard*, 28 October 2024: 157.

⁵⁷ Associate Professor Laura Grenfell, *Hansard*, 28 October 2024: 157.

⁵⁸ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 4.

⁵⁹ *Equal Opportunity Act 1984*: Part 3—Prohibition of discrimination on ground of sex, sexual orientation or gender identity; Part 4—Prohibition of discrimination on ground of race; Part 5—Prohibition of discrimination on ground of disability; Part 5A—Prohibition of discrimination on ground of age; Parts 5B and 6 relate to other grounds and unlawful acts. *Racial Vilification Act 1996*: Section 4.

⁶⁰ *Mental Health Act 2009*. Section 7(1)(ac).

⁶¹ ALHR, *Written submission No. 118*, February 2024: 12.

⁶² JFA Purple Orange, *Written submission No. 69*, February 2024: 12.

⁶³ Civil Liberties Australia Inc., “Attachment A”, *Written submission No. 32*, 14 February 2024: 15.

The following table provides a compilation of the numerous different South Australian legislation containing some rights protections:

Table of Current Legislation⁶⁴

Legislation	Description of Rights
Aboriginal Heritage Act 1988	<p>The <i>Aboriginal Heritage Act 1988</i> (AH Act) provides for the protection and preservation of Aboriginal material culture and cultural heritage. The AH Act specifically preserves the right of Aboriginal people to act in accordance with their traditions and in relation to their sites, objects and remains.</p> <p>The AH provides for an Aboriginal Heritage Committee to advise the Minister, manage the Aboriginal Heritage Archive and other functions.</p> <p>It is an offence to fail to advise the Minister about found Aboriginal sites, objects or remains (except where the person may be a traditional owner).</p>
Bail Act 1982	The <i>Bail Act 1985</i> sets out the rules for the application of bail in South Australia.
Children and Young People (Safety) Act 2017	<p>An Act to protect children and young people from harm; to provide for children and young people who are in care; to provide children and young people with rights and recognise children and young people are citizens of the State.</p> <p>The <i>Children and Young People (Safety) Act 2017</i> (CYP Safety Act) is ‘An Act to protect children and young people from harm; to provide for children and young people who are in care; and for other purposes.’⁶⁵ The CYP Safety Act was brought about in response to several coronial inquests into the deaths of children in the Child Protection system.⁶⁶</p> <p>Section 13 of the CYP Safety Act provides that the Guardian for Children and Young People, must prepare and maintain a <i>Charter of Rights for Children and Young People in Care</i>.</p>

⁶⁴ Adapted from Rights Resource Network SA, *Written submission No. 2*, Attachment 1, “Designing a Human Rights Framework for South Australia”, Table 1: Human Rights Provisions in South Australian Legislation, 2022: 48 – 55. Received 22 December 2023.

⁶⁵ *Children and Young People (Safety) Act 2017*. Preamble.

⁶⁶ Hon Katrine Hilyard, Minister for Child Protection, Minister for Women and the Prevention of Domestic, Family and Sexual Violence, Minister for Recreation, Sport and Racing, Children and Young People (Safety and Support) Bill, Second Reading Speech, House of Assembly, *Hansard*, 16 October 2024.

<p>Children and Young People (Oversight and Advocacy Bodies) Act 2016</p>	<p>The Child Development Council (CDC) advise that, the <i>Children and Young People (Oversight and Advocacy Bodies) Act 2016</i> (OAB Act) includes at Part 1, clause 5, that state authorities are 'to give effect to the rights set out from time to time in the United Nations <i>Convention on the Rights of the Child</i> (UNCRC).</p> <p>Section 55(1) of the OAB Act provides that the primary function of the CDC is to prepare and maintain an <i>Outcomes Framework for Children and Young People</i>. This includes the establishment and promotion of the <i>Charter for Children and Young People</i> (CYP Charter), which according to the CDC, “articulates the essential life conditions that all South Australian children and young people can and should have to thrive.”⁶⁷</p> <p>The CDC advise, the CYP Charter reflects state, national and international statements of rights relevant to children and young people, including the UNCRC and other human rights instruments.⁶⁸</p> <p>The OAB Act outlines the commitment of the South Australian Government to uphold the rights of children and young people, including their right to:</p> <ul style="list-style-type: none"> • be safe from harm; • be cared for in a way that allows them to realise their potential; • physical and mental health and emotional wellbeing; • participate in educational and vocational training; • participate in sporting, creative, cultural and other recreational activities; • be prepared for taking their position in society as responsible citizens; and • maintain their cultural identity.⁶⁹ <p>The OAB Act provides:</p> <p>58—Statutory duty of State authorities in respect of Outcomes Framework</p> <p>(1) Every State authority must, in carrying out its functions or exercising its powers, have regard to, and seek to give effect to, the Outcomes Framework.</p>
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⁶⁷ Child Development Council, Adjunct Associate Professor Victoria Whittington, Presiding Member, *Written submission No. 41*, 14 February 2024: 1.

⁶⁸ Child Development Council, *Written submission No. 41*, 14 February 2024: 1.

⁶⁹ *Children and Young People (Oversight and Advocacy Bodies) Act 2016*. Section 55(2)(a)(i) to (vii).

	<p>(2) A State authority will be taken not to be in breach of subsection (1) if the State authority is acting—</p> <ul style="list-style-type: none"> (a) in accordance with a requirement under this or any other Act; or (b) in circumstances prescribed by the regulations. <p>(3) A failure by a State authority to comply with this section does not, of itself, give rise to any civil liability against the Crown, the State authority or any other person.</p>
<p>Correctional Services Act 1982</p>	<p>The <i>Correctional Services Act 1982</i> provides for the establishment and management of prisons and other correctional institutions; to regulate the manner in which persons in correctional institutions are to be treated by those responsible for their detention and care; to provide for certain powers relating to the management of correctional services officers and employees; to provide for drug and alcohol testing of correctional services officers and employees and other persons; and for other purposes The Act also governs the way that correctional services are managed and conducted to prevent corruption and inconsistency; and includes some elements concerning the rights of prisoners including the right to visitors and their rights to legal aid assistance.</p>
<p>Criminal Law Consolidation Act 1935</p>	<p>An Act to provide for the rules and procedures associated with the charging and sentencing of persons who are alleged to have committed certain criminal offences.</p>
<p>Disability Inclusion Act 2018</p>	<p>An Act to promote the full inclusion in the community of people with disability; to assist people with disability to achieve their full potential as equal citizens; to promote improved access to mainstream supports and services by people with disability;</p> <p>The Objects and Principles of the <i>Disability Inclusion Act 2018</i> (DI Act), are described as:</p> <p style="text-align: center;">7—Act to support United Nations Convention on the Rights of Persons with Disabilities etc</p> <p>It is the intention of the Parliament of South Australia that, to such an extent as may be reasonably practicable, the operation, administration and enforcement of this Act is to support and further the principles and purposes of the United Nations <i>Convention on the Rights of Persons with Disabilities</i>, as well as any other relevant international human rights instruments affecting people with disability, as in force from time to time.</p>

District Court Act 1991	An Act to set out the powers and processes of the carrying out of the business of the District Court. Provides the requirements for issuing of warrants, notices of appeal and issuing of certain orders and damages/relief.
Education and Children Services Act 2019	An Act to provide for preschool, primary and secondary school services and Can enforce legal requirement that all children of legal age must be enrolled in school. The Act specifically states that every child has the ‘right’ to receive education and that education must be of a high standard however this is not legally enforceable.
Electoral Act 1985	An Act to protect the rights of South Australians to vote in State Elections if they have enrolled.
Environment Protection Act 1993	An Act 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 minimization methods. Has ability to enforce laws which is underpinned by the principle of ecologically sustainable development.
Equal Opportunity Act 1984	The <i>Equal Opportunity Act 1984</i> (the EO Act) is an Act which seeks to promote equality of opportunity between the citizens of South Australia; to prevent certain kinds of discrimination based on sex, race, disability, age or various other grounds; to facilitate the participation of citizens in the economic and social life of the community; and to deal with other related matters. ⁷⁰ The EO Act requires that all citizens of South Australia are treated equally before the law and are entitled to equal protection of the law, without discrimination. It also requires that all citizens have the right to equal and effective protection against discrimination. The Act also creates a Commissioner and Tribunal to ensure enforcement of the legislation. The Commissioner may investigate complaints of alleged discrimination and refer matters to the Tribunal or to the South Australian Employment Tribunal.
Fair Work Act 1994	The <i>Fair Work Act 1994</i> ensures the facilitation of lawful employment within the state and provides for the responsibilities of employers and employees in employment related matters, including conditions of employment.

⁷⁰ *Equal Opportunity Act 1984.*

	It provides protections for both parties such as for Awards and in in relation to industrial disputes. The Fair Work Act ensures freedom of association for South Australian workers and sets out requirements for a matter to be referred and reviewed by the Fair Work Tribunal (the South Australian Employment Tribunal, SAET).
First Nations Voice Act 2023	<p>The South Australian <i>Constitution Act 1934</i> (the Constitution Act) provides recognition of the importance of First Nations voices and acknowledges the South Australian Parliament will, through the <i>First Nations Voice Act 2023</i> (the Voice Act), hear the voice of First Nations people:</p> <p style="text-align: center;">3—Recognition of importance of First Nations voices</p> <p>(1) The Parliament of South Australia recognises the importance of listening to the voices of First Nations people if there is to be a fair and truthful relationship between the First Nations and non-First Nations people of South Australia.</p> <p>(2) The Parliament acknowledges that the voice of First Nations people has not always been heard in Parliament, and intends that, through the <i>First Nations Voice Act 2023</i>, that voice will be heard, and will make a unique and irreplaceable contribution to South Australia that benefits all South Australians.</p>
Freedom of Information Act 1991 Public Interest Disclosure Act 2018	The right to access documents held by government agencies, including Ministers, unless an exemption applies.
Health and Community Services Complaints Act 2004	An Act to provide the right to health through the Charter of Health and Community Services Rights. Provides the right to complain where there are breaches of the rights.
Mental Health Act 2009	<p>The <i>Mental Health Act 2009</i>, is an Act to make provision for the treatment, care and rehabilitation of persons with severe mental illness with the goal of bringing about their recovery as far as is possible;</p> <p>to provide protections of the freedom, legal rights, dignity and self-respect of persons with severe mental illness, as far as is consistent with their protection, the protection of the public and the proper delivery of the services; and</p> <p>to confer appropriately limited powers to make orders for community treatment, or inpatient treatment, of such persons where required.⁷¹</p>

⁷¹ *Mental Health Act 2009*. Preamble; sections 6 and 7.

	All staff employed in positions with responsibilities under the Mental Health Act are to be guided by principles that put patients first, provide best practice services in step with international treaties and meet the highest levels of quality and safety. ⁷²
Police Act 1998	An Act to govern the establishment and management of the Police. It sets out the ‘rules’ for appointment of SA Police force.
Racial Vilification Act 1996	<p>An Act to prohibit certain conduct involving vilification of people on the ground of race. Provision for court awarded damages up to \$40 000.</p> <p>South Australia’s <i>Racial Vilification Act 1996</i> (RV Act), makes it a punishable offence to publicly incite hatred, serious contempt for, or severe ridicule of a person or persons on the grounds of race. The RV Act has several qualifying provisions which are that the public act must include:</p> <ul style="list-style-type: none"> 4 (a) threatening physical harm to the person, or members of the group, or to property of the person or members of the group; or (b) inciting others to threaten physical harm to the person, or members of the group, or to property of the person or members of the group. <p>Threats include implicit and explicit threats and where a person is found guilty of such an offence, the maximum penalty for a natural person is \$5 000, or imprisonment for 3 years, or both, and for a body corporate it is \$25 000. The last amendments to the RV Act were made in 2002.</p>
Safe Drinking Water Act 2011	An Act to ensure that all 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. Has compliance regime in place. The right is implied, rather than being explicit.
Sentencing Act 2017	<p>The <i>Sentencing Act 2017</i> is an Act to make provision in relation to the sentencing of offenders in the Criminal Justice system; to repeal the Criminal Law (Sentencing) Act 1988; and for other purposes.</p> <p>While the primary purpose of the Act is to ensure community safety, the Act prescribes the manner in which sentencing must be carried out, which acts as inferred rights to proper processes.</p>

⁷² *Mental Health Act 2009*. Section 7.

	<p>Part 2 contains ‘General Principles’ for sentencing which include taking into account various factors including proportionality, parity and totality along with other considerations.</p> <p>The Act also provides special provisions for the sentencing of ‘youths’.</p>
South Australian Civil and Administrative Tribunal Act 2013	An Act to set out the powers and processes of the tribunal with jurisdiction to review certain administrative decisions and to act with respect to certain disciplinary, civil or other proceedings; to confer powers on the tribunal.
Summary Offences Act 1953	<p>An Act to make provision for certain offences against public order and other summary offences.</p> <p>The <i>Summary Offences Act 1953</i> makes provision for the powers of the SA Police in relation to investigation of offences. It set out general powers of the Police in relation to arrest, general search warrants for entry and searching of persons and property; recording interviews, and it also provides for appeal rights for defendants.</p>
Supreme Court Act 1935	The <i>Supreme Court Act 1935</i> sets out the powers and procedures of the court and provides for the administration of law and equity.
Work Health and Safety Act 2012	An Act to protect workers, ensure they are physically and mentally safe and healthy while at work and provide a remedy if these conditions are not upheld.
Young Offenders Act 1993	An Act to regulate the conditions and processes to be followed for dealing with children and young people involved with the Criminal Justice system. This includes provisions around sentencing and arrest and procedural guidance for the Youth Court. Provides for a child or young person’s right to legal representation.
Youth Justice Administration Act 2016	<p>An Act to provide for the establishment and management of training centres and community-based supervision services.</p> <p>Contains objects and guiding principles that provide guidance for the safe, humane and secure management of youths held in training centres in the State.</p> <p>Establishes that there shall be a <i>Charter of Rights for Youths Detained in Training Centres</i>.</p>

Issues with Existing Laws

Equal Opportunity and Anti-discrimination Rights

Some submissions raised concerns that without a unifying Human Rights Act to bring existing legislative provisions together with further protections, citizens are subject to the discretion of individual public servants, or the “managing processes” of a department and its chief executive.⁷³ These submissions suggest that “gaps” in protecting the rights of South Australians could be addressed through the creation of a consistent framework and a single Human Rights Act.^{74, 75, 76}

The Rights Resource Network SA holds that existing laws that provide human rights protections for South Australians, “are failing to secure the dignity of individuals and groups of South Australians who fall outside of their scope or prescribed criteria.”⁷⁷ This is largely due to the rights protections not being widely known or reinforced; not being applied appropriately; or not having discreet avenues for remedy and redress.⁷⁸

Submissions argue current mechanisms and laws are not adequate to protect the human rights of large sections of the South Australian community including, people with disabilities, people experiencing mental illness, people with drug and alcohol problems and people experiencing poverty or homelessness.

Some submissions comment that although the *Equal Opportunity Act 1984* (the EO Act) prohibits discrimination for a number of groups, and the *Racial Vilification Act 1996* protects people based on race, the fundamental human right of ‘freedom of religion’ is not adequately protected in South Australia.⁷⁹

Several submissions argue that some South Australian legislation goes so far as to infringe on the human rights of South Australians.⁸⁰ This includes:

- *Disability Inclusion Act 2018*
- *Guardianship and Administration Act 1993* (GA Act)
- *Mental Health Act 2009* (MH Act)
- *Children and Young People (Safety) Act 2017* (CYP Safety Act)
- *Youth Justice Administration Act 2016* (YJA Act)
- *Correctional Services Act 1982* (CS Act)
- Disability Inclusion (Restrictive Practices-NDIS) Regulations.

While the key anti-discrimination legislation, the EO Act, provides mechanisms for people to make a complaint to the Commissioner for Equal Opportunity, the provisions do not provide a ‘cover-all’

⁷³ Mr Geoff Harris, Executive Director, Mental Health Coalition, *Hansard*, 2 December 2024: 184; 186.

⁷⁴ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 5.

⁷⁵ Ms Helen Connolly, *Written submission No. 44*, 15 February 2024: 4 - 5.

⁷⁶ SACOSS, *Written submission No. 94*, February 2024: 4.

⁷⁷ Rights Resource Network, *Written submission No. 2*, 22 December 2023: 3.

⁷⁸ Members of the Rights Resource Network, Rights Resource Network, *Written submission No. 2*, 22 December 2023: 4.

⁷⁹ Falan Dafa Association of Australia Inc., *Written submission No. 107*, 16 February 2024: 2.

⁸⁰ ALHR, *Written submission No. 118*, February 2024: 8.

for breaches of the rights of South Australians which may occur. The Public Advocate, Ms Anne Gale provides in her written submission that the current anti-discrimination laws provide “[...] important protections for people who may otherwise have experienced discrimination.” However, Ms Gale also acknowledges that “[they] do not deal with human rights holistically.”⁸¹

Gaps in Legislation for Specific Groups and Concerns

People Living with Disability

The *Equal Opportunity Act 1984* (the EO Act) provides some mechanisms for people living with disability to seek redress for discrimination. Australian Lawyers for Human Rights (ALHR) advise that although these legal protections against discrimination are provided by the EO Act, the enforcement of them relies on a person bringing a complaint against the discriminator, to court.⁸²

Flinders University Law Lecturers, Dr Rowan Nicholson, Dr Jenny Richards and Dr James Scheibner comment that the EO Act is problematic when it comes to providing protections for people with disabilities as it may not cover all forms of disability, and complaint mechanisms are limited and often “ineffective”.⁸³

One of the key functions of the *Disability Inclusion Act 2018* (DI Act) is to provide for the administration of ‘Disability and Inclusion Action Plans’ (DAIPs) across local and state government areas.⁸⁴

It is recognised, that the DI Act is a proactive measure that seeks to further the responsibilities of state authorities by requiring them to develop and implement DAIPs.^{85, 86} Some submissions claim the DI Act is not an Act intended to empower people with disability, nor to provide a right to recourse for a failure of a state authority to uphold a person’s rights.^{87, 88}

It is also argued in these submissions that the DI Act fails to provide some of the rights that are included in the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) and further, fails to provide a genuine avenue for people with disability to have input into the State’s law-making processes.⁸⁹

Dr Nicholson, Dr Richards and Dr Scheibner point out:

⁸¹ Ms Anne Gale, Public Advocate of South Australia, *Written submission No. 108*, 15 February 2024: 2.

⁸² Ms Natalie Wade, Principal, Equality Lawyers; Chair of Disability Rights, ALHR. *Written submission No. 59*, 16 February 2024: 6 – 7.

⁸³ Dr Rowan Nicholson, Senior Lecturer in Law, Dr Jenny Richards, Lecturer in Law and Dr James Scheibner, Lecturer in Law, Flinders University, *Written submission No. 73*, 16 February 2024: 2.

⁸⁴ *Disability Inclusion Act 2018*. Part 5, section 16.

⁸⁵ ALHR, *Written submission No. 118*, February 2024: 8.

⁸⁶ Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 2.

⁸⁷ Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 2.

⁸⁸ ALHR, *Written submission No. 118*, February 2024: 8.

⁸⁹ ALHR, *Written submission No. 118*, February 2024: 8.

While South Australia does have the *Disability Inclusion Act 2018* (SA), the plans which are mandated under that legislation apply to State government bodies only, and the Act does not create rights.⁹⁰

Ms Natalie Wade, Principal, Equality Lawyers and Chair of Disability Rights with ALHR considers there are a number of mechanisms that are central to human rights legislation which are “...fundamental and essential to advancing human rights for persons with disabilities...” and which... “...are not and will not, be available in the DI Act...”⁹¹ These are:

- a requirement for the human rights of persons with disabilities be considered in law-making,
- enabling the courts and tribunals to interpret legislation consistently with human rights, and
- provision of a complaints mechanism.⁹²

ALHR contends that mechanisms provided in the *Disability Inclusion Act 2018* “...fail to provide adequate protection for human rights for persons with disabilities.”⁹³

While the DI Act is an important proactive measure protecting some of the rights of persons with disabilities, it does not address all human rights. Instead it focuses on social and economic inclusion and safeguarding. This leaves out many human rights articulated in the Convention on the Rights of Persons with Disabilities (CRPD), including rights such as:

- housing;
- independent living; and
- the recognition of legal capacity.⁹⁴

Ms Wade argues the EO Act and its complaints mechanisms fail to provide adequate protection for the human rights of persons with disabilities. This is because human rights issues are not limited to matters of discrimination, which is the purpose of the EO Act.⁹⁵ Ms Wade further comments the EO Act is also inadequate for human rights protections as:

[...] human rights breaches do not only occur in individual situations, either due to direct actions or systemic decisions and approaches. Human rights breaches also occur in the making of laws and are a standalone concept, capable of complaint.⁹⁶

⁹⁰ Dr Rowan Nicholson, Dr Jenny Richards, and Dr James Scheibner, Flinders University, *Written submission No. 73*, 16 February 2024: 2.

⁹¹ Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 2.

⁹² Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 2.

⁹³ ALHR, *Written submission No. 118*, February 2024: 12.

⁹⁴ ALHR, *Written submission No. 118*, February 2024: 8.

⁹⁵ Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 7.

⁹⁶ Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 7.

JFA Purple Orange asserts that although current anti-discrimination legislation acknowledges people living with disability must be treated with equality, the legislation available to protect the human rights of South Australians with disability is inadequate.⁹⁷

JFA Purple Orange note both the DI Act and the EO Act provide some avenues for people to make complaints when they are not treated equally, but both Acts could also be strengthened to better protect the rights of South Australians living with disability.⁹⁸

Other intersecting areas include human rights in relation to disability and education. Dr Peta Spyrou advises that South Australia does not have a legally enforceable right to *education* nor *inclusive education* and, although the *Education and Children's Services Act 2019* provides that 'every child has the right to education', "[...] this is merely an expressed legislative principle, making it an interpretation tool, instead of an enforceable right."⁹⁹

Dr Spyrou considers children and young people with a disability, face greater limitations to their rights than students without disability.¹⁰⁰ This is an issue also raised by Jenny Karavolos, Chief Executive Officer, Disability Advocacy and Complaints Service of South Australia Inc. (DACCSA), who commented the legislation does not provide for inclusivity for children with disability and this is evidenced by the lack of recourse where a student is suspended or expelled.¹⁰¹

Dr Spyrou elaborates in her written submission that while South Australia does not expressly recognise the right to education through a legally enforceable instrument, it does recognise the importance of education through its compulsory education systems.¹⁰²

The South Australian education system provides that a person should not be discriminated against on the grounds of disability by way of recognition of the rights and protections offered by the EO Act and the Commonwealth *Disability Discrimination Act 1992*.

However, Aboriginal and Torres Strait Islander children's advocates SNAICC, contend that South Australian Aboriginal and Torres Strait Islander children frequently face disadvantage and discrimination in relation to education.¹⁰³

SNAICC also commented supports for parents with disability and their children are insufficient:

Aboriginal and Torres Strait Islander parents with disability experience discrimination in the form of over surveillance and insufficient support. Lack of supports for both children and parents with disabilities contributes significantly to the removal of children to out-of-home care, and separation of children from family and culture.¹⁰⁴

⁹⁷ JFA Purple Orange, *Written submission No. 69*, February 2024: 14.

⁹⁸ JFA Purple Orange, *Written submission No. 69*, February 2024: 14.

⁹⁹ Dr Elpitha (Peta) Spyrou, Lecturer in Law, The University of Adelaide, *Written submission No. 27*, 13 February 2024: 3.

¹⁰⁰ Dr Elpitha Spyrou, *Written submission No. 27*, 13 February 2024: 3.

¹⁰¹ Ms Jenny Karavolos, Chief Executive Officer, Disability Advocacy and Complaints Service of South Australia Inc. (DACCSA), *Hansard*, 23 September 2024: 134 – 135.

¹⁰² Dr Elpitha Spyrou, *Written submission No. 27*, 13 February 2024: 3.

¹⁰³ SNAICC, *Written submission No. 101*, February 2024: 12.

¹⁰⁴ SNAICC, *Written submission No. 101*, February 2024: 12.

People Living with Mental Illness

The Human Rights and Coercion Reduction Committee (HRCRC), chaired by Chief Psychiatrist Dr John Brayley, submitted that there are tensions within the mental health system, relating to the limiting of some rights to protect other rights. For example, infringing on an individual's right to freedom of movement to ensure theirs or another's right to safety from harm or likewise in the use of restrictive practices in mental health treatment.¹⁰⁵

These tensions principally involve the *Mental Health Act 2009* (Mental Health Act). The HRCRC advised the Mental Health Act is currently under review and that a Human Rights Act would “complement” amendments to the Mental Health Act concerning the rights of people receiving mental health care:

A Human Rights Act would complement the criteria of the Mental Health Act. It would contribute to giving more safeguards to ensure the limitation of any right in the context of mental health care is conducted with transparency under the principle of proportionality, respecting the dignity, equality, and freedom of people requiring mental health care.¹⁰⁶

While there are concerns evidenced by the HRCRC and the Chief Psychiatrist's Office regarding fundamental rights and freedoms for people experiencing mental health distress under the Mental Health Act, the HRCRC advise that the EO Act is problematic in its selective application:

While anti-discrimination legislation, such as the *Equal Opportunity Act 1984* (EOA) has had laudable goals, given that the Act seeks to stop discrimination and ensure equality, the Act does not describe the full range of rights Citizens should be expected to have, and without this backbone it is possible that compromises can be made. For example, the EOA protects insurers from committing unlawful discrimination on the grounds of disability when denying coverage based on a person's mental health status. This exemption is not consistent with contemporary views of the mental health sector, and different solutions would be found if issues such as the denial of insurance to specific groups were considered through a human rights lens.¹⁰⁷

Chief Psychiatrist Dr John Brayley also commented:

[...] legal protections for people with mental health distress and their families are scattered across a complex legal framework. Specific rights are currently recognised in different acts. Moreover, critical definitions like decision-making capacity or even the definition of a child vary between acts which creates ambiguity in the interpretation of the fundamental principles. A human rights act would enhance the operation of the Mental Health Act by ensuring that any rights' limitations are transparent and proportional, respecting dignity, equality and freedom and considering the rights of carers and others in the community.¹⁰⁸

The HRCRC further note:

¹⁰⁵ The Human Rights and Coercion Reduction Committee (HRCRC), *Written submission No. 113*, “Attachment”, February 2024: 1.

¹⁰⁶ HRCRC, *Written submission No. 113*, “Attachment”, February 2024: 2.

¹⁰⁷ HRCRC, *Written submission No. 113*, “Attachment”, February 2024: 3.

¹⁰⁸ Dr John Brayley, *Hansard*, 17 June 2024: 82.

A *Human Rights Act* would underpin general legislative development to give cohesion and compatibility between the diverse Acts [...] For example, the *Mental Health Act* is under review and should have modern human rights provisions. However, this requirement can be better ensured if new laws need to be tested against the requirements of a *Human Rights Act*.¹⁰⁹

Mr Geoff Harris, Executive Director, Mental Health Coalition of South Australia commented that the recent review of the *Mental Health Act 2009* by the South Australian Law Reform Institute identifies there is debate on rights and the use of involuntary treatments and community treatment orders.¹¹⁰ Mr Harris notes these are “[...] complex, emotive, difficult topics and a human rights lens would assist in creating a better balance.”¹¹¹

Mental Incapacity

The Australian Lawyers for Human Rights (ALHR) provide in their written submission that people with intellectual disability and/or psychosocial disabilities, including diagnoses of autism, brain injuries and mental illness disproportionately experience rights violations under the *Guardianship and Administration Act 1993* (GA Act).¹¹²

ALHR allege, the GA Act removes the legal capacity from a person on the basis of their “mental incapacity” which, is defined under section 3 as:

the inability of a person to look after his or her own health, safety or welfare or to manage his or her own affairs, as a result of—

(a) any damage to, or any illness, disorder, imperfect or delayed development, impairment or deterioration of, the brain or mind; or

(b) any physical illness or condition that renders the person unable to communicate his or her intentions or wishes in any manner whatsoever.¹¹³

The ALHR advise that the operation of the GA Act in relation to the detention of persons deemed to incapable of making decisions based on their “mental incapacity”, violates article 12 of the UN CRPD.¹¹⁴ ALHR state:

The GA Act provides no mechanism for supported decision making and so, more often than not, it sees persons with intellectual disability or psychosocial disability have their legal capacity removed and a substituted decision maker appointed. While guardianship and administration orders are subject to regular review, many persons with disabilities are subject to them for their lifetime, never having the legal capacity to make decisions about their healthcare, accommodation, financial or legal affairs.¹¹⁵

¹⁰⁹ HRCRC, *Written submission No. 113*, February 2024: 2.

¹¹⁰ Mr Geoff Harris, Mental Health Coalition of South Australia, *Hansard*, 2 December 2024: 184.

¹¹¹ Mr Geoff Harris, *Hansard*, 2 December 2024: 184.

¹¹² ALHR, *Written submission No. 118*, February 2024: 9.

¹¹³ Section 3 of the *Guardianship and Administration Act 1993*. Cited in ALHR, *Written submission No. 118*, February 2024: 9.

¹¹⁴ ALHR, *Written submission No. 118*, February 2024: 9 - 10.

¹¹⁵ ALHR, *Written submission No. 118*, February 2024: 9.

Cultural Determinants of Wellbeing for Aboriginal and Torres Strait Islander People

Human rights and freedoms are of particular significance for Aboriginal and Torres Strait Islander people.¹¹⁶ Aboriginal and Torres Strait Islander people face greater infringement on their rights, than non-Aboriginal people especially in relation to health and mental health services, housing, food security, cultural safety, freedom of movement, freedom from violence and freedom from discrimination.¹¹⁷

While the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) provides rights protections for many of these aspects, the Aboriginal Health Council of South Australia (AHCSA) advise:

Our existing fragmented approach to human rights, both at the state and national levels, fails to effectively prevent or shield people from harm or rights violations. This disjointed framework selectively acknowledges certain rights, leaving others with uncertain legal standing or inadequate enforceability.¹¹⁸

Cultural determinants such as connection to land, sea, water, culture, and spirituality are critical for Aboriginal and Torres Strait Islander peoples' mental health and wellbeing. According to the HRCRC, the Mental Health Act establishes that mental health services should take into account—

[i]n the case of persons of Aboriginal or Torres Strait Islander descent—the persons' traditional beliefs and practices and, when practicable and appropriate, involve collaboration with health workers and traditional healers from their communities (SA Mental Health Act S 7(1)(ca)(iv))

HRCRC recognises that the social and emotional wellbeing of Aboriginal and Torres Strait Islander people are connected to cultural determinants and intersect with mental health and contend that:

[...] the social and emotional wellbeing and mental health care of First Nations People should be underpinned by the cultural rights and principles recognised in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).¹¹⁹

The HRCRC advise there is very limited guidance for authorities working within the mental health system in providing Aboriginal and Torres Strait Islander people with holistic, culturally appropriate mental health care.¹²⁰ The HRCRC advise:

While this will be addressed in a new Mental Health Act, a Human Rights Act would give guidance to protect, promote and uphold these rights not only in the context of mental health and wellbeing care but a full range of government services.¹²¹

Aboriginal Legal Rights Movement (ALRM) provide that for Aboriginal and Torres Strait Islander people with mental illness, access to services is fraught with obstacles which are underscored by

¹¹⁶ Aboriginal Health Council of South Australia Ltd. (AHCSA), *Written submission No. 120*, February 2024: 4; 5.

¹¹⁷ AHCSA, *Written submission No. 120*, February 2024: 4.

¹¹⁸ AHCSA, *Written submission No. 120*, February 2024: 5.

¹¹⁹ HRCRC, *Written submission No. 113*, Attachment, February 2024: 2.

¹²⁰ HRCRC, *Written submission No. 113*, Attachment, February 2024: 2.

¹²¹ HRCRC, *Written submission No. 113*, Attachment, February 2024: 2.

“culturally inappropriate conditions”.¹²² ALRM’s concerns range from the lack of interpreters provided when Aboriginal people engage with services, to services failing to adequately engage with family members on decisions that affect whole families, to examples provided below:¹²³

People who exhibit mental health or suicide risk when detained by police being placed in padded cells and at times, fully stripped. Having confided their suicidal feelings, they are left alone and naked in a padded cell. This is contrary to Recommendation 142 of the Royal Commission into Aboriginal Deaths in Custody and evidence. (Prohibition against torture or cruel, inhuman, or degrading treatment or punishment).¹²⁴

Children and Young People

Ms Shona Reid, South Australian Guardian for Children and Young People, Training Centre Visitor (TCV), Child and Young Person’s Visitor (CYPV) and Youth Treatment Order Visitor (YTOV), states the current *Children and Young People (Safety) Act 2017* (CYP Safety Act) does not treat children and young people as the holders of rights.¹²⁵

Ms Reid, advises in her submission to the inquiry, that in undertaking her statutory functions in these roles she has observed:

“[...] a consistent and alarming lack of responsiveness in South Australia towards protecting, respecting, and fulfilling the human rights of children and young people in care and detention.”¹²⁶

Ms Reid further contends:

“[...] considerable work is required to refocus relevant laws and policies towards treating children and young people, first and foremost, as rights holders.”¹²⁷

In discussing an example of the way current legislation and mechanisms fail children and young people’s human rights, Ms Reid refers to the obligation imposed on the Youth Court and the South Australian Civil and Administrative Tribunal (SACAT) by the CYP Safety Act to provide children and young people with a reasonable opportunity to *personally present* their views about their ongoing care and protection.¹²⁸

This obligation is in part, fulfilling the State of South Australia’s duty to Article 12 of the United Nations *Convention on the Rights of the Child* (CRC) which provides that children who are capable of forming their own views, have the right to express their views freely in all matters affecting them,

¹²² Aboriginal Legal Rights Movement (ALRM), *Written submission No. 297*, March 2024: 2.

¹²³ ALRM, *Written submission No. 297*, March 2024: 7 - 8.

¹²⁴ ALRM, *Written submission No. 297*, March 2024: 8.

¹²⁵ Ms Shona Reid, Guardian for Children and Young People, Training Centre Visitor (TCV), Child and Young Person’s Visitor (CYPV) and Youth Treatment Order Visitor (YTOV), *Written submission No. 298*, 13 March 2024: 1 - 2.

¹²⁶ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 1.

¹²⁷ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 2.

¹²⁸ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 3.

with their views being given due weight in accordance with their age and maturity. This includes in judicial and administrative proceedings affecting the child.¹²⁹

Ms Reid explains by contrast, section 85 of the CYP Safety Act, sets a different standard for children and young people’s participation in the annual reviews conducted by the Department for Child Protection, of a child or young person’s circumstances in care, and does not expressly provide the opportunity for these children and young people to make their submissions personally.¹³⁰

Regardless of the origins, the result is that the CYP Safety Act imposes a lower standard for ensuring children and young people can express their views in one process, compared to another. [...] Based on data collected through my office’s audit of 193 annual reviews in 2021-22, my relevant findings included:

- 45% of children and young people were not invited to their annual review
- a further 20% were invited but did not attend
- For those who did not personally attend, most commonly this was due to the annual review being scheduled during school hours (44%)
- Some concerning bases for children and young people’s non-attendance included a child who was COVID-positive (and the review was not rescheduled), and another where the recorded reason was ‘would have declined if invited’.¹³¹

Ms Reid explains the “concerningly low” attendance of children and young people at the annual review of their circumstances (under the CYP Safety Act), raises concerns about the risks associated with the Department’s implementation of Article 12 of the UNCRC.¹³² Importantly, Ms Reid points out:

There is nothing that precludes a policy standard which sets best practice for children’s participation in annual reviews, above that imposed by the legislation. However, the reality of overburdened systems is that practice tends to gravitate towards minimum legislative compliance, rather than the intent of Article 12: to promote children’s ability to participate in decision-making to the fullest extent possible, as a fundamental mechanism to achieve decisions that are in their best interests.¹³³

Ms Reid advises, without a “single, consolidated legislative instrument” that details the rights of all South Australians, the “on-the-ground practice” in translating legislation into procedure, that

¹²⁹ UN, *Convention on the Rights of the Child*, 20 November 1989, United Nations Treaty Series, vol. 1577, Article 12. Accessed: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en#EndDec

¹³⁰ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 3 - 4.

¹³¹ Office of the Guardian for Children and Young People (OGCYP), A rights-based approach to safety – OGCYP submission to the five-year review of the *Children and Young People Safety Act 2017, 2022: 20-22* (‘A rights-based approach to safety’). Cited in: Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 4.

¹³² Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 4.

¹³³ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 4.

