

# Designing a Human Rights Framework for South Australia

## **Expert Workshop**

Delegates Briefing Paper

2 December 2021

Rights Resource Network SA



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## About the Expert Workshop

The Rights Resource Network SA invites you to be part of an Expert Workshop designed to advance the implementation of a human rights framework for South Australia.

The Workshop will take place online on International Human Rights Day, Friday 10 December 2021 from 9.30am and 2pm. It will be attended by a small group of delegates nominated by Rights Resource Network SA members, including representatives from non-government organisations, Aboriginal organisations, academia and the legal profession.

The Workshop will be recorded for note taking purposes but will be conducted under Chatham House Rules. Volunteer Rapporteurs will be in attendance to help record discussions.

## Workshop Purpose

The [Rights Resource Network SA](#) is a volunteer-run collaboration that shares information and research among academics, community organisations and individuals who share an interest in protecting the human rights of South Australians.

On International Human Rights Day (10 December 2021), the Network hosted a Workshop to discuss whether South Australia – a jurisdiction with a proud tradition of leadership in the area of social justice and equality – should establish a *human rights framework* to guide the process of policy-making and lawmaking.

More than 60 Network members with a diverse range of skills and experiences, including academics, community leaders, service providers and individuals participated in the Workshop.<sup>1</sup> Participants expressed broad support for advancing a human rights framework for South Australia, including a legislative framework for rights protection that would:

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

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<sup>1</sup> Read a copy of our Human Rights Day Workshop Report [here](#).



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South Australia's response to the COVID-19 pandemic has also highlighted our strength as a community that has the capacity to protect and promote rights and responsibilities, as well as the fragility of many of the freedoms we take for granted. The continued use of emergency management laws to delegate lawmaking power to a handful of individuals has also underscored the need to ensure commensurate oversight and accountability of this form of executive power.

The objective of this Workshop is to develop a clear advocacy strategy to advance the implementation of a human rights framework for South Australia.

It will do this by bringing together delegates from all three Universities, senior members of the South Australian medical and legal profession, senior Executive Officers from SACOSS, Shelter SA, Aged Rights, YACSA, LELAN, Civil Liberties Australia and the Working Women's Centre as well as representatives from all major political parties.

The Workshop is designed to generate a plan of action for the Rights Resource Network SA to share with its members and to use as a basis for future prioritisation and research. Delegates will be asked to share their thoughts on the key questions set out below and help generate areas of consensus or options for next steps.

## Workshop Program

1.	Welcome and Introductions 9.30-9.45am	How the Workshop Will Work
2.	Opening Panel: 9.45-10.40am	The Rights work of Statutory Office Holders and Commissioners in South Australia (Guardian for Children and Young People, Penny Wright; South Australian Ombudsman, Wayne Lines and Mental Health Commissioner, John Mannion)
Short break 10.40-10.50am		
3.	Session 1: 10.50-11.20am	What difference do we want the Human Right Framework to Make? – Defining the objective and developing the key messages
4.	Session 2: 11.20am—12noon	What rights do we want the Framework to protect or promote?
LUNCH BREAK 12-12.30		



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5.	Session 3: 12.30-1.10pm	How do we want the Framework to work? Legal structure and institutional identity
6.	Session 4: 1.10-1.50pm	Next steps – Making Change Happen – advocacy and strategy
7.	Conclusion of day: 1.50-2pm	Thank you and close

The opening session will be a conventional **panel discussion** involving Statutory Office Holders and Commissioners in South Australia.

After this session (from 10.50am), the event will take the form of an **interactive group discussion**, designed to generate a plan of action for the Rights Resource Network SA to share with its members and to use as a basis for future prioritisation and research. Delegates will be asked to share their thoughts on the key questions set out in the program and help generate areas of consensus or options for next steps.

This Briefing Paper contains a summary of the key thoughts shared with us by delegates through our online survey with respect to each of these key questions.