“compliance-culture” can arise.¹³⁴ Ms Reid says, there is a “selective approach to embedding human rights into laws” and that this approach “prioritises those rights suited to procedural protections” and will (often) “lose sight of the core intention and indivisible nature of children’s rights.”¹³⁵

Ms Reid’s position is supported by the Youth Affairs Council of South Australia (YACSA), who provided in their written submission that:

The UNCRC clearly articulates in Article III that the paramount consideration in the intervention in a child or young person’s life must be the ‘best interests’ of the child or young person. Despite this, the *Children and Young People (Safety) Act 2017* (SA) placed the ‘protection of children and young people from harm’ as the paramount consideration.¹³⁶

These views are echoed by the Commissioner for Children and Young People, Ms Helen Connolly.¹³⁷ Ms Connolly informed the Committee that early childhood education settings had developed a rights understanding for younger children, but there were many gaps in the education system. This, Ms Connolly advised was especially true for primary school and lower high school aged groups.¹³⁸

Ms Connolly offered the below analysis of how children and young people view their rights (or perceived lack of rights) in South Australia:

It would be rare for children—extremely rare for children—to talk about having any rights. What they will write to me about [...] is wishing there were rights for people. There's an assumption in kids that children don't have rights and that there are no rights for people with disability. A rights framework gives us the basis on which to then deepen the education. I think for me that builds trust in institutions, and trust in institutions gives rise to civic participation and then we have got, I think, a much more healthy kind of democratic society.¹³⁹

Ms Reid offers addressing this “confused and inconsistent” legislative framework could be achieved by establishing “a single authoritative source of human rights”, which:

- promotes consistency across government agencies and work units regarding which rights must be incorporated into practice – and how
- provides clear guidance about processes for balancing competing rights
- ensures accountability and transparency through associated record-keeping and reporting.¹⁴⁰

¹³⁴ See also: Youth Affairs Council of South Australia (YACSA), *Written submission No. 81*, February 2024: 2 – 3.

¹³⁵ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 4.

¹³⁶ YACSA, *Written submission No. 81*, February 2024: 2 – 3.

¹³⁷ Ms Helen Connolly, Commissioner for Children and Young People, *Written submission No. 44*, 15 February 2024: 1.

¹³⁸ Ms Helen Connolly, *Hansard*, 25 November 2024: 117.

¹³⁹ Ms Helen Connolly, *Hansard*, 25 November 2024: 117.

¹⁴⁰ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 3 - 4.

Ms Connolly advised that although some efforts and investment had been made, current laws, systems and services “are failing to adequately protect the rights of all children and young people.”¹⁴¹ Ms Connolly commented further:

Importantly, in addition to strengthening remedies for breaches of rights, a rights-focused framework can facilitate change across all systems and legislation to proactively build rights-respecting environments and a culture of rights accountability.¹⁴²

The Aboriginal Legal Rights Movement (ALRM) provide:

Children under guardianship of the Chief Executive who have high levels of trauma being placed into residential care facilities, acting out and causing damage, being then subject to police calls, charges, arrests and detention – with ongoing trajectory of incarceration. These children can also find themselves detained under s269X orders – they are unable to plead, are suffering effects of trauma but not to the extent of being placed in a mental health facility and are instead left in detention.¹⁴³

SNAICC raised many concerns that current legislative measures are failing to provide adequate protections to children in vulnerable situations, such as those who have had interactions with the Child Protection system or the Youth Justice system.¹⁴⁴

Ms Ashum Owen, Wakwakurna Kanyini, informed the Committee that as of 30 June 2023, Aboriginal and Torres Strait Islander children accounted for approximately 5 per cent of the population of South Australian children. Despite this low number, Ms Owen advises Aboriginal and Torres Strait Islander children accounted for 37 per cent of all South Australian children in out-of-home care or on ‘third-party orders’ and were 1½ times more likely to be in out-of-home care compared to non-Indigenous children.¹⁴⁵

Ms Owen also advised that South Australia has the highest rate of Aboriginal and Torres Strait Islander children in residential care and on long term orders, with the lowest rate of family reunification, compared to other states and territories.¹⁴⁶ Ms Owen Advised:

It is apparent that once in the child protection system Aboriginal children are more likely to be disconnected permanently from family, community and country. These statistics reflect that Aboriginal children are uniquely vulnerable to breaches of their human rights and would be significantly supported by the introduction of a human rights act.¹⁴⁷

SNAICC advised that although Australia has ratified the UNCRC, the Australian Government continues to hold a reservation to article 37(c) of the UNCRC, which requires that children are not detained with adults.¹⁴⁸

¹⁴¹ Ms Helen Connolly, *Written submission No. 44*, 15 February 2024: 3.

¹⁴² Ms Helen Connolly, *Written submission No. 44*, 15 February 2024: 3.

¹⁴³ ALRM, *Written submission No. 297*, March 2024: 6.

¹⁴⁴ SNAICC, *Written submission No. 101*, February 2024: 12.

¹⁴⁵ Ms Ashum Owen, Wakwakurna Kanyini, *Hansard*, 14 October 2024: 148.

¹⁴⁶ Ms Ashum Owen, Wakwakurna Kanyini, *Hansard*, 14 October 2024: 148.

¹⁴⁷ Ms Ashum Owen, Wakwakurna Kanyini, *Hansard*, 14 October 2024: 148.

¹⁴⁸ SNAICC, *Written submission No. 101*, February 2024: 11.

This means in South Australia there is no rights-based impetus for the South Australian Government to do otherwise. SNAICC claim the rights of Aboriginal and Torres Strait Islander children are disproportionately represented in the Criminal Justice system (Youth Justice) and may therefore be subject to further harms.^{149, 150} This view is supported by the ALRM and the Guardian for Children and Young People.¹⁵¹ SNAICC advise the UNDRIP requires that:

Particular attention is to be paid to the rights and special needs of Indigenous children and measures taken to ensure that Indigenous children enjoy the full protection and guarantees against all forms of violence and discrimination.¹⁵²

However, SNAICC also advise that they are aware that Aboriginal and Torres Strait Islander children are still being held in detention "...in watchhouses, police vehicles, police stations, in adult facilities and in the presence of adults"¹⁵³, while ALRM advise they are aware there are "[c]hildren in custody being restricted in cells beyond a reasonable time and being restrained by 'wrap' where they are essentially tied to the wall."¹⁵⁴

According to the Guardian for Children and Young People, Ms Shona Reid, compliance with the *Optional Protocol to the Convention against Torture* (OPCAT) is the key standard of international best practice on mechanisms to prevent mistreatment of people in detention settings.¹⁵⁵

[...] it is notable that there remains no funding or legislation in South Australia to support activities required under the United Nations *Optional Protocol to the Convention against Torture* (OPCAT) regarding respect to places where children and young people may be deprived of their liberty. This includes youth detention facilities, police facilities, health facilities (including hospital emergency departments and wards), residential care houses and other places where OOHC is provided.¹⁵⁶

Ms Reid further stated that in her roles as Guardian for Children and Young People, Training Centre Visitor, Child and Young Person's Visitor and Youth Treatment Order Visitor, she considers the OPCAT is a necessary function to protect children and young people's human rights and that:

"[...] serious rights violations are currently occurring in the Youth Justice Centre and places where out-of-home care is provided. The lack of this mechanism is a concerning gap in South Australia's human rights infrastructure".¹⁵⁷

Save the Children SA / 54 Reasons submit that although it is noted that there are some rights for children recognised through South Australian legislation, they agree with the Rights Resource

¹⁴⁹ SNAICC, *Written submission No. 101*, February 2024: 11.

¹⁵⁰ See also Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 3.

¹⁵¹ ALRM, *Written submission No. 297*, March 2024: 6 – 7.

¹⁵² SNAICC, *Written submission No. 101*, February 2024: 11.

¹⁵³ SNAICC, *Written submission No. 101*, February 2024: 11.

¹⁵⁴ ALRM, *Written submission No. 297*, March 2024: 5.

¹⁵⁵ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 5.

¹⁵⁶ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 4 - 5.

¹⁵⁷ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 5.

Network’s assertion that existing South Australian laws (where they relate to children), are limited in scope and enforceability and lack any consistent framework to tie them together.¹⁵⁸

Ms Gai Campbell writes “[v]iolations of children’s rights are widespread in South Australia.”¹⁵⁹ With issues such as poverty, development, child protection, family and domestic violence, high rates of Aboriginal and Torres Strait Islander children being removed from home and impacts from the COVID-19 pandemic, cited as key concerns.¹⁶⁰

The Youth Affairs Council of South Australia (YACSA) also submit that conditions are worse for young people following the COVID-19 pandemic and note inequality has increased for many young South Australians.¹⁶¹ YACSA provide:

Despite commitment to the UNCRC, the absence of a Federal or State-based mechanism to safeguard human rights will see young people continue to be disproportionately impacted by global conditions and economic, environmental, social, and demographic policy decisions that have increased inequality between generations, especially since the COVID-19 pandemic.¹⁶²

YACSA also comment on South Australia’s progress on the recommendations made by the UN Committee on the Rights of the Child. YACSA provide that since 2021, there have been 30 recommendations across 7 areas including *health, education, disability, environment, child protection and justice, and physical punishment*.¹⁶³

YACSA state, as of December 2023, none of the 30 recommendations made by the UN Committee on the Rights of the Child had ‘clear evidence of progress’. YACSA also note: “Most concerning, some recommendations had ‘no evidence of progress’ despite being considered to have ‘some evidence of progress’ in previous years.”¹⁶⁴

SA Government responses to the UN Committee on the Rights of the Child was an issue also raised by the Commissioner for Children and Young People. Ms Helen Connolly advises:

A Human Rights Act would provide a foundation for better responses to systemic human rights concerns repeatedly raised by the UN Committee on the Rights of the Child and other international treaty bodies. The current absence of a legislative framework that upholds children’s rights manifests in significant rights violations and in governments lacking direction and accountability to address violations.¹⁶⁵

¹⁵⁸ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 3. Cited in Ms Gai Campbell, *Save the Children / 54 Reasons*, *Written submission No. 63*, 16 February 2024: 1.

¹⁵⁹ Ms Gai Campbell, *Save the Children / 54 Reasons*, *Written submission No. 63*, 16 February 2024: 1.

¹⁶⁰ Ms Gai Campbell, *Save the Children / 54 Reasons*, *Written submission No. 63*, 16 February 2024: 1 - 2.

¹⁶¹ YACSA, *Written submission No. 81*, February 2024: 1

¹⁶² YACSA, *Written submission No. 81*, February 2024: 1.

¹⁶³ YACSA, *Written submission No. 81*, February 2024: 2

¹⁶⁴ YACSA, *Written submission No. 81*, February 2024: 2.

¹⁶⁵ Ms Helen Connolly, *Written submission No. 44*, 15 February 2024: 3.

Women

Full Stop Australia advises that the statistics showing the prevalence of gender-based violence such as sexual violence and family and domestic violence in Australia are “disturbing”.¹⁶⁶ Full Stop Australia provide data sourced from the Australian Institute of Criminology, National Homicide Monitoring Program, 2015; the Australian Bureau of Statistics, Personal Safety data from 2021-22 and a report from the Australian Child Maltreatment Study, Queensland University of Technology, 2023:

On average, one Australian woman is murdered every week by a current or former intimate partner.

According to the latest Australian Bureau of Statistics Personal Safety Survey, 1 in 5 Australian women has experienced sexual violence since the age of 15, and 1 in 4 Australian women has experienced violence from an intimate partner or family member since the age of 15.

The latest Australian Child Maltreatment Study, a survey of over 8,500 Australians, revealed that more than 1 in 3 girls, and almost 1 in 5 boys, experience Child Sexual Abuse.¹⁶⁷

Full Stop Australia comment that the latest ABS data on Personal Safety also show that 92 per cent, or 680, 000 women who experienced sexual assault by a male perpetrator in Australia (in the 10 years prior to 2021 -22), did not report the most recent incident to police.¹⁶⁸ Full Stop Australia advocate that the figures demonstrate access to the Criminal Justice system via reporting to the police is “not working for victim-survivors.”¹⁶⁹ Full Stop Australia provide:

[...] the scale of the problem of sexual, domestic and family violence, and the extent to which existing laws and systems are failing to provide justice to victim-survivors, justifies creating a standalone right to live free from sexual, domestic and family violence. This would also highlight the critical importance of ending sexual, domestic and family violence as a key priority for South Australia.¹⁷⁰

JusticeNet SA provide that access to justice is a human right.¹⁷¹ However for women who are not able to afford adequate representation in court, or do not meet eligibility criteria for legal aid, these rights are abrogated:

Family and civil law matters, which disproportionately impact women, are largely unfunded by legal aid while most of scarce legal aid funds are directed to criminal offences where there is a limited right to have a trial postponed if an accused person is unable to obtain legal representation.¹⁷²

¹⁶⁶ Full Stop Australia, *Written submission No. 125*, February 2024: 5.

¹⁶⁷ Full Stop Australia, *Written submission No. 125*, February 2024: 5.

¹⁶⁸ Full Stop Australia, *Written submission No. 125*, February 2024: 5.

¹⁶⁹ Full Stop Australia, *Written submission No. 125*, February 2024: 5.

¹⁷⁰ Full Stop Australia, *Written submission No. 125*, February 2024: 5.

¹⁷¹ JusticeNet SA, *Written submission No. 43*, 16 February 2024: 2.

¹⁷² JusticeNet SA, *Written submission No. 43*, 16 February 2024: 9.

The South Australian Abortion Action Coalition (SAAAC) advise that obstructions to universal, adequate, and culturally appropriate access to abortion care occurs in South Australia and that all women and pregnant people should be afforded the right to quality health care.¹⁷³ SAAAC proposes that the following obstructions occur for women and pregnant people, which is especially present in regional, rural and remote locations:

- poor policy and planning by government;
- inadequate allocation of resources;
- entrenched stigma attached to abortion which is evident in the actions of individuals and institutions which slow and hinder not only progress when it is proposed, but the everyday operation of health care;
- the absence of adequate access to accurate information about abortion healthcare services;
- the absence of the availability of and the cost of early medical abortion in primary care settings (lack of GPs currently prescribing early medical abortion);
- the absence of adequate access to abortion healthcare later in pregnancy (especially after 20 weeks);
- the uneven quality of abortion healthcare in public hospitals;
- the persistence of a legislated ‘right’ for health care professionals to claim conscientious objection to abortion privileging their rights over the patient’s.¹⁷⁴

SAAAC state:

Denying people access to abortion can amount to violations of the rights to health, privacy and, in certain cases, the right to be free from cruel, inhumane and degrading treatment.¹⁷⁵

Aboriginal and Torres Strait Islander People

Aboriginal Legal Rights Movement (ALRM) advised the Committee that South Australian Aboriginal and Torres Strait Islander people are yet to experience the same degree of rights as non-Aboriginal people, including in relation to life expectancy. ALRM assert that Aboriginal people are “the most systemically disadvantaged people in South Australia.”¹⁷⁶

Submissions provide a Human Rights Act is necessary to ensure Closing the Gap targets are met, “to see real change for Aboriginal peoples”¹⁷⁷ and to “evolve government structures and culture and [...] prevent rights abuses.”¹⁷⁸

¹⁷³ South Australian Abortion Action Coalition (SAAAC), *Written submission No. 86*, February 2024: 2.

¹⁷⁴ SAAAC, *Written submission No. 86*, February 2024: 2.

¹⁷⁵ SAAAC, *Written submission No. 86*, February 2024: 1.

¹⁷⁶ ALRM, *Written submission No. 297*, March 2024: 2.

¹⁷⁷ ALRM, *Written submission No. 297*, March 2024: 2; 4.

¹⁷⁸ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 2; 4.

These views are advocated by numerous other submissions including from the Aboriginal Health Council of South Australia Ltd. (AHCSA),¹⁷⁹ The Law Society of South Australia,¹⁸⁰ The Guardian for Children and Young People (Training Centre Visitor, Child and Young Person’s Visitor and Youth Treatment Order Visitor),¹⁸¹ SNAICC¹⁸² and Save the Children / 54 Reasons.¹⁸³

There are a number of measures by which ALRM advises current legislation and mechanisms are failing Aboriginal and Torres Strait Islander people in South Australia. Some of these include:

- Aboriginal people have a significantly lower life expectancy than non- Aboriginal people;
- Aboriginal people have a lower year 12 school completion rate;
- Aboriginal people are less likely to be living in secure appropriately sized housing;
- Aboriginal people are overrepresented in the Criminal Justice system and are imprisoned at the highest rate of any people in the world;
- Aboriginal children are overrepresented in the numbers of children under the Guardianship of the Chief Executive and generally in the Child Protection system;
- Aboriginal people are overrepresented amongst people under public guardianship of the Public Advocate;
- Aboriginal people have significantly higher suicide rates than non-Aboriginal people.¹⁸⁴

ALRM advise that the rights of Aboriginal people “...must be forefront and enforcement by and with Aboriginal peoples, must be key to any supporting human rights framework.”¹⁸⁵

Aboriginal Health Council of South Australia (AHCSA) also advised:

The challenges currently faced highlight the inadequacy of current systems, exposing the ongoing discourse and need for change and reform. Shifting the policy focus from crisis response to a proactive human rights approach is important for all South Australians especially the most marginalised in our community.¹⁸⁶

Along with the UNDRIP, the UNCRC contains a number of articles that are relevant to Aboriginal and Torres Strait Islander children, and must be given special consideration, such as the right to enjoy their culture, and to learn and use the language and customs of their Indigenous Nations.¹⁸⁷

¹⁷⁹ AHCSA, *Written submission No. 120*, February 2024: 4.

¹⁸⁰ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 4.

¹⁸¹ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 2; 4.

¹⁸² SNAICC, *Written submission No. 101*, February 2024: 4.

¹⁸³ Ms Gai Campbell, Save the Children / 54 Reasons, *Written submission No. 63*, 16 February 2024: 2 – 3.

¹⁸⁴ ALRM, *Written submission No. 297*, March 2024: 4.

¹⁸⁵ ALRM, *Written submission No. 297*, March 2024: 2.

¹⁸⁶ AHCSA, *Written submission No. 120*, February 2024: 5.

¹⁸⁷ UNCRC cited in SNAICC, *Written submission No. 101*, February 2024: 10.

LGBTQIA+ People

Several submissions raised concerns with the EO Act, and in particular with the effect of subsection 50(1)(c) of the EO Act.^{188, 189} According to the South Australian Rainbow Advocacy Alliance (SARAA), this subsection allows religious organisations to discriminate against LGBTQIA+ people in “who they hire and serve in education, health, housing and other essential services.”¹⁹⁰ Thorne Harbour Health also advocate that this subsection leaves deficiencies in the protections for LGBTQIA+ people against discrimination provided by the EO Act.¹⁹¹ Subsection 50(1)(c) provides that

50—Religious bodies

(1) This Part does not render unlawful discrimination in relation to—

[...]

(c) any other practice of a body established for religious purposes that conforms with the precepts of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

SARAA advise that in 2016 the South Australian Law Reform Institute (SALRI) recommended the removal of s50(1)(c) of the Equal Opportunity Act to “make it clear that it does not apply to exempt discrimination with respect to the provision of key public services such as education or health services.”¹⁹²

According to SARAA, some steps were taken by the government in 2020 to narrow the scope of s50(1)(c) of the subsection, however no further action was taken.¹⁹³

Thorne Harbour Health note the Victorian Parliament amended its anti-discrimination legislation in 2021 (*Equal Opportunity (Religious Exceptions) Amendment Act 2021*), to provide specific circumstances in which a religious body may discriminate against employees or potential employees.¹⁹⁴

SARAA,¹⁹⁵ Thorne Harbour Health and several other submissions also raised concerns regarding the rights of LGBTQIA+ people in relation to:

¹⁸⁸ South Australian Rainbow Advocacy Alliance (SARAA), *Written submission No. 300*, 12 February 2024: 3.

¹⁸⁹ Thorne Harbour Health, *Written submission No. 98*, 16 February 2024: 3.

¹⁹⁰ SARAA, *Written submission No. 300*, 12 February 2024: 3.

¹⁹¹ Thorne Harbour Health, *Written submission No. 98*, 16 February 2024: 3.

¹⁹² SARAA, *Written submission No. 300*, 12 February 2024: 4.

¹⁹³ SARAA, *Written submission No. 300*, 12 February 2024: 4.

¹⁹⁴ Thorne Harbour Health, *Written submission No. 98*, 16 February 2024: 4.

¹⁹⁵ SARAA, *Written submission No. 300*, 12 February 2024: 5 - 6.

- vilification hate speech and hate crimes;¹⁹⁶
- conversion practices;¹⁹⁷
- freedom of choice and consent in medical procedures in particular for people with intersex status;¹⁹⁸
- aged care services;¹⁹⁹ and
- living with disability.²⁰⁰

Other concerns raised by SARAA include access to health care, right to privacy and reputation, the legal recognition of gender identity, LGBTQIA+ people incarcerated, intersecting minorities and the rights of people with intersex characteristics.²⁰¹

The Coalition of Women and LGBT Groups advised they are concerned about the rights of women and lesbians regarding single-sex spaces and “...the conflict of rights that has arisen as a result of our institutions prioritising gender identity over sex-based protections....”²⁰²

People with Experience of the Criminal Justice System

Justice Reform Initiative support the comments made by the Rights Resource Network in relation to the limitations of the effectiveness of current laws to protect the rights of people incarcerated or with experience of the Criminal Justice system.²⁰³ Justice Reform Initiative contend, the *Optional Protocol to the Convention Against Torture’s* (OPCAT) *National Preventative Mechanism* (NPM) is a very important mechanism for protecting human rights in SA however, they are aware there has been international criticism for South Australia’s failure to comply with the instrument, and state:²⁰⁴

The Justice Reform Initiative respectfully submits to this Committee that if the South Australian Parliament will not fund mechanisms **for protecting the constituents of Members of this Committee from torture** then there is not adequate mechanisms for protecting human rights in South Australia.²⁰⁵

The South Australian Correctional Services Official Visitor also considers the OPCAT has not been adhered to as effectively as it might have been given the inadequacies in funding for the Official Visitor role.

¹⁹⁶ Thorne Harbour Health, *Written submission No. 98*, 16 February 2024: 3 - 4.

¹⁹⁷ Name withheld, *Written submission No. 127*, 4 March 2024: 1.

¹⁹⁸ Ms Carolyn Hannaford, Advisory Board Member, Rights Resource Network SA, *Hansard*, 8 April 2024: 3 – 4.

¹⁹⁹ Ms Susan Ditter, *Written submission No. 30*, 8 February 2024: 1.

²⁰⁰ Mr Timothy Green, Regional President, SA/ NT Activist Leadership Committee, Amnesty International Australia, *Hansard*, 26 August 2024: 99; *Written submission No. 95*, February 2024: 1.

²⁰¹ SARAA, *Written submission No. 300*, 12 February 2024: 7 - 11.

²⁰² Coalition of Women and LGBT Groups, *Written submission No. 302*, 23 February 2024: 1 – 2.

²⁰³ Justice Reform Initiative, *Written submission No. 90*, February 2024: 4.

²⁰⁴ Justice Reform Initiative, *Written submission No. 90*, February 2024: 4.

²⁰⁵ Justice Reform Initiative, *Written submission No. 90*, February 2024: 5.

The Official Visitor, Mr Tristian Colmer provides:

Since its inception in early 2022, the Official Visitor role has monitored human rights in South Australian prisons. Unfortunately, the role has suffered from an absence of funding [...] lack of resource commitment [...] to assist in supporting and developing the role. At present, the role is undertaken by part-time appointees, who have limited resources available to investigate broader issues.²⁰⁶

ALRM states the experiences of Aboriginal and Torres Strait Islander people within the Criminal Justice system demonstrate breaches of the rights set out in the UNDRIP, rights which have been endorsed by the Commonwealth.²⁰⁷

ALRM provide that Aboriginal and Torres Strait Islander people are overrepresented in the Criminal Justice system and are the most imprisoned people in the world.²⁰⁸

ALRM advised the rights of Aboriginal and Torres Strait Islander people as set out in UN treaties, which are most violated in the criminal justice context are:

- prohibition against torture or cruel, inhuman or degrading treatment or punishment;
- freedom from arbitrary deprivation of liberty;
- right to life;
- right to health;
- right to privacy and family life;
- cultural rights;
- right to equality and non-discrimination; and
- minimum guarantees in criminal proceedings.²⁰⁹

People Experiencing Poverty and/ or Homelessness

It is well understood that South Australia faces a severe housing shortage. Submissions to the inquiry provide that this is compounded for people experiencing homelessness, or face intersecting and /or complex challenges, such as domestic violence, poverty or mental illness.^{210, 211, 212} Shelter SA provides that:

²⁰⁶ Mr Tristian Colmer, South Australian Government, Department of Correctional Services, Official Visitor, *Written submission No. 78*, February 2024: 1 – 2.

²⁰⁷ ALRM, *Written submission No. 297*, March 2024: 5; 8.

²⁰⁸ ALRM, *Written submission No. 297*, March 2024: 2.

²⁰⁹ ALRM, *Written submission No. 297*, March 2024: 4.

²¹⁰ Dr Alice Clark, Executive Director, Shelter SA, *Written submission No. 15*, 8 February 2024: 2 – 4; 9.

²¹¹ Uniting Church in Australia, Synod of South Australia, Public Theology and Mission Committee, *Written submission No. 39*, 14 February 2024: 1.

²¹² Ms Claire Hyland and Ms Cathy Brook (Chair), South Australian Health Social Work Advisory Group, *Written submission No. 76*, 12 February 2024: 1.

The right to adequate housing and the right to the highest attainable standards of physical and mental health are intrinsically linked. [...] The human right to housing is not assured in South Australia, nor is access to redress when this right is not met.²¹³

According to the Australian Institute of Health and Welfare (AIHW) during 2023-24, 18, 200 South Australians were assisted by specialised services for homelessness.²¹⁴

Shelter SA note, homelessness includes situations that are insecure, inappropriate, unsafe, overcrowded, or unaffordable.²¹⁵

The AIHW data also shows that in South Australia, 1 in 99 people received homelessness assistance, with the top 3 reasons for the assistance being: 54 per cent related to housing crisis, 26 per cent related to family and domestic violence and 19 per cent related to inadequate or inappropriate dwelling conditions.²¹⁶

Shelter SA argues there are more people experiencing homelessness than reported by the AIHW, and homelessness services and charities are “overwhelmed” by the increasing need. Shelter SA also argue South Australia should aspire to “end homelessness” and this can be achieved through applying a human rights culture to policy and law-making systems in this state.²¹⁷

JusticeNet SA also offer that access to adequate housing is a human right and there are no protections for this in South Australia:

There are limited human rights protections for people experiencing homelessness in SA and no clear obligation on local or State governments to protect people against homelessness or treat people experiencing homelessness with dignity.²¹⁸

The Environment

Several submissions were received in relation to human rights, the environment and climate change. Professor Jennifer McKay AM advised that laws for the protection of the environment in South Australia are fragmented and have varying definitions of the meaning of ‘Ecologically Sustainable Development’ (ESD). Professor McKay noted that the practice of ESD is key to protections for the environment and in addressing climate change.²¹⁹

Professor McKay further advised that Australia incorporated the Rio Earth Summit concept of Ecologically Sustainable Development into approximately sixty pieces of Commonwealth

²¹³ Shelter SA, *Written submission No. 15*, 8 February 2024: 2.

²¹⁴ Australian Government, Australian Institute of Health and Welfare (AIHW), *Specialist homelessness services annual report 2023–24*, 11 December 2024. Accessed: <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/state-and-territory-summary-data-and-fact-sheets>

²¹⁵ Shelter SA, *Written submission No. 15*, 8 February 2024: 2.

²¹⁶ AIHW, *Specialist homelessness services annual report 2023–24*, 11 December 2024. Accessed: <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/state-and-territory-summary-data-and-fact-sheets>

²¹⁷ Shelter SA, *Written submission No. 15*, 8 February 2024: 2.

²¹⁸ JusticeNet SA, *Written submission No. 43*, 16 February 2024: 4.

²¹⁹ Professor Jennifer McKay AM, *Written submission No. 11*, 8 February 2024: 3; 5.

legislation, including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and the *Water Act 2007* (Cth). According to Professor McKay, South Australia also adopted the Rio ESD into the *Environment Protection Act 1993* (SA).²²⁰ Professor McKay offered that:

The Rio concept of ESD is based on the recognition that human development and environmental protection are interdependent and mutually reinforcing, and that both should be integrated into all aspects of decision-making and governance. This integration/interdependence aspect is really a human rights statement from 1992, and is really the father of this concept of the right to a clean, healthy and sustainable environment.²²¹

Mr Hugo Hopton, Chief Executive, Conservation Council SA (CCSA) also consider current laws could be strengthened and a Human Rights Act would support existing legislation to protect the environment for South Australians.²²²

Mr Michael Cornish, Vice President, CCSA, advised that South Australia cannot afford to not act on the opportunity to include environmental rights in a Human Rights Act, particularly given South Australia's biodiversity is declining.²²³

The Climate Justice Network argue that for South Australia, as for the rest of Australia, the climate crisis most impacts those groups who are the least responsible for its causes:

It is an existential threat to many Aboriginal and Torres Strait Islander communities which are experiencing risks to their ability to maintain cultural connections to country, totemic plant and animal species, and to their community. Beyond this, there is intergenerational inequality, where today's younger people and the generations of tomorrow will bear the brunt of the impacts of climate change and bear the responsibility for its mitigation and adaptation.²²⁴

Religious and Faith-Based Freedoms

The Falun Dafa Association of Australia Inc., provide that although the *Equal Opportunity Act 1984* (the EO Act) prohibits discrimination for a number of groups, and the *Racial Vilification Act 1996* protects people based on race, the fundamental human right of 'freedom of religion' is not adequately protected in South Australia.²²⁵ This is supported by the Adelaide Falun Gong Practitioners, who stated there had been incidences of "religious vilification" of Falun Dafa practitioners in South Australia, and for whom there are no current legal protections.²²⁶

The Australian Christian Lobby (ACL) and the Human Rights Lawyers Alliance (HRLA) consider that although there is no protection for 'freedom of religion' in South Australia, there are currently adequate protections for other "attributes" under the EO Act.

²²⁰ Professor Jennifer McKay AM, *Written submission No. 11*, 8 February 2024: 3.

²²¹ Professor Jennifer McKay AM, *Written submission No. 11*, 8 February 2024: 3.

²²² Mr Hugo Hopton, Chief Executive, Conservation Council SA, *Hansard*, 13 May 2024: 48.

²²³ Mr Michael Cornish, Vice President, Conservation Council SA, *Hansard*, 13 May 2024: 48.

²²⁴ Climate Justice Network, *Written submission No. 62*, February 2024: 3.

²²⁵ Falan Dafa Association of Australia Inc., *Written submission No. 107*, 16 February 2024: 2.

²²⁶ Mr Brian Thompson, Public Engagement Coordinator, Adelaide Falun Gong Practitioners, *Written submission No. 91*, 16 February 2024: 2 – 3.

The ACL and HRLA argue should a Human Rights Act be implemented in South Australia it must be in line with the protections for freedom of thought, conscience and religion, afforded under the ICCPR.^{227, 228} Freedom for Faith, agreed with this position.²²⁹

EO Act Limited, Outdated and Requires Modernising

The Law Society of South Australia submits that the EO Act is limited by the requirement for the discrimination to have occurred within limited contexts and, under a limited range of circumstances.²³⁰

The EO Act provides some remedies to unlawful discrimination, but these too are limited to qualifying provisions. The Law Society finds that the EO Act and its approach “[...] fall short of promoting the right to equality as understood at international law, and well short of the expectations of the community [...]”²³¹

The Human Rights Law Centre also commented on the limitations of the EO Act and other protections:

The fragmented nature of the limited existing human rights protections in South Australia does not reflect how people experience human rights breaches within the state, and it leaves many rights unprotected. Different aspects of a person’s identity, including sexuality, gender, or race, can leave them exposed to overlapping forms of discrimination and marginalisation. Comprehensive protection of rights is vital because human rights are interdependent, indivisible, and mutually reinforcing. Piecemeal recognition of human rights is inconsistent with basic human rights principles and threatens their effective implementation.²³²

The Commissioner for Equal Opportunity, Ms Jodeen Carney, provided in her written submission that the EO Act has not been reviewed since its enactment in 1984.²³³ Ms Carney advised:

I am concerned that while most jurisdictions have reviewed or updated their equivalent legislation, South Australia’s Act represents an old ship to which many barnacles are attached, and which is somewhat rudderless.²³⁴

Ms Carney also provided that given there have been many developments in anti-discrimination and human rights protections in the last forty years, it is the “right time” for the EO Act to be comprehensively reviewed in order to modernise the legislation.²³⁵ Ms Carney advised:

²²⁷ Australian Christian Lobby (ACL), *Written submission No. 68*, 12 February 2024: 4 – 5.

²²⁸ Human Rights Lawyers Alliance (HRLA), *Written submission No. 34*, 12 February 2024: 1 – 2.

²²⁹ Freedom for Faith, *Written submission No. 102*, 30 June 2024: 2.

²³⁰ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 2.

²³¹ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 3.

²³² Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 10.

²³³ Ms Jodeen Carney, Commissioner for Equal Opportunity, *Written submission No. 13*, 6 February 2023: 2.

²³⁴ Ms Jodeen Carney, *Written submission No. 13*, 6 February 2023: 2.

²³⁵ Ms Jodeen Carney, *Written submission No. 13*, 6 February 2023: 2 – 3.

[...] my preference is for a review to occur from which recommendations can be made as to its modernisation. This may include the creation of a Human Rights Act or Charter and the establishment of an Equal Opportunity and Human Rights Commission replete with the requisite resources.²³⁶

Ms Carney noted that this could be done in conjunction with the development of human rights law in South Australia.²³⁷

Mechanisms for Upholding Human Rights

Parliamentary Scrutiny

Currently, the *Parliamentary Committees Act 1991* (PC Act) enables a parliamentary committee formed under the PC Act to perform some scrutiny functions through matters referred through one of the Houses of Parliament or by self-reference.²³⁸ The Legislative Review Committee (LRC) must report on subordinate legislation to the Parliament, but the LRC's ambit does not include scrutiny of Bills for proposed legislation nor amendments to existing legislation.²³⁹

A number of submissions argue there is a need for a parliamentary human rights scrutiny committee as there are insufficient mechanisms for the South Australian Parliament to assess proposed legislation for compatibility with human rights.^{240, 241, 242, 243}

The Public Law and Policy Research Unit (PLPRU), The University of Adelaide note in their written submission:

Currently the SA Parliament is one of the few in Australia with no system for protecting human rights via a scrutiny system for new bills introduced into it. This means that when Members of Parliament introduce a bill, there is no requirement to consider, or inform Parliament of, the human rights implications of the bill or policy behind it.²⁴⁴

In 2021, the *Select Committee on the Effectiveness of the System of Committees in the South Australian Parliament* (the Select Committee on Committees), found that compared with other Australian bicameral jurisdictions, who have scrutiny of Bills/legislation committees. South

²³⁶ Ms Jodeen Carney, *Written submission No. 13*, 6 February 2023: 3.

²³⁷ Ms Jodeen Carney, *Written submission No. 13*, 6 February 2023: 3.

²³⁸ See for example the Social Development Committee's reports on: Inquiry into Gestational Surrogacy, 13 November 2007; Statutes Amendment (Relationships) Bill 2004, 24 May 2005; Inquiry into Prostitution, 21 August 1996; Inquiry into the Voluntary Euthanasia Bill 1996, 12 October 1999.

²³⁹ *Parliamentary Committees Act 1991*, section 12(a). See: <https://www.legislation.sa.gov.au/lz/path=/c/a/parliamentary%20committees%20act%201991>

²⁴⁰ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 3.

²⁴¹ Professor Matthew Stubbs, Adelaide Law School, The University of Adelaide, *Written submission No. 57*, 16 February 2024: 2.

²⁴² Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 5.

²⁴³ Dr Jenny Stock, Elder, SA/NT Regional Meeting of Quakers, *Hansard*, 2 December 2024: 189.

²⁴⁴ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 5.

Australia is the only (mainland) parliament without a dedicated scrutiny committee.²⁴⁵ The Select Committee on Committees recommended implementation of a ‘Scrutiny of Bills and Delegated Legislation Committee’ which, with greater resourcing, would also include the current role of the LRC.²⁴⁶

The Rights Resource Network provide in their written submission to the current inquiry that the existing delegated legislation scrutiny functions of the LRC could be broadened to include scrutiny of proposed legislation.²⁴⁷

The Law Society of South Australia also proposed the terms of reference of the LRC could be amended to include a “specific focus on the human rights identified”, or that there is “[...] establishment of a Joint Human Rights Scrutiny Standing Committee [...] with a mandate to examine all Bills and subordinate legislation for compliance with identified human rights.”²⁴⁸

Professor Matthew Stubbs, The University of Adelaide commented:

In my view, the gold standard is a committee whose remit is expressly human rights, as the federal parliamentary committee is and as exists in some of the other jurisdictions. That doesn't have to be the case. In Queensland it doesn't work that way, it is another committee that has that role, so it can be part of an existing committee's role as well as a new committee. The point being that there should be a place in the parliament where members get together and talk about whether the statement of compatibility is right and talk about those issues of, 'Are we getting the balance right?'²⁴⁹

Impact on Communities

Associate Professor Laura Grenfell and Dr Sarah Moulds, The University of Adelaide, argue the passing of legislation or amendments to existing legislation, without “systematic scrutiny” can result in “unintended consequences” for some parts of the community:²⁵⁰

South Australia is presently in a black hole of rights scrutiny. Regardless of whether or not they are urgent, bills in the South Australian Parliament are rushed through without any systematic scrutiny of their rights impact on parts of the population. We have no explanatory memoranda to set out the aims of bills. We have no statements of compatibility which require the executive to turn their minds to how a bill engages with common law rights or internationally recognised rights. South Australia has no designated parliamentary committee to scrutinise how these bills impact on rights and no system for recording who the government has consulted with in the development of the bill.²⁵¹

²⁴⁵ Select Committee on the Effectiveness of the System of Committees in the South Australian Parliament, *Report*, Parliament of South Australia, Second Session, Fifty-Fourth Parliament 2020-2021, 25 August 2021: 13.

²⁴⁶ Select Committee on the Effectiveness of the System of Committees in the South Australian Parliament, *Report*, 25 August 2021: 7; 61.

²⁴⁷ Rights Resource Network, *Written submission No. 2*, 22 December 2023: 12.

²⁴⁸ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 5.

²⁴⁹ Professor Matthew Stubbs, *Hansard*, 17 June 2024: 71.

²⁵⁰ Assoc Professor Laura Grenfell and Dr Sarah Moulds, *Law Society Bulletin*, December 2023. Cited in Rights Resource Network, *Written submission No. 2*, 22 December 2023: 5 – 6.

²⁵¹ Assoc Professor Laura Grenfell and Dr Sarah Moulds. Cited in Rights Resource Network, *Written submission No. 2*, 22 December 2023: 5 – 6.

The Law Society of South Australia further notes South Australia is “distinct” from other jurisdictions in that new legislation introduced into the Parliament is not required to contain with it an Explanatory Memoranda or Human Rights Impact Statement:

This leaves it difficult for non-legally trained individuals or organisations to contribute to the Parliamentary lawmaking process in an efficient and productive way. Instead, such organisations are often dependent on media reporting of proposed laws and can only engage with the merits of the proposed law after it has proceeded through Parliament, or in the context of an often-politicised public debate. As a result, many community organisations who have access to expertise and lived experience relevant to proposed new laws or amendments to laws are excluded from this process.²⁵²

Associate Professor Grenfell and Dr Moulds also consider that for communities who are unlikely to engage with the Parliament’s law-making processes, there is:²⁵³

[...] a disconnect between communities vulnerable to rights abuses and the process and practices of parliament. This disconnect is a barrier to the development of practical solutions to local problems, and it erodes public trust in democratic institutions like parliaments.²⁵⁴

Dr Julie Debeljak, Associate Professor, Faculty of Law, Academic Member, Castan Centre for Human Rights Law, Monash University, notes each of the ‘three arms’ of government have “great freedom when creating and enforcing laws”, and human rights have traditionally been interpreted narrowly by the courts.²⁵⁵

Dr Debeljak advises “[...] the narrower rights protections and the narrower the restrictions on governmental activity, the broader the power of the government and parliament to impact on human rights.”²⁵⁶ The effect of this is what Dr Debeljak describes as a “monopoly” by the representative arms of government over human rights in South Australia.²⁵⁷

It also means that laws may be passed in the South Australian Parliament in a very rapid timeframe, without scrutiny, or consultation with appropriate stakeholders.

Civil Liberties Australia comment that government decision-makers wield a lot of power and have the ability to affect ordinary citizens’ individual rights:

²⁵² The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 3.

²⁵³ Associate Professor Laura Grenfell and Dr Sarah Moulds. Cited in Rights Resource Network, *Written submission No. 2*, 22 December 2023: 6.

²⁵⁴ Associate Professor Laura Grenfell and Dr Sarah Moulds. Cited in Rights Resource Network, *Written submission No. 2*, 22 December 2023: 6.

²⁵⁵ Dr Julie Debeljak, Associate Professor, Faculty of Law, Academic Member, Castan Centre for Human Rights Law, Monash University, *Written submission No. 9*, 1 February 2024: 3.

²⁵⁶ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 3.

²⁵⁷ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 3; 5 and 8 - 10.

Government decisions are by nature complex and often balance competing rights. Government decisions also contain a substantial power imbalance between decision makers and the people their decisions affect and carry a risk that bureaucracies will be inadvertently inhumane if their attention is focussed on matters other than the rights of individuals.²⁵⁸

Ms Nikita White, Lead Campaigner Human Rights Act, Amnesty International Australia, argues:

It's not just about the rights of the individual but also the community and balancing people's human rights, ensuring everyone can respect them, and giving people the support they need to be able to realise those rights, whether they are someone who may be facing eviction or someone who has issues with a neighbour, for example, who is causing them disruption.²⁵⁹

SACOSS comments:

[...] it is clear there are limited, if any, protections of people's human rights in legislation, more so in the absence of a Human Rights Act. Instead, we rely upon a combination of constitutional limitations on legislative power, specific legislative provisions (such as anti-discrimination laws) and common law principles to protect and promote the individual rights of citizens. This means that, in effect, the parliament has the final say on any conflicting rights issues and, provided it stays within the legislative limits set out in the Constitution, it can override common law protections and amend statutory provisions. The court's role in enforcing or upholding individual rights is far more limited and indirect than in jurisdictions which have constitutional or legislated Bills of Rights.²⁶⁰

The Human Rights Law Centre (HRLC) comment that the current parliamentary scrutiny process in South Australia is "very limited", while the level of parliamentary debate and scrutiny that occurs at the Federal level, "[...] has an important instrumental and normative value in acculturating human rights in government processes."²⁶¹ The HRLC agree, a Human Rights Act would influence all decision-making processes across all arms of government:

A South Australian Human Rights Act would ingrain a human rights culture in all levels of government, including law-making, policy development and service delivery, while allowing for complex or unusual cases requiring careful interpretation of human rights principles to be determined by the courts.²⁶²

The PLPRU advise that South Australia only has what are referred to as *downstream* mechanisms, which means courts and other review bodies such as the Ombudsman must review, investigate or adjudicate over matters that should have been prevented or diverted via *upstream* mechanisms. For example through the committee scrutiny functions, drafting of laws or developing and implementing government policy:

²⁵⁸ Civil Liberties Australia, *Written submission No. 32*, 14 February 2024: 3.

²⁵⁹ Ms Nikita White, Lead Campaigner Human Rights Act, Amnesty International Australia, *Hansard*, 26 August 2024: 98 – 99.

²⁶⁰ SACOSS, *Written submission No. 94*, February 2024: 8.

²⁶¹ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 15.

²⁶² Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 11.

Unfortunately, these existing downstream mechanisms in SA are not aimed at human rights protection. [...] carefully considered upstream mechanisms (via a Human Rights Act) are the preventative measures we need. These include a system whereby laws and policies receive careful consideration upstream before they are introduced AND a system whereby government departments and agencies are trained upstream to consider human rights in their day-to-day work and interactions with the public.²⁶³

A parliamentary human rights scrutiny committee for new legislation can prevent issues arising *downstream* in the implementation of new laws at the departmental level, by addressing concerns *upstream*.²⁶⁴

Examples of a Need for Parliamentary Scrutiny

Summary Offences (Obstruction of Public Places) Bill 2023

A number of submissions raised concerns about rights issues with the introduction of the *Summary Offences (Obstruction of Public Places) Bill 2023* (the Obstruction of Public Places Bill).²⁶⁵ The Obstruction of Public Places Bill was introduced by the State Government in response to protests conducted by climate activists in the City of Adelaide, which caused disruption to the public's use of public spaces, roads and bridges.²⁶⁶

The proposed changes, which are now law, increased the potential penalties from \$750 up to \$50,000 or three-months in jail, for persons found guilty of intentionally obstructing the free passage of a public place.

Submissions claim the amendments breach the right to peaceful protest and that the penalty is disproportionate to the alleged offence.²⁶⁷ It was also noted in the submission of SACOSS that the passage of time allowed for debate in the Parliament on the Obstruction of Public Places Bill, was extremely short and that there needed to be greater 'checks and balances' for assessment of human rights implication.²⁶⁸

²⁶³ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 6.

²⁶⁴ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 6.

²⁶⁵ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 10.

²⁶⁶ Hon Kyam Maher MLC, Minister for Aboriginal Affairs, Attorney-General, Minister for Industrial Relations and Public Sector, Summary Offences (Obstruction of Public Places) Amendment Bill 2023, Second Reading, *Hansard*, Parliament of South Australia, 18 May 2023. Accessed: <https://hansardsearch.parliament.sa.gov.au/daily/uh/2023-05-18/45>

²⁶⁷ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 25.

²⁶⁸ SACOSS, *Written submission No. 94*, February 2024: 8 – 9.

The implications of the changes to the Summary Offences Act, brought in by the Obstruction of Public Places Bill will only be felt once they have been tested in the courts and submissions agree this could be avoided if the Bill had been subject to scrutiny prior to ascension.^{269, 270}

Children and Young People (Safety and Support) Bill 2024

In 2024, the State Government introduced the Children and Young People (Safety and Support) Bill 2024 (CYPSS Bill), to repeal and replace the *Children and Young People (Safety) Act 2017* (CYP Safety Act).²⁷¹

The CYPSS Bill recognises the CYP Safety Act was a response to the Child Protection system’s Royal Commission and Coronial findings and which, provide responses to single incidents, rather than as a holistic approach.²⁷²

The CYPSS Bill is for an Act to protect children and young people and keep them safe from harm and preferably with their families, to support and strengthen families and communities to improve outcomes for children and young people, to support children and young people who are in care, to promote working in partnership with families and carers, to support children and young people leaving care, to make related amendments to other Acts, to repeal the CYP Safety Act and for other purposes.²⁷³

The CYPSS Bill is the result of the statutory 5-year review of the CYP Safety Act and according to the Hon Clare Scriven MLC, has incorporated feedback from key stakeholders regarding the rights of the child and child protection practices that focus on supporting families.²⁷⁴

The CYPSS Bill recognises the UNCRC and the UNDRIP as “...documents informing the administration and operation of the legislation”. Parts 2 and 4 of the CYPSS Bill contain the Bill’s guiding Principles, including special provisions relating to Aboriginal and Torres Strait Islander children and young people (Part 4).

The CYPSS Bill refers to five aspects of prevention, partnership, placement, participation and connection, which form the ‘Aboriginal and Torres Strait Islander Child Placement Principle’ (s 44). to the “standard of active efforts” (s 45), none of the principles contain enforceable measures which will uphold the rights of the child.

²⁶⁹ Amnesty International Australia, *Written submission No. 97*, 12 February 2024: 4.

²⁷⁰ Along with the penalty ordered by the Court (on finding a person guilty of obstruction of a public place under section 58(1a) of the *Summary Offences Act 1953*), the Court may also make orders under section 58(1b), that the person (on the application of the prosecutor), pay the ‘reasonable costs and expenses’ of any action taken by emergency services for the purposes of dealing with the obstruction.

²⁷¹ Hon Katrine Hilyard, Minister for Child Protection, Minister for Women and the Prevention of Domestic, Family and Sexual Violence, Minister for Recreation, Sport and Racing, Children and Young People (Safety and Support) Bill, Introduction and First Reading, House of Assembly, *Hansard*, 16 October 2024.

²⁷² Hon Katrine Hilyard, Children and Young People (Safety and Support) Bill 2024, Second Reading, *Hansard*, 16 October 2024.

²⁷³ Children and Young People (Safety and Support) Bill 2024,

²⁷⁴ Hon Clare Scriven MLC, Legislative Council Debates, Children and Young People (Safety and Support) Bill 2024, Second Reading, *Hansard*, 28 November 2024.

The CYPSS Bill clarifies which decisions are reviewable and what actions may be taken by the chief executive following an internal review. It clarifies the internal review provisions and provides criteria for persons seeking an internal review.²⁷⁵

Amendments to the Bill were made to provide jurisdiction to the SACAT to conduct reviews of decisions made by the Department for Child Protection following internal review by the chief executive.²⁷⁶

Committee Review of the CYPSS Bill

On 28 November 2024, the Hon Tammy Franks MLC moved the CYPSS Bill be referred to a select committee for inquiry. A Select Committee of the Legislative Council was established and during its inquiry the Select Committee received evidence from many of the same children’s advocacy organisations as the Government of South Australia had received during consultation for the CYPSS Bill.²⁷⁷

The Select Committee had “...power to send for persons, papers and records, to adjourn from place to place and report...”²⁷⁸ the Select Committee did not have a human rights focus, or scrutiny function and was not able to make recommendations, however, the Report of the Select Committee stated:

Evidence heard and submissions received expressed concerns that the Bill is not aligned with the commitments and objectives within and falls short of its stated purpose. It requires amendments to promote meaningful change and the primacy of the best interests of the child.²⁷⁹

Oversight of Human Rights and Legal Mechanisms for Redress

Evidence to the inquiry shows, without a human rights framework, public authorities, including state government departments, may be liable to make unintended human rights infringements when performing their statutory functions.^{280, 281}

²⁷⁵ Hon Katrine Hilyard, *Children and Young People (Safety and Support) Bill 2024*, Second Reading, Hansard, 16 October 2024.

²⁷⁶ Hon Katrine Hilyard, *Children and Young People (Safety and Support) Bill 2024*, Second Reading, Hansard, 16 October 2024.

²⁷⁷ Commissioner for Children and Young People; Guardian for Children and Young People; Aboriginal legal Rights Movement; Connecting Foster & Kinship Carers; Uniting Communities; Child Development Council; SACOSS; Wakwakuma Kanyini; SNAICC; The Law Society of South Australia.

²⁷⁸ Hon Tammy Franks MLC, Minutes of proceedings of the Legislative Council Debates for Thursday, 28 November 2024.

²⁷⁹ Select Committee on the Children and Young People (Safety and Support) Bill 2024, *Final Report*, 4 February 2025: 4.

²⁸⁰ Ms Cornelia Koch, *Hansard*, 28 October 2024: 157.

²⁸¹ Dr Michelle Fernando, Dr Michele Jarldorn, Dr Kerrilee Lockyer, Matt Ryan, Professor Jennifer McKay AM, Kerry Maxfield, Taylor Jobling, Associate Professor Joe McIntyre, Justice and Society Unit, University of South Australia (UNISA), *Written submission No. 52*, 16 February 2024: 1.

Professor Matthew Stubbs, The University of Adelaide, advises existing laws in South Australia do not offer “sufficient protection for human rights.” Professor Stubbs notes, this is caused by an “institutional failure” which would be addressed by a Human Rights Act:

[...] there is no sufficient legal framework to ensure that human rights issues are thoroughly and systematically considered by the Parliament when making laws, nor to ensure that human rights must – or even can – be considered by decision-makers, nor to assist decisionmakers to understand how to apply human rights principles in their decision-making, nor to enable effective consideration of human rights issues by oversight bodies such as the Ombudsman, nor to empower courts and tribunals who may legally review decisions to consider human rights issues. The South Australian Human Rights Act would change the institutional framework, allowing human rights issues to be taken into account when laws, and decisions made under them, are made.²⁸²

According to Ms Cornelia Koch, under a Human Rights Act, public authorities would have a duty as decision-makers to apply human rights principles to their administrative and operational decisions.²⁸³ Ms Koch advises:

A human rights mechanism system would establish a system whereby public authorities have to consider human rights when acting and making decisions and that would prevent arbitrary, but also unintended and disproportionate infringements of rights.²⁸⁴

This view is supported by Associate Professor Laura Grenfell and Dr Sarah Moulds, who note a Human Rights Act could provide the South Australian Parliament, the executive and public servants with very clear guidelines for how to act consistently with human rights principles when carrying out their public duties.²⁸⁵ Associate Professor Grenfell and Dr Moulds:

A Human Rights Act for South Australia could also clarify that public authorities have a positive duty to act consistently with human rights, and provide incentives and practical guidance for the executive when it comes to consultation with relevant communities (such as Aboriginal communities and persons with disabilities) about laws and policies that disproportionately impact them. [...] Currently we rely on the good will of government offices to act consistently with human rights and to consult with communities most affected when drafting laws and policies.²⁸⁶

The Australian Lawyers Alliance comment:

A legislative human rights instrument can be a powerful tool, not only in keeping society diverse, fair, respectful and inclusive, but also being an essential adjunct to the institutions of parliamentary democracy and the common law.²⁸⁷

²⁸² Professor Matthew Stubbs, *Written submission No. 57*, 16 February 2024: 2.

²⁸³ Ms Cornelia Koch, *Hansard*, 28 October 2024: 157.

²⁸⁴ Ms Cornelia Koch, *Hansard*, 28 October 2024: 157.

²⁸⁵ Associate Professor Laura Grenfell and Dr Sarah Moulds. Cited in Rights Resource Network, *Written submission No. 2*, 22 December 2023: 6.

²⁸⁶ Associate Professor Laura Grenfell and Dr Sarah Moulds. Cited in Rights Resource Network, *Written submission No. 2*, 22 December 2023: 6.

²⁸⁷ Australian Lawyers Alliance, *Written submission No. 35*, 14 February 2024: 6.

Some submissions argue, without an effective framework to review the government decisions that affect human rights, remedy may only be achieved through limited or individually specific scenarios which, may work for some citizens, while not for others.^{288, 289}

The Rights Resource Network consider South Australia has “[...] very few formal, legal mechanisms to ensure that these kinds of considerations occur in a systematic, consistent and evidence-based way.”²⁹⁰ The Human Rights Law Centre notes:

Access to justice is a fundamental component of the right to a fair hearing and a critical element of the promotion, protection, and fulfilment of other human rights. Accordingly, in addition to education and awareness raising, various practical resources are required to develop a stronger human rights culture by supporting individuals to enforce their legal rights. This includes the availability and accessibility of appropriate and affordable legal advice, representation, and advocacy services.²⁹¹

There were a number of individual situations detailed in the submissions concerning the human rights of South Australians who live with complex circumstances and for whom a Human Rights Act would provide a safeguard.

Some submissions to the inquiry advised the Committee that there are cohorts who experience ‘intersecting’ vulnerabilities and may be less likely to have access to their existing rights across the myriad of different legislation. An enforceable Human Rights Act with an overarching human rights commission, or other body, would address non-compliance and rights abuses.^{292, 293, 294, 295}

Example of How a Human Rights Act could have Helped During the COVID-19 Pandemic

Some submissions raised concerns that the emergency controls legislation during the COVID-19 pandemic had impacted their human rights, particularly the right to freedom of movement.²⁹⁶ Other submissions argue the COVID-19 pandemic gave rise to concerns about the management of privacy in the absence of privacy laws in the state, for example, The Law Society of South Australia stated:

Unlike most Australian jurisdictions, South Australia does not have a Privacy Act and instead relies upon a complex range of provisions across different Acts, as well as a privacy committee, to protect South Australians’ personal information and right to privacy. There are gaps in this protection and a gap between what the community expects (comprehensive and holistic protection of personal information) and what the law currently provides (ad hoc protection). This was evident during the COVID-19 pandemic

²⁸⁸ Emeritus Professor Alan Reid AM, University of South Australia, Centre for Research in Education and Social inclusion, *Written submission No. 8*, 30 January 2024: 4.

²⁸⁹ Justice Reform Initiative, *Written submission No. 90*, February 2024: 4.

²⁹⁰ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 3.

²⁹¹ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 17.

²⁹² For example: Aboriginal and Torres Strait Islander people, children and Youth Justice; homelessness and mental illness; women, poverty and domestic violence.

²⁹³ Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 2 – 3.

²⁹⁴ JFA Purple Orange, *Written submission No. 69*, February 2024: 10 – 11.

²⁹⁵ Ms Jenny Karavolos and Mr Huw Owen, DACSSA, *Hansard*, 23 September 2024: 133.

²⁹⁶ Mariel Beros, *Written submission No. 29*, 13 February 2024: 1.

in the context of contact tracing, where the Society had raised concerns about the storage and deletion of data obtained by the mandatory use of the COVID-SAFE Check-in app.²⁹⁷

Lecturers in Law at Flinders University, Dr Rowan Nicholson, Dr Jenny Richards and Dr James Scheibner also raised concerns about the absence of dedicated and enforceable privacy laws in South Australia.²⁹⁸

Another issue raised in several submissions, is that without a Human Rights Act, misinformation about people's rights can be spread easily, as was the case during the COVID-19 pandemic. This occurred as people were not aware of what rights were applicable.²⁹⁹ Ms Cornelia Koch commented:

One thing that the pandemic starkly underlined was a lack of public awareness of the mechanisms for the protection of rights in Australia. In particular, it really highlighted the low level of public understanding that there are no constitutional provisions, express or implied in our constitution, protecting civil rights—such as freedom of movement, freedom of assembly or the right to gather for religious reasons—at the state level.³⁰⁰

Dr Michelle Fernando et al., of the Justice and Society Unit, UNISA write:

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.³⁰¹

Human Rights Law Centre advised that a Human Rights Act can support public health, commenting that “[...] some people pushed back on the obligation to wear a mask to protect themselves and those around them from the virus, on the basis they had a “human right not to wear a mask.”³⁰² The Human Rights Law Centre also argue, this type of misconception has the ability to undermine public health responses and reduce the number of lives saved during a public health emergency.³⁰³ The submission further adds:

In addition to improving the knowledge base about human rights, state human rights acts can be used in moments like these to educate, clarify and counter harmful, misinformed public narratives.³⁰⁴

The COVID-19 pandemic provides an example of the challenges with balancing the rights of individuals with the rights of the many. Professor George Williams AO, offers:

[...] the relevance of a human rights act at a time of crisis and public health emergency is that it is a tool for making hard decisions. That's all it is; it's a tool. It doesn't direct outcomes. It doesn't say, 'You must privilege this right over another,' because—particularly during the pandemic—it is about balancing those things out and, in particular,

²⁹⁷ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 10.

²⁹⁸ Dr Rowan Nicholson, Dr Jenny Richards, and Dr James Scheibner, Flinders University, *Written submission No. 73*, 16 February 2024: 1 – 2.

²⁹⁹ Ms Cornelia Koch, *Hansard*, 28 October 2024: 157.

³⁰⁰ Ms Cornelia Koch, *Hansard*, 28 October 2024: 157.

³⁰¹ Dr Michelle Fernando, et al., UNISA, *Written submission No. 52*, 16 February 2024: 2.

³⁰² Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 13.

³⁰³ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 13.

³⁰⁴ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 13.

recognising that often group rights will need to come to the fore over individual rights, that we will need to protect all of us from infection and, in doing so, our individual liberties will need to be constrained....A human rights act gives you a public and well-understood basis for making those decisions.³⁰⁵

³⁰⁵ Professor George Williams, *Hansard*, 8 April 2024: 13.

b) The Operation and Effectiveness of Human Rights Legislation in Other Jurisdictions

The Committee received many submissions that addressed this term of reference, with a number recommending that South Australia should adopt a Human Rights Act similar to either Victoria's or the Australian Capital Territory's (ACT), adjusted to reflect the values of South Australians.

The Committee looked at the Human Rights Framework in Australia and the Human Rights Acts in the ACT, Victoria and Queensland as well as overseas including the United Kingdom (UK), Canada and New Zealand, as these were the jurisdictions most referenced in submissions.

A table comparing the Australian jurisdictions is included in the Appendices.

Commonwealth Human Rights Framework

Australia was one of the original signatories of the United Nations (UN) Universal Declaration of Human Rights (UN UDHR) and is a signatory to seven human rights treaties (the treaties) along with several other human rights protocols.³⁰⁶ As a States Party and signatory to these treaties, Australia has obligations under international law to provide protections for all persons within its territory, regardless of their country of origin, or citizenship.³⁰⁷ The seven United Nations human rights treaties Australia has agreed to be bound by are:

- 1980 International Covenant on Civil and Political Rights (ICCPR), ratified.
- 1976 International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified.
- 1975 International Convention on the Elimination of all forms of Racial Discrimination (ICERD), ratified.
- 1983 Convention on the Elimination of all forms of Discrimination against Women (CEDW), ratified.
- 1975 Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CTCIDTP), and 2017 Optional Protocol, ratified.
- 1991 Convention on the Rights of the Child (CRC), ratified.³⁰⁸
- 2008 Convention on the Rights of Persons with Disabilities (CRPD), ratified.

Australia has also supported the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), adopted by the UN General Assembly in 2007 (supported by Australia in 2009).³⁰⁹

³⁰⁶ Australian Human Rights Commission (AHRC), *Human Rights Explained: Australia and Human Rights Treaties*. Accessed: <https://humanrights.gov.au/our-work/education/human-rights-explained-australia-and-human-rights-treaties>

³⁰⁷ AHRC. Accessed: <https://humanrights.gov.au/our-work/education/human-rights-explained-how-states-commit-human-rights-treaties>

³⁰⁸ Australia ratified the UNCRC with reservation to Article 37(c) regarding separate imprisonment.

³⁰⁹ United Nations Declaration on the Rights of Indigenous Peoples (*Declaration on the Rights of Indigenous Peoples*), General Assembly Resolution 61/295, UN Doc A/61/L.67 (2007).

Australia's human rights obligations under international law are threefold:

- to respect – requiring government not to interfere with or limit human rights;
- to protect – requiring government to take measures to prevent others (for example individuals or corporations) from interfering with human rights; and
- to fulfil – requiring government to take positive measures to fully realise human rights.³¹⁰

Australia's Obligations and Domestic Law

At the Federal level, although human rights protections are disparate, with only some rights protected by several different mechanisms, the Commonwealth has not yet implemented a Human Rights Act.

Rights and freedoms in Australia exist through the Constitution, specific legislation and the common law.³¹¹

The *Commonwealth Constitution* does not comprehensively guarantee human rights in Australia but does contain three human rights that are protected to some degree. These include the right to trial by jury on indictment, the right to religious freedom and the right to be free from discrimination on the basis of interstate residence.³¹²

There are also three implied freedoms – the implied separation of the judicial arm from the executive and legislative arms of government, the implied freedom of political communication, and voting rights.³¹³

The common law recognises some rights and freedoms. The common law protects human rights indirectly through statutory interpretation by the judiciary. The Parliament does not ordinarily interfere with common law rights and freedoms but may intervene in certain contexts.

States and Territories' Obligations

Australian States and Territories are obliged to also fulfil their obligations to the treaties. Australia is the party answerable under international law if this is not carried out, whether at the Commonwealth level, or at the state or territory level.³¹⁴ For example, Article 50 of the ICCPR states that the provisions of the ICCPR “shall extend to all parts of Federal States without any limitations or exceptions.”

This means for international human rights law to become enforceable in Australia, the obligations under the seven treaties must be implemented into law at the domestic level.

³¹⁰ PJCHR, *Guide to human rights*, June 2015: 5. Accessed https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources

³¹¹ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 11; 12.

³¹² Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 3.

³¹³ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 3.

³¹⁴ Parliamentary Joint Committee on Human Rights (PJCHR), *Guide to human rights*, June 2015: 5 - 6. Accessed https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources

The States and Territories should also have relevant statutory provisions to meet the obligations under international law at the State and Territory level.³¹⁵

Parliamentary Joint Committee on Human Rights

While the Commonwealth presently does not have a Human Rights Act, Australia's parliamentary process does include scrutiny of proposed legislation via the Parliamentary Joint Committee on Human Rights (PJCHR).³¹⁶

The PJCHR was established under the *Human Rights (Parliamentary Scrutiny) Act 2011* (the HRPS Act) in order to scrutinise proposed legislation for compatibility with Australia's obligations under international human rights law. The HRPS Act provides the PJCHR has the following functions:

- to examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue; and
- to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.³¹⁷

The PJCHR provides advice and recommendations to the Australian Parliament on draft legislation that it finds incompatible with international human rights law however, it does not have the power to circumvent, intervene or over-rule parliamentary sovereignty in the legislature.³¹⁸ The PJCHR advises that:

In understanding how human rights are to be applied, the committee has regularly looked to the way in which the UN human rights treaty bodies have interpreted the UN human rights treaties, as well as to the interpretations by comparable regional human rights courts and the domestic human rights courts of other countries.³¹⁹

In 2023 the PJCHR undertook an inquiry into Australia's human rights framework, reporting in May 2024. This Committee notes the PJCHR made seventeen recommendations including that the Australian Government introduce legislation to establish an Australian Human Rights Act.³²⁰

³¹⁵ AHRC, *Revitalising Australia's Commitment to Human Rights: Free and Equal Report 2023*, Sydney, December 2023: 34. Access at: <https://humanrights.gov.au/free-and-equal>

³¹⁶ PJCHR, *Guide to human rights*, June 2015: 5.

³¹⁷ PJCHR, *Guide to human rights*, June 2015: i.

³¹⁸ PJCHR, *Inquiry into Australia's Human Rights Framework*, May 2024: 7.

³¹⁹ PJCHR, *Guide to human rights*, June 2015: 11.

³²⁰ PJCHR, *Inquiry into Australia's Human Rights Framework*, May 2024: xxi – xxviii. https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf

Australian Human Rights Commission

The Commonwealth also has the Australian Human Rights Commission (AHRC or the Commission) with a complaints management system administered by the Commission under the *Australian Human Rights Commission Act 1986* (Cth) however, the AHRC's abilities to resolve complaints are limited.

The AHRC advised in its 2022 *Free and Equal* report that "if the Commission cannot conciliate a human rights complaint, the person cannot then bring court proceedings, nor obtain any enforceable remedies."³²¹ Having an enforceable remedy to a human rights complaint is a key component for a Human Rights Act in South Australia for a number of submitters to this inquiry, and it was the focus of the 'No Rights without Remedy' inquiry undertaken by the Legislative Assembly in the ACT, by petition of ALHR joined with ACTCOSS, the Human Rights Law Centre and Civil Liberties Australia, to amend the ACT Human Rights Act and achieve this right.³²²

The AHRC's 2022 *Free and Equal* report and 2023 follow up paper proposed model for a Federal Human Rights Act which builds on the success and lessons from the existing models in the ACT, Victoria and Queensland.

The AHRC's proposed model for a Human Rights Act would operate at the Federal level to meet constitutional requirements and provide a clear set of rights and complaints, able to be prosecuted.³²³

³²¹ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 12.

³²² CLA, ALHR and ACTCOSS in CLA, *Written submission No. 32*, February 2024: 6.

³²³ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 12.

Australian Capital Territory, Victoria and Queensland

Human Rights Acts exist in three states and territories in Australia, the Australian Capital Territory's *Human Rights Act 2004* (ACTHRA), the Victorian *Charter of Human Rights Act 2006* (VCHRA) and the *Queensland Human Rights Act 2019* (QHRA).

Human Rights Acts from these jurisdictions include the following common features which were addressed in the evidence received by the Committee and which are outlined in the further sections below:

- the model used
- the rights protected
- Statements of Compatibility
- scrutiny of legislation provisions
- limitations on rights
- override provisions
- role of the judiciary
- requirements for public authorities and their definition
- remedies, cause of action and the complaints process
- oversight bodies.

Common Features of Legislation in other Jurisdictions

The following features of legislation adopted in other jurisdictions are present across the three Australian jurisdictions, the ACT, Victoria and Queensland:

Dialogue Model

The dialogue model for a Human Rights Act provides for all arms of government to have input into the making of legislation. It provides for pre-legislative scrutiny obligations and emphasises the interpretation of laws through a dialogue between the parliament, the executive and judiciary, without undermining parliamentary sovereignty.

The ACT, Victoria and Queensland's human rights legislation are all dialogue models; the UK, and NZ Acts are also dialogue models.³²⁴ Generally, under a dialogue model the following elements are present:

- the parliament is required to consider human rights in lawmaking;
- the executive and public authorities are required to account for human rights in developing policy, proposing legislation, and making decisions;
- the judiciary interprets laws consistently with human rights;
- non-government organisations performing functions of a public nature are also required to comply with protected human rights.

³²⁴ *Human Rights Act 1998* (UK); *Human Rights Act 1993* (NZ); *Human Rights Act 2004* (ACT); *Charter of Human Rights and Responsibilities Act 2006* (Vic); *Human Rights Act 2019* (Qld).

- are ordinary Acts of Parliament and can be amended.^{325, 326, 327, 328}

The dialogue model for human rights legislation also places obligations on public authorities to consider and act compatibly with human rights when carrying out their functions and in their decision-making.³²⁹

Statement of Compatibility

The ACT, Victoria and Queensland all include Statement of Compatibility features in their Human Rights Acts. The Statement of Compatibility is the first layer in protecting human rights by providing for parliamentary consideration of them.

The reasoning for the Bill and an explanation of the broader public interest or policy objectives at stake are set out in the statement. The assessment involves a test of *proportionality*.

Benefits of this process include:

- reassures the public that human rights are considered in a systematic and transparent manner
- parliament can set out its reasoning in a statement of incompatibility.

Rights Protected

The rights protected in all Acts from the ACT, Victoria and Queensland jurisdictions, build on the UN UDHR rights that are considered ‘absolute rights’ that cannot be limited are:

- the prohibition on genocide;
- the prohibition on torture or cruel, inhuman and degrading treatment or punishment;
- the prohibition on slavery and servitude;
- the prohibition on prolonged arbitrary detention;
- the prohibition on imprisonment for a failure to fulfil a contractual obligation;
- the prohibition on the retrospective operation of criminal laws;
- the right of everyone to recognition everywhere as a person before the law; and
- the right to freedom from systematic racial discrimination.³³⁰

³²⁵ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 7.

³²⁶ Rights Resource Network SA, *Written submission No. 2*, Attachment 1, “Designing a Human Rights Framework for South Australia”, Table 1: Human Rights Provisions in South Australian Legislation, 2022: 28. Received 22 December 2023.

³²⁷ Dr Penelope Mathew, ACT Human Rights Commission, *Written submission No. 111*, 21 February 2024: 2.

³²⁸ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 10 – 11.

³²⁹ See discussion in: Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 10 – 11.

³³⁰ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 17 – 18.

All three jurisdictions recognise the *International Convention on Civil and Political Rights* (ICCPR) which include the following rights and freedoms:

- freedom of speech
- freedom of association, assembly and movement
- right to life
- freedom from torture
- right to a fair trial
- freedom from arbitrary detention
- freedom from forced work.

Recognition and Protection of Distinct Cultural Rights of Aboriginal and Torres Strait Islander People

The Aboriginal Health Council of South Australia Ltd. (AHCSA) note that Queensland’s Human Rights Act contains specific protections in recognition of Aboriginal and Torres Strait Islander people’s cultural rights as the First Nations of Australia.³³¹ AHCSA further observe that:

The recent 2023 national Referendum for a First Nations Voice to Parliament highlights the important link between these human rights and the Voice. A Voice to Parliament would provide for better human rights protections by promoting equality and self-determination for Aboriginal and Torres Strait Islander people.³³²

Australian Lawyers Alliance (ALA) advise that they support the inclusion of the principles and rights outlined in the United Nations’ *Declaration on the Rights of Indigenous Peoples* (UNDRIP) into a South Australian Human Rights Act.

ALA provide that a Human Rights Act include a provision recognising that Aboriginal and Torres Strait Islander people “[...] hold distinct cultural rights and must not be denied the right, to maintain, control, protect and develop their identity and cultural heritage, traditional knowledge, distinctive spiritual practices, observances, beliefs, teachings and language.”³³³

ALA note both the ACTHRA and the QHRA include a provision that recognises and protects the distinct cultural rights of Aboriginal and Torres Strait Islander people.³³⁴

SACOSS make the comment that once a Human Rights Act is put in place, a culture of rights builds up around it:

In these jurisdictions, human rights have become part of the everyday business of government agencies, and human rights protections have been incorporated into key policies and guidelines to inform decision-making. This is delivering tangible benefits for the people living in those jurisdictions.³³⁵

³³¹ AHCSA, *Written submission No. 120*, February 2024: 6.

³³² AHCSA, *Written submission No. 120*, February 2024: 6.

³³³ ALA, *Written submission No. 35*, 14 February 2024: 16.

³³⁴ ALA, *Written submission No. 35*, 14 February 2024: 17.

³³⁵ SACOSS, *Written submission No. 94*, February 2024: 11.

The HRCRC observes that section 27 of the ACTHRA is specifically informed by Article 27 of the ICCPR and Articles 25 and 31 of the UNDRIP which, may contribute to ensuring Aboriginal and Torres Strait Islander people will be included in decisions that affect them, including mental health and wellbeing care and treatment.³³⁶

The HRCRC comment that in South Australia, the *Mental Health Act 2008* provides very limited guidance on incorporating the diverse cultural elements of Aboriginal and Torres Strait Islander people in a mental health care setting and that a Human Rights Act would address this deficiency:

There is no other guideline in the Mental Health Act regarding the protection of cultural rights when providing mental health care to First Nations People'. **While this will be addressed in a new Mental Health Act, a Human Rights Act would give guidance to protect, promote and uphold these rights not only in the context of mental health and wellbeing care but a full range of government services. It also would ensure that public authorities will be responsible for considering cultural practices when developing new services and policies aimed at this community group's wellbeing and mental health.**³³⁷

Limitations

The ACT, Victoria and Queensland all include limitations to varying degrees. Human Rights are not absolute and carry limitations when they interact with other Human Rights. Each Act provides an external limitations provision, but justifications for limitation differ slightly.