## Actions Following Workshop

The aim of this Expert Workshop is to develop a clear advocacy strategy to advance the implementation of a human rights framework for South Australia. We hope to achieve this aim by presenting summaries of the areas of consensus and options for future research and advocacy identified during the Expert Workshop in a **Final Report**, which will build upon the information contained in this Briefing Paper. Each delegate will have the opportunity to review the Final Report before it is made publicly available on the Rights Resource Network SA website. We hope to be in a position to settle and publish the Final Report before the March 2022 State Election.



## Current Legal Landscape In South Australia

There is no human rights legislation or constitutionally entrenched Bill of Rights at the federal level in Australia. Instead, Australia relies upon a combination of constitutional limitations on legislative power,<sup>2</sup> specific legislative provisions (such as anti-discrimination laws)<sup>3</sup> and common law principles<sup>4</sup> to protect and promote the individual rights of its people.

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

Although specific human rights legislation exists in the Australian Capital Territory, Victoria and Queensland [footnote ref to table here], at the state level in South Australia, and there is no human rights legislation or parliamentary Human Rights Committee to scrutinise proposed new laws for compliance with human rights.

However, there are features of the current South Australia law-making system that seek to promote and protect human rights. These include:

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

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

<sup>3</sup> For example the Race Discrimination Act 1975 (Cth), the Sex Discrimination Act 1984 (Cth).

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

<sup>5</sup> Williams, George and Lisa Burton, (2013) ‘Australia’s Exclusive Parliamentary Model of Rights Protection’ 34(1) Statute Law Review 58.



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**Table 1: Human Rights Provisions In South Australian Legislation**

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

Legislation	Human Rights	Legislative protection
<b>Freedom of information Act 1991</b> <b>Public Interest Disclosure Act 2018</b>	The right to access documents held by government agencies unless an exemption applies	These Acts ensures that South Australian's have the ability to access personal government records information or information from government departments which may be of public interest such as information of regarding the operations of government. These Acts identify their provisions as "rights".
<b>Work Health and Safety Act 2012</b>	The right to feel safe while at work	This Act helps to protect workers, a far as reasonably practicable, and ensure they are physically and mentally safe and healthy while at work. Although this legislation does not fundamentally identify that its object is to create a "rights" it does provide remedy if these conditions are not upheld. Further it does confer rights to workers to exercise while in the workplace.
<b>Children and Young People (Safety) Act 2017</b>	Every child has the right, without discrimination, to such protection as is in the child's best interests and is needed by the child by reason of being a child	This Act commits to upholding and promoting a set of outcomes for children which they expect all members of the state to safeguard and comply with. This Act directly addresses these outcomes as "rights" for children and young people.



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





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<b>Electoral Act 1985</b>	Every eligible person has the right, and is to have the opportunity, without discrimination— (a) to vote and be elected at periodic State and municipal elections that guarantee the free expression of the will of the electors;	This Act protects the rights of Australian's to vote in State Elections. The Act does explicitly says that all members of the state have a "right" to vote in a state election if they have enrolled.
<b>Fair Work Act 1994</b>	Every person has the right to freedom of association with others, including the right to form and join trade unions.	The Act ensures the facilitation of lawful employment within the state among other protections such as compliance with awards and provisions for industrial disputes, this Act ensures freedom of association for South Australian workers. This Act does not state that South Australian's have the "right" to these protections however it does outline the rights of pregnant woman.
<b>Environment Protection Act 1993</b>	Every person has the right to a healthy and sustainable environment.	This Act helps to promote the principles of ecologically sustainable development through the protection of natural resources to meet the needs for the foreseeable future, ensuring that measures are taken to protect and restore the natural environment and enforce harm elimination and minimisation methods. The Act does not evidently articulate that its object is to protect a "right" however it does allude to the importance of these protections.
<b>Criminal Law Consolidation Act 1935</b> <b>Summary Offences Act 1953</b> <b>Magistrates Court Act 1991</b>	A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.	These Acts touch on a broad range of areas such as sentencing, bail and court etiquette. However they all include procedures and policies to ensure equality and fairness within the South Australian justice system.