Generally Human Rights can be subject to reasonable limits that are demonstrably justified in a free and democratic society based on human dignity, equality and freedom.³³⁸

Specific Features of Legislation in other Australian Jurisdictions

Each of the jurisdictions also have features that are unique to them and their own legislation.

Australian Capital Territory

The Australian Capital Territory (ACT) was the first Australian jurisdiction to introduce specific human rights legislation, in the *Human Rights Act 2004* (ACTHRA). The ACTHRA forms part of a human rights protection framework which includes the *Human Rights Commission Act 2005* which provides for the creation of the ACT Human Rights Commission.

Rights Protected

The ACTHRA provides for human rights based on the *International Covenant on Civil and Political Rights* (ICCPR) and some from the *International Covenant on Economic, Social and Cultural Rights*

³³⁶ HRCRC, *Written submission No. 113*, “Attachment”, February 2024: 2.

³³⁷ HRCRC, *Written submission No. 113*, “Attachment”, February 2024: 2.

³³⁸ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 329.

(ICESCR). The ACTHRA is a ‘dialogue model’ based on the United Kingdom's *Human Rights Act 1998* (UK).³³⁹

The following amendments have been made to improve the ACTHRA, including in 2008, the ACTHRA was amended to add an obligation on public authorities to comply with human rights in the carrying out of their functions.

In 2012, amendments were made to introduce the right to education. In 2016, Aboriginal and Torres Strait Islander cultural rights were given express recognition under the ACTHRA and in 2020 the right to work was also recognised.³⁴⁰

In 2023, the ACTHRA was amended first by the *Human Rights (Complaints) Legislation Amendment Act 2023* which introduced an accessible complaints mechanism and second, by the Human Rights (Healthy Environment) Amendment Bill 2023 which, introduced the right to a healthy environment.

This amendment is the first in Australia and provides that public authorities have an obligation to consider the impact on the environment when carrying out their functions and in their decision making.³⁴¹ The Conservation Council SA notes the key operative section of the amendment and new section 27C is “[e]veryone has the right to a clean, healthy and sustainable environment” and that “[e]veryone is entitled to enjoy this right without discrimination”.³⁴²

The Environment and Natural Resources Law Research Unit, The University of Adelaide also notes the ACT Human Rights (Healthy Environment) Amendment Bill was designed to provide an “express statutory protection for the right to a clean, healthy and sustainable environment in the ACT’s human rights framework”.³⁴³ This would be achieved through including in the ACTHRA:

“several substantive elements including: clean air; a safe climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and eco-system”.³⁴⁴

The other rights protected by the ACTHRA include:

- right to life
- recognition and equality before the law
- protection from torture and cruel, inhuman or degrading treatment
- protection of the family and children
- the right to privacy and reputation

³³⁹ Dr Penelope Mathew, ACT Human Rights Commission, *Written submission No. 111*, 21 February 2024: 2.

³⁴⁰ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 2.

³⁴¹ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 2.

³⁴² Conservation Council SA, *Written submission No.12*, 5 February 2024: 2.

³⁴³ ACT Government, Justice and Community Safety Directorate, *Right to a Healthy Environment*. Cited in Dr Alex Wawryk, Director, Dr Phillipa McCormack, Ms Claire Williams, and Margaret Castles, Adjunct Professor Robert Fowler and Associate Professor Beth Nosworthy, Environment and Natural Resources Law Research Unit (ENREL), Adelaide Law School, The University of Adelaide, *Written submission No. 36*, 14 February 2024: 5.

³⁴⁴ ACT Government, Justice and Community Safety Directorate, *Right to a Healthy Environment*. Cited in Dr Alex Wawryk et al., ENREL, The University of Adelaide, *Written submission No. 36*, 14 February 2024: 5.

- 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 the 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
- rights of minorities
- right to education.

Commissioner for Human Rights in the ACT, Dr Penelope Mathew provided that when the ACTHRA was first introduced, it only protected human rights derived from the ICCPR. The first amendments to include other rights occurred in 2012 with inclusion of a right to education. This was followed by reforms in 2016 ensuring the ability to fully enforce that right by including it within the public authority obligations.³⁴⁵

Part 3A of the ACTHRA contains the rights related to the ICESCR. Section 27A of the ACTHRA contains ‘the right to have access to free school education appropriate to ... needs’ and ‘the right to have access to further education and vocational and continuing training’. According to Dr Julie Debeljak, these rights have two immediately realisable aspects, which are:

- a. the enjoyment of ‘these rights without discrimination’, and
- b. the power to choose the religious or moral education in conformity with a child’s parent’s or guardian’s conviction.³⁴⁶

However, Dr Debeljak considers these education rights protections do not go far enough, stating:

This is very limited protection: (a) the scope of the right is limited by the words ‘access to’ the right, rather than the ICESCR guarantee of the right in full; (b) it is limited to immediately realisable goals rather than progressive realisation; (c) with the protection of rights via non-discrimination provisions being very familiar to the Australian legal landscape.³⁴⁷

Dr Elpitha (Peta) Spyrou notes that there is no case law involving compulsory school-aged students, from which to understand how the education provision (s 27A) is helping children and young people in the ACT. However, Dr Spyrou also notes “the existence of these sections may play a positive role

³⁴⁵ Dr Penelope Mathew, ACT Human Rights Commission, *Written submission No. 111*, 21 February 2024: 2.

³⁴⁶ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 15.

³⁴⁷ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 15.

in strengthening education policy in th[is] jurisdiction[n] through establishing a human rights culture.”³⁴⁸

JFA Purple Orange note the ACTHRA does not reference the UNCRPD, and only refers to ‘disability’ in relation to examples of discrimination in recognition and equality before the law, protection of the family and children, and the right to work and other work-related rights.³⁴⁹ However, JFA Purple Orange also recognise that having human rights law in the ACT, has been positive for people living with disability. JFA Purple Orange acknowledge the studies undertaken by the AHRC and Human Rights Law Centre who provide examples of the areas of life human rights protections work in, including in representing their cases to a tribunal or court. Other areas include:

[...] improved the accessibility and inclusiveness of communities in instances such as replacing steep stairs with escalators at train stations, assisting parents living with disability to avoid eviction from their tenancy, assisting parents living with disability with their custody rights, improving accessibility for people living with disability representing themselves in courts, ensuring access to public school education for asylum seekers with disability, and removing guardianship orders which contradicted the choices and needs of the person living with disability.³⁵⁰

Section 27B refers to the right to work and other work-related rights which, include the right of all to the enjoyment of just and favourable conditions of work and to the right to join a work-related association or union.³⁵¹

Amendments in 2016 also introduced Aboriginal and Torres Strait Islander cultural rights sourced from the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP) on the recommendation by the ACTHRC in partnership with the ACT’s Aboriginal and Torres Strait Islander Elected Body.³⁵²

The ACTHRA rights to ‘a healthy environment’ passed on 28 August 2024.³⁵³ The ACT HR Commissioner, Dr Mathew comments that the right will promote early consultation by public authorities about the implications of proposed legislation on the right to a healthy environment. Public authorities will be required to provide justification as to whether any actions or decision taken limit the human right to a healthy environment and where they would be considered reasonable, necessary and proportionate.³⁵⁴

³⁴⁸ Dr Elpitha Spyrou, *Written submission No. 27*, 13 February 2024: 4.

³⁴⁹ JFA Purple Orange, *Written submission No. 69*, February 2024: 21.

³⁵⁰ JFA Purple Orange, *Written submission No. 69*, February 2024: 20 - 21.

³⁵¹ Subsections 27B(1), (2), (3) ACTHRA 2004.

³⁵² Dr Penelope Mathew, ACT Human Rights Commission, *Written submission No. 111*, 21 February 2024: 11.

³⁵³ ACT Government, *Right to Healthy Environment now Enshrined in the ACT’s Human Rights Act*. Media Release. Accessed: [Right to healthy environment now enshrined in the ACT’s Human Rights Act - Chief Minister, Treasury and Economic Development Directorate](#)

³⁵⁴ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 11.

Scrutiny of Legislation

The ACT's Executive and Cabinet engage with human rights advisors to receive independent views on a Bill's human rights impacts. This includes accessing services provided by the ACT Human Rights Commission (ACTHRC).³⁵⁵ Additionally, the ACT Legislative Assembly Standing Committee on Justice and Community Safety (ACT Legislative Assembly SCJCS) has a scrutiny role in the development of Bills. The Human Rights Commission receives draft cabinet submissions in confidence, to provide compatibility advice. The ACT Human Rights Commissioner, Dr Penelope Mathew provides:

Importantly, there is also an informal protocol through which the ACTHRC receives most draft cabinet submissions in confidence. The ACTHRC is thereby able to feedback our early and independent views on the human rights compatibility of draft proposals. Our involvement at an early stage means we are able to give our robust advice out of the glare of the public spotlight. This confidential consultation does not prevent our ability to make public and critical statements once bills have become available for public scrutiny. The practice of providing early comment on the human rights compatibility of submissions to cabinet has naturally led to the practice of government policy and legal officers approaching our office early and informally to seek our feedback on legislative proposals and drafts. Over the almost twenty years that the ACT HR Act has been in force, no bill has been introduced with a statement of incompatibility.³⁵⁶

Dr Mathew also advised; the ACT Cabinet Handbook requires that all submissions seeking 'first pass approval' should indicate any possible impact of human rights. Where a Bill is categorised as a "significant Bill", a detailed human rights proportionality analysis is required and assistance is provided by the Justice and Community Safety's Human Rights Unit for this process.³⁵⁷

The ACTHRA requires that the ACT Legislative Assembly SCJCS must report to the Legislative Assembly about human rights issues raised by any Bills presented to the Assembly.

Limitations

Section 28 of the ACTHRA provides limitations for human rights and requires a proportionality test to demonstrate that human rights may only be subject to reasonable limits that are justifiable in a free and democratic society.

The *proportionality* test in the ACTHRA provides a mechanism to achieve a considered approach in balancing rights or competing public interests.³⁵⁸

The ACTHRA provides for a five-factor test, which includes the following considerations:

³⁵⁵ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 3.

³⁵⁶ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 3.

³⁵⁷ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 3.

³⁵⁸ ALA, *Written submission No. 35*, 14 February 2024: 19.

- nature of the rights affected;
- importance of the purpose of the limitation;
- nature and extent of the limitation;
- relationship between the limitation and its purposes; and
- any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.³⁵⁹

Role of the Judiciary

In the ACT, section 30 of the ACTHRA requires the judiciary to interpret legislation in a way that is compatible with human rights, so far as it is possible to do so, while section 31(1) concerns how the Supreme Court should interpret the scope of rights within the ACTHRA. The ACTHRA expressly provides that international law, and the judgements of international courts and tribunals may be used in interpreting a human right. This creates a second layer of protection of human rights.³⁶⁰

In the ACT, the judiciary cannot invalidate any legislation interpreted as incompatible with the human rights legislation, instead, the Court may issue a declaration of incompatibility with human rights but this does not affect validity or operation of the law.

The ACT Attorney General must then be notified of the declaration and he or she must prepare a report to the Legislative Assembly of the ACT Parliament. The Members of the ACT Legislative Assembly will then determine how to proceed with the report.³⁶¹

Dr Penelope Mathew, ACT Commissioner for Human Rights provided that there here have been two declarations of incompatibility made in the ACT. The first was a declaration that the bail laws in the ACT could not be interpreted compatibly with the ACTHRA but has yet to be acted upon. The second declaration of incompatibility regarded a delegated legislative instrument which the Court found was invalid.³⁶²

The ACT Human Rights Commission (ACTHRC) is notified of all Supreme Court proceedings involving application of the ACTHRA. Under section 36 of the ACTHRA, the ACTHRC may intervene with leave of the Court in any court proceedings, therefore providing an “avenue of independent advocacy for human rights principles.”³⁶³

Dr Mathew, advised that the ACTHRC would be better placed to support claimants in the court process were the Commission empowered to intervene without the need to seek leave from the Court. Dr Mathew recommends South Australia incorporates such a provision into its own Human Rights Act.³⁶⁴

³⁵⁹ See Section 28 ACTHRA 2004. Accessed: [HUMAN RIGHTS ACT 2004 - SECT 28 Human rights may be limited](#)

³⁶⁰ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 7.

³⁶¹ Rights Resource Network SA Inc., *Written submission No. 2*, December 2023. Attachment: Table 2 Designing a Human Rights Framework for South Australia - Final Report, February 2022: 56.

³⁶² Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 8.

³⁶³ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 8.

³⁶⁴ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 8.

Requirements for Public Authorities and their Definitions

In the ACT, a proactive and preventative part of ACTHRA requires that public authorities must not act in a way incompatible with human rights and are expected to take human rights into account when making decisions or providing services.

Unless another law expressly requires a public authority to act inconsistently with a human right, section 40B makes it unlawful for an ACT public authority to act in a way that is incompatible with a human right; or, in making a decision, to fail to give proper consideration to a relevant human right.³⁶⁵ This provides a further layer of human rights protections.

Dr Mathew provides:

The obligation on public authorities is critical for a human rights culture to become embedded into the practices of government agencies directly whose decisions and actions directly impact the human rights of the members of the community with whom they interact. At the State and Territory level these obligations bind agencies delivering services such as social housing, public education, public health services, corrections and youth justice facilities and child and protection services. The obligation requires a decision maker to consider the human rights impacts of a decision and to act in a way that is compatible with human rights. Limitations of human rights may occur but only when such a limitation is set by law and in a way that is proportionate: meaning it is reasonable and aimed at and rationally connected to a legitimate purpose and is the least restrictive way of achieving the intended purpose.³⁶⁶

³⁶⁵ Civil Liberties Australia, *Written submission No. 32*, 14 February 2024: 17.

³⁶⁶ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 9.

CASE STUDY: Public authorities required to consider human rights³⁶⁷

In *Little v Commissioner for Social Housing* [2017] ACAT 11 a public housing tenant raised her human rights when facing eviction into homelessness following separate proceedings for rental arrears. The Commissioner for Social Housing had been successful in obtaining a warrant for eviction based on the rental arrears. Prior to execution of the warrant of eviction the tenant was successful in applying for a stay of that process to allow her to bring proceedings to seek administrative review to dispute the significant amount of rent she was alleged to have owed.

The rental arrears debt was largely based on the tenant having been charged full market rent for the previous year rather than the subsidised rebated rent she was entitled to as a pensioner.

The tenant raised her human rights and the Tribunal in its administrative review division considered the Commissioner for Social Housing's refusal to accept the tenant's application to backdate her rental rebate application, despite documented domestic violence and the death of her son. The need to backdate the rebate was necessary because she had not been able to submit the necessary documentation within the required timeframes, which was the cause of her rebate being cancelled and full market rent being charged.

The Tribunal decided that, in refusing to exercising an available discretion to backdate the rebate, the Commissioner for Social Housing did not give proper consideration to the human rights of the tenant under the ACT HR Act. The Tribunal decided the specific circumstances of the tenant needed to be considered. This included the reasons the rebate had been initially cancelled following serious domestic violence, and the grief following the death of her son. The consequence of the rebate cancellation and the refusal to backdate the new rebate was the tenant being charged full market rent for a significant period and therefore a direct cause of the rental arrears and the warrant for eviction.

The Tribunal decided section 11 of the ACT HR Act was engaged and that there was an arbitrary interference in the tenants' privacy and home. The decision led to the rebate being backdated and the rental arrears significantly reducing. The warrant for eviction was not pursued and the tenant was able to remain in her home.

Remedies, Cause of Action and the Complaints Process

The ACT is the only Australian jurisdiction with a direct cause of action provision for alleged breaches of human rights. However, this was only achieved by amendment, through the 'No Rights without Remedy' inquiry undertaken by the Standing Committee on Justice and Community Safety in the Legislative Assembly, ACT, and through the Petition of the ALHR, ACTCOSS, the Human Rights Law Centre and Civil Liberties Australia.³⁶⁸

The Petition sought to have the *ACT Human Rights Act 2004* amended to enable a complaint to be made to the Human Rights Commission for conciliation; and if conciliation is unsuccessful, enable a complaint about a breach of the *Human Rights Act 2004* to be made to the ACT Civil and

³⁶⁷ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 9 - 10.

³⁶⁸ ALHR, *Written submission No. 118*, February 2024: 22.

Administrative Tribunal for resolution.³⁶⁹ *The Human Rights (Complaints) Legislation Amendment Bill 2023* was passed in November 2023 and came into effect in May 2024.³⁷⁰

Direct Cause of Action

Section 40C of the ACTHRA provides that if a person claims a public authority has acted in a way that is incompatible with a human right, or has failed to give proper consideration to a relevant human right, then the person may start a proceeding against the public authority in the Supreme Court.³⁷¹

The ACTHRA also contains a form of what is referred to as a ‘piggyback’ provision in Victoria and Queensland, which in the ACT allows a person to rely on their human rights in “other legal proceedings”.³⁷² The Commissioner for Human Rights in the ACT provides:

[c]ontrary to the perception that a direct right of action may open the “flood gates” to human rights litigation, the direct right of action has been used in a relatively limited number of cases in the ACT. The reasons for this are varied.³⁷³

The ACT Commissioner recommends South Australia adopts a Human Rights Act model with a direct cause of action and complaints mechanism for providing an independent avenue for redress.³⁷⁴ The below two case studies provided by the ACT Commissioner highlight the benefits of this model:

CASE STUDY: direct action and conditions in detention³⁷⁵

The direct right of action under the ACT HR Act has played an important role in court cases relating to conditions in places of detention.

The 2022 case of *Davidson v JACS14* concerned a detainee’s isolation in his cell for disciplinary reasons. Mr Davidson was confined to his cell and only allowed out for limited periods into a small internal courtyard covered with a mesh roof, connected to his cell and around the same size of his cell.

The Supreme Court found that Mr Davidson was denied the guaranteed minimum daily hour of access to open air and an adequate space to exercise and that this was incompatible with human rights under both international human rights standards and ACT laws.

³⁶⁹ Standing Committee on Justice and Community Safety Legislative Assembly for the Australian Capital Territory, *Report into the Inquiry into Petition 32-21 (No Rights Without Remedy)*, Report 7, 10th Assembly, June 2022. Accessed: [JCS-Report-7-Report-into-the-Inquiry-into-Petition-32-21-No-Rights-Without-Remedy.pdf](#)

³⁷⁰ ALHR, *Written submission No. 118*, February 2024: 22 - 23.

³⁷¹ Dr Penelope Mathew, ACT Human Rights Commission, *Written submission No. 111*, 21 February 2024: 6.

³⁷² Amnesty International Australia, *Written submission No. 97*, 12 February 2024: 6.

³⁷³ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 5.

³⁷⁴ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 10.

³⁷⁵ Dr Penelope Mathew, *Written submission No. 111*, 21 February 2024: 5 - 6.

[An] Aboriginal girl detained at the Bimberi Youth Justice Centre alleged that her human rights were breached by segregation from other young people, and by staff confiscating her artwork and Koori Mail newspaper.

The ACTHRC intervened in a direct action brought to the Supreme Court to complain that this treatment was inconsistent with her human rights.

The case settled prior to a decision and included an apology given by the ACT Government.

Victoria

Rights Protected

The Victorian *Charter of Human Rights and Responsibilities Act 2006* (VCHRA or the Victorian Charter) adopts some of the rights of the ICCPR, but does not specifically protect economic, social or cultural rights.³⁷⁶

Professor Marinella Marmo and Eva Coussens, Flinders University advised the VCHRA was amended with the *Charter of Human Rights and Responsibilities Amendment (Protection from Torture and Slavery) Bill* which, was passed in 2023. The aim for the amendment is to align the Victoria Human Rights legislation with the ICCPR and the Universal Declaration of Human Rights and includes reasons such as:

- to provide for the protection of certain non-derogable rights
- to repeal the power of Parliament to override the Charter
- to consequentially amend the *Subordinate Legislation Act 1994* (VIC) for these same protections and for other purposes.’ (Explanatory Memorandum of Bill 2023: 1.)³⁷⁷

Freedom for Faith argue Victoria has removed or severely restricted the right of faith-based organisations to “...maintain their ethos and values in the employment of staff in Christian schools and other organisations in the changes it introduced to protections for religious bodies via the *Equal Opportunity (Religious Exceptions) Amendment Act 2021*.”³⁷⁸

Christian Schools Australia (CSA) and the Australian Association of Christian Schools (AACS) agree and provide that most protections come from anti-discrimination legislation in Victoria. CSA and AACS contend the compatibility of the test introduced in the *Equal Opportunity (Religious Exceptions) Amendment Bill 2021* (Vic) “...may fail to adequately acquit the obligations of international human rights law”.³⁷⁹

³⁷⁶ Amnesty International Australia, *Written submission No. 97*, 12 February 2024: 6.

³⁷⁷ Professor Marinella Marmo and Eva Coussens, Flinders University, *Written submission No. 112*, February 2024: 11.

³⁷⁸ Freedom for Faith, *Written submission No. 102*, 16 February 2024: 3.

³⁷⁹ Christian Schools Australia (CSA) and Australian Association of Christian Schools (AACS), *Written submission No. 103*, 16 February 2024: 3.

CSA consider that the approach of introducing an ‘inherent requirements’ test in relation to the employment of staff by religious organisations provide poor protections for religious freedom for Christian and other faith-based schools.³⁸⁰

Victims Support Service (VSS) provide that the VCHRA, in accordance with section 6(2)(b) requires courts to directly enforce Charter rights that relate to court proceedings, such as section 24, right to a fair hearing and section 25, rights in criminal proceedings. VSS note however, that there is no reference to victims of crime in either section 24 or 25 but the absence of victims of crime from human rights statutes is not unique to Victoria.³⁸¹

The HRCRC offer that Victoria’s Charter provides protection to people experiencing mental ill health in their dealings with public authorities and bureaucratic processes. The HRCRC refer to an example from the Victorian Civil and Administrative Tribunal reproduced below, as an illustration of human rights protection for people with mental illness particularly in relation to compulsory treatment orders.³⁸²

Case 4 Mental health treatment orders must be reviewed within a reasonable time.³⁸³

Gary Kracke lives with a mental illness. He challenged an order requiring him to have mental health treatment. The periods for reviewing his treatment under the relevant mental health legislation had not been complied with, mainly because of administrative failures. Mr Kracke argued that the failure to comply with the treatment reviews on time meant that the compulsory treatment orders were invalid. The Victorian Civil and Administrative Tribunal decided that the treatment orders were not made invalid by the failure to review them.

The Tribunal decided that the treatment was a reasonable restriction on Mr Kracke's Charter rights, including his right not to be subject to medical treatment without his full, free, and informed consent. This was because the compulsory treatment regime includes safeguards aimed at ensuring that limitations on Charter rights are reasonable and proportionate.

However, the Tribunal declared that the failure to review the treatment orders within a reasonable time breached Mr Kracke's right to a fair hearing. This led to better processes to ensure that treatment orders were reviewed in a timely way. The mental health legislation at the time has now been replaced and the new mental health legislation has clear expiry dates for orders for compulsory treatment to better protect human rights.

³⁸⁰ Christian Schools Australia (CSA) and Australian Association of Christian Schools (AACS), *Written submission No. 103*, 16 February 2024: 2 – 3.

³⁸¹ Victim Support Service, *Written submission No. 16*, 9 February 2024: 8.

³⁸² HRCRC, *Written submission No. 113*, “Attachment”, February 2024: 3.

³⁸³ *Kracke v Mental Health Review Board* [2009] VCAT 646 cited in HRCRC, *Written submission No. 113*, “Attachment”, February 2024: 5.

Scrutiny of Legislation

Section 30 of the VCHRA provides that all proposed legislation, including Bills and statutory rules, must be scrutinised by the Scrutiny of Acts and Regulations Committee and report to the Victorian Parliament as to whether a Bill is incompatible with human rights.

Section 31 allows the Parliament to expressly declare in an Act that that Act or a provision of that Act or another Act or a provision of another Act has effect despite being incompatible with one or more of the human rights or despite anything else set out in the Charter.³⁸⁴

Statement of Compatibility and Override Provisions

When introducing new laws into Victoria's Parliament, a Statement of Compatibility (s 28), must be tabled, indicating how the proposed law is compatible or incompatible with the human rights set out in the Charter.³⁸⁵

Section 29 of the VCHRA provides that a failure to comply with section 28 in relation to any Bill that becomes an Act, does not affect the validity, operation or enforcement of that Act or of any other statutory provision.

Associate Professor Laura Grenfell et al., Public Law and Policy Research Unit (PLPRU), The University of Adelaide note in overriding the sentencing of two Victorians to enforce a life-sentence without parole, the Victorian Parliament has retained its power to limit individual rights when it believes they are outweighed by the need for community protection.³⁸⁶

The PLPRU offer that the VCHRA has had benefits to the broader community also as it informed the Victorian Government's decision to take a health-based approach to the second COVID lockdown of Melbourne's public housing towers in July 2021:

[...] after the ill-considered first immediate lockdown in July 2020 when police surrounded the public housing towers, making residents unnecessarily fearful and intimidated. Through her investigation into the first lockdown, the Victorian Ombudsman was able to guide the Victorian Government in taking a more considered approach, one based on human rights, in reaching its lockdown aims in July 2021.³⁸⁷

The PLPRU comment that statements of incompatibility have been used eight times by the Victorian Parliament, while it has used the override twice in relation to parole.³⁸⁸

The VCHRA also contains a provision under section 31, for the Victorian Parliament to override the operation of the VCHRA where a proposed legislative instrument is found to be incompatible with one or more human rights. The Castan Centre for Human Rights advised in their written submission

³⁸⁴ *Charter of Human Rights and Responsibilities Act 2006* (VIC), sections 30 and 31.

³⁸⁵ *Charter of Human Rights and Responsibilities Act 2006* (VIC), section 28.

³⁸⁶ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 11.

³⁸⁷ Associate Professor Laura Grenfell et al., PLPRU, *Written submission No. 51*, 15 February 2024: 11.

³⁸⁸ Associate Professor Laura Grenfell et al., PLPRU, *Written submission No. 51*, 15 February 2024: 12.

that the Castan Centre does not support the use of override provisions that can have the effect of diminishing the efficacy of a Human Rights Act.³⁸⁹ The Castan Centre provides:

[...] human rights instruments are ‘designed not only to preserve parliamentary sovereignty, but also to enhance the transparency of an accountability for public decision-making that impacts on rights, and to require justifications for the rights-costs of such decisions’, override provisions ‘in design and practice ... undermine such scrutiny and accountability’ and allow for ‘the substitution of inter-institutional dialogue with a representative monologue’.³⁹⁰

Limitations

The VCHRA contains similar criteria in relation to limitations on rights as the ACT. Human Rights may be subject only to reasonable limits.

In balancing competing rights, there are five factors to be assessed in accordance with section 7(2) of the VCHRA, in order for limitations to apply:

- 7 (2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—
- (a) the nature of the right;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relationship between the limitation and its purposes;
 - (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.³⁹¹

Section 7(2) of the VCHRA applies to all human rights, including those under international law and does not allow for derogation from the limitations.³⁹² Dr Julie Debeljak observes that the “general limitations clause in section 7 of the VCHRA is based on the *Canadian Charter*, being Schedule B to the *Canada Act 1982*.”³⁹³ Dr Debeljak advised that the limitations imposed on absolute rights in the VCHRA, is in violation of international law:

The one difficulty with external limitations provisions is that those provisions apply to *all* of the guaranteed rights, and fails to recognise that some of the rights guaranteed are “absolute rights” under international law. For example, to apply s 7(2) to all of the rights within the *Victorian Charter* violates international human rights law to the extent that the limitations provision applies [to] absolute rights.³⁹⁴

³⁸⁹ Scott Walker, Research Fellow, Professor Melissa Castan, Director, Associate Professor Ronli Sifris, Deputy Director (Academic), Castan Centre for Human Rights Law, Monash University, *Written submission No. 109*, February 2024: 16.

³⁹⁰ Dr Julie Debeljak, 2022 cited in Scott Walker et al., Castan Centre for Human Rights Law, Monash University, *Written submission No. 109*, February 2024: 16.

³⁹¹ *Charter of Human Rights and Responsibilities Act 2006* (VIC), section 7(2).

³⁹² Amnesty International Australia, *Written submission No. 97*, 12 February 2024: 6.

³⁹³ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 17.

³⁹⁴ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 18.

Dr Debeljak considers, by contrast Queensland’s *Human Rights Act 2019* (QHRA) limitation clause provides a more ‘nuanced’ approach to the criteria by which a limitation may be imposed (the Queensland human rights model is discussed after Victoria below). Dr Debeljak offers the following criteria for a South Australian Human Rights Act with “[...] reasonable and demonstrably justifiable limitations to be placed on the guaranteed rights [...]”:³⁹⁵

- a generally-worded external limitations provision be used based on s 7(2) of the *Victorian Charter* (protected rights ‘may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom...’);
- the wording of the factors to be considered in assessing the reasonableness and demonstrable justifiability of limitations be based on s 13(2)(a) – (g) of the *QHRA*;
- that the provision be stated to *not* apply to the following absolute rights:
 - the prohibition on genocide;
 - the prohibition on torture or cruel, inhuman and degrading treatment or punishment;
 - the prohibition on slavery and servitude;
 - the prohibition on prolonged arbitrary detention;
 - the prohibition on imprisonment for a failure to fulfil a contractual obligation;
 - the prohibition on the retrospective operation of criminal laws;
 - the right of everyone to recognition everywhere as a person before the law; and
 - the right to freedom from systematic racial discrimination.³⁹⁶

Role of the Judiciary

In Victoria, as in the ACT and Queensland, the Court must interpret legislation in a way that is compatible with human rights, so far as it is possible to do so. The VCHRA provides under section 32(1), that all statutory provisions are to be interpreted in a way that is compatible with rights, so far as it is possible to do so, and consistently with the statutory purpose.

Section 32(3) of the VCHRA limits this by providing the following requirements:

- (3) This section does not affect the validity of—
 - (a) an Act or provision of an Act that is incompatible with a human right; or
 - (b) a subordinate instrument or provision of a subordinate instrument that is incompatible with a human right and is empowered to be so by the Act under which it is made.

The VCHRA recognises under section 32(2) that international law and the judgments of domestic, foreign and international courts and tribunals may be used in interpreting human rights.

Section 36(2) provides that where legislation cannot be interpreted consistently with human rights, the Supreme Court and Court of Appeal may issue a declaration of inconsistent interpretation. This must be provided in writing to the Victorian Attorney-General and the Victorian Equal Opportunity and Human Rights Commissioner (VEOHRC).

³⁹⁵ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 18.

³⁹⁶ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 18 – 19.

However, this section is also limited by section 36(5) in that:

- (5) A declaration of inconsistent interpretation does not—
 - (a) affect in any way the validity, operation or enforcement of the statutory provision in respect of which the declaration was made; or
 - (b) create in any person any legal right or give rise to any civil cause of action.

The Victorian Attorney-General and the VEOHRC may intervene in, and may be joined as a party to, any proceeding before any court or tribunal in which a question of law arises that relates to the application of the VCHRA. They may also intervene on a question related to the interpretation of a statutory provision in accordance with the VCHRA.³⁹⁷

The declaration of incompatible interpretation is provided to the relevant Minister administering the statutory provision for which the declaration was made and must be laid on the table of both Houses of the Victorian Parliament with the Minister's response, within 6 months of the Minister receiving it.³⁹⁸

Public Authorities and their Definitions

The VCHRA prescribes duties on Public Authorities. Section 38 of the VCHRA makes it unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right. Section 38:

38 Conduct of public authorities

- (1) Subject to this section, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.
- (2) Subsection (1) does not apply if, as a result of a statutory provision or a provision made by or under an Act of the Commonwealth or otherwise under law, the public authority could not reasonably have acted differently or made a different decision.

Example

Where the public authority is acting to give effect to a statutory provision that is incompatible with a human right.

- (3) This section does not apply to an act or decision of a private nature.

Subsection 38(4) of the VCHRA provides qualifications that may adversely affect religious bodies:

- (4) Subsection (1) does not require a public authority to act in a way, or make a decision, that has the effect of impeding or preventing a religious body (including itself in the case of a public authority that is a religious body) from acting in conformity with the religious doctrines, beliefs or principles in accordance with which the religious body operates.

³⁹⁷ *Charter of Human Rights and Responsibilities Act 2006* (VIC), section 34(1).

³⁹⁸ *Charter of Human Rights and Responsibilities Act 2006* (VIC), section 37.

- (5) In this section *religious body* means—
- (a) a body established for a religious purpose; or
 - (b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.

The VCHRA also provides a caveat on the obligations of public authorities in section 38 by providing in section 39 that where a decision by a public authority was required by another law or a law of the Commonwealth, the section doesn't apply if the public authority could not reasonably have acted differently or made a different decision.

Parliament, the Courts and Tribunals are excluded, unless acting in an administrative capacity. Section 4 of the VCHRA provides a definition of a 'Public Authority' as:

- (a) a public official within the meaning of the *Public Administration Act 2004* (VIC); or
 - A public official under the *Public Administration Act 2004* (VIC) includes employees of the public service, including the Head of a government department or an Administrative Office (such as the Secretary to the Department of Justice or the Chairman of the Environment Protection Authority) and the Victorian Public Sector Commissioner. It also includes the directors and staff of certain public entities, court staff, parliamentary officers and holders of certain statutory or prerogative offices.
- (b) an entity established by a statutory provision that has functions of a public nature; or
- (c) an entity whose functions are or include functions of a public nature, when it is exercising those functions on behalf of the State or a public authority (whether under contract or otherwise); or
- (d) Victoria Police; or
- (e) a Council within the meaning of the *Local Government Act 2020* (Vic) and Councillors and members of Council staff within the meaning of that Act; or
- (f) a Minister; or
- (g) members of a Parliamentary Committee when the Committee is acting in an administrative capacity; or
- (h) an entity declared by the regulations to be a public authority for the purposes of this Charter—
- (i) Parliament or a person exercising functions in connection with proceedings in Parliament; or
- (j) a court or tribunal except when it is acting in an administrative capacity; or
- (k) an entity declared by the regulations not to be a public authority for the purposes of this Charter.

[...]

In the 2022 report on the VCHRA’s operation, the VEOHRC provides that:

A culture of human rights requires public authorities to understand their duties to respect, protect, promote and fulfil human rights. A human rights culture is a pattern of shared attitudes, values and behaviours that influence the policy-making, decisions and practices of government to uphold the human rights of all people.³⁹⁹

The Castan Centre for Human Rights provided a useful explanation of what is required to be considered by a public authority and how that operates in Victoria. The Castan Centre recommends South Australia adopt considerations such as those identified in section 38(1) of the VCHRA.

The duty to give proper consideration to human rights when making a decision requires that the decision-maker approach decision-making with regard to relevant human rights. This is known as the procedural obligation. In Victoria, the duty to give proper consideration to human rights requires that the decision-maker ask:

- Is any human right relevant to the decision or action that a public authority has made, taken, proposed to take, or failed to take?
- If so, has the public authority done or failed to do anything that limits that right?
- If so, is that limit a reasonable and demonstrably justified limit?
- Even if the limit is proportionate, did the public authority give proper consideration to the right?
- Was the act or decision made under a law that gave the public authority no discretion in relation to that act or decision, or does the law confer a discretion that is consistent with the protected right?

This has become a well understood process and part of the human rights culture of public authorities where this duty exists.⁴⁰⁰

By way of example, the HRCRC provided that the Victorian Department of Health reviewed procedures in mental health services taking into consideration VCHRA requirements. This resulted in efforts to reduce the use of restraint and seclusion in mental health care in Victoria.⁴⁰¹

Complaints and Oversight Bodies

The VCHRA has no avenue for independent causes of action for human rights. Instead, claims must be ‘piggybacked’ on another cause of action. This limits the effectiveness of parties to be able to

³⁹⁹ Victorian Equal Opportunity and Human Rights Commission (VEOHRC), *2022 Report on the Operation of the Charter of Human Rights and Responsibilities*, 2022: 27.

⁴⁰⁰ Scott Walker et al., Castan Centre for Human Rights Law, Monash University, *Written submission No. 109*, February 2024: 17 - 18.

⁴⁰¹ Victorian Equal Opportunity and Human Rights Commission - Submission to the Four-Year Review of the Charter, Appendix J, 2011. Cited in HRCRC, *Written submission No. 113*, “Attachment”, February 2024: 6.

enforce their human rights and the Victorian Commission for Equal Opportunity and Human Rights does not handle complaints.⁴⁰²

The Victorian Ombudsman can seek to informally resolve or investigate complaints about administrative actions and decisions by public authorities. The Ombudsman can also conciliate and mediate individual complaints.⁴⁰³

Amnesty International Australia argue that as people cannot receive compensation the VCHRA's limitation clauses should be amended "...so it is clear what rights are *jus cogens* and cannot be limited, if this is not clear."⁴⁰⁴

SACOSS provide that although there is no direct cause of action in Victoria, having the Ombudsman (Vic) working with the VEOHRC helps to reduce the incidences of *causes* for complaint and provides relief in ways other than compensation:

Victoria has a Charter of Human Rights and Responsibilities Act 2006 and the Victorian Ombudsman works alongside the Victorian Human Rights Commission, and has a uniquely designated role as the human rights complaints and investigation body. In 2021, the Victorian Ombudsman dealt with more than 3,000 complaints about human rights issues, prompting in many cases, reversals of decisions, improved policies and other actions upholding the public's rights.⁴⁰⁵

The VEOHRC may also intervene in, and may be joined as a party to, any proceeding before any court or tribunal in which a question of law arises that relates to the application of the VCHRA or on a question of law to which the charter relates. The VEOHRC's functions are otherwise limited to reporting, advice and education.⁴⁰⁶

Queensland

Rights Protected

Along with the civil and political rights contained in the *International Covenant on Civil and Political Rights* (ICCPR), the *Queensland Human Rights Act 2019* (QHRA) provides a right to education (section 36) and some rights for access to health services (section 37).

Section 36 of the QHRA provides that 'every child has the right to have access to primary and secondary education appropriate to the child's needs', and 'every person has the right to have access, based on the person's abilities, to further vocational education and training that is equally accessible to all.'

⁴⁰² VEOHRC, *2022 Report on the Operation of the Charter of Human Rights and Responsibilities*, 2022: 27 – 28.

⁴⁰³ VEOHRC, *2022 Report on the Operation of the Charter of Human Rights and Responsibilities*, 2022: 28.

⁴⁰⁴ Amnesty International Australia, *Written submission No. 97*, 12 February 2024: 7.

⁴⁰⁵ SACOSS, *Written submission No. 94*, February 2024: 11.

⁴⁰⁶ *Charter of Human Rights and Responsibilities Act 2006* (VIC), sections 40 and 41.

Section 37 provides that ‘every person has the right to access health services without discrimination’ and that ‘a person must not be refused emergency medical treatment that is immediately necessary to save the person’s life or to prevent serious impairment to the person.’

Although these rights are included, they come with qualifiers, to which Dr Julie Debeljak offered:

[...] this is limited protection of these rights, with (a) the rights to education limited by the words ‘access to’, (b) the right to health services being limited by non discriminatory access to, and (c) the emergency medical treatment being very specifically limited in its terms.⁴⁰⁷

JFA Purple Orange provide that although the QHRA mandates that the first statutory review of the QHRA requires consideration to be given to the UNCRPD, it does not make any other stipulation for the protection of the rights of people living with disabilities.⁴⁰⁸ JFA Purple Orange commented:

As identified by Aged and Disability Advocacy Australia, the Act “does not provide complete coverage for persons with disability” and was “expressly overridden by the Queensland government with the enactment of the Strengthening Community Safety Bill 2023 (Qld).”⁴⁰⁹

Justice Reform Initiative referred to the following case example which demonstrates use of the QHRA during the COVID-19 pandemic:

Case Study: Queensland Human Rights⁴¹⁰

The human rights of people in prison were significantly affected during the COVID-19 pandemic. People were confined to their cells for extended hours, in-person visits were cancelled or postponed, there was limited access to telephones and video conferencing and medication was not received at the right time or in the correct dosage. Caxton Legal Centre used the QHRA to advocate with the Queensland Corrective Services and Queensland Health to gain its clients access to telephone conferencing for legal services. Caxton Legal also argued that a number of the quarantining measures implemented at the prisons breached human rights, including the protection of families and children, right to access health services and protection from torture and cruel, inhuman or degrading treatment.

Source: The First Annual Report on the Operation of Queensland’s Human Rights Act 2019-20, p. 111

Scrutiny of Legislation and Statement of Compatibility

The QHRA provides under section 38 a member who proposes to introduce a Bill in the Legislative Assembly must prepare a statement of compatibility for the Bill. Section 38(2) seeks that:

⁴⁰⁷ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 15.

⁴⁰⁸ JFA Purple Orange, *Written submission No. 69*, February 2024: 21.

⁴⁰⁹ JFA Purple Orange, *Written submission No. 69*, February 2024: 21.

⁴¹⁰ Justice Reform Initiative, *Written submission No. 90*, February 2024: 11.

- (2) The statement of compatibility must state-
- a) whether, in the member's opinion, the Bill is compatible with human rights and, if so, how it is compatible; and
 - b) if, in the member's opinion, a part of the Bill is not compatible with human rights, the nature and extent of the incompatibility.

Accordingly, section 39 requires that all proposed Bills must be referred to a portfolio committee responsible for examining a Bill introduced in the Legislative Assembly. The Queensland Parliament has seven portfolio committees to scrutinise legislation and report to the Parliament.

The relevant portfolio committee must on receipt of the statement from the member, consider the statement of compatibility tabled for the Bill and report to the Assembly about the statement.

The portfolio committee must also consider the Bill and report to the Assembly about whether the Bill is not compatible with human rights.⁴¹¹

The Law Society of South Australia observes, “[t]he approach in Queensland mandates statements of compatibility; a mechanism South Australia lacks and has been suggested by the Society in its Policy Position [...]”⁴¹²

Override Provisions

The QHRA has provision for the Queensland Parliament to override the operation of the Act in exceptional circumstances. Section 43 of the QHRA provides that the Queensland Parliament may issue an ‘override declaration’ which allows an Act to have effect despite being incompatible with one or more human rights. Section 43 states that an override declaration is intended to be used only in exceptional circumstances, such as in a time of:

- war
- a state of emergency; or in
- an exceptional crisis situation constituting a threat to public safety, health or public order.⁴¹³

This provision is balanced by a requirement in section 44 of the QHRA, for the Member of Parliament who introduced the Bill containing an override declaration, to make a statement to the Legislative Assembly explaining the exceptional circumstances that justify including the override declaration.

Associate Professor Laura Grenfell et al., PLPRU, note the QHRA provides an option to legislate notwithstanding the rights set out in the QHRA through use of an ‘override’ provision.⁴¹⁴

Assoc. Prof. Laura Grenfell et al., PLPRU comment:

⁴¹¹ *Human Rights Act 2019* (QLD), sections 38(2) and 39.

⁴¹² The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 6.

⁴¹³ *Human Rights Act 2019* (QLD), section 43.

⁴¹⁴ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 11.

The ‘override’ was used twice by the Queensland Parliament in 2023 in relation to youth detention laws which were fast tracked. The use of the override illustrates that the Queensland Parliament has retained its sovereignty.

An alternative pathway for the Queensland Parliament would have been to issue a statement of incompatibility which would indicate its intention not to legislate compatibly with the Human Rights Act.⁴¹⁵

Assoc. Prof. Laura Grenfell et al., PLPRU go on to provide an example stating that:

Such a statement of incompatibility would have offered an explanation as to why Parliament considered it reasonable for children’s rights to be limited in this context. Such a statement strengthens democratic accountability in our system of government. The electorate can then decide whether it agrees with the Parliament’s reasoning. This pathway also preserves parliamentary sovereignty.⁴¹⁶

The Castan Centre for Human Rights consider the South Australian Human Rights Act should not contain an override provision such as is seen in the QHRA and the VCHRA.⁴¹⁷ Dr Julie Debeljak agreed with this view and advised that should South Australia choose to include an override provision, she would recommend it be modelled on the ‘derogation provision’ of Part 4 of the ICCPR.⁴¹⁸

Limitations

The Queensland *Human Rights Act 2019* (QHRA) is similar to the VCHRA in that it provides that a human right ‘may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society’. The QHRA then requires a seven-factor proportionality test for consideration. Section 13 of the QHRA provides:

13 Human rights may be limited

- (1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.
- (2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection the following factors may be relevant-
 - (a) the nature of the human right;
 - (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
 - (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
 - (d) whether there are any less restrictive and reasonably available ways to achieve the purpose;

⁴¹⁵ Associate Professor Laura Grenfell et al., PLPRU, *Written submission No. 51*, 15 February 2024: 11.

⁴¹⁶ Associate Professor Laura Grenfell et al., PLPRU, *Written submission No. 51*, 15 February 2024: 11.

⁴¹⁷ Scott Walker et al., Castan Centre for Human Rights Law, *Written submission No. 109*, February 2024: 16.

⁴¹⁸ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 36.

- (e) the importance of the purpose of the limitation;
- (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
- (g) the balance between the matters mentioned in paragraphs (e) and (f).

The Castan Centre for Human Rights considers the limitations test applied in the QHRA strikes a reasonable balance between protection of non-absolute human rights and legitimate reasons for the Queensland Government to limit human rights under law.”⁴¹⁹

Role of the Judiciary

In Queensland, the Supreme Court must interpret legislation in a way that is compatible with human rights so far as it is possible to do so.

The Court may declare a statutory provision to be not compatible with human rights and this triggers a Parliamentary process to review the legislation but does not invalidate the law.

The Queensland Human Rights Commission (QHRC) has a right to intervene in court proceedings where there is a question of law about the application of the QHRA or in the interpretation of a provision within the QHRA.

The QHRC is also provided with the opportunity to make submission where the Court proposes a declaration of incompatibility.

Public Entities and their Definitions

Public entities must not act in a way incompatible with human rights and are expected to always take human rights into account when making decisions or providing services. An exception is provided where another law expressly requires an act to be done, contrary to the QHRA.

The Australian Lawyers for Human Rights (ALHR) provides the following example of both the application of the ICESCR and UNDRIP cultural rights of Aboriginal and Torres Strait Islander people and the requirement for public entities to act with human rights in mind when carrying out their functions.

⁴¹⁹ Scott Walker et al., Castan Centre for Human Rights Law, *Written submission No. 109*, February 2024: 19.

Case Study: Cultural Rights⁴²⁰

In Queensland, an Indigenous community leader and his family asserted their distinct cultural rights in a complaint against the Queensland Police Service (QPS). The cultural rights of Aboriginal and Torres Strait Islanders are expressly protected by Queensland's Human Rights Act, including the right to maintain distinctive spiritual, material, and economic relationship with the land and waters with which they hold a connection. Adrian Burragubba and his family were camping, practising their culture, and performing traditional ceremonies on a pastoral lease area when police officers claimed they were 'trespassing'. The police required them to pack up their equipment and leave within an hour. A complaint conciliated in the QLD Human Rights Commission resulted in the QPS agreeing to provide a statement of regret which was able to be shared publicly and which acknowledged that the events had caused embarrassment, hurt and humiliation for Mr Burragubba and his extended family. The QPS also committed to take cultural sensitivities into account in the future.

Remedies, Cause of Action and the Complaints Process

The Queensland Human Rights Commission (QHRC) has a number of functions where complaints about human rights are concerned. The QHRC can deal with a complaint under the QHRA and refer a complaint to another entity, or enter into arrangements with other entities to deal with a complaint, for example the NDIS (sections 73 and 74).

The QHRC may also deal with a complaint under the *Anti-Discrimination Act 1991* (QLD) where they consider this to be the more appropriate Act (section 75). Under section 80 of the QHRA, the purpose of the QHRC providing conciliation of a human rights complaint, is 'to promote the resolution of the complaint in a way that is informal, quick and efficient.'

Civil Liberties Australia highlights issues with the complaints system in the QHRA stating:

Queensland has built on the Victorian legislation by allowing any human rights complaint to be taken before the Queensland Human Rights Commission. It does not provide access to the Queensland Supreme Court for human rights complainants.⁴²¹

Further, Civil Liberties Australia advise that the QHRA does not allow individuals to seek mandated remedies, including compensation, from a tribunal where the primary cause of action is a human rights breach.⁴²²

⁴²⁰ Queensland Human Rights Commission cited in ALHR, *Written submission No. 18*, February 2024: 19.

⁴²¹ Civil Liberties Australia, *Written submission No. 32*, 14 February 2024: 4.

⁴²² Civil Liberties Australia, *Written submission No. 32*, 14 February 2024: 4.

The right to a conciliated complaints mechanism is additional to the right to include a human rights complaint as part of another court action referred to as a ‘piggy-back’ provision. As is the case in Victoria, a person who wishes to take their human rights complaint beyond a QHRC conciliation must have a separate cause of action⁴²³.

ALHR provided:

ALHR submits that the Queensland Act would be more effective if it entitled a person with a human rights complaint alone to attempt to conciliate their complaint and, if unresolved, have the option to commence further proceedings should they seek a determination of their rights.⁴²⁴

⁴²³ ALHR, *Written submission No. 118*, February 2024: 28.

⁴²⁴ ALHR, *Written submission No. 118*, February 2024: 28.

Overseas Jurisdictions

United Kingdom

The *Human Rights Act 1998* (UK) (UKHRA) sets out the fundamental rights and freedoms that everyone in the UK is entitled to whether a citizen or not. It incorporates rights contained in the *European Convention on Human Rights* (ECHR).⁴²⁵ Articles to the UKHRA are:

Article 2: Right to life

Article 3: Freedom from torture and inhuman or degrading treatment

Article 4: Freedom from slavery and forced labour

Article 5: Right to liberty and security

Article 6: Right to a fair trial

Article 7: No punishment without law

Article 8: Respect for your private and family life, home and correspondence

Article 9: Freedom of thought, belief and religion

Article 10: Freedom of expression

Article 11: Freedom of assembly and association

Article 12: Right to marry and start a family

Article 14: Protection from discrimination in respect of these rights and freedoms.⁴²⁶

Protocols also contained in the UKHRA:

Protocol 1, Article 1: Right to peaceful enjoyment of your property

Protocol 1, Article 2: Right to education

Protocol 1, Article 3: Right to participate in free elections

Protocol 13, Article 1: Abolition of the death penalty.⁴²⁷

Courts have a duty to interpret statutory provisions consistently with the UKHRA. A court cannot change the legislation found to be inconsistent with the UKHRA however, if the court is satisfied that the provision is incompatible with the ECHR it may make a declaration of incompatibility (section 4). Courts are also required to consider decisions of the European Court of Human Rights in assessing the compatibility of the legislation with the UKHRA.⁴²⁸

⁴²⁵ Equality and Human Rights Commission (EHRC). *The Human Rights Act*. Accessed: <https://www.equalityhumanrights.com/human-rights/human-rights-act>

⁴²⁶ NOTE: Articles 1 and 13 of the ECHR do not feature in the UKHRA as the UK fulfilled these rights through implementing the UKHRA, and these Articles have been removed from the UKHRA.

⁴²⁷ Equality and Human Rights Commission (EHRC), *The Human Rights Act*. Accessed: <https://www.equalityhumanrights.com/human-rights/human-rights-act>

⁴²⁸ ALHR, *Written submission No. 118*, February 2024: 32.

The UKHRA requires all public authorities and other authorities carrying out public functions to act compatibly with the rights protected in the UKHRA (section 6). It is unlawful for a public authority to act in a way that is incompatible with an ECHR right.⁴²⁹

Complainants can take their case to a British court if they believe their rights are breached. Dr Julie Debeljak advised the UKHRA provides a useful example for remedy, which is similar to the model used in the ACT. Dr Debeljak provides:

The British and, more recently, the ACT models offer a much better solution to remedies than s 39 of the [Victorian] *Charter*. In Britain, ss 6 to 9 of the *UK HRA* make it unlawful for a public authority to exercise its powers under compatible legislation in a manner that is incompatible with rights. [...] Such unlawful action gives rise to three means of redress: (a) a new freestanding cause for breach of statutory duty, with the *UK HRA* itself being the statute breached; (b) a new ground of illegality under administrative law; and (c) the unlawful act can be relied upon in any legal proceeding. Most importantly, under s 8 of the *UK HRA*, where a public authority acts unlawfully, a court may grant such relief or remedy, or make such order, within its power as it considers just and appropriate, which includes an award of damages in certain circumstances if the court is satisfied that the award is necessary to afford just satisfaction. The British experience of damages awards for human rights breaches is influenced by the *ECHR*. Under the *ECHR*, a victim of a violation of a human right is entitled to an effective remedy, which may include compensation. Compensation payments made by the European Court of Human Rights under the *ECHR* have always been modest, and this has filtered down to compensation payments in the United Kingdom [...]⁴³⁰

Canada

Canada's human rights law is slightly different to the other models seen in Commonwealth countries in that it constitutionally protects human rights through the *Canadian Constitution Act 1982* and *Charter of Rights and Freedoms* (Canadian Charter).⁴³¹ Section 2 of the Canadian Charter provides for fundamental freedoms to be protected, including:

Fundamental freedoms

- 2 Everyone has the following fundamental freedoms:
- (a) freedom of conscience and religion;
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - (c) freedom of peaceful assembly; and
 - (d) freedom of association.

⁴²⁹ ALHR, *Written submission No. 118*, February 2024: 32.

⁴³⁰ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 46 - 47

⁴³¹ Government of Canada, Justice Laws Website, *Constitution Act 1982*. Accessed: <https://laws-lois.justice.gc.ca/eng/Const/page-12.html>

Other rights to be protected under the Canadian Charter include democratic rights (section 3); mobility rights (section 6); legal rights (sections 7 – 14); equality rights (section 15). Under the Canadian Charter, remedies are available from the Court, including damages, injunctions, and declarations that a law is invalid.

The Canadian Charter applies to the Parliament and Government of Canada in respect of all matters within the authority of Parliament as well as to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.⁴³² Where the sovereignty of the Canadian Parliament is concerned, Civil Liberties Australia comments:

The position in Canada is slightly different to other jurisdictions. Canada's Charter of Rights somewhat limits Parliament's sovereignty by allowing Canada's courts to declare statutes as invalid because they are incompatible with human rights. Canada's override provision permits any Canadian Parliament to expressly declare a statute is valid notwithstanding its incompatibility with human rights expressed by the judiciary. Canada's Parliament, in comparison to Australia, has to be proactive in validating legislation found incompatible with their human rights act by the judiciary.⁴³³

Canada also has a Federal *Canadian Human Rights Act 1977* (CHRA) with Part I protecting against discrimination based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, or pardoned or spent convictions.

Other protections include those related to the provision of goods and services and employment. Part II of the CHRA provides for rights solely related to the Aboriginal Peoples of Canada.

The Castan Centre for Human Rights notes there is also the *United Nations Declaration on the Rights of Indigenous Peoples Act 2021* (UNDRIP Act) (Canada), which implements the UNDRIP. The UNDRIP Act has two purposes which are to affirm the UNDRIP is a universal international human rights instrument with application in Canadian law and to provide a framework for the Canadian Government's implementation of the UNDRIP.⁴³⁴ The Castan Centre for Human Rights provided:

The [UNDRIP] Act seeks to achieve these purposes in two ways. First, the Act requires that the Canadian Government, in consultation with Indigenous peoples, 'take all measures necessary to ensure that the laws of Canada are consistent with' the UNDRIP. Second, the Act requires the preparation and implementation of an action plan to achieve the objectives of the UNDRIP.⁴³⁵

The Human Rights Commission (the CHRC) of Canada provides a number of services including advocacy on rights related matters. The CHRC operates under the authority of the Canadian *Human Rights Act 1977* and other Canadian rights statutes. The CHRC provides a complaints management service which:

⁴³² Government of Canada, Justice Laws Website, *Constitution Act 1982*, sections 16, 23 and 32. Accessed: <https://laws-lois.justice.gc.ca/eng/Const/page-12.html>

⁴³³ Civil Liberties Australia, *Written submission No. 32*, 14 February 2024: 18.

⁴³⁴ Scott Walker et al., Castan Centre for Human Rights Law, *Written submission No. 109*, February 2024: 11.

⁴³⁵ Scott Walker et al., Castan Centre for Human Rights Law, *Written submission No. 109*, February 2024: 11.

- helps people resolve disputes through mediation;
- refers complaints to the Canadian Human Rights Tribunal when the issues are systemic in nature; and
- represent the public interest in certain cases that go before the Tribunal and the courts.⁴³⁶
- advising Parliament on new laws and emerging human rights issues
- supporting and conducting human rights research

The Commission will refer a complaint to the respective tribunal, and if not resolved at the tribunal stage, it will conduct a hearing and make a determination on the complaint. The Tribunal may order cessation of the discriminatory practice and make rulings to ensure avoidance of such practices in the future. The Tribunal also has powers to decide compensation for lost wages, the additional costs of obtaining alternative goods, services, facilities, or accommodation, as well for pain and suffering; and interest on compensation.⁴³⁷

New Zealand

New Zealand has a Bill of Rights and a Human Rights Act and these statutes offer protections under a dialogue model. The *Bill of Rights 1990* (NZ) (NZ Bill of Rights) covers a range of rights such as:

- the right not to be deprived of life
- the right not to be subjected to torture and cruel treatment
- the right not to be subjected to medical and scientific experimentation
- the right to refuse to undergo medical treatment,
- electoral rights
- freedom of thought, conscience and religion
- freedom of expression
- manifestation of religion and belief,
- freedom of peaceful assembly, association, and movement
- freedom from discrimination
- minority rights
- unreasonable search and seizure
- liberty of the person
- the rights of persons arrested or detained
- the rights of persons charged
- minimum standards of criminal procedure; and
- the right to justice.⁴³⁸

⁴³⁶ Canadian Human Rights Commission. Accessed: <https://www.chrc-ccdp.gc.ca/>

⁴³⁷ ALHR, *Written submission No. 118*, February 2024: 31.

⁴³⁸ *Bill of Rights Act 1990* (NZ), section 6.

The ALHR notes that NZ Bill of Rights covers a number of the core rights from the ICCPR but does not extend protections to the ICESCR.⁴³⁹

The *Human Rights Act 1993* (NZ) (NZ Human Rights Act) protects New Zealanders from unlawful discrimination, which is also guaranteed in section 19 of the NZ Bill of Rights. The NZ Bill of Rights deals with the public sector, while the NZ Human Rights Act deals with some aspects of the public and private sectors.

While covered in the Human Rights Acts in the ACT, Victoria and Queensland, in New Zealand, the Bill of Rights covers matters concerned with the requirement of proposed legislation to be compatible with human rights.

The NZ Government and House of Representatives respond to ‘declarations of inconsistency’ by requiring the Attorney-General to notify the House of Representatives of the court’s declaration of inconsistency within six sitting days after the declaration becomes final; and the Minister responsible to present the Government response within six months of the Attorney-General notifying the House.

⁴³⁹ ALHR, *Written submission No. 118*, February 2024: 30.

c) The Strengths and Weaknesses of Adopting a Human Rights Act in South Australia

Submissions to the inquiry addressing the strengths of adopting a Human Rights Act in South Australia were more numerous than those addressing the weaknesses. The majority of submissions agree having a Human Rights Act in South Australia will “[...] allow the South Australian Government to meet its obligations under the various international human rights instruments that Australia has ratified.”⁴⁴⁰

Numerous submissions provided views on the strengths and benefits of a Human Rights Act in broad terms, while others provided views in the context of specific groups or concerns, such as strengths relating to improving the lives of South Australian Aboriginal and Torres Strait Islander people or the benefits to the environment.

Key strengths provided in the evidence include that a Human Rights Act will oblige the Government of South Australia to undertake certain duties to the people of South Australia. These include:

- providing a duty of participation for citizens in government decision-making;
- improving the law-making processes within the South Australian Parliament;
- improving the decision-making processes of the Government and the administering of law;
- addressing inequalities and discrimination in people’s access to fundamental services;
- enhancing access to justice for all South Australians and addressing social disadvantage;
- *Closing the Gap* and improving the lives of Aboriginal and Torres Strait Islander South Australians;
- improving the public’s understanding of their rights and what to expect from public authorities;
- reducing inefficiencies in State Government and reducing waste;
- improving existing legislation and legal rights; and
- providing a remedy, or a cause of action when a person’s human rights are breached.^{441, 442}

A number of submissions also address the reference regarding the potential weaknesses of South Australia adopting a Human Rights Act. Some submissions provide detailed analysis on the potential to limit rights through narrow interpretations or the consequences of inhibiting the Parliament’s law-making; some submissions simply comment, there are no weaknesses⁴⁴³.

Submissions that addressed the weaknesses of adopting a Human Rights Act in South Australia provided the following:

⁴⁴⁰ SACOSS, *Written submission No. 94*, February 2024: 3.

⁴⁴¹ See: Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 8.

⁴⁴² See also: ALHR, *Written submission No. 118*, February 2024: 33 – 34.

⁴⁴³ Professor Jennifer McKay AM, UNISA, *Written submission No. 11*, 8 February 2024: 7.

- the parliamentary system already has powers in guaranteeing human rights;
- it may elevate some rights over others;
- there are already protections across a number of existing pieces of legislation;
- subversion of the parliamentary process;
- limited impact and cannot guarantee a right to remedy or redress; and
- it may cause narrow interpretations to be made and create unhelpful case law.^{444, 445}

Strengths

Increased Community Participation in Public Life

Many submissions agree a Human Rights Act for South Australia will increase the ways in which ordinary people can participate in the development of government policy and procedures through improved consultation with South Australian communities.^{446, 447, 448}

Many submissions also recognise that decision-making processes within the Government and other public authorities, will be improved by the Act requiring them to apply a human-rights lens to all policies, procedures and decisions.^{449, 450}

Amnesty International Australia argue public authorities must necessarily adopt a participation duty and engage with their communities on issues that will likely affect them.⁴⁵¹

According to the Rights Resource Network SA, improving public engagement with South Australian public institutions will assist communities to foster trust in them, which will have flow-on benefits.⁴⁵²

JFA Purple Orange note that incorporating human rights into government decision-making processes will bring human rights to front of mind for those working in public institutions, and it will raise awareness in the eyes of the general public.⁴⁵³

Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, agreed adding:

⁴⁴⁴ See: Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 9.

⁴⁴⁵ See also: JFA Purple Orange, *Written submission No. 69*, February 2024: 25 – 26.

⁴⁴⁶ Thorne Harbour Health, *Written submission No. 98*, 16 February 2024: 5.

⁴⁴⁷ SACOSS, *Written submission No. 94*, February 2024: 5.

⁴⁴⁸ Ms Anne Gale, Public Advocate of South Australia, *Written submission No. 108*, 15 February 2024: 3.

⁴⁴⁹ JFA Purple Orange, *Written submission No. 69*, February 2024: 23.

⁴⁵⁰ Climate Justice Network of South Australia, *Written submission No. 62*, February 2024: 1.

⁴⁵¹ Amnesty International Australia, *Written submission No. 97*, 12 February 2024: 11.

⁴⁵² Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 8.

⁴⁵³ JFA Purple Orange, *Written submission No. 69*, February 2024: 23.

Adopting a Human Rights Act in SA would bring clarity and certainty as to which rights can be enjoyed and it would bring transparency to the circumstances in which these rights can be legitimately limited by parliament when there is a broader public interest at stake. This would add another level of accountability into our system of government.⁴⁵⁴

Dr Rowan Nicholson et al., Flinders University, also consider a Human Rights Act will improve trust in government and the robustness of South Australia’s democratic system by “...clarifying the relationship between government institutions and residents of South Australia.”⁴⁵⁵

Improved Law-Making by the Parliament of South Australia

Many submitters comment in their evidence that a Human Rights Act will improve the way the Parliament makes laws through consulting first with those affected by proposed laws and through provision of statements of compatibility.⁴⁵⁶ A statement of compatibility must assess proposed laws against human rights and outline any implications the proposed laws may have.⁴⁵⁷

Dr Julie Debeljak summarises the obligation on governments to provide statements of compatibility:

Under the numerous Australian human rights instruments, there is an obligation on the relevant Minister to present a statement of compatibility with rights for all new legislation proposed to parliament. This is an important obligation and serves numerous purposes. It aids in the transparency of and accountability for the rights implications of proposed legislation. It is also a vital step in creating a dialogue about rights between the executive, parliament and the judiciary.⁴⁵⁸

Thorne Harbour Health provide that a Human Rights Act requires consideration by governments of the rights of all people when drafting legislation and providing accompanying services:

It will place human rights at the centre of decision-making by requiring governments to consider human rights when drafting laws, developing policies, funding and delivering services, and making decisions.⁴⁵⁹

Thorne Harbour Health further comment that a Human Rights Act will assist South Australia in “codifying” a range of rights that are considered important in the State:

A human rights framework would greatly assist in codifying the range of human rights regarded as important by South Australians, 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 are taken into account when laws are enacted, or decisions made about their lives.

⁴⁵⁴ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 12.

⁴⁵⁵ Dr Rowan Nicholson, Dr Jenny Richards, and Dr James Scheibner, Flinders University, *Written submission No. 73*, 16 February 2024: 4.

⁴⁵⁶ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 13.

⁴⁵⁷ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 36.

⁴⁵⁸ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 36.

⁴⁵⁹ Thorne Harbour Health, *Written submission No. 98*, 16 February 2024: 5.

A human rights framework would help to ensure that all South Australians are able to enjoy their human rights on an equal basis with each other.⁴⁶⁰

SACOSS consider that a Human Rights Act will assist social justice agencies by providing legal mechanisms when drawing the Parliament and the Government's attention to concerns during legislation making:

Having a Human Rights Act in place would give organisations such as ours, and the organisations and communities we care about and work with, appropriate legal mechanisms and tools to ensure that the Parliament considers people's human rights when making laws and designing policies; that governments and departments respect human rights when making decisions about policies, programs and people's lives; and individuals have access to justice and legal support when their rights are ignored or breached.⁴⁶¹

Ms Cornelia Koch, PLPRU, The University of Adelaide, offered:

We believe that introducing a human rights act in South Australia would bring greater clarity and certainty as to which rights can be enjoyed. It would bring transparency to the circumstances in which these rights can be legitimately limited by parliament when there is a broader public interest at stake. Obviously a statement of compatibility accompanying each bill would spell out which rights are being limited by parliament and why.⁴⁶²

In its 2022 *Free and Equal Position Paper*, the Australian Human Rights Commission provided:

Democracy relies on a system of constraints on executive power. The executive branch is empowered to use executive power by the Constitution, which also ensures that the exercise of executive power is checked by the other two branches of government: the judiciary and legislature. Rule of law principles provide that the executive should be both separate from, and accountable to, those branches, and it must act within the law. Executive power should not be so broad as to extend to arbitrary action – particularly where people's rights and freedoms are affected by discretionary decisions.⁴⁶³

The written submission of the Australian Capital Territory Human Rights Commission (ACTHRC) demonstrates this, by providing that in the ACT, where the ACT *Human Rights Act 2004* has been in operation for over twenty years, the most significant impact has been its influence on creating human rights compliant legislation due to scrutiny through the policy development and drafting processes.⁴⁶⁴

The ACTHRC offer the following example in a case study of how the ACT benefits from a robust Human Rights Framework, including the scrutiny powers held by the ACTHRC:

⁴⁶⁰ Thorne Harbour Health, *Written submission No. 98*, 16 February 2024: 5.

⁴⁶¹ SACOSS, *Written submission No. 94*, February 2024: 5.

⁴⁶² Ms Cornelia Koch, *Hansard*, 28 October 2024: 157.

⁴⁶³ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 86.

⁴⁶⁴ Dr Penelope Mathew, President and Human Rights Commissioner, ACT Human Rights Commission, *Written submission No. 111*, 21 February 2024: 2.

CASE STUDY: Terrorism (Extraordinary Temporary Powers) Act 2006

The ACTHRC has consistently advocated for human rights compatible laws to deal with the threat of terrorism. Over several years since the introduction of the *Terrorism (Extraordinary Temporary Powers) Act 2006*, our advocacy has guaranteed and extended the human rights safeguards that govern preventative detention orders made under the Act, which reflect best practice and distinguish it from other comparable schemes in Australia.

These include full judicial review and oversight; higher and more stringent tests for making preventative detention orders; express prohibition on the admissibility of evidence obtained from torture; shorter duration of interim orders; restrictions on rolling warrants; limitations on duration of preventative detention orders; court ordered compensation for wrongful detention; presumption of confidential legal communications; assistance for legal representation; and prohibitions on detention of children under 18, among others.⁴⁶⁵

Positive Duty of Government - A Culture of Rights

Several submissions explain that a Human Rights Act will provide the Government of South Australia and other public authorities with a framework that puts people first and clarifies the relationship between the Government and the people of South Australia.^{466, 467}

The Human Rights Law Centre provide that a Human Rights Act will reduce the likelihood of human rights breaches occurring when South Australian public authorities carry out their statutory obligations. This could be achieved through a prospective Human Rights Act imposing a *positive duty* on all public institutions to consider human rights upfront and, to act accordingly in their decision-making:

One of the biggest impacts a South Australian Human Rights Act could have is to impose a positive duty on public authorities to consider human rights when making decisions, and to act compatibly with human rights. This duty would both reduce the likelihood of human rights being breached and give South Australians the ability to challenge decisions or seek other remedies when public authorities fail to adequately consider human rights or act consistently with them.⁴⁶⁸

Mr Camilo Guaqueta, Principal Adviser, Lived Experience and Human Rights, Department of Health and Wellbeing, provides a Human Rights Act will provide a “comprehensive framework” which will assist public authorities to take a “person-centric” approach to policymaking and operation:

Intersectionality is crucial for understanding how people may experience violations of their rights. It is a challenge for policy designers and implementers, as a sectorial approach in public policy brings silos that create gaps where vulnerable people fall.

⁴⁶⁵ Dr Penelope Mathew, ACT Human Rights Commission, *Written submission No. 111*, 21 February 2024: 3 - 4.

⁴⁶⁶ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 8.

⁴⁶⁷ Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 7.

⁴⁶⁸ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 15.

A human rights act would strengthen the capacity of public authorities to use a comprehensive framework to design initiatives guided by the principle of interdependence of rights and therefore a person-centric approach. Every decision, regardless what is the dimension or the scope, always will impact at least one person, and that is a reminder that we need to give every public authority.⁴⁶⁹

SACOSS offer that a Human Rights Act will improve the everyday lives of all South Australians; and improve the way parliament, government and public authorities develop laws and policies, and how decisions are made. This, would create “a much-needed culture of human rights.”⁴⁷⁰ SACOSS note:

Having reference to [a Human Rights] Act would create a culture of human rights awareness within and between the three arms of government (Parliament, Executive and Judiciary) and place obligations on each to protect and promote human rights.⁴⁷¹

Thorne Harbour Health offer that a Human Rights Act will provide an added safeguard for people and an opportunity for them to contribute to the decision making process:

A Human Rights Act would also help make sure people with the on the ground knowledge are involved in service design and delivery and provide a safeguard to ensure everyone is treated with dignity, regardless of their situation in life.⁴⁷²

SNAICC consider one of the strengths of a Human Rights Act will be creation of cultural change through development of a partnership between the South Australian Government and Aboriginal and Torres Strait Islander people. SNAICC advise a Human Rights Act will help prevent breaches of Aboriginal and Torres Strait Islander children’s rights.⁴⁷³

Beyond required consideration of human rights in the technical aspects of law and policy, the existence of a South Australian Human Rights Act will create a culture of valuing and prioritising human rights in public policy. These requirements and cultural changes will help prevent breaches of Aboriginal and Torres Strait Islander children’s rights. Below is a case study from the Human Rights Law Centre that demonstrates the benefit of human rights legislation in Victoria where children have had breaches of rights addressed.⁴⁷⁴

⁴⁶⁹ Mr Camilo Guaqueta, Principal Adviser, Lived Experience and Human Rights, Department of Health and Wellbeing, *Hansard*, 17 June 2024: 84.

⁴⁷⁰ SACOSS, *Written submission No. 94*, February 2024: 3.

⁴⁷¹ SACOSS, *Written submission No. 94*, February 2024: 12.

⁴⁷² Thorne Harbour Health, *Written submission No. 98*, 16 February 2024: 5.

⁴⁷³ SNAICC, *Written submission No. 101*, February 2024: 18; 22.

⁴⁷⁴ SNAICC, *Written submission No. 101*, February 2024: 18.

Case 44: Aboriginal children returned to the care of their grandmother

Four Aboriginal siblings were placed in protective care because of concerns for their safety. At first, the children were placed in a non-Aboriginal home and separated from one another. Their mother then successfully applied to have the siblings reunited and returned to the care of their maternal grandmother. The court considered (among other things) how this decision would impact on the human rights of the children, and, in particular, their cultural and spiritual identity and connection with their Aboriginal family and the wider community. The court upheld the decision to return the children to their grandmother.⁴⁷⁵

ALHR comment that legislation plays a “significant role” in our lives, in informing community, expectations, norms and the laws which we all abide by. As a result, legislation can influence what we value, what we understand to be right and wrong, and what the South Australian Government “commits to for its people.”⁴⁷⁶

A Human Rights Act can therefore “[...] foster a culture of respect for human rights, framed through tolerance, respect, dignity and security, embedding these cornerstone values throughout the work of our parliament, government and across our community.”⁴⁷⁷

Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, agree that consistent with the preventative and proactive approach adopted in other Australian jurisdictions, if South Australia establishes a system where public authorities have to consider human rights when acting and making decisions, this will prevent “arbitrary infringements of the rights of members of the public.”⁴⁷⁸

Increased Equality and Access to Justice

Dr Nicholson et al., Flinders University comment that a Human Rights Act will provide a “common language that reflects shared values” and:

[t]hat common language would also articulate principles that define and preserve aspects of our democracy and reinforce the equality of community members. [...] It will remedy inequality of access to government services, especially by vulnerable groups.