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<b>District Court Act 1991</b> <b>Supreme Court Act 1935</b> <b>Sentencing Act 2017</b> <b>Bail Act 1982</b>	<p>Any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in respect of it reviewed by a higher court in accordance with law.</p> <p>A person must not be tried or punished more than once for an offence in respect of which the person has already been finally convicted or acquitted in accordance with law.</p>	<p>None of these Acts make mention of their contents being “rights” however they do create protections that award those who, have allegedly committed a crime or have been found guilty of a crime, the safety of the law so they are treated fairly.</p>
<b>Police Act 1998</b>	<p>A person must not be subjected to arbitrary arrest or detention.</p> <p>A person must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law.</p> <p>A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person.</p>	<p>This Act helps to govern the power that Police have in our society. One of its aims is to protect the public's civil freedoms by protecting them from subjection to arbitrary Police power.</p> <p>The protections found in the Act are not specified as being “rights” however it does insinuate the importance of these protections and regulate penalty if they are not upheld.</p>
<b>Safe Drinking Water Act 2011</b>	<p>The right to safe and clean drinking water and sanitation</p>	<p>This Act ensures that all drinking water providers, persons or organisations who provide drinking water to the public, do so in a way that protects the health and safety of all South Australians. This includes establishing auditing procedures, encouraging risk management and specifying the quality expected.</p>



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		This Act does not explicitly state that South Australian's have the "right" to safe drinking water however it purpose as a legislative instrument achieves this.
<b>Correctional Services Act 1982</b>	<p>All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary.</p> <p>An accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.</p>	<p>This Act protects the way in which those who are contained in correctional facilities in South Australia are treated. The Act further helps to govern the way that correctional services are managed and conducted to prevent corruption and inconsistency.</p> <p>This Act does includes some comment about the rights of prisoners including the right to visitors and their rights to legal aid assistance. However the Act does not make any overarching and conclusive statements about the "rights" of prisoners or individuals in South Australia.</p>
<b>Education and Children's Services Act 2019</b>	Every person has the right to education.	<p>This recently created Act firstly creates legislative framework to ensure that education given to children across the state is of a high standard. Secondly, the Act helps to enforce the legal requirement that all children of legal age must be enrolled in school.</p> <p>The Act specifically states that every child has the "right" to education.</p>



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



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



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## Does South Australia Need a Human Rights Framework?

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

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

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

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

In our recent survey you told us:

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



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

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

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

## Benefits A Human Rights Framework Could Deliver

The benefits a Human Rights Framework could deliver for law makers, policy makers and community groups.

### Raise the profile of Parliamentarians doing great work at the moment

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

### Save money and keep vulnerable community members safe

Rights-enhancing laws and policies that have been subject to meaningful community and expert consultation save money because they are (a) more likely to achieve their stated policy aims and



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(b) less likely to have unintended consequences or disproportionate impacts on certain groups within our community.

When laws and policies are made in the absence of these key features, or when causes of injustice or inequality go unattended to in our community, the economic costs can be significant. For example, KMPG estimated that the cost of violence against women and their children in Australia in 2015-16 was between \$22 billion and \$26 billion.<sup>6</sup> In South Australia, there were 3,164 family and domestic abuse related offences recorded in the first quarter of the financial year from 2020-2021. During 2019-2020 the South Australian Police reported 8 855 family and domestic abuse-related offences, up 7.4% from the previous year.<sup>7</sup> These grim statistics show that the current legislative and policy settings designed to tackle domestic and family violence are not yet having the desired impact, and could benefit from expert and community review.

When a rights-based approach to law reform is adopted, system-wide saving and benefits can be felt. For example, when the Productivity Commission conducted a review of the *Disability Discrimination Act 1992* (Cth) (DDA),<sup>8</sup> it found that reductions in discrimination can lead to an increase in the productive capacity of the economy and enhance the participation and employment of people with disabilities in the workforce. This in turn leads to incentives to students with disabilities to improve their educational outcomes, making them more productive members of the community.<sup>9</sup>

## Improve the effectiveness of our COVID-19 response

The COVID-19 pandemic has also underscored the need to continuously invest in building relationships of trust between lawmakers, law enforcers and community members, particularly when delegating lawmaking power to executive officers.<sup>10</sup> A Human Rights Framework can help ease the burden on individual officers who are currently tasked with two potentially competing duties (1) delivering accurate, timely expert advice and (2) assessing how that advice should be acted upon having regard to the impact on other important rights and interests. The second of

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<sup>6</sup> KPMG *Cost Of Violence Against Women And Their Children In Australia* (May 2016) available at [https://www.dss.gov.au/sites/default/files/documents/08\\_2016/the\\_cost\\_of\\_violence\\_against\\_women\\_and\\_their\\_children\\_in\\_australia\\_-\\_summary\\_report\\_may\\_2016.pdf](https://www.dss.gov.au/sites/default/files/documents/08_2016/the_cost_of_violence_against_women_and_their_children_in_australia_-_summary_report_may_2016.pdf).

<sup>7</sup> <https://www.police.sa.gov.au/about-us/annual-reporting/annual-report-2019-20/agencys-performance#agency-specific>

<sup>8</sup> Productivity Commission, Review of the Disability Discrimination Act 1992, Productivity Commission Inquiry Report Vol 1, Report No 30, (30 April 2004) 134.

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

<sup>10</sup> See for example Mark Evans 'Public trust in the government's COVID response is slowly eroding. Here's how to get it back on track' *The Conversation* (12 July 2021) available at <https://theconversation.com/public-trust-in-the-governments-covid-response-is-slowly-eroding-heres-how-to-get-it-back-on-track-163722>





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these two tasks involves a proportionality assessment that could strengthened and clarified through the use of human rights principles that have been tried and tested in many other comparable jurisdictions in Australia and overseas.<sup>11</sup>

Recent research into COVID-19 contact tracing also suggests that improving rights protections within laws and policies, including those relating to the use and disclosure of personal information, can increase compliance with protective health measures, decreasing the risk of community transmission of COVID-19 and contributing to significant cost savings.<sup>12</sup>

## Assist in designing good quality legislation for complex social problems

The recent community consultations on the draft Suicide Prevention Bill and the Suicide Prevention Plan also illustrate the benefits of a rights-based approach to developing legislative frameworks to address complex social problems. Submissions from community groups including the Rights Resource Network<sup>13</sup> have highlighted the benefits of aligning the proposed legislative framework with the principles set out in the *Convention on the Rights of Persons with Disabilities* to consider responsibilities regarding housing, education and mental health care and help reduce contributing factors to suicide such as social media and bullying, and impediments to accessing employment or health care due to disability.

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

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<sup>11</sup> See for example the federal Parliamentary Joint Committee on Human Rights Guide to Human Rights available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Guidance\\_Notes\\_and\\_Resources](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources)

<sup>12</sup> See e.g.; Moulds, S, Corsini, N, Ryder, J & Forsythe, D (2021) Stopping the spread: community views and legal considerations to support faster easier contact tracing, University of South Australia, available at <http://researchoutputs.unisa.edu.au/11541.2/147402>

<sup>13</sup> For example, see Rights Resource Network SA Submission on the draft Suicide Prevention Bill (February 2021) [https://32219faa-b014-40a7-a896-f4f58aaf7984.filesusr.com/ugd/8cf77c\\_1afb52c9f8c14e4aa84e68bf2dadcb74.pdf](https://32219faa-b014-40a7-a896-f4f58aaf7984.filesusr.com/ugd/8cf77c_1afb52c9f8c14e4aa84e68bf2dadcb74.pdf)