⁴⁷⁵ Human Rights Law Centre, ‘101 Cases of How Charters of Human Rights Make Our Lives Better’. Retrieved from: <https://charterofrights.org.au/101-cases> Cited in SNAICC, SNAICC, *Written submission No. 101*, February 2024: 19.

⁴⁷⁶ ALHR, *Written submission No. 118*, February 2024: 32.

⁴⁷⁷ ALHR, *Written submission No. 118*, February 2024: 33.

⁴⁷⁸ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 13.

One way it will do this is through normalising awareness and provision for the diverse needs of various populations within our community.⁴⁷⁹

The Rights Resource Network SA agree, commenting, that a Human Rights Act will address inequality, discrimination and “[...] lack of access to fundamental services, which is experienced by many vulnerable groups within our community.”⁴⁸⁰ The Rights Resource Network also advise a Human Rights Act will identify and address complex and systemic social disadvantage.⁴⁸¹

Mr Camilo Guaqueta, notes the strength of a Human Rights Act would be that it would allow public authorities to ensure standards are met in protecting the dignity of South Australians:

People with lived experience face difficulties achieving a high standard of mental health without legal protections for fundamental rights like housing, income and education. Since all human rights are indivisible and interdependent, one set of rights cannot be fully enjoyed without the other. Thus, a human rights act would enable public authorities to ensure minimal (Sic) standards to protect dignity of South Australians by addressing adverse social determinants of health.⁴⁸²

The Human Rights and Coercion Control Committee (Office of the Chief Psychiatrist) (HRCRC) written submission provides:

[...] a Human Rights Act would strengthen the capacity of policymakers to use a comprehensive legal framework to design new initiatives aimed at addressing the challenges related to the intersectionality of disadvantaged situations, like non-binary people who experience mental distress due to domestic violence and are at risk of homelessness as well as the need of their families and friends who support them.⁴⁸³

Mr Harald Ehmman, SA/NT Regional Meeting of Quakers, summarised what he perceives as “the right to life security”, being enshrined in a Human Rights Act:

[...] the provision of adequate housing, the provision of adequate nourishment, the provision of adequate shelter: these are all life security issues. When these are not provided to people, when people don't have them available to them, particularly even if they can't get them with their own honest agency, that is a real problem. This is a problem that we have.

This concept of the right to life security is more of an overarching concept for other existing rights, but what it does is it helps to frame the thinking around what the real rights need to be to further human thriving as opposed to survival. None of us just want to survive: we want to thrive, therefore we deserve to thrive, and this is what we need.⁴⁸⁴

⁴⁷⁹ Dr Rowan Nicholson, Dr Jenny Richards, and Dr James Scheibner, Flinders University, *Written submission No. 73*, 16 February 2024: 3; 4.

⁴⁸⁰ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 8.

⁴⁸¹ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 8.

⁴⁸² Mr Camilo Guaqueta, *Hansard*, 17 June 2024: 84.

⁴⁸³ HRCRC, *Written submission No. 113*, “Attachment”, February 2024: 8.

⁴⁸⁴ Mr Harald Ehmman, *Hansard*, 2 December 2024: 191.

Dr Michelle Fernando et al., Justice and Society Unit, UNISA contend:

A Human Rights Act 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.⁴⁸⁵

According to the AHRC, minimum obligations to be included in a Human Rights Act are the non-negotiable rights that all individuals are entitled to, in any context and under all circumstances. The AHRC cites, that this will establish a floor, below which a public authority must not infringe upon, and is based on the foundational rights (contained in the UDHR).⁴⁸⁶ In establishing this benchmark, it will provide the Courts with guidance as to the interpretation of the law.

Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, advise:

An interpretive clause set out in human rights legislation would be easier for all South Australians to understand as it would ask the courts to interpret all legislation, so far as is reasonably possible, in a manner that is (most) compatible/consistent with human rights.⁴⁸⁷

Amnesty International Australia provide remedies should include injunctions, orders requiring actions, and setting aside administrative decisions. The Courts would also have a full suite of remedies including financial ones such as awarding damages.⁴⁸⁸ Amnesty further provide:

While an overarching Human Rights Act will benefit all people in South Australia, it will be a powerful tool for the most vulnerable members of the community to ensure their rights are protected. The current lack of strong legal human rights protections affects people who experience disadvantage, marginalisation and discrimination the most.⁴⁸⁹

Raising Public Awareness of Human Rights

JFA Purple Orange maintain that a Human Rights Act in South Australia will benefit people living with disability who are marginalised by current discriminative practices, by engendering a more inclusive community and providing education about what rights people have.

JFA Purple Orange state, many people in the community have little knowledge of the human rights afforded to people living with disability, such as those under the UNCRPD and this exposes people with disability to further disempowerment.⁴⁹⁰

JFA Purple Orange comment, a Human Rights Act will benefit the broader community, which would foster a more proactive approach to rights:

⁴⁸⁵ Dr Michelle Fernando et al., UNISA, *Written submission No. 52*, 16 February 2024: 3.

⁴⁸⁶ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 330.

⁴⁸⁷ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 14.

⁴⁸⁸ Amnesty International Australia, *Written submission No. 97*, 12 February 2025: 12.

⁴⁸⁹ Amnesty International Australia, *Written submission No. 97*, 12 February 2025: 12.

⁴⁹⁰ JFA Purple Orange, *Written submission No. 69*, February 2024: 23.

The adoption of a Human Rights Act in South Australia would also lead to the community having a greater awareness of human rights generally, and what they can do when their human rights are violated. [...] The Act would lead to more proactive actions to protecting human rights (rather than an emphasis on complaints and reactive responses to human rights violations), and to more positive actions to ensure the inclusion of all people in the community.⁴⁹¹

Dr Michell Fernando et al., of the Justice and Society Unit, UNISA write:

[...] a Human Rights Act could provide a catalyst for rebuilding trust between South Australians and 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 Act 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 new law is about, and provide a consistent foundation for participating in public discussion about its merits.⁴⁹²

Ms Natalie Wade provides that South Australia must start having a conversation about what human rights are and commit to the protection, promotion and realisation of those rights.⁴⁹³

The HRCRC consider a Human Rights Act can provide the foundation from which cultural change can occur and advise this is the case in the Mental Health Care sector:

Promoting a human rights culture in mental health services is a priority for the sector. Some initiatives like the Human Rights Analysis Tool and the Philosophy of Care have been designed in SA to contribute towards this cultural shift. A Human Rights Act would provide the legal grounds and high-level support to give consistency to the implementation of these initiatives.⁴⁹⁴

The Justice Reform Initiative writes that:

It is a critical aspect of the rule of law that the law is known to all: if the current laws of South Australia do indeed adequately protect the human rights of its citizens, that is certainly not known to all. A Human Rights Act would remedy that and strengthen the rule of law in SA by providing a consistent framework more easily understood by all.⁴⁹⁵

Ms Nikita White advised that Amnesty International Australia advocate it is important there is education around human rights to "...allow people to learn about their human rights and how they can ensure they are respected."⁴⁹⁶

⁴⁹¹ JFA Purple Orange, *Written submission No. 69*, February 2024: 23.

⁴⁹² Dr Michelle Fernando et al., UNISA, *Written submission No. 52*, 16 February 2024: 3.

⁴⁹³ Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 8.

⁴⁹⁴ HRCRC, *Written submission No. 113*, 23 February 2024: 8.

⁴⁹⁵ Justice Reform Initiative, *Written submission No. 90*, February 2024: 4.

⁴⁹⁶ Ms Nikita White, *Hansard*, 26 August 2024: 100.

Unifying Protections and Updating Current Legislation

The HRCRC provide, there are concerns with variations across current legislation that have implications from a human rights perspective, and which need to be addressed concurrently with a Human Rights Act for South Australia. The HRCRC add that some of the concerns relate to definitions across different Acts, such as the definition of “decision-making capacity” which is different across the *Advance Care Directives Act 2013* (s 7), the *Mental Health Act 2009* (s 5A) and the *Voluntary Assisted Dying Act 2021* (s 4).⁴⁹⁷

This particular concern was also raised by Ms Natalie Wade and the ALHR in their written submissions in relation to the variation of decision-making capacity and the *Guardianship and Administration Act 1993*.⁴⁹⁸

Along with Dr John Brayley, Chief Psychiatrist, several submissions agreed there should be consistency with international conventions and treaties, across the rights and protections to be offered by a Human Rights Act in South Australia. This was identified as a priority for the South Australian Government to address, as it will assist in updating the protections in current legislation.^{499, 500, 501}

The HRCRC also advise Australia ratified the Convention on the Rights of the Child (UNCRC), which provides articles on the best interests of the child and the right of the child to express their views in all matters affecting them according to the evolution of their capacities. (UNCRC Art 3 & Art 12).⁵⁰²

In South Australia, the *Consent to Medical Treatment and Palliative Care Act 1995*, defines a ‘child’ as a person under 16 years of age, while the *SA Mental Health Act 2009* defines a ‘child’ as a person under 18 years of age.⁵⁰³

These types of legislative differences are considered problematic and create difficulties for practitioners working in child mental health such as obtaining consent. They also create ambiguity over safeguards to protect the rights of people with lived experience of mental health distress, and in certain situations, inhibit rights altogether.⁵⁰⁴

The HRCRC consider a Human Rights Act would address issues of interpretation and definitions by simplifying processes and because it would apply to all Acts in the Mental Health Care sector.⁵⁰⁵

Enabled Youth Disability Network (EYDN) writes that “[a] Human Rights Act that clearly defines human rights, integrates with other ‘similar legislation’[...]” and:

[b]y having a Human Rights Act it would allow young people living with disability to feel more secure within their community without fear of discrimination. In personal experience people don’t realise that that (Sic) they have done anything wrong until it’s too late and the damage has already been done. With that in mind a Humans Rights Act

⁴⁹⁷ HRCRC, *Written submission No. 113*, “Attachment”, February 2024: 7.

⁴⁹⁸ ALHR, *Written submission No. 118*, February 2024: 9 - 10.

⁴⁹⁹ Dr John Brayley, *Hansard*, 17 June 2024: 82 – 83.

⁵⁰⁰ ALHR, *Written submission No. 118*, February 2024: 33 - 34.

⁵⁰¹ Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 4.

⁵⁰² HRCRC, *Written submission No. 113*, 23 February 2024: 7.

⁵⁰³ HRCRC, *Written submission No. 113*, 23 February 2024: 7.

⁵⁰⁴ HRCRC, *Written submission No. 113*, 23 February 2024: 6 - 7.

⁵⁰⁵ HRCRC, *Written submission No. 113*, 23 February 2024: 7.

would help prevent the invisible line from being crossed before any pain is caused to the individual. The act will also give people an education in a sense that they may not have had previously and as a result will make the world a better place to live in for current and future generations.⁵⁰⁶

Complaints and Enforceable Remedies

Some submissions to the inquiry argue a Human Rights Act should provide for a Commissioner for Human Rights who will be responsible for conciliation processes under the Act. There would also need to be an enforceable remedy through an independent cause of action and right to redress of breaches of rights contained in the Act.^{507, 508}

ALHR explained that an accessible complaints process and avenue for an independent cause of action with appropriate associated remedy would demonstrate South Australia's fulfilment of international law obligations under the treaties ratified by the Commonwealth.⁵⁰⁹

Ms Nikita White, Amnesty International Australia, advised that an independent cause of action will give people the ability to launch cases in court that they believe are violations of the Human Rights Act:

We do know that people prefer mediation. Most people don't want to go to court as the first step, and so we do believe that should be the first path that people can take—mediation and conciliation—but we do believe there should be an independent cause of action available to people whose human rights are abused.⁵¹⁰

Australian Lawyers Alliance (ALA) comment that the Equal Opportunity Commissioner could receive complaints made under the Human Rights Act and provide a conciliation service, before a complainant pursues action through the courts.⁵¹¹

ALHR also contend:

[...] a Human Rights Act for South Australia must protect the international legal right to an effective remedy and establish accessible pathways for anyone who has their human rights breached.

There are no rights without remedy and a Human Rights Act for SA must enable everyone to obtain a timely and appropriate remedy via a complaint mechanism and independent cause of action that is cost-effective and cost-protected.⁵¹²

⁵⁰⁶ Enabled Youth Disability Network (EYDN), *Written submission No. 119*, 26 February 2024: 3.

⁵⁰⁷ ALHR, *Written submission No. 118*, February 2025: 43.

⁵⁰⁸ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 17.

⁵⁰⁹ ALHR, *Written submission No. 118*, February 2025: 43.

⁵¹⁰ Ms Nikita White, *Hansard*, 26 August 2024: 97.

⁵¹¹ ALA, *Written submission No. 35*, 14 February 2025: 19 – 20.

⁵¹² ALHR, *Written submission No. 118*, February 2025: 43.

The AHRC provides a useful discussion of the complaints and remedy process for human rights breaches in its *Free and Equal Position Paper*, outlining proposed different avenues for redress (as recommended for a Federal Human Rights Act).⁵¹³

Complainants can first seek resolution through conciliation with a conciliation body, for example in South Australia it may be the Commissioner for Equal Opportunity or a standalone Commissioner for Human Rights. Where a complaint is unable to be resolved at this stage, a complainant can pursue several other avenues of resolution for example if it is a merit-based review, through the Administrative Appeals Tribunal (Cth), or as is the case in South Australia, the South Australian Civil and Administrative Tribunal (SACAT).⁵¹⁴

Alternatively, the matter may be actionable as a judicial review through the Federal Court or in this case, the Supreme Court of South Australia.⁵¹⁵

Cost-Saving

Associate Professor Laura Grenfell and Dr Sarah Moulds consider that having a Human Rights Act will be more cost effective for the Government in the longer term as it will assist in saving money that would otherwise be directed to resolve matters ‘*downstream*’.⁵¹⁶

Further, according to Assoc. Prof Grenfell and Dr Moulds a Human Rights Act can provide the executive and public servants tools with which to act consistently with human rights, as well as save money for the Government downstream through avoiding costly mistakes:

[...] strengthening of the upstream process is important because once laws and policies head downstream, they can be very difficult to remedy. Our research suggests that resourcing and incentivising parts of the executive to do this form of human rights risk assessment is an excellent investment - it will save millions of dollars that might otherwise be spent on Royal Commissions, courts and tribunals that look at the problems downstream, on the frontline in communities, when the upstream processes have not worked.⁵¹⁷

JusticeNet SA provide that injustice is ultimately more costly than justice and that at present:

[t]he demand on the justice system is at breaking point – and the alternative to funding more and more lawyers is to have a society with greater access to fair, just and equitable outcomes that are restorative and preventative.⁵¹⁸

The Environmental Defenders Office (EDO) argue any claims that implementing a Human Rights Act will cause a spike in litigation, are unfounded.

⁵¹³ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 339.

⁵¹⁴ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 339.

⁵¹⁵ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 339.

⁵¹⁶ Associate Professor Laura Grenfell and Dr Sarah Moulds. Cited in Rights Resource Network, *Written submission No. 2*, 22 December 2023: 6.

⁵¹⁷ Associate Professor Laura Grenfell and Dr Sarah Moulds. Cited in Rights Resource Network, *Written submission No. 2*, 22 December 2023: 6.

⁵¹⁸ JusticeNet SA, *Written submission No. 43*, 16 February 2024: 1; 9.

The EDO comment “[...] the potential for a ‘flood of vexatious litigation’ that inundates Courts and stymies effective government and legislating [...]” is the most common criticism of introducing human rights legislation.⁵¹⁹ The EDO comment:

[...] As has been observed by multiple legal and judicial advocacy organisations, no such ‘flood’ has eventuated in response to the introduction of human rights legislation in Australia. The Law Council of Australia makes this clear by stating it has not seen a ‘flood’ of litigation in these jurisdictions’ Courts.⁵²⁰

The AHRC *Free and Equal Position Paper* provides that, there are a number of options for resolution of a complaint against a public authority and:

[...] an accessible complaints process (utilising alternative dispute resolution) would reduce the impact of a Human Rights Act on the judicial system. Litigation need not be the only port of call for people who wish to make a complaint alleging a breach of human rights. Rather, it is a necessary last resort when other avenues have failed.⁵²¹

Associate Professor Dr Sarah Moulds and Professor Matthew Stubbs summarise the cost-effectiveness of implementing a Human Rights Act in South Australia, arguing that, in their view the efficiency gains will outweigh any costs incurred:

[...] a human rights act is economically efficient through two mechanisms. First, it enhances the quality of decision-making in the public service, which leads to savings by reducing challenges and litigation relating to those decisions. In this way, a human rights act is a proactive investment that avoids later expenses incurred in reacting to inappropriate decisions through individual complaints and challenges or broader inquiries. Second, considering human rights when designing and implementing government policies makes it more likely that the policy objectives will be achieved, which leads to greater efficiency.⁵²²

Weaknesses

The Committee received scant evidence on the potential weaknesses of introducing a Human Rights Act in South Australia. Some submissions provided analysis on the potential of a Human Rights Act to limit some rights, through narrow interpretations, limitation clauses and override provisions, however these were not arguments against adopting a Human Rights Act.⁵²³

⁵¹⁹ EDO, *Written submission No. 116*, 23 February 2024: 7

⁵²⁰ EDO, *Written submission No. 116*, 23 February 2024: 7; See: Law Council of Australia, ‘Submission to Australian Human Rights Commission’s *Free and Equal: An Australian Conversation on a Human Rights Inquiry*’, November 2019: 35, cited in the above.

⁵²¹ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 339.

⁵²² Associate Professor Dr Sarah Moulds and Professor Matthew Stubbs, *Supplementary Written submission No. 324*, 5 November 2024: 3.

⁵²³ Freedom for Faith, *Written submission No. 102*, 16 February 2024: 7.

Existing Protections in Current Legislation

The Rights Resource Network SA advised that the parliamentary system in South Australia already has powers in guaranteeing human rights and although not comprehensive, some rights are protected through a number of existing pieces of legislation.⁵²⁴

Lack of Clear Outcome in Complaints Conciliation

Australian Lawyers Alliance (ALA) comment that the Equal Opportunity Commissioner (EOC) could receive complaints made under the Human Rights Act and provide a conciliation service. ALA advise, the process of conciliation is likely to fail if there is no binding or clear outcome from a complaint being brought about.⁵²⁵ JFA Purple Orange also commented on this advising there would need to be an enforceable remedy to breaches of rights.⁵²⁶

ALA further note that a Human Rights Act that does not provide a binding or enforceable outcome to complainants will:

[...] result in individuals who allege human rights abuses losing confidence in the complaints and conciliation process and ultimately in the Human Rights Act and the EOC itself. This will undermine the role of the EOC and the ability of the Human Rights Act to fulfil its object of protecting and promoting human rights and a human rights culture.⁵²⁷

ALA posit that if not drafted appropriately, a Human Rights Act could have limited impact and might not guarantee a right to remedy or redress, therefore undermining the confidence of the public in the Act.⁵²⁸

Narrow Interpretations and Limitations

Freedom for Faith and the Australian Christian Lobby (ACL) raised concerns that legislating freedoms such as thought, beliefs and conscience removes debate about such freedoms from policy questions to judicial questions. Both submissions raised that a Human Rights Act could undermine the parliamentary process through allowing the judiciary to rule that a law is inconsistent with Human Rights.^{529, 530} Freedom for Faith argue:

Opposition to human rights charters and acts is not opposition to human rights. Contested human rights issues are ultimately a matter of public policy. A charter or act would ultimately remove these policy questions from the legislature and place them in the hands of judges. This presents a significant danger that human rights could be eroded from the bench.⁵³¹

⁵²⁴ Rights Resource Network SA, *Written submission No. 2*, 22 December 2023: 9.

⁵²⁵ ALA, *Written submission No. 35*, 14 February 2024: 20.

⁵²⁶ JFA Purple Orange, *Written submission No. 69*, February 2024: 25 – 26.

⁵²⁷ ALA, *Written submission No. 35*, 14 February 2024: 20.

⁵²⁸ ALA, *Written submission No. 35*, 14 February 2024: 21.

⁵²⁹ Freedom for Faith, *Written submission No. 102*, 16 February 2024: 7.

⁵³⁰ ACL, *Written submission No. 68*, 19 February 2024: 7.

⁵³¹ Freedom for Faith, *Written submission No. 102*, 16 February 2024: 7.

It was suggested by the Castan Centre for Human Rights Law, Monash University that this would be circumvented by maintaining parliamentary sovereignty through a dialogue model of a Human Rights Act.⁵³²

Freedom for Faith, along with the ACL also contend that a Human Rights Act in South Australia should be directly modelled on the ICCPR, including the wording of ‘Religious Freedom’. By not being categorical about Religious Freedom:

[...] leads to a widening imbalance between the protection of people of faith and people of other protected attributes, and a failure to address situations of competing rights. As a result, religious discrimination in Australia is increasing.^{533, 534}

The AHRC commented in the 2022 *Free and Equal Position Paper*:

The incorporation of non-discrimination rights, without the incorporation of other human rights, creates a ‘lopsided’ legal framework. The balancing process between discrimination protections and other rights and freedoms can become distorted, leading to confused public debate and confused public policy.

A recent example of this was the heated and often counter-productive discourse around the proposed Religious Freedom Bills. A Human Rights Act would protect all rights. In those circumstances where rights appear to be in conflict, or intersect, a Human Rights Act would provide a comprehensive framework for the balancing of rights through the application of clear principles.

The absence of such a framework means our fundamental rights and freedoms are not fully protected or realised. At times, this has led to unfair, unjust or unequal treatment without appropriate recourse or consequences.⁵³⁵

⁵³² Scott Walker et al., Castan Centre for Human Rights Law, Monash University, *Written submission No. 109*, February 2024: 16.

⁵³³ Freedom for Faith, *Written submission No. 102*, 16 February 2024: 7 - 8.

⁵³⁴ ACL, *Written submission No. 68*, 19 February 2024: 7.

⁵³⁵ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 56.

d) The Potential Human Rights Protections in any Act

What Rights to Protect

The Committee received many submissions that agreed a Human Rights Act for South Australia should as a starting point, contain the rights already identified in the *United Nations Universal Declaration of Human Rights* (UDHR) and the seven UN Human Rights Treaties, to which Australia is a signatory.^{536, 537, 538} The Rights Resource Network SA provides:

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.⁵³⁹

Some submissions to this inquiry note South Australia can benefit from the experience of the three other states and territories who have already implemented a Human Rights Act or Charter and build on the rights and protections already contained in those instruments. Several submissions also provided comparisons with international jurisdictions such as New Zealand, the United Kingdom, Canada and South Africa, noting that South Australia has similarities with these common law jurisdictions and would therefore benefit from looking to their frameworks.^{540, 541, 542, 543}

Many submissions provide evidence to draw attention to the rights of Aboriginal and Torres Strait Islander people particularly in relation to the right to self-determination, Closing the Gap, the rights of Aboriginal children and young people, and rights of access to and ownership of their unique cultures.^{544, 545}

A number of submissions to this inquiry raise that the rights of people living with disability including people with mental illness and those who may be subject to guardianship laws or restrictive practices should also be included in a Human Rights Act.^{546, 547}

These submissions argue that a Human Rights Act can provide greater protection against discrimination including a fairer complaints system with recourse to redress for those whose rights

⁵³⁶ Rights Resource Network SA Inc., *Written submission No. 2*, 22 December 2023: 10.

⁵³⁷ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 7.

⁵³⁸ SACOSS, *Written submission No. 94*, February 2023: 13.

⁵³⁹ Rights Resource Network SA Inc., *Designing a Human Rights Framework for South Australia: Final Report*, February 2022:

⁵⁴⁰ Human Rights Law Centre, *Written submission 126*, 1 March 2024: 21.

⁵⁴¹ Professor Matthew Stubbs, *Written submission No. 57*, 16 February 2024: 3 - 4.

⁵⁴² Dr Michelle Fernando et al., UNISA, *Written submission No. 52*, 16 February 2024: 3.

⁵⁴³ Dr Julie Debeljak, *Written submission No. 9*, 2 February 2024: 8; 10.

⁵⁴⁴ ALRM, *Written submission No. 297*, March 2024: 18.

⁵⁴⁵ AHCSA, *Written submission No. 120*, February 2024: 5, 6, 7; 12.

⁵⁴⁶ HRCRC, *Written submission No. 113*, "Attachment", February 2024: 8.

⁵⁴⁷ JFA Purple Orange, *Written submission No. 69*, February 2024: 14.

have been breached. Further, it will place a *positive* duty on public authorities to consider the implications of their decision-making on people with disabilities.^{548, 549}

Other submissions, such as Full Stop Australia’s and the Women’s International League for Peace and Freedom state the rights of women and the rights of those who experience gendered violence need to be included through enactment of the UN *Convention on the Elimination of All Forms of Discrimination Against Women*.^{550, 551}

SARAA provided evidence to the inquiry regarding the rights of LGBTQIA+ community, and the need to protect the LGBTQIA+ community more from discriminatory practices where the EO Act fails to do so.⁵⁵²

A number of submissions raised concern over the rights of children, particularly of Aboriginal children and their rights within the context of the Juvenile Justice system, the age of criminality and the Child Protection system.^{553, 554}

As the cost of living and the housing crisis continue to be concerns within our communities, the rights of people who are experiencing hardship through homelessness or poverty were raised as necessary inclusions to a Human Rights Act.^{555, 556}

The Committee also received submissions concerning the rights of those in the South Australian community who are incarcerated, rights for carers and the ageing population, rights for victims of crime, and rights for those with religious beliefs.^{557, 558, 559}

Several submissions, including the written submissions of SACOSS and The Law Society of South Australia, raise concerns that the increasing prevalence and reliance on digital technology and Artificial Intelligence (AI) in our society, will see new and novel challenges in the area of ‘digital inclusion’, AI and human rights.^{560, 561}

⁵⁴⁸ Ms Natalie Wade, *Written submission No. 59*, 16 February 2024: 6 – 7.

⁵⁴⁹ DRAS, *Written submission No. 6*, January 2024: 4 – 5.

⁵⁵⁰ Full Stop Australia, *Written submission No. 125*, February 2024: 11 – 12.

⁵⁵¹ Women’s International League for Peace and Freedom, *Written submission No. 60*, 16 February 2024: 3.

⁵⁵² SARAA, *Written submission No. 300*, 12 February 2024: 5 - 6.

⁵⁵³ ALRM, *Written submission No. 297*, March 2024: 18.

⁵⁵⁴ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 4 - 5.

⁵⁵⁵ Shelter SA, *Written submission No. 15*, 8 February 2024: 1.

⁵⁵⁶ Mr Brad Hocking, State President, St Vincent de Paul Society, Hansard, 3 June 2024: 59.

⁵⁵⁷ Carers SA Australia, *Written submission No. 45*, 15 February 2024: 4.

⁵⁵⁸ Victim Support Service, *Written submission No. 16*, 9 February 2024: 3.

⁵⁵⁹ COTA, *Written submission No. 65*, 16 February 2024: 2.

⁵⁶⁰ SACOSS, *Written submission No. 94*, February 2023: 6.

⁵⁶¹ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 7.

The Committee received a number of submissions that argue the environment is an emerging area of human rights and should be included in a South Australian Human Rights Act.^{562, 563, 564, 565}

Core Rights and Freedoms

The ALHR assert under a Federal Human Rights framework, those rights which are absolute would include:

- the right to life;
- the right to freedom from torture and inhumane or degrading treatment;
- freedom from slavery and forced labour;
- the right to liberty and security of person;
- humane treatment when deprived of liberty;
- the right to a determined period of detention if liberty is deprived;
- the right to a fair hearing; and
- the rights of children in the criminal process.⁵⁶⁶

The AHRC provides in its 2022 *Free and Equal Position Paper: A Human Rights Act for Australia*:

Human rights are grounded in principles of dignity, equality and autonomy. They are key to the functioning of a democratic society and the maintenance of the rule of law. Australian values of fairness, inclusivity and freedom are realised through human rights protections.⁵⁶⁷

The rights and freedoms discussed in the evidence include:

- the right to life, liberty and security of person
- freedom from slavery or servitude
- freedom from torture or cruel, inhumane or degrading treatment or punishment
- the right to equal recognition before the law
- equal protection of the law without discrimination
- the right to effective remedy for wrongful conviction
- freedom from arbitrary arrest, detention or exile
- full equality to a fair and public hearing
- the right to be presumed innocent until proved guilty according to law
- humane treatment when deprived of liberty and rights in criminal proceedings
- the right for adults to marry
- freedom from arbitrary interference of privacy, family, home or correspondence

⁵⁶² See for example: PJCHR, *Inquiry into Australia's Human Rights Framework*, Final Report, May 2024: 48 – 49; 122 – 131; 303; 311 and 373 – 375.

⁵⁶³ See also: AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 166; 168; 228 and 458 – 459.

⁵⁶⁴ Conservation Council SA, *Written submission No. 12*, 5 February 2024: 4 - 5.

⁵⁶⁵ Ms Astrid Haines, *Written submission No. 10*, 3 February 2024: 1 - 3.

⁵⁶⁶ ALHR, *Written submission No. 118*, February 2024: 39.

⁵⁶⁷ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 106.

- the rights of children including the requirement for decisions to be made in the best interests of children
- the rights of children in criminal proceedings
- the right to reputation
- freedom of movement and residence
- the right to leave any country, and to return to one's own country
- the right to nationality and to asylum from persecution
- right to freedom of thought, conscience and religion; and to manifest one's religion or belief in teaching, practice, worship and observance
- freedom of opinion and expression
- freedom to receive and impart information and ideas through media
- freedom of peaceful assembly and association
- the right to take part in government
- equal access to public service
- the right to vote
- the right to work with favourable conditions, including remuneration
- the right to an adequate standard of living, including food, clothing, housing, medical care and social services, and social security
- the right to the highest attainable standard of health
- the right to self-determination and to culture for First Nations people
- the right to free primary education
- the right of parents to choose the type of education for their children
- the right to a clean, healthy and sustainable environment.

Rights and Limitations

The majority of submissions agree the rights contained in the *International Covenant on Civil and Political Rights* (ICCPR) are the starting point to build on the rights under the UN *Universal Declaration of Human Rights* (UDHR) for any Human Rights Act in South Australia. There was little debate over the inclusion of rights contained in the ICCPR given these rights may be 'immediately realisable.'

There was debate in some submissions concerning how the rights and freedoms of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) might be included. Several submissions, particularly those from Dr Julie Debeljak and the Castan Centre for Human Rights Law, provide useful consideration of current legal views on whether the rights and freedoms contained in the ICESCR are justiciable; primarily, whether or not these rights can be immediately realised and therefore adjudicated in a court of law, or whether they are 'progressively realisable'.^{568, 569}

In her written submission to the inquiry, Dr Debeljak cites her submission to the 2023 PJCHR *Inquiry into Australia's Human Rights Framework*, stating there are sufficient examples to satisfy the justiciability of the rights under the ICESCR.⁵⁷⁰ Dr Debeljak discusses the differences between rights

⁵⁶⁸ Dr Julie Debeljak, *Written submission No. 9*, 2 February 2024: 11 – 17.

⁵⁶⁹ Scott Walker et al., Castan Centre for Human Rights Law, Monash University, *Written submission No. 109*, February 2024: 8 – 9.

⁵⁷⁰ Dr Julie Debeljak, *Written submission No. 9*, 2 February 2024: 11- 12.

that have been traditionally considered ‘justiciable’ and those that have been considered ‘progressively realisable’:

Two arguments are often rehearsed against the domestic incorporation of economic, social and cultural rights. The two arguments are: (a) that Parliament rather than the courts should decide issues of social and fiscal policy; and (b) that economic, social and cultural rights raise difficult issues of resource allocation unsuited to judicial intervention.

These arguments are basically about justiciability. Civil and political rights have historically been considered to be justiciable; whereas economic, social and cultural rights have not been considered to be justiciable. These historical assumptions have been based on the absence or presence of certain qualities. What qualities must a right, and its correlative duties, possess in order for the right to be considered justiciable? To be justiciable, a right is to be stated in the negative, be cost-free, be immediate, and be precise, manageable, non-ideological and ‘real’. By way of contrast, a non-justiciable right imposes positive obligations, is costly, is to be progressively realised, is vague, is complex, is ideologically divisive and merely aspirational. Traditionally, civil and political rights are considered to fall within the former category, whilst economic, social and cultural rights fall within the latter category.

All categories of rights have positive and negative aspects, have cost-free and costly components, and are certain of meaning with vagueness around the edges, and so on. If civil and political rights, which display this mixture of qualities, are recognised as readily justiciable, the same should apply to economic, social and cultural rights.⁵⁷¹

The UN UDHR establishes fundamental tenets in international human rights law, which are that all human rights are *universal, indivisible, interdependent and interrelated*.⁵⁷² Human rights include both rights and obligations. For example, for lawmakers, when determining rights for one particular group of people, the extent to which those rights may impact on another groups’ rights also requires consideration. A person is entitled to the protection of human rights, however, that person must also respect the human rights of others.^{573, 574}

ALHR provide that it is appropriate that only human rights which are not absolute may be subject to “reasonable and proportionate limitations.”⁵⁷⁵

Rights should only be limited after careful consideration and only in a way that can be justified in a free and democratic society based on human dignity, equality, freedom and the rule of law; and human rights should be protected from limitation beyond what is permitted in the legislation.⁵⁷⁶ AHLR offer:

⁵⁷¹ Dr Julie Debeljak, *Written submission No. 9*, 2 February 2024: 11 – 12

⁵⁷² United Nations Office of the High Commissioner for Human Rights, *Universal Declaration of Human Rights*, adopted by the UN General Assembly in Paris on 10 December 1948. Accessed: <https://www.ohchr.org/en/universal-declaration-of-human-rights>

⁵⁷³ ALHR, *Written submission No. 118*, February 2024: 38 - 39.

⁵⁷⁴ Scott Walker et al., Castan Centre for Human Rights Law, Monash University, *Written submission No. 109*, February 2024: 8 – 9.

⁵⁷⁵ ALHR, *Written submission No. 118*, February 2024: 38.

⁵⁷⁶ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 106.

ALHR believes that, in advancing equality, dignity and security, a Human Rights Act for South Australia should recognise that discrimination may arise on intersecting grounds rather than being confined to a single attribute.⁵⁷⁷

The AHRC advise human rights law can guide governments and lawmakers in determining the balance on what rights to protect:

Limitations on rights are an inevitable part of a democratic society, where there are intersecting public interests, as well as individuals and groups with different needs and priorities. Government transparency about limitations and public debates focused on weighing rights and interests are a sign of a healthy democracy. Human rights law provides guidance on how different rights and public interests are to be balanced with each other when they intersect [...] ⁵⁷⁸

The HRCRC recognise the ‘progressively realisable’ qualities of the ICESCR and comment that these rights will need to be improved upon in government policy over time:

The progressive realisation principle implies a responsibility for public authorities to develop initiatives aimed at the continual progress on the status of these rights based on the availability of resources. The progressive principle also refers to the priority that should be given, regardless of resource availability, to ensuring people's fundamental economic, social, and cultural rights.⁵⁷⁹

Mr Guaqueta, Principal Adviser, Lived Experience and Human Rights, HRCRC provided:

The principle of progressive realisation of these rights places a responsibility on public authorities to create initiatives to foster ongoing improvement in their status, depending on the availability of resources. Included in the human rights act, a minimum core obligation of non-negotiable foundation of these rights that all individuals are entitled to any context and under all circumstances will establish a floor below to which a public authority can't go regardless of economic situation.⁵⁸⁰

International Covenant on Civil and Political Rights

Many submissions, including written submissions from the Rights Resource Network and The Law Society of South Australia, suggest the rights and freedoms as expressed in the *Declaration of Human Rights* and which are extended through the civil and political rights and freedoms of the *International Covenant on Civil and Political Rights* (ICCPR) should be included in a South Australian Human Rights Act.^{581, 582}

⁵⁷⁷ ALHR, *Written submission No. 118*, February 2024: 38.

⁵⁷⁸ Vienna Declaration UN General Assembly, Vienna Declaration and Programme of Action, UN Doc no A/CONF.157/23 (July 1993) [5]. Cited in AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 106.

⁵⁷⁹ HRCRC, *Written submission No. 113*, “Attachment”, February 2024: 9.

⁵⁸⁰ Mr Camilo Guaqueta, *Hansard*, 17 June 2024: 84.

⁵⁸¹ The Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 7.

⁵⁸² Rights Resource Network SA Inc., *Written submission No. 2*, 22 December 2023: 10.

Dr Rowan Nicholson, Dr Jenny Richards, and Dr James Scheibner, Flinders University comment “Any prospective human rights act in South Australia should explicitly address the rights enunciated by treaties to which Australia is a party.”⁵⁸³

ALA submitted that South Australia’s Human Rights Act should also recognise “more procedural and modern rights, such as”:

- the right to public participation in decision-making;
- the right to access to justice;
- the right to protest; and
- the right to a healthy and safe environment.

Protections in the Criminal and Youth Justice systems

Several submissions raised concerns regarding the rights of South Australians with experience of the Criminal Justice system, including the rights of incarcerated women, Aboriginal and Torres Strait Islanders, people with disabilities including mental illness, children and particularly Aboriginal and Torres Strait Islander children in the Youth Justice system.^{584, 585}

While some of these concerns intersect across several of the key international human rights treaties, the Justice Reform Initiative commented that rights protections should not cease when a person is incarcerated and, that a Human Rights Act in South Australia should provide protections afforded to other groups under the ICCPR to prisoners also:

Civil and political rights are included in the Victorian Charter, the ACTHRA and the QHRA. These rights are particularly important for people in the criminal justice system as they include such rights as the right to be presumed innocent until proven guilty, the right to a fair hearing, the right not to be subject to arbitrary arrest, the right to humane treatment when held in detention and the rights of children in the criminal process.⁵⁸⁶

Religious Protections

Submissions provided by various religious organisations advised there is a need to protect the rights of those in the community who wish to practice their religion.^{587, 588} This necessarily raises issues around whether or not a Human Rights Act will provide for some rights over others and is discussed in evidence provided by Dr Rachel Carling and Dr Brendan Long of Christian Schools Australia (CSA). Dr Long provides:

⁵⁸³ Dr Rowan Nicholson, Dr Jenny Richards, and Dr James Scheibner, Flinders University, *Written submission No. 73*, 16 February 2024: 6 - 7.

⁵⁸⁴ Rights Resource Network SA, *Written submission No. 2*, December 2023: 11.

⁵⁸⁵ Law Society of South Australia, “A Human Rights Framework for All South Australians”, Policy Position, 2022: 10 in Law Society of South Australia, *Written submission No. 99*, 16 February 2024.

⁵⁸⁶ Justice Reform Initiative, *Written submission No. 90*, February 2024: 13.

⁵⁸⁷ ACL, *Written submission No. 68*, 12 February 2024: 4 – 5.

⁵⁸⁸ HRLA, *Written submission No. 34*, 12 February 2024: 1 – 2.

Essentially, the question is this, and you are all familiar with the argument: do you restrict the capacity for the Christian school to be able to employ, or to have a preference for employing, only people of faith to those positions in which the duty statement, so to speak, requires them to teach or hold a position that is explicitly religious and has an inherent requirement of their role, or whether in fact that test should be seen more loosely and it is possible for the school to have a preference beyond employment, beyond just looking at the duty statement, so you can discriminate in the sense of preferring someone of faith, even if they are not a religion teacher and even if they are a maths teacher?⁵⁸⁹

Drs Long and Carling advise that under current international law, religious schools may discriminate in their choice of schoolteacher by only employing those teachers with complimentary faiths.^{590, 591}

Dr Carling stated religious freedoms are protected under the ICCPR, to which Australia is a signatory.⁵⁹² Dr Carling noted, Article 18.4 of the ICCPR specifically states that:

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Dr Long noted European jurisdictions have adapted Article 18 of the ICCPR to limit interpretation to include ‘inherent requirements’ which is not consistent with Article 18(4) and 18(3) of the ICCPR.⁵⁹³ Dr Long commented if South Australia decides to implement human rights legislation which has a test for when a school can preference a person of faith:

[...] we would caution you against taking the narrower reading presence (Sic) in the Victorian model and point to the fact that the evidence shows this is potentially not consistent with the international conventions to which Australia is a signatory. We would seek a different definition, a definition close to what is in the federal act as it currently stands.⁵⁹⁴

Dr Carling advised CSA don’t have strong position on whether a human rights act should go ahead or not, however CSA “[...] implore that if you do go down this path, that religious freedoms are front of mind for the drafters.”⁵⁹⁵

International Covenant on Economic, Social and Cultural Rights

Some submissions consider that certain rights and freedoms contained in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) should be included, but to a lesser extent.

⁵⁸⁹ Dr Brendan Long, Executive Officer, Government Relations and Advocacy, Christian Schools Australia, *Hansard*, 28 October 2024: 169.

⁵⁹⁰ Dr Rachel Carling, Director of Public Policy, Christian Schools Australia, *Hansard*, 28 October 2024: 168.

⁵⁹¹ Dr Brendan Long, *Hansard*, 28 October 2024: 169.

⁵⁹² Dr Rachel Carling, *Hansard*, 28 October 2024: 168.

⁵⁹³ Dr Brendan Long, *Hansard*, 28 October 2024: 169.

⁵⁹⁴ Dr Brendan Long, *Hansard*, 28 October 2024: 169.

⁵⁹⁵ Dr Rachel Carling, *Hansard*, 28 October 2024: 168.

Other submissions argue these rights must be protected in a South Australian Human Rights Act, as they benefit marginalised and vulnerable people in the community.^{596, 597} Dr Julie Debeljak advised:

Protection of civil and political rights is a positive step forward in ensuring comprehensive human rights protection. It is the first step that most jurisdictions take. However, there is a strong case for protecting all categories of rights – that is, economic, social, cultural, civil and political rights.⁵⁹⁸

Submissions provided that the main concerns for ICESCR inclusion in a Human Rights Act are those relating to rights for Aboriginal and Torres Strait Islander people, children and women, the LGBTQIA+ community, people living with a disability including mental illness, religious freedoms, the rights of persons incarcerated, the ageing and the carer community, education rights and the right to adequate housing.

Shelter SA agree with many other submissions that South Australia should legislate to include the existing rights under international law, including economic, social and cultural rights under the ICESCR.⁵⁹⁹

This should include specific provisions that protect a person’s right to adequate shelter, adequate levels of privacy, space, security, lighting, ventilation, basic infrastructure, location and facilities, all at a reasonable cost.⁶⁰⁰

Shelter SA also consider “[Aboriginal and Torres Strait Islander people] should be consulted in the development of all aspects of the South Australian Human Rights Act”⁶⁰¹ adding:

A South Australian Human Rights Act should be designed with a focus on delivering real change for those experiencing the most severe rights abrogations (including those experiencing homelessness or insecure housing) and include mechanisms to prevent rights abuses from happening in the first place.⁶⁰²

JusticeNet SA advises:

Adequate Housing is part of the right to an adequate standard of living in article 25 of the 1948 *Universal Declaration of Human Rights* and in article 11.1 of the 1966 *International Covenant on Economic, Social, and Cultural Rights*.⁶⁰³

The Justice Reform Initiative provide that social disadvantage disproportionately affects people who have had contact with the Criminal Justice system. Rights protections should address the basic elements of this disadvantage:

⁵⁹⁶ ALA, *Written submission No. 35*, 14 February 2023: 15.

⁵⁹⁷ Professor Matthew Stubbs, *Written submission No. 57*, 16 February 2024: 4.

⁵⁹⁸ Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 11.

⁵⁹⁹ Shelter SA, *Written submission No. 15*, 8 February 2024: 1.

⁶⁰⁰ Shelter SA, *Written submission No. 15*, 8 February 2024: 2.

⁶⁰¹ Shelter SA, *Written submission No. 15*, 8 February 2024: 1.

⁶⁰² Shelter SA, *Written submission No. 15*, 8 February 2024: 1.

⁶⁰³ JusticeNet SA, *Written submission No. 43*, 16 February 2024: 4.

Some Economic, Social and Cultural Rights are included in the ACTHRA (right to education, right to work) and the QHRA (right to education, right to health services). These rights are also important for people who are at risk of coming into contact with the criminal justice system as they reflect the need to address various elements of social and economic disadvantage which have been shown to be significant social determinants of likelihood of contact with the criminal justice system and the risk of incarceration. This includes growing up and living in poorly serviced geographic locations of socio-economic disadvantage, unemployment, lack of access to quality education, homelessness or unstable housing, low income and lack of training or employment.⁶⁰⁴

Ms Nikita White, Amnesty International Australia, commented that:

In the ACT, Victoria and Queensland, each act has built on the previous act, and we have learnt a lot on the way, which is something that, through this inquiry, hopefully the committee and the government takes on board [...] For example, the Victorian charter of human rights doesn't include economic, social and cultural rights. Something that we think is necessary for an act to be strong in is the inclusion of civil and political rights but also economic, social and cultural rights.⁶⁰⁵

Shelter SA provide:

The inclusion of housing as a human right in the introduction of human rights legislation in South Australia would provide an imperative for governments to adequately fund and prioritise shelter for all South Australians to meet their human rights obligations.⁶⁰⁶

The HRCRC offer that South Australia could be a leader in introducing these rights under legislation:

South Australia has a significant opportunity to be the first jurisdiction to protect its community members' economic, social, and cultural rights [...].⁶⁰⁷

The Parliamentary Joint Committee on Human Rights (PJCHR) noted in the May 2024 report on its *Inquiry into Australia's Human Rights Framework*, that ICESCR rights should be protected:

[...] the committee considers that it is essential that economic, social and cultural rights be protected in a federal HRA [Human Rights Act]. Indeed, so much of what people experience as human rights breaches in their everyday life relate to economic, social and cultural rights. [...] Protecting these economic, social and cultural rights in a HRA is necessary to ensure that every Australian can access the basic necessities to live a dignified life and reach their full potential. In doing so, Australia would more fulsomely comply with its obligations under international law to respect, protect and promote human rights.⁶⁰⁸

This was also recognised in the Australian Human Rights Commission's (AHRC) 2022 *Free and Equal Position Paper: A Human Rights Act for Australia*, whereby the Commission noted the

⁶⁰⁴ Justice Reform Initiative, *Written submission No. 90*, February 2024: 13.

⁶⁰⁵ Ms Nikita White, *Hansard*, 26 August 2024: 100.

⁶⁰⁶ Shelter SA, *Written submission No. 15*, 8 February 2024: 3.

⁶⁰⁷ HRCRC, *Written submission No. 113*, "Attachment", February 2024: 8.

⁶⁰⁸ PJCHR, *Inquiry into Australia's Human Rights Framework, Final Report*, May 2024: 302.

parliamentary scrutiny process would provide opportunities for broader consideration of aspects of the ICESCR, beyond the ‘narrower’ articulation of rights to be applied by the courts.⁶⁰⁹

Rights Under Other Treaties

Convention on the Rights of the Child

Many submissions agree, rights contained in United Nations *Convention on the Rights of the Child* (UNCRC) should be included in a South Australian Human Rights Act. This included the Child Development Council (CDC) and the YACSA, who agree with this position.⁶¹⁰ The CDC comment:

We firmly believe that the establishment of a Human Rights Act in South Australia would be a significant step forward in recognising the importance of human rights in the lives of children and young people. Such legislation would provide a legal framework to uphold and safeguard the fundamental rights of all individuals, with particular emphasis on the unique needs and vulnerabilities of children and young people.⁶¹¹

Submissions from the Commissioner for Children and Young People, The Guardian for Children and Young People, Training Centre Visitor, Child and Young Person’s Visitor and Youth Treatment Order Visitor, considers rights contained in the UNCRC (and *Optional Protocol to the Convention against Torture* (OPCAT)) are necessary to protect children and young people’s human rights, and should be included in any South Australian Human Rights Act.^{612, 613}

According to the evidence provided by SNAICC, The Guardian for Children and Young People, Training Centre Visitor, Child and Young Person’s Visitor and Youth Treatment Order Visitor, Ms Shona Reid and the Commissioner for Children and Young People, Ms Helen Connolly, although the Australian Government continues to hold a reservation to article 37(c) of the UNCRC, which requires that children are not detained with adults, South Australia could still implement the full suite of rights and protections provided under the UNCRC.⁶¹⁴

ALHR advise in its most recent *Concluding Observations to Australia* in 2019, the United Nations Committee on the Rights of the Child drew attention to failures to uphold UNCRC rights across Australia and called for urgent measures to be taken in relation to:

⁶⁰⁹ AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 19.

⁶¹⁰ Child Development Council, Adjunct Associate Professor Victoria Whittington, Presiding Member, *Written submission No. 41*, 14 February 2024: 1.

⁶¹¹ Child Development Council, Adjunct Assoc Prof. Victoria Whittington, *Written submission No. 41*, 14 February 2024: 1.

⁶¹² Commissioner for Children and Young People, *Written submission No. 44*, 15 February 2024: 6.

⁶¹³ Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 5.

⁶¹⁴ SNAICC, *Written submission No. 101*, February 2024: 11.

- (a) violence, including sexual violence, abuse and neglect;
- (b) children deprived of a family environment;
- (c) mental health;
- (d) the impact of climate change on the rights of the child;
- (e) asylum-seeking, refugee and migrant children; and
- (f) administration of child justice.⁶¹⁵

SACOSS provide adherence to the international instruments for the rights of the Child and the OPCAT are “[...] central to effecting positive change in the lives of children and young people, more especially those who encounter the Child Protection and Youth Justice systems.” However, SACOSS also state:

The recent release of the SA Attorney-General Department’s *Minimum Age of Criminal Responsibility – alternative diversion model* discussion paper, proposes that the minimum age be raised to 12 years, with exceptions. This is well below the minimum age of 14 as directed by international requirements, and advocated by medical experts, and human rights and children’s rights organisations.⁶¹⁶

SNAICC contend, given Aboriginal and Torres Strait Islander children are disproportionately represented in the Youth Justice system implementing the rights and protections provided under the UNCRC will also meet obligations to provide Aboriginal and Torres Strait Islander children and young people with protections required under the *Universal Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the OPCAT.^{617, 618}

Ms Catherine Liddle, SNAICC advises the rights of some Aboriginal and Torres Strait Islander children may intersect across the UNCRC, UNCRPD and the UNDRIP:

Aboriginal and Torres Strait Islander children's rights include those owed to all children under the Convention on the Rights of the Child as well as their unique rights as Indigenous peoples under the United Nations Declaration on the Rights of Indigenous Peoples. For some Aboriginal and Torres Strait Islander children, this also includes their rights as persons with disabilities under the United Nations Convention on the Rights of Persons with Disabilities. Our rights include Aboriginal and Torres Strait Islander peoples' collective right to self-determination. SNAICC advocates for the full enactment of self-determination in all legislation, policies and strategies. SNAICC unequivocally supports the introduction of a human rights act in South Australia.⁶¹⁹

This view is supported by the ALRM who contend the both the UNDRIP and the UNCRC need to be implemented.⁶²⁰

⁶¹⁵ ALHR, *Written submission No. 118*, February 2024: 41.

⁶¹⁶ SACOSS, *Written submission No. 94*, February 2024: 14.

⁶¹⁷ SNAICC, *Written submission No. 101*, February 2024: 11.

⁶¹⁸ See also Ms Shona Reid, *Written submission No. 298*, 13 March 2024: 3.

⁶¹⁹ Ms Catherine Liddle, SNAICC, *Hansard*, 14 October 2024: 148.

⁶²⁰ ALRM, *Written submission No. 297*, March 2024: 19.

Convention on the Rights of Persons with Disabilities

The Committee received a number of submissions that raise as a matter of priority for consideration, the human rights of people living with disabilities, including those with mental illness. These submissions argue that to protect people living with disabilities from discrimination a South Australian Human Rights Act must include the rights and protections under the United Nations *Convention on the Rights of Persons with Disabilities* (UNCRPD) under law at domestic level.^{621, 622}

JFA Purple Orange note a South Australian Human Rights Act should be co-designed with people with lived experience of disability and that:

[i]t is important that the UNCRPD is referred to specifically in the legislation to ensure that state authorities, and the wider community, place sufficient attention on protecting, respecting and promoting the rights of people living with disability.⁶²³

LELAN comment, recognising Article 12 of the UNCRPD, in relation to the recent review of the *Mental Health Act 2009*:

The anticipated opportunity to reset the Mental Health Act in South Australia along more humane lines is falling extraordinarily short of the transformative changes that are urgently needed. Mental illness remains the only health care that legislates force as an acceptable power imbalance between the person and their health care team. Whose responsibility is it to protect human rights whilst the mental health system fails to adhere to the existing laws and international conventions, aimed at protecting human rights?

[...]

It is timely to consider the capacity of a Human Rights Act to embed obligations for human rights across all legislation, and in doing so, form the foundation for human rights based mental health legislation, policy and service delivery in South Australia.⁶²⁴

Mr Geoff Harris, MHCSA advised that in October 2023, the World Health Organisation and the Office of the High Commissioner for Human Rights, published the document 'Mental health, human rights and legislation: guidance and practice'. The document provides direction and guidance for the international community at a domestic level, around “mental health law-making.”⁶²⁵

Mr Harris provides:

It sets out a clear mandate for mental health services around how to adopt a rights based approach in order to address discrimination and human rights violations in mental health care settings, as well as focus on positive human rights outcomes from mental health treatments. It includes a practical checklist, enabling countries to assess whether their laws align with current human rights obligations or not, or how much.

⁶²¹ LELAN (SA), *Written submission No. 299*, February 2024: 10 – 12.

⁶²² ALHR, *Written submission No. 118*, February 2024: 37 - 38.

⁶²³ JFA Purple Orange, *Written submission No. 69*, February 2024: 26.

⁶²⁴ LELAN (SA), *Written submission No. 299*, February 2024: 10

⁶²⁵ Mr Geoff Harris, *Hansard*, 2 December 2024: 184.

In a human rights context, this is probably the most important piece of thinking we could use as a reference to the task of reviewing mental health legislation, but without a human rights act in South Australia it is just another document that the reviewers may or may not refer to, but with a human rights act it becomes an essential resource to use.⁶²⁶

The HRCRC advised the Office of the Chief Psychiatrist produced a Human Rights Analysis Tool to assist developing a human rights culture in mental health services.⁶²⁷

United Nations Declaration on the Rights of Indigenous Peoples

The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) recognises the rights of Aboriginal and Torres Strait Islander People. However, Aboriginal and Torres Strait Islander People are not constitutionally recognised in Australia, and there is no national commitment to comply with human rights standards. Many submissions contend special consideration should be given to the rights of Aboriginal and Torres Strait Islander people through inclusion of the rights contained in the UNDRIP.^{628, 629, 630}

According to the AHRC, despite Australia endorsing the UNDRIP, it has still not been committed to domestic law. The AHRC have recommended the Australian Government “[...] develop a national program to implement UNDRIP and schedule it to the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).”⁶³¹

National Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss has publicly commented that:

[...] while governments support First Nations voices in decision-making through Advisory or Expert Committee structures, including jurisdictional processes to progress truth and treaty arrangements, this cannot be a substitute for State responsibility to protect First Nations rights.

The absence of bipartisanship and nationally agreed standards enables State ambiguity on their responsibilities to protect the rights of First Nations peoples.⁶³²

⁶²⁶ Mr Geoff Harris, *Hansard*, 2 December 2024: 184.

⁶²⁷ Office of the Chief Psychiatrist Human Rights and Coercion Reduction Committee (2023) Human Rights Analysis Tool. <https://www.chiefpsychiatrist.sa.gov.au/news/human-rights-analysis-tool-1> Cited in HRCRC, *Written submission No. 113*, 23 February 2024: 8.

⁶²⁸ Ashum Owen, Wakwakurna Kanyini, *Hansard*, 14 October 2024: 149.

⁶²⁹ JusticeNet SA, *Written submission No. 43*, 16 February 2024: 2.

⁶³⁰ Dr Michelle Fernando et al., UNISA, *Written submission No. 52*, 16 February 2024: 3.

⁶³¹ AHRC, *Implementing UNDRIP*, 2021. Accessed: https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf

⁶³² Ms Katie Kiss, Aboriginal and Torres Strait Islander Social Justice Commissioner, *A Statement by Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss on Item 3, 17th Session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)*, 8 July 2024. Accessed: <https://humanrights.gov.au/about/news/speeches/emrip-lack-constitutional-recognition-first-nations-peoples>

The Justice and Society Unit, UNISA comment special consideration should be given to the rights of Aboriginal people in South Australia and that Aboriginal people must be consulted in the process of developing a Human Rights Act, through the First Nations Voice to Parliament:

Aboriginal people in South Australia [...] should be consulted in the development of all aspects of the South Australian Human Rights Act. The South Australian First Nations Voice process has the potential to provide a self-determined forum from which the Parliament and the Government can receive advice from the Aboriginal community about their priorities for reform and policy action.⁶³³

Convention on the Elimination of All Forms of Discrimination Against Women

The rights of women were raised in many submissions to the inquiry, in particular issues around gendered violence towards women, women’s rights at work, abortion rights, housing security, cost of living and access to the justice system.^{634, 635, 636}

Full Stop Australia noted in their written submission recent inquiries in Queensland and Victoria in relation to amending those states’ instruments to address gaps in protection for victim-survivors.⁶³⁷

Full Stop Australia “provide for the Committee’s consideration”, the following rights which seek to “explicitly protect victim-survivors” in criminal proceedings against perpetrators of sexual, family and domestic violence:

The right to be treated with respect and dignity.

The right to be protected from unnecessary trauma, intimidation and distress when giving evidence.

The right to be acknowledged as a participant with an interest in legal proceedings— including the right to be informed about and consulted on decisions that impact them.

The right to standing to appear in legal proceedings, either themselves or through a legal representative, in relation to aspects of the criminal process that impact them.

⁶³³ Dr Michelle Fernando et al., UNISA, *Written submission No. 52*, 16 February 2024: 3 - 4.

⁶³⁴ Full Stop Australia, *Written submission No. 125*, February 2024: 6 - 7:

⁶³⁵ Working Women’s Centre SA, *Written submission No. 87*, 16 February 2024: 6.

⁶³⁶ SAAAC, *Written submission No. 86*, February 2024: 4.

⁶³⁷ Full Stop Australia provides the following references to the QLD and VIC inquiries in *Written submission No. 125*, February 2024: 6: Queensland Government, Response to the report of the Queensland Women’s Safety and Justice Taskforce, Hear Her Voice — Report two: Women and girls’ experienced across the criminal justice system , 21 November 2022, p 13, accessed [Queensland Government response to the Women’s Safety and Justice Taskforce recommendations - Dataset - Publications | Queensland Government](#); Queensland Government, Inquiry into support provided to victims of crime: Queensland Government response , 19 May 2023, accessed 4 February 2024, p 4, [Government Response to LASC Report No. 48. Inquiry into support provided into victims of crime.pdf](#)

Victoria: Victorian Law Reform Commission, Victims in the criminal trial process: report , 22 November 2016, chapter 3, accessed: www.lawreform.vic.gov.au/publication/the-role-of-victims-of-crime-in-the-criminal-trial-process-report-2/

The right to legal assistance, to understand their rights and the criminal justice process—including the right to free legal assistance where required.

The right to access gender-based, violence and trauma informed, and culturally safe support services while navigating the justice system.

The right to access translation and other communication support services, such as witness intermediaries, where required.

The right to have proceedings that impact them completed without delay.⁶³⁸

The Justice Reform Initiative also provided that South Australia’s Criminal Justice system and victims of gendered violence who become offenders themselves, would benefit from a more victim-centered approach with rights included in a Human Rights Act.⁶³⁹ The Justice Reform Initiative offered:

All South Australian agencies involved in the criminal justice system have policies and processes that recognise the Declaration of Basic Principles of Justice for Victims, but those agencies have to work within a complex system where the needs of victims are frequently not centred. Part of that process is support and processes that recognise and give voice to their experience as victims, alongside programs that genuinely address the causes of offending and also ensure that people who have committed crime are held accountable for their actions. Restorative and Transformative Justice processes are examples of this kind of approach. It is of note that there is clear research noting that many people in prison are themselves also victims of crime, with some estimates suggesting more than 85% of women in prison have experienced crime in the form of gendered violence.⁶⁴⁰

The Victim Support Service comment international evidence shows human rights approach to legal and systemic disadvantage can address discrimination and inequality, and thus:

[...] a human rights framework can give a voice to domestic and family violence victims about their safety and wellbeing. Framing this as a matter of human dignity, human rights underpin equality and contribute to better legal and social justice outcomes for victim-survivors.⁶⁴¹

Full Stop Australia also advise they support human rights legislation that recognises a duty to victim-survivors’ right to legal assistance to navigate the justice system. Full Stop Australia provide that a 2023 survey of victim survivors showed that difficulties with accessing legal support negatively impacted victim-survivors’ experience of the justice system. Principal reasons were cited as barriers such as cost, limited services in rural areas, long wait lists, discrimination in service provision, and the lack of a clear pathway to legal services.⁶⁴²

⁶³⁸ Full Stop Australia, *Written submission No. 125*, February 2024: 7:

⁶³⁹ Justice Reform Initiative, *Written submission No. 90*, February 2024: 11 – 12.

⁶⁴⁰ Justice Reform Initiative, *Written submission No. 90*, February 2024: 12 - 13.

⁶⁴¹ Victim Support Service, *Written submission No. 16*, 16 February 2024: 3.

⁶⁴² Full Stop Australia, *Written submission No. 125*, February 2024: 9.

In other matters raised relating to the rights of women, SAAAC provide “equitable access to safe abortion services is first and foremost a human right”.⁶⁴³ SAAAC offer the following inclusions for a Human Rights Act:

A Human Rights Act in South Australia could protect important human rights related to access to abortion in law and increase accountability on the provision of access to abortion in line with human rights standards. The potential human rights protections in any act would propel and safeguard:

- equitable access to safe abortion services;
- the right to decide independently in all matters related to reproduction;
- free expression of protest.⁶⁴⁴

The Women’s International League for Peace and Freedom (WILPF) provide:

A human rights Act would require that the state government consider the human rights impacts on vulnerable South Australians, including women, on issues such as housing (e.g., rental laws, forced evictions), Centrelink (e.g., debt, domestic violence, emergency concerns), aged care (e.g., abuse, neglect, chemical restraints), police issues concerning domestic violence (e.g., restraining orders), women’s prison issues, religious discrimination, LGBTQIA+, people with disabilities, and other issues and disadvantaged groups.⁶⁴⁵

Other Rights to Consider

The environment is also an emerging area of human rights, and this has been noted by the PJCHR and the AHRC.^{646, 647} The Committee received a number of submissions, including evidence provided by the Conservation Council of South Australia, which call for the inclusion of rights and protections related to the environment, while others reference the ACT’s recent inclusion of environmental human rights in their Act.^{648, 649}

The Environmental and Natural Resources Law Research Unit (ENREL) also supports the introduction of a Human Rights Act in South Australia with express recognition that all South Australians have a human right to a clean, healthy and sustainable environment (‘the right to a healthy

⁶⁴³ Human Rights Watch cited in SAAAC, *Written submission No. 86*, February 2024: 2.

⁶⁴⁴ SAAAC, *Written submission No. 86*, February 2024: 4.

⁶⁴⁵ Women’s International League for Peace and Freedom, *Written submission No. 60*, 16 February 2024:1 – 2.

⁶⁴⁶ See for example: PJCHR, *Inquiry into Australia’s Human Rights Framework*, Final Report, May 2024: 48 – 49; 122 – 131; 303; 311 and 373 – 375.

⁶⁴⁷ See also: AHRC, *Free and Equal Position Paper: A Human Rights Act for Australia*, December 2022: 166; 168; 228 and 458 – 459.

⁶⁴⁸ Conservation Council SA, *Written submission No. 12*, 5 February 2024: 4 - 5.

⁶⁴⁹ Ms Astrid Haines, *Written submission No. 10*, 3 February 2024: 1 - 3.

environment’). This could be achieved with provisions similar to those enacted under the ACT’s Human Rights (Healthy Environment) Amendment Bill 2023.⁶⁵⁰

Environmental Defenders Office (EDO) advised that in July 2022, the UN General Assembly passed a resolution which reaffirmed recognition of the human right to a clean, healthy and sustainable environment, following recognition by the UN Human Rights Council in October 2021.⁶⁵¹ Australia voted in favour along with one hundred and sixty other UN Member States. The EDO provided that:

The result is that the right to a healthy environment is now universally recognised as a human right that is important for the enjoyment of other human rights. Noting that Australia voted in favour of recognising the right to a healthy environment, EDO considers that South Australia should reflect the Commonwealth Government’s commitment to the international community within its jurisdiction by legislating a Charter and including the right to a healthy environment in such a Charter. This would also ensure that South Australia at a minimum provides recognition of the right in line with other jurisdictions in Australia that recognise or will soon recognise the right in legislation.⁶⁵²

⁶⁵⁰ Dr Alex Wawryk, et al., ENREL, The University of Adelaide, *Written submission No. 36*, 14 February 2024: 3.

⁶⁵¹ UN General Assembly, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300, 28 July 2022; and UN HRC, *The Human Right to a Clean, Healthy and Sustainable Environment*, GA Res 48/13, UN Doc. A/HRC/48/13 (18 October 2021). Cited in EDO, *Written submission No. 116*, 23 February 2024: 9.

⁶⁵² EDO, *Written submission No. 116*, 23 February 2024: 9.

e) The Potential Implications of any Act for the Making of Laws, Courts and Tribunals, Public Authorities and Other Entities

A Human Rights Act is an ordinary piece of legislation; it is not constitutionally enshrined and can be amended. It is therefore not stuck in time and can be changed to respond to and reflect who we are, what we believe and what we aspire to protect and uphold as a community.⁶⁵³

The Dialogue Model

Some submissions to the inquiry agree that introducing human rights legislation will not reduce parliamentary sovereignty if the ‘dialogue model’ of law is adopted.⁶⁵⁴ These submissions support the dialogue model proposed by the Australian Human Rights Commission (AHRC). The dialogue model is the model adopted in Victoria, the ACT and Queensland.

The Australian Lawyers Alliance (ALA) contemplate that the Court may seek to override the laws enacted by the Parliament, by interpreting a law or a decision made by a public authority to be incompatible with human rights⁶⁵⁵ others advise the dialogue model preserves parliamentary sovereignty by requiring the Parliament, the Government and other public authorities and the judiciary through the courts, to give consideration to how proposed legislation or policy will impact human rights, at the early stages of its development and before it is implemented.⁶⁵⁶

The below diagram provided by Civil Liberties Australia in their written submission, demonstrates the ways in which the dialogue model allows a conversation about human rights to ensue between the different arms of government.⁶⁵⁷

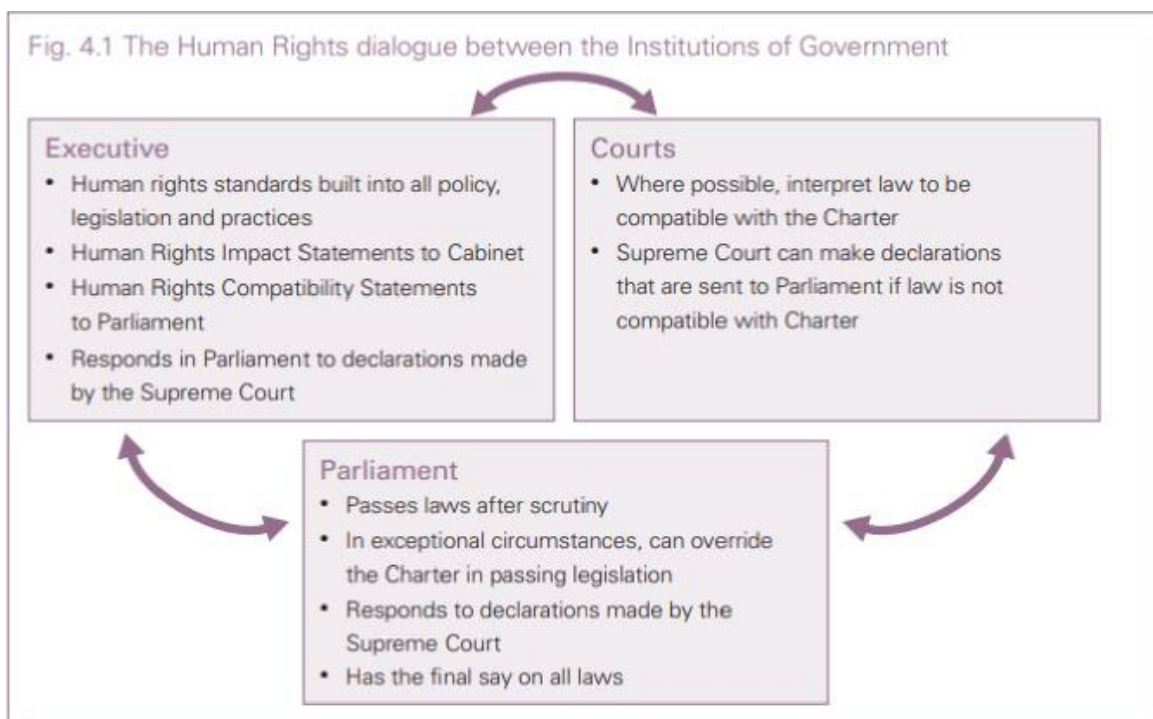
⁶⁵³ SACOSS, *Written submission No. 94*, February 2024: 3.

⁶⁵⁴ Rights Resource Network, *Written submission No. 2*, 22 December 2023: 7.

⁶⁵⁵ Australian Lawyers Alliance, *Written submission No. 35*, 14 February 2024: 7 – 8.

⁶⁵⁶ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 15.

⁶⁵⁷ Image from “Rights, Responsibilities and Respect – The Report of the Human Rights Consultation Committee” cited in CLA, *Written submission No. 32*, 14 February 2024: 16.



Ms Nikita White, Amnesty International Australia, advised there are three key aspects to a “strong” Human Rights Act. These include the following aspects of the dialogue model:

1. preventative action, by requiring parliament to include statements of compatibility in proposed legislation; departments and service providers, to consider human rights to prevent human rights abuses;
2. cause of action, so that if there is an abuse of human rights, people can take action; and
3. right to remedy, by providing redress to an action.⁶⁵⁸

The following sections discuss the implications on the different arms of government, of enacting a Human Rights Act in South Australia.

The Parliament – preventative duty

A Human Rights Act will require a *preventative action* through the Parliament, emboldening scrutiny functions before proposed legislation is enacted (as mentioned by Ms White above). This means processes will need to be put in place to ensure the Member responsible for introducing a Bill has requested a statement of compatibility to be provided by the government department/ public authority that will be responsible for administering the legislation.

Once introduced to the Parliament, a parliamentary committee will need to review the statement of compatibility and inquire into any issues it determines there might be with compatibility with human rights.

A stand-alone human rights scrutiny committee is one suggestion made for this process, alternatively as already discussed in this report, the Legislative Review Committee may also be given these functions, however, additional secretariat resources would be required in order to provide adequately

⁶⁵⁸ Ms Nikita White, *Hansard*, 26 August 2024: 100.

for these functions.⁶⁵⁹ YACSA provided in their written submission that human rights scrutiny has operated at a federal level since the adoption of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) and this has been improved over time.⁶⁶⁰ YACSA comment:

These improvements include enhancing transparency of [the] Human Rights Committee by including an appendix of instruments considered in each report, allowing a committee prescribed time for consideration of legislation during which a Bill or instrument cannot be enacted, and a committee incorporating specific recommendations for changes in its reports. Facilitating consistent consideration of human rights when drafting legislation would protect vulnerable cohorts from rights violations and allow for consideration of possible unintended consequences.⁶⁶¹

Professor Matthew Stubbs, The University of Adelaide Law School advised that a stand-alone scrutiny committee is the preferred model to use, to give due consideration to the issues and the impacts for human rights, however Professor Stubbs notes the main concern is that there is adequate conversation around human rights compatibility.⁶⁶² Professor Stubbs provided:

In my view, the gold standard is a committee whose remit is expressly human rights, as the federal parliamentary committee is and as exists in some of the other jurisdictions. That doesn't have to be the case. In Queensland it doesn't work that way, it is another committee that has that role, so it can be part of an existing committee's role as well as a new committee. The point being that there should be a place in the parliament where members get together and talk about whether the statement of compatibility is right and talk about those issues of, 'Are we getting the balance right?'⁶⁶³

The Executive –positive duty, education, participation and remedy

Numerous submissions identified that there needs to be a positive human rights culture within the public sector and amongst other public authorities acting for the Government of South Australia.^{664, 665, 666} A Human Rights Act will require a *positive duty* on all public authorities to be educated in human rights and to apply human rights assessments to policy development and operational decision making. Public authorities will also be trained in providing remedy and redress when citizens claim they have had their human rights breached.⁶⁶⁷

⁶⁵⁹ Rights Resource Network, *Written submission No. 2*, 22 December 2023: 12.

⁶⁶⁰ YACSA, *Written submission No. 81*, February 2024: 3.

⁶⁶¹ YACSA, *Written submission No. 81*, February 2024: 3.

⁶⁶² Professor Matthew Stubbs, *Hansard*, 17 June 2024: 75.

⁶⁶³ Professor Matthew Stubbs, *Hansard*, 17 June 2024: 75.

⁶⁶⁴ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 15.

⁶⁶⁵ Scott Walker et al., Castan Centre for Human Rights Law, Monash University, *Written submission No. 109*, February 2024: 17.

⁶⁶⁶ SACOSS, *Written submission No. 94*, February 2024: 16.

⁶⁶⁷ Rights Resource Network SA, *Written submission No. 2*, December 2023: 13.

The Rights Resource Network SA advised there should be clear pathways for individuals and groups to challenge government decisions where a public authority fails to consider human rights principles, or act in a way that unjustifiably burdens or breaches individuals' or groups' human rights.⁶⁶⁸

The Rights Resource Network SA proposed:

This could take the form of a 'duty of due regard' modelled on that contained in section 1 of the *Equality Act 2010* (UK).