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## Develop sustainable approaches to improving access to economic and social rights

A Human Rights Framework could also provide an opportunity for the Parliament to develop sustainable responses to ongoing policy challenges associated with ensuring South Australian communities have access to basic social and economic rights, including access to safe drinking water and access to secure housing. The South Australian Council for Social Services has highlighted the urgent need to address access to safe water in regional communities in South Australia and documented the range of health and economic costs associated with the failure to protect and promote this basic human right.<sup>14</sup> A Human Rights Framework could provide a parliamentary-based mechanism to inquire into this issue and develop sustainable, evidence based responses that build upon local expertise and involve peak representative bodies and community organisations in identifying and implementing solutions.

As the United Nations' Office of the High Commissioner for Human Rights has observed, there is a strong connection between these very practical resource challenges faced by the South Australian community and the changing climate caused largely by human-made greenhouse gas emissions, which will increase the frequency of extreme weather events and natural disasters, rising sea levels, floods, heat waves, droughts, desertification, water shortages, and the spread of tropical and vector-borne diseases..<sup>15</sup> A Human Rights Framework could provide the scaffolding by which policy and legislation which impact greenhouse gas emissions and those which attempt to mitigate the effect of climate change, are evaluated. South Australia could lead the world by putting climate change front and centre in its consideration of policy and legislation from a human rights perspective.

## Rebuild trust between South Australians and our public institutions

In addition to these specific benefits, a Human Rights Framework could provide a catalyst for rebuilding trust between South Australians, their elected representatives and the public institutions that protect and preserve our democracy. Having worked together to try and combat the spread of COVID-19, and endured the collective suffering caused by lockdowns and other pandemic responses, South Australians are hungry for the opportunity to articulate and express a set of common values or aspirations that define our community and identify us as South Australians.

A Human Rights Framework provides a vehicle for identifying and articulating these common values or aspirations, by reflecting on the universal values of human dignity, equality, freedom and

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<sup>14</sup> South Australian Council for Social Services, Website, 'SA Fails Water Fundamentals, August 2021 available at <https://www.sacoss.org.au/sa-fails-water-fundamentals>

<sup>15</sup> As affirmed by the [Intergovernmental Panel on Climate Change \(IPCC\)](https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/AboutClimateChangeHR.aspx) and [Human Rights Council resolution 1/21.](https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/AboutClimateChangeHR.aspx)" (<https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/AboutClimateChangeHR.aspx>)



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

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

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

A Human Rights Framework would help make it easier for South Australians to have an informed, open, transparent conversation about the law and what impact it has on their lives, which in turn will help improve their connection with parliamentarians and their trust in the Parliament as an institution.<sup>16</sup> This in turn could improve the quality of submissions and other representations to Parliament about proposed laws or changes to existing laws, by providing a clear, accurate foundation from which individuals or organisations can express an informed view.

## Survey Results

You told us that it is imperative that a human rights framework:

- Address inadequacies of existing social welfare systems,
- Improve community engagement and trust in public institutions
- Consider privacy implications of the use of digital technologies and data collection by government
- Improving government accountability for human right breaches
- Improve public understanding of existing legal rights and remedies

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<sup>16</sup> See e.g Moulds, S, 'Its time to talk about rights protection in South Australia' *InDaily*, 3 March 2019. <https://indaily.com.au/opinion/2019/03/01/its-time-to-talk-about-rights-protection-in-south-australia/>



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- Address widening wealth gap and experiences of poverty
- Address inequality and discrimination, particularly against vulnerable minorities within our community
- Inspiring young people to exercise their democratic rights and be proud of being in a modern democracy
- Improve the quality of service delivery
- Identify and address unintended or unequal impacts of legislation or government policy
- Address homelessness, domestic violence and disproportionate rate of Aboriginal people in custody

This feedback aligns with the priority rights issues discussed during the 2020 Human Rights Day Workshop which included the following focus areas:

- poverty and access to social security;
- age of criminality and Aboriginal incarceration;
- housing and homelessness;
- family violence and family safety;
- right to protest and environmental protection, and
- citizens' engagement with parliament and policy.