It could also take the form of an independent complaints body such as a Human Rights Commission or Human Rights Advocate.⁶⁶⁹

The Rights Resource Network SA advise there should be meaningful remedies for individuals and groups where 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.⁶⁷⁰

Further a Human Rights Act should provide for 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.⁶⁷¹

Better Decision-making

The Australian Lawyers Alliance (ALA) offer that a legislative human rights instrument can 'avoid litigation and not cause it' by ensuring in the first instance the South Australian Parliament has processes to consult with citizens affected by a proposed law and secondly makes laws that do not infringe on citizens' rights.⁶⁷²

The Environmental Defenders Office (EDO) argue a Human Rights Act in South Australia must enshrine a *participation duty* to ensure the participation of all South Australian people in decisions made by public authorities, that may directly or disproportionately affect them.⁶⁷³

The ALHR advise that the most prevalent human rights concerns identified in South Australia should be the focus for educating public servants and public authorities about Human Rights:

⁶⁶⁸ Rights Resource Network SA, *Written submission No. 2*, December 2023: 13.

⁶⁶⁹ Rights Resource Network SA, *Written submission No. 2*, December 2023: 13.

⁶⁷⁰ Rights Resource Network SA, *Written submission No. 2*, December 2023: 13.

⁶⁷¹ Rights Resource Network SA, *Written submission No. 2*, December 2023: 13.

⁶⁷² Australian Lawyers Alliance (ALA), *Written submission No. 35*, 14 February 2024: 7 - 9.

⁶⁷³ Environmental Defenders Office (EDO) consider those who may be vulnerable in society including children, people with disabilities, Aboriginal and Torres Strait Islander people and people most at risk of environmental harm, must have their participatory rights enshrined in a HRA. EDO also provide a further list provided by the Special Rapporteur on Human Rights and the Environment cited in EDO, *Written submission No. 116*, 23 February 2024: 14 -15.

Increased human rights awareness and literacy. This is an essential element in fostering a culture of respect for human rights across the South Australian community. It could include, for example, a requirement that all public servants, or employees of entities exercising a public function, 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. This educational function could be supported by a Human Rights Commissioner.⁶⁷⁴

By providing an educative function in the Human Rights Act, public authorities will grow toward better decision making which will help to avoid breaches from occurring in the first place.

The ALA provide numerous examples of how a Human Rights Act in South Australia would assist those who are vulnerable and provide protection for all South Australians.⁶⁷⁵ Of these examples, the most compelling is the account of the tragic death of Mr Wayne Fella Morrison who was in police custody when he died.⁶⁷⁶

Prior to the South Australian Government's 2021 ban of the use of spit hoods on adults in custody, Mr Morrison was arrested, restrained with cuffs to his wrists and ankles, spit-hooded and placed on the floor of a police van.⁶⁷⁷

The ALA write that at the inquest into Mr Morrison's death, the coroner heard evidence that the South Australian Government had failed:

[...] to take into account and implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody, in particular about cultural matters. A Human Rights instrument in South Australia would ensure that such failures were audited and compliance with those recommendations – designed to prevent deaths – were implemented.⁶⁷⁸

The EDO particularly argue the need to ensure the voices of Aboriginal and Torres Strait Islander people are listened to and are specifically mentioned in reference to the duty.⁶⁷⁹ The EDO further comment that this duty could be modelled on the AHRC's duty outlined in the *Free and Equal Position Paper*, which provides that this would be a 'binding duty' on public authorities and failure to comply with it would amount to a breach of human rights.⁶⁸⁰

The Human Rights Law Centre comment that through ensuring public authorities have a duty to consider human rights in administering the law, a Human Rights Act will reduce the amount of abuses and breaches over time:

⁶⁷⁴ ALHR, *Written submission No. 118*, February 2024: 34.

⁶⁷⁵ ALA, *Written submission No. 35*, 14 February 2024: 7 - 9.

⁶⁷⁶ ALA, *Written submission No. 35*, 14 February 2024: 8.

⁶⁷⁷ ABC News, Candice Prosser, *Yatala prison inquest: Guards refused to cooperate over Wayne Fella Morrison death, court told*, 27 August 2018. Accessed: <https://www.abc.net.au/news/2018-08-27/yatala-prison-inquest-examines-death-of-wayne-fella-morrison/10168994>

⁶⁷⁸ ALA, *Written submission No. 35*, 14 February 2024: 8.

⁶⁷⁹ EDO, *Written submission No. 116*, 23 February 2024: 14.

⁶⁸⁰ AHRC, "Free and Equal: A Human Rights Act for Australia 2022, Position Paper", 2022: 161. Cited in EDO, *Written submission No. 116*, 23 February 2024: 14.

One of the biggest impacts a South Australian Human Rights Act could have is to impose a positive duty on public authorities to consider human rights when making decisions, and to act compatibly with human rights. This duty would both reduce the likelihood of human rights being breached and give South Australians the ability to challenge decisions or seek other remedies when public authorities fail to adequately consider human rights or act consistently with them.⁶⁸¹

SACOSS suggested human rights can be “embedded into key performance indicators for public servants”⁶⁸²

The HRCRC commented that a Human Rights Act will protect the dignity of South Australians struggling with their mental health “[...] by mitigating the impact of dysfunctional social determinants that impact on them.”⁶⁸³

Cost-Savings

In considering expenditure on implementing a Human Rights Act in South Australia, the Committee notes that by requiring the public sector and other public authorities to act with human rights in mind provides *preventative action*, in that, better decisions made ‘upstream’ will avoid costly remedy and cost blow-outs ‘down-stream’.⁶⁸⁴

Professor Matthew Stubbs offered the following comments on how a Human Rights Act will assist government to be more efficient, and more cost effective:

[...] it's not going to fix every single problem, but if you get a Public Service that is more rights conscious, if you get decision-makers who sit and think, 'Okay, this is a sensible decision. I've got to work out how I'm going to allocate this resource. There is only one of it; I can't split it in two and give it to both people who need it, but I can at least think of it through a human rights lens. Then you get better decisions and better decisions mean less time wasted in disputes and arguments and court cases and so on. So that's where the efficiency comes in. You are actually getting better decisions in the first instance, which means less time faffing around later.’⁶⁸⁵

The Human Rights Law Centre note in their written submission that the implications of a *positive duty* for public authorities are significant, but the impacts will be invaluable in developing and maintaining a human rights culture in South Australia.⁶⁸⁶

⁶⁸¹ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 15.

⁶⁸² SACOSS, *Written submission No. 94*, February 2024: 16.

⁶⁸³ HRCRC, *Written submission No. 113*, February 2024: 9.

⁶⁸⁴ Associate Professor Laura Grenfell et al., PLPRU, The University of Adelaide, *Written submission No. 51*, 15 February 2024: 6.

⁶⁸⁵ Professor Matthew Stubbs, *Hansard*, 17 June 2024: 75.

⁶⁸⁶ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 16.

Definition of a Public Authority

Numerous submissions contend there will need to be a definition for ‘public authority’ included in a Human Rights Act for South Australia. The Justice Reform Initiative advised that this could be achieved by providing criteria for assessing whether an entity will meet the definition.⁶⁸⁷

ALHR provided the following example of how Victoria has dealt with issues arising from definitions specifically where a public authority uses contractors to undertake work for them:

The Victorian Charter requires that whenever a public authority uses contractors or other third parties to perform public functions on their behalf, the public authority must take steps to ensure they operate in a manner that is consistent with human rights. Accordingly, the Department of Justice’s Health Unit inserted a requirement into the model Health Service agreements that external service providers must comply with the human rights obligations under the Victorian Charter.⁶⁸⁸

ALHR also provided that Victoria Police require the external contractor responsible for the operation of the Melbourne Custody Centre “[to] refrain from acting in a manner that is incompatible with human rights under the Victorian Charter.”⁶⁸⁹

The Aged Rights Advocacy Service (ARAS) argue ‘public authority’ should include aged care services so that greater scrutiny may be exerted over the conditions older people are subjected to:

It is submitted that aged care facilities should be subject to a Human Rights Act. Model legislation (taken from interstate legislation) is as follows:

1. An entity would be covered by the Human Rights Act if it:
 - a. Received public funding for the purpose of delivering a service, or undertaking a function, for or behalf of the public AND/OR
 - b. Performed a public function or delivered services to the public
 - c. For the purpose of (a) and (b) **public service or public function** should be broadly defined with an inclusive list of services and functions included in the legislation eg **aged care**, health services, educational services, child care, disability services, etc).⁶⁹⁰

⁶⁸⁷ Justice Reform Initiative, *Written submission No. 90*, February 2024: 17.

⁶⁸⁸ ALHR, *Written submission No. 118*, February 2024: 15.

⁶⁸⁹ ALHR, *Written submission No. 118*, February 2024: 16.

⁶⁹⁰ ARAS, *Written submission No. 14*, 6 February 2024: 5.

The Judiciary – Interpretive Clause

According to Professor Matthew Stubbs, The University of Adelaide one of the key outcomes for any Human Rights Act to achieve will be the promotion of “the application of laws in such a way as to be consistent with human rights.”⁶⁹¹

Other submissions agree with this view. The Rights Resource Network SA provided the courts cannot change a law once it is made as this would be an ‘override’ of the Parliament’s autonomy.⁶⁹² As discussed under term of reference (c) in this report, it was highlighted that an override provision was not desirable for a South Australian Human Rights Act.⁶⁹³

As such, should South Australia choose not to include an override provision, any inconsistency, or incompatibility with human rights that is determined by the Court, would trigger a review to be undertaken by the Parliament:

Once the law has been made, the courts must interpret laws in a way that is compatible with human rights where possible to do so, and can make a declaration if they find a law is not compatible with human rights. The courts cannot change the law – even if it is considered contrary to human rights standards – but they can flag this for attention of the Parliament.⁶⁹⁴

Ms Cornelia Koch, PLPRU, The University of Adelaide advised that an *interpretative* clause contained in a Human Rights Act would encourage the Court to read legislation, including delegated legislation, “in the light of the rights that are set out in the Human Rights Act.”⁶⁹⁵ Ms Koch commented further:

Our research indicates that in the 40-plus now combined years of the operation of the human rights acts in Queensland, the ACT and Victoria, there is really no indication at all that the Australian courts have gone rogue in some way and trespassed beyond this interpretation role. In fact, if anything, I think the experience in those jurisdictions is that this interpretive clause has been applied very modestly by the courts.⁶⁹⁶

The PLPRU also contend in their written submission that another consequence of implementing a Human Rights Act will come from mechanisms earlier in the complaints process and provide greater efficiency for reviewing bodies such as the Ombudsman, the SACAT and the Supreme Court:

South Australia presently only has downstream mechanisms, which means our courts and other review bodies (e.g. Ombudsman SA) risk being clogged with problems which could have been spotted via an upstream mechanism [...]

One set of these existing downstream mechanisms are the courts and other review bodies. There are already immense pressures on their workloads. Where improvements can be made, that will also be conducive to greater efficiency.

⁶⁹¹ Professor Matthew Stubbs, *Written submission No. 57*, 16 February 2024: 4.

⁶⁹² Rights Resource Network SA, *Written submission No. 2*, December 2023, 7.

⁶⁹³ See: Scott Walker et al., Castan Centre for Human Rights Law, *Written submission No. 109*, February 2024: 16; and Dr Julie Debeljak, *Written submission No. 9*, 1 February 2024: 36.

⁶⁹⁴ Rights Resource Network SA, *Written submission No. 2*, December 2023, 7.

⁶⁹⁵ Ms Cornelia Koch, *Hansard*, 28 October 2024: 158.

⁶⁹⁶ Ms Cornelia Koch, *Hansard*, 28 October 2024: 158.

If human rights issues are attended to before becoming problematic, the whole legal system and the community will benefit.⁶⁹⁷

Direct Cause of Action

Some submissions agreed with the principle that there are *'No rights without remedy'*^{698, 699} and suggest that South Australia should adopt a Human Rights Act with an independent or direct cause of action provision and an “accessible, affordable, timely and effective” complaints process.⁷⁰⁰

The Human Rights Law Centre (HRLC) observed the difficulties for citizens who consider their rights to have been breached, in bringing a claim before the court, in both Victoria and Queensland where it is necessary to ‘piggyback’ a claim on another action.⁷⁰¹ The HRLC provided the requirement of the Victorian and Queensland “...creates an impression that human rights will not be treated with the seriousness and importance that they deserve...” and:

- (a) many people whose rights may have been infringed do not pursue a claim because they mistakenly believe that there is no remedy available to them; and
- (b) some public authorities do not give appropriate consideration to human rights because they may assume that no legal action will be taken to challenge their decision.⁷⁰²

These difficulties were acknowledged in the ACT as a result of the *No Rights without Remedy* petition and parliamentary inquiry. This resulted in the ACT Government bringing about amendments to the *Human Rights Act 2004*, to provide an accessible complaints mechanism in the ACT.⁷⁰³

The ACT Human Rights Commissioner Dr Penelope Mathew offered the following observation of the recent amendments:

The ACTHRC already receives complaints across a wide range of jurisdictions meaning we regularly bring together a complainant and public agencies to conciliate complaints. Our experience is that that this is of great benefit both to the person bringing the complaint but also to assist with cultural change within the relevant agencies. Accessible complaints mechanisms support restorative justice approaches and empower individuals who would be otherwise prevented from commencing legal proceedings to raise their concerns in a forum that encourages efficient and effective early resolution.⁷⁰⁴

⁶⁹⁷ PLPRU, *Written submission No. 51*, February 2024: 5.

⁶⁹⁸ CLA, ALHR and ACTCOSS in CLA, *Written submission No. 32*, February 2024: 6.

⁶⁹⁹ Ms Nikita White, *Hansard*, 26 August 2024: 96 – 97.

⁷⁰⁰ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 18.

⁷⁰¹ Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 18.

⁷⁰² Human Rights Law Centre, *Written submission No. 126*, 1 March 2024: 18.

⁷⁰³ Dr Penelope Mathew, ACT Human Rights Commission, *Written submission No. 111*, 21 February 2024: 10.

⁷⁰⁴ Dr Penelope Mathew, ACT Human Rights Commission, *Written submission No. 111*, 21 February 2024: 10.

Concerns that implementing a direct cause of action would give rise to an onslaught of claims being made through the court system have been found to be unjustified in the ACT since the *Human Rights (Complaints) Legislation Amendment Bill 2023* came into effect in May 2024.⁷⁰⁵

⁷⁰⁵ ALHR, *Written submission No. 118*, February 2024: 22 - 23.

f) Any Other Related Matters

A number of submissions called for the Committee to recommend several actions to reform the current landscape for human rights and while a decision is made as to whether South Australia is to have a Human Rights Act. These include:

- Increase the resourcing of the Equal Opportunity Commission to enhance the capacity of the Commissioner for Equal Opportunity to perform their statutory functions regarding the promotion and protection of human rights;
- Increase the resourcing of the Aboriginal Legal Rights Movement and other Aboriginal organisations to enhance their capacity to provide access to justice for Aboriginal South Australians;
- Introduce a requirement to provide a Statement of Compatibility with Human Rights for all proposed Bills and subordinate legislation;
- Establish a Charter of Rights Select Committee of the Parliament of South Australia to consult with South Australians and draft a legislative Charter of Rights.^{706, 707, 708}



Hon Ian Hunter MLC

28 April 2025

⁷⁰⁶ Law Society of South Australia, *Written submission No. 99*, 16 February 2024: 5.

⁷⁰⁷ Rights Resource Network, *Written submission No. 2*, 22 December 2023: 12 – 13.

⁷⁰⁸ Dr Michelle Fernando et al., UNISA, *Written submission No. 52*, 16 February 2024: 5.

Appendices

Table of Comparison - Other Australian Human Rights Acts

The following table provides an overview of features of the Human Rights Acts/Charter of the Australian Capital Territory, Victoria and Queensland

Table 1: Overview of features of the three Australian Human Rights Acts/Charter

(information sourced largely from submissions to the inquiry)

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
Model	<p style="text-align: center;">Dialogue Model</p> <p>A dialogue model facilitates inter-institutional conversation about rights protection.</p> <p>All arms of government have a constructive role in interpreting and enforcing guaranteed rights and No arm has a monopoly over rights.</p> <p>The Sovereignty of Parliament is maintained</p> <p>Under the model:</p> <ul style="list-style-type: none"> · Parliament would be required to consider human rights in lawmaking · the Executive/public authorities would be required to account for human rights in developing policy and proposing legislation, and making decisions 		

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
	<ul style="list-style-type: none"> · the Judiciary is required to interpret laws consistently with Human Rights · Non government organisations performing functions of a public nature would comply with protected human rights. <p style="text-align: center;">Are ordinary Acts of Parliament and can be amended</p>		
Rights protected	<p style="text-align: center;">Rights protected in all Acts are based on the Universal Declaration of Human Rights (UDHR), International Convention on Civil and Political Rights (UNICCPR) and the International Covenant of Economic Social and Cultural Rights (ICESCR)</p> <p style="text-align: center;">All Acts enshrine civil and political rights including</p> <ul style="list-style-type: none"> · freedom of speech <li style="padding-left: 20px;">association <li style="padding-left: 20px;">assembly <li style="padding-left: 20px;">movement 		

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
	<ul style="list-style-type: none"> · right to life · freedom from torture · fair trial · freedom from arbitrary detention. · Freedom from forced work <p>Rights can be subject to reasonable limits</p> <p>In effect provide for protection of culture, religion and language of ethnic, religious or linguistic minorities.</p> <p>Provides for protection of distinct cultural rights of Aboriginal and Torres Strait Islander people</p>		
	Provides for a right to education and rights to work and a right to a healthy environment	Does not specifically protect Economic, Social or Cultural rights.	Provides for a right to education and right to health services Act requires Parliament in its first review of a bill to consider the CRPD.
Statement of Compatibility	Is the first layer in protecting human rights by providing for Parliamentary consideration of human rights		

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
	<p>Parliament sets out its reasoning for the bill and an explanation of the broader public interest or policy objectives at stake; this would involve a test of proportionality.</p> <p>Reassures the public that human rights are considered in a systematic and transparent manner.</p> <p>Parliament can set out its reasoning in a statement of <i>incompatibility</i></p>		
Scrutiny of legislation	<p>The Legislative Assembly Standing Committee on Justice and Community Safety has scrutiny role</p> <p>Additionally, in development of a Bill the Executive and Cabinet will engage speciality HR advisors to receive independent views</p> <p>The Human Rights Commission will receive draft cabinet submissions to provide compatibility advice.</p>	Under S30, all proposed legislation is scrutinised against the Charter by the Scrutiny of Acts and Regulations Committee which reports to Parliament.	<p>Parliament has 7 Portfolio Committees to scrutinise legislation and report to Parliament.</p> <p>Must consider whether a bill is compatible with human rights and also report on the statement of compatibility.</p>

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
Limitations	<p>Human Rights are not absolute and carry limitations when they interact with other Human Rights.</p> <p>Each Act provides an external limitations provision, but justifications for limitation differ slightly.</p> <p>Generally Human Rights can be subject to reasonable limits that are demonstrably justified in a free and democratic society based on human dignity, equality and freedom.</p>		
	<p>Human Rights may be subject only to reasonable limits. . Five Factors to be balanced</p> <ul style="list-style-type: none"> · Nature of the right · Importance of the purpose of the limitation · Nature & extent of the limitation · Relationship between the limitation & its purposes · Any less restrictive means reasonable available to achieve the purpose that the limitation seeks to achieve (minimum impairment test) 	<p>Human Rights can be subject to reasonable limits. Five Factors to be balanced</p> <ul style="list-style-type: none"> · Nature of the right · Importance of the purpose of the limitation · Nature & extent of the limitation · Relationship between the limitation & its purposes · Any less restrictive means reasonable available to achieve the purpose that the limitation seeks to achieve (minimum impairment test) 	<p>Similar to Victoria but more weight is given to proportionality test</p> <p>7 Factors to be balanced</p> <ul style="list-style-type: none"> (a) the nature of the human right; (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom; (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
			<ul style="list-style-type: none"> (d) whether there are any less restrictive and reasonably available ways to achieve the purpose; (e) the importance of the purpose of the limitation; (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right; and (g) the balance between the matters mentioned in paragraphs (e) and (f).
Override provision.		Has provision for Parliament to override the operation of the Charter despite being incompatible with one or more human rights (or anything else in the Charter)	Has provision for Parliament to override the operation of the Act in exceptional circumstances despite being incompatible with one or more human rights
Role of Courts	<p>Courts must interpret legislation in a way that is compatible with human rights so far as it is possible to do so.</p> <p>A second layer of protection of human rights.</p>		

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
	<p>Court may issue a declaration of incompatibility with human rights but this does not affect validity or operation of the law.</p> <p>Attorney General is notified of a declaration who prepares a report to Parliament</p> <p>The Human Rights Commission may intervene in any court proceedings, <i>with leave</i>.</p> <p>HRC is notified of all Supreme Court proceedings involving application of the HRA.</p> <p>Court may use international law & judgements of foreign/international courts/tribunals in interpreting a human right.</p>	<p>Courts can issue an unenforceable statement of incompatibility.</p> <p>The VEOHRC can intervene in legal proceedings to assist the Court where there is a question of law in the application of the Charter.</p> <p>Courts formally notify the VEOHRC of a case that raises the Charter.</p>	<p>The Supreme Court may declare a statutory provision to be not compatible with human rights.</p> <p>This triggers a Parliamentary process to review the legislation but does not invalidate the law.</p> <p>The HRC has right to intervene in court proceedings where there is a question of law about the application of the HRA or interpretation of a provision within the HRA.</p> <p>HRC also provided opportunity to make submission where court proposes a declaration of incompatibility.</p>

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
Public Entities	<p>Public Authorities must not act in a way incompatible with human rights and are expected to always take human rights into account when making decisions or providing services. Unless the law expressly requires an act to be done.</p> <p>Is a proactive and preventative part of HR legislation.</p> <p>It provides a further layer of human rights protections.</p> <p>Parliament, Courts and tribunals are excluded, unless acting in an administrative capacity (except in Victoria where Parliament is not included as a public authority)</p>		
	<p>ACT has strongest connection between governance and human rights in Australia.</p> <p>Is unlawful for a public authority to act in a way incompatible with a human right, or in making a decision to fail to give proper consideration to a relevant human right.</p>	<p>Is unlawful for a public authority to act in a way incompatible with a human right, or in making a decision to fail to give proper consideration to a relevant human right.</p> <p>Five tests to determine if an entity is Public:</p> <p>Is function conferred under a statutory provision</p>	<p>Has an extensive list of criteria to determine if an entity is ‘public’ but includes the five functions as per the ACT/Vic</p> <p>Is function conferred under a statutory provision</p> <p>Is function connected to or generally identified with functions of govt</p> <p>Is function of a regulatory nature</p> <p>Is entity publicly funded to perform function</p>

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
	<p>Five tests to determine if an entity is Public:</p> <ul style="list-style-type: none"> Is function conferred under a statutory provision Is function connected to or generally identified with functions of govt Is function of a regulatory nature Is entity publicly funded to perform function Is entity a govt owned corp. <p>Specifically lists the following:</p> <p>Places of detention and correctional centres; gas, electricity and water supply; emergency services; public health services; public education; public transport; public housing.</p> <p>Has "opt-in" clause; non-government organisations can voluntarily comply with human rights obligations.</p>	<ul style="list-style-type: none"> Is function connected to or generally identified with functions of govt Is function of a regulatory nature Is entity publicly funded to perform function Is entity a govt owned corp. 	<p>Is entity a govt owned corp.</p> <p>Specifically lists the following:</p> <p>Corrective services and places of detention, emergency services, public - health services, disability services, education, transport, and housing services where provider funded by the state.</p>

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
Complaints/cause of action	No Act provides for an individual to seek mandated remedies, including compensation, from a tribunal where the primary cause of action is a human rights breach.		
	<p>Only jurisdiction with direct right of action.</p> <p>Complainant may commence a direct proceeding in Supreme Court against a public authority.</p> <p>Cannot claim damages.</p> <p>HRC can investigate and conciliate a complaint for a range of HR breaches by a public authority for –</p> <p>Apology</p> <p>Authority may change policies/procedures</p> <p>Where no resolution, may make recommendations for change of policy/procedures/staff training.</p> <p>No power to enforce.</p>	<p>No independent cause of action – a complaint against a public authority must ‘piggyback’ on another cause of action.</p> <p>Complaint may be made to the Vic. Ombudsman who can conduct an inquiry where the breach is discrimination based, but has no power of enforcement.</p> <p>The VCAT can hear HR complaints relating to the EO Act and Racial & Religious Tolerance Act</p> <p>Complaints may go directly to VCAT if belief conciliation at VEOHRC will not be successful</p>	<p>No independent cause of action – a complaint against a public authority must ‘piggyback’ on another cause of action.</p> <p>The HRC can conciliate complaints relating to breaches of the HRA.</p> <p>If not resolved a report is prepared that may include recommendations. These are not enforceable.</p>

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
	<p>Is free & accessible</p> <p>Complaints about discrimination can be heard by the Civil & Administrative Tribunal if conciliation unsuccessful.</p>		
Oversight Bodies	<p>ACT Human Rights Commission</p> <p>Is established under the <i>Human Rights Commission Act 2005</i>.</p> <p>Is independent.</p> <p>Role to promote the HRs and welfare of people in the ACT -</p> <ul style="list-style-type: none"> · Systemic oversight, monitors and advises ACT Govt and agencies about complying with the Act · Community education · Advises on laws/policies to ACT Govt · Intervenes in significant court/tribunal cases where there is HR issue · Reviews effect of laws on HRs. 	<p>Victorian Equal Opportunity and Human Rights Commission.</p> <p>Is established under the <i>Equal Opportunity Act 2010</i> with HR role established under the <i>Charter of Human Rights and Responsibilities Act 2006</i>.</p> <p>In independent</p> <p>Role to protect and promote HR in Victoria.</p> <p>Preventing discrimination from occurring and dealing with it if it does.</p>	<p>Queensland Human Rights Commission</p> <p>Is established under the <i>Anti-Discrimination Act 1091</i> (formerly the Anti-Discrimination Commission)</p> <p>Is independent</p> <p>Role to protect and strengthen HRs in Qld, building a fairer, safer, more inclusive community.</p> <ul style="list-style-type: none"> · Support development of policy & legislation · Expert dispute resolution service for discrimination, HR, sexual harassment and vilification complaints · Education

Legislation →	<i>ACT Human Rights Act 2004</i>	<i>Victorian Charter of Human Rights & Responsibilities Act 2006</i>	<i>Queensland Human Rights Act 2019</i>
Feature ↓			
	<p>Comprises</p> <p>President & Human Rights Commissioner</p> <p>Discrimination, Health Services, Disability & Community Services Commissioner</p> <p>Public Advocate & Children & Young People Commissioner</p> <p>Victims of Crime Commissioner.</p>	<ul style="list-style-type: none"> · Education & engagement with communities, employers, government and public · Assist to resolve discrimination complaints · Undertakes investigations & independent reviews · Advocate for stronger protections · Monitor the operation of the Charter of Human Rights & Responsibilities and progress in protecting fundamental rights. <p>Note: most information provided dispute resolution, reviews, and investigations, relates to the Commissions role in relation to EO/discrimination</p> <p>Led by a Commissioner and Board with representatives from public & private sector.</p>	<ul style="list-style-type: none"> · Free personalised information service on rights & responsibilities & increasing public awareness and discussion <p>Led by a Commissioner supported by two committees (Executive Leadership & Leadership).</p>

List of Written Submissions Received

- 001** Professor George Williams
- 002** Rights Resource Network of South Australia
- 003** Emeritus Professor Rick Sarre
- 004** Scots Church Congregation – Reverend Paul Turley
- 005** Darzen Baric *
- 006** Disability Rights Advocacy Service
- 007** Uniting Church Australia (SA Synod)
- 008** Emeritus Professor Alan Reid
- 009** Dr Julie Debeljak
- 010** Astrid Haines
- 011** Professor Jennifer McKay
- 012** Conservation Council of South Australia
- 013** Commissioner for Equal Opportunity, South Australia
- 014** Aged Rights Advocacy Service (ARAS)
- 015** Shelter SA
- 016** Victim Support Service
- 017** Hon. CJ Sumner AM
- 018** Gill Caunce
- 019** Zonta International South Australia District 23. Area 2
- 020** Dr George & Helen Manos
- 021** Jan McConchie
- 022** The Wyatt Trust
- 023** Margaret Charlesworth
- 024** Catherine McMahon
- 025** Matt Ryan
- 026** Samuel Narroway
- 027** Dr Elpitha Spyrou
- 028** Professor Richard Bruggemann
- 029** Mariel Beros
- 030** Susan Ditter
- 031** Australian Services Union (SA/NT)

- 032 Civil Liberties Australia
- 033 Beau Molanus-Winkel
- 034 Human Rights Law Alliance
- 035 Australian Lawyers Alliance
- 036 Environmental & Natural Resources Law Research Unit University of South Australia
- 037 Kym Davey
- 038 Annette Holden
- 039 Uniting Church of Australia Public Theology & Mission Committee
- 040 Dementia Australia
- 041 Child Development Council
- 042 Knowmore
- 043 JusticeNet SA
- 044 Commissioner for Children & Young People
- 045 Carers SA
- 046 Pamela Patane
- 047 Jane Edwards
- 048 Holly James
- 049 B-Hart
- 050 Fay Fuller Foundation
- 051 Public Law & Policy Unit, The University of Adelaide
- 052 Justice & Society Unit, University of South Australia
- 053 Mental Health Coalition of South Australia
- 054 Dr. Michael Hooper
- 055 Margaret Dingle
- 056 Michelle Hall
- 057 Professor Matthew Stubbs
- 058 Karina McDonald
- 059 Natalie Wade
- 060 Women's International League for Peace & Freedom
- 061 Nick Wagner
- 062 Climate Justice Network SA
- 063 Save the Children/54 Reasons
- 064 Mental Health Commissioner for South Australia

- 065** COTA (Council of the Ageing)
- 066** Covenanting Committee Uniting Church of Australia, SA Synod
- 067** Community Centres SA
- 068** Australian Christian Lobby
- 069** JFA Purple Orange
- 070** SA/NT Regional Meeting of Quakers
- 071** Human Rights Coalition
- 072** Doctors for Environment Australia
- 073** Dr Rowan Nicholson, Dr Jenny Richards, Dr James Scheibner
- 074** Gregg Ryan
- 075** Jonah Haines
- 076** SA Health Social Work Advisory Group
- 077** Drug & Alcohol Foundation
- 078** Tristan Colmer
- 079** Arouk Dharuai
- 080** Mark Knight
- 081** YACSA (Youth Affairs Council SA)
- 082** Public Health Association of Australia
- 083** Megan Thomas
- 084** Mark Rice
- 085** Melanie Carter
- 086** SA Abortion Action Coalition
- 087** Working Women's Centre
- 088** Thomas Masters
- 089** Connecting Foster & Kinship Carers SA
- 090** Justice Reform Initiative
- 091** Adelaide Falun Gong Practitioners
- 092** XRSA Inc (extinction rebellion)
- 093** Welcoming Australia
- 094** SACOSS
- 095** SA/NT Activist Leadership Group Amnesty International Australia
- 096** Sue Gilbey
- 097** Amnesty International

- 098 Thorne Harbour Health
- 099 Law Society of South Australia
- 100 SANDAS
- 101 SNAICC (Secretariat of National Aboriginal & Islander Child Care)
- 102 Freedom for Faith
- 103 Christian Schools Australia & Australian Association of Christian Schools
- 104 Peter Goldsmith
- 105 Elizabeth Mills
- 106 Disability Advocacy and Complaints Service SA (DACSSA)
- 107 Falun Dafa Association of Australia
- 108 Office of the Public Advocate
- 109 Castan Centre for Human Rights Law
- 110 Jenny Karavolos & Gary Michael
- 111 ACT Human Rights Commission
- 112 Professor Marinella Marmor & Eva Coussens
- 113 Human Rights & Coercion Reduction Committee, Office of the Chief Psychiatrist
- 114 Child and Family Focus SA
- 115 City of Playford Access & Social Inclusion Advisory Group
- 116 Environmental Defenders Office
- 117 St Vincent de Paul Society
- 118 Australian Lawyers for Human Rights
- 119 Enabled Youth Disability Network
- 120 Aboriginal Health Council of SA Ltd
- 121 Adoptee Rights Australia
- 122 Isabel Devitt
- 123 Aspire Recovery Connection
- 124 SA Unions
- 125 FullStop Australia
- 126 Human Rights law Centre
- 127 Name withheld
- 128 Stephanie Wood
- 129 Justin Baxter & Dianah Walter
- 130 Roscoe Hilton

- 131 Virginia North
- 132 Nick Wagner
- 133 Alison Kastelein
- 134 Sarah Vanson
- 135 Corbus, Riette, Armand, Jandre, Jacque de Klerk
- 136 Virginia Brookes
- 137 Dr Brian Ambrose
- 138 – 180 Proforma
- 181 – 212 Proforma
- 213 – 254 Proforma
- 255 – 295 Proforma
- 296 WMH Gough
- 297 Aboriginal Legal Rights Movement (ALRM)
- 298 Office of the Guardian for Children & Young People
- 299 SA Lived Experience Leadership & Advocacy Network (LELAN)
- 300 South Australian Rainbow Advocacy Alliance (SARAA)
- 301 Run For It
- 302 Affiliation of Australian Women’s Action Alliances (AAWAA)
- 303 Lobby Co
- 304 – 309 Proforma
- 310 Proforma
- 311 –316 Proforma
- 317 - 319 Proforma
- 320 Llewellyn Jones
- 321 John Skewes
- 322 Confidential
- 323 Adelaide Hills Group, Amnesty International
- 324 Dr Sarah Moulds and Prof Matthew Stubbs
- 325 Mr Michael Barry Fyfe

List of Witnesses and Hearings

The Committee held hearings of evidence at Parliament House, Adelaide, as follows:

Monday, 8 April 2024

Rights Resource Network, South Australia

Associate Professor Sarah Moulds, Director

Carolyn Hannaford, Advisory Board Member

Professor George Williams

Monday, 29 April 2024

Uniting Church Synod of South Australia

Helen Sheppard, Chief Executive Officer, UnitingCare Wesley Bowden

Paul Turley, Congregation Minister, Scots Church

Mark Waters, Director Uniting Care South Australia

South Australian Council of Social Services (SACOSS)

Rebecca. Acting Chief Executive Officer

Susan Tilley, Acting Director, Policy & Advocacy

Monday, 13 May 2024

Australian Lawyers for Human Rights

Natalie Wade, Executive Committee Member & Disability Rights Senior Chair

Conservation Council of South Australia

Michael Cornish, Vice-President

Hugo Hopton, Chief Executive Officer

Monday 3 June 2024

Human Rights Law Centre

Daney Faddoul, Campaign Manager

Arif Hussein, Senior Lawyer

St Vincent de Paul Society

Brad Hocking, State President

Carla Leversedge, General Manager

Monday 17 June 2024

Human Rights & Coercion Reduction Committee, Office of the Chief Psychiatrist

John Brayley, Chair & Chief Psychiatrist

Allan Taimi, South Australian Mental Health Commissioner

Camilo Guaqueta, Principal Adviser, Lived Experience & Human Rights

Professor Matthew Stubbs

Monday 26 August 2024

Amnesty International

Nikita White, Lead Campaigner Human Rights Act

Tim Green, President, SA/NT Amnesty Leadership Committee

Kym Davey

Monday 9 September 2024

JFA Purple Orange

Robbi Williams, Chief Executive Officer

Rebecca Dowd, Manager Policy & Projects

Justice Reform Initiative

Hannah March, Campaign Coordinator (SA)

Lorna Robinson, Campaign Coordinator (Children & Young People)

Monday 23 September 2024

Disability Advocacy & Complaints Service of South Australia (DACSA)

Jenny Karavolos, Chief Executive Officer

Huw Owen, Disability Advocate

Jenny Karavolos and Garry Michael

Monday 14 October 2024

Secretariat of National Aboriginal & Islander Child Care (SNAICC)

Catherine Liddle, Chief Executive Officer

Wakwakurna Kanyini

Ashum Owen, Chief Executive Officer

Monday 28 October 2024

Public Law and Policy Unit, The University of Adelaide / Shelter SA

Associate Professor Laura Grenfell, Deputy Director

Dr Elpitha Spyrou, Lecturer in Law

Cornelia Koch, Senior Lecturer

Dr Alice Clark, Executive Director, Shelter SA

Christian Schools Australia

Dr Rachel Carling, Director of Public Policy

Dr Brendan Long, Executive Officer, Government Relations & Advocacy

Monday 25 November 2024

Commissioner for Children and Young People

Helen Connolly, Commissioner

Monday 2 December 2024

Mental Health Coalition

Geoff Harris, Executive Director

SA/NT Regional Meeting of Quakers

Harald Ehmman, Member

Jo Jordan, Clerk

Restina Nininahazwe, Assistance Clerk

Dr Jenny Stock, Elder