These ideas were expressed eloquently by many of you in your Delegate Nomination forms:

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

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



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

## The Human Rights Standards That Should Feature In A South Australian Human Rights Framework

*The rights of Aboriginal nations should have explicit recognition, consultation, and consideration in the framework and its operation. There are many benefits to all members of SA society for active engagement with Aboriginal cultures and peoples.<sup>17</sup>*

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

- *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)
- *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
- *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature (entry into force 4 January 1969)
- *International Convention on the Elimination of Racial Discrimination*
- *International Convention on the Rights of Persons with Disabilities*
- *International Convention on the Elimination of Discrimination against Women*
- *International Convention on the Rights of the Child*

However, there are other statements of rights that have been accepted by the international community, including the Universal Declaration on the Rights of Indigenous Peoples, as well as emerging rights concepts, including environmental rights, that could potentially be included in any future South Australian model.

In order to address the priority areas for impact described above, it would appear that at a minimum, a South Australian Human Rights Framework should include all the rights listed in the human rights conventions to which Australia is a party, as well as the Universal Declaration on the Rights of Indigenous Peoples.

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<sup>17</sup> RRNSA Survey Response



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This is in line with the Civil Liberties Australia *Rights in Sight* document which explains that a federal human rights act should

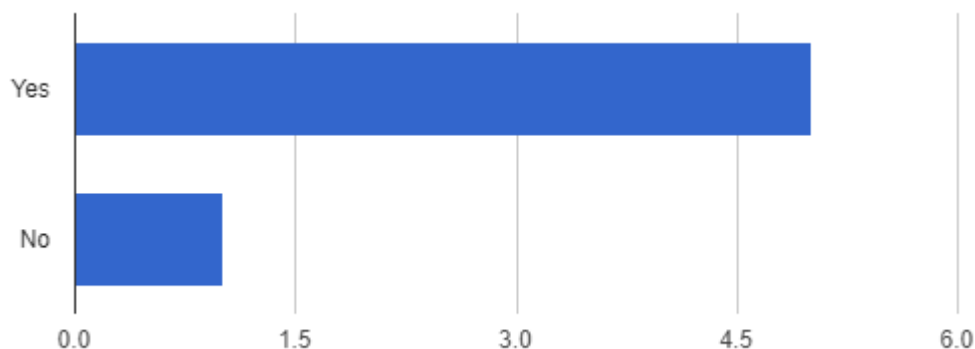
*Enable the full enjoyment of civil and political rights by including all rights in the International Covenant on Economic, Social and Cultural Rights?*

*Cover rights in other Human Rights instruments ratified by Australia, including:*

- *International Convention on the Elimination of All Forms of Racial Discrimination;*
- *Convention on the Elimination of All Forms of Discrimination against Women;*
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;*
- *Convention on the Rights of the Child; and*
- *UN Declaration of the Rights of Indigenous Peoples.*

## Survey Results

According to our survey results, most respondents support an *inclusive* approach to the list of human rights that should be included in a South Australian Human Rights Framework.



There was some strong feedback in favour of ensuring a South Australian Human Rights Framework includes:

- Rights of Aboriginal and First Nations peoples
- Rights to decent health care no matter status or address of the person, and including non-citizens in the State
- Right to shelter and housing

The revised Australian Capital Territory *Human Rights Act* was suggested as a **best practice model**. The ACT model includes:

- The creation of a Human Rights Commission and Commissioner to adjudicate and review breaches of the Act by Public Authorities or contraventions within legislation.



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- To ensure alignment with the treaty that Australia has agreed to ratify, the Act includes the rights incorporated in the United Nations International Covenant on Economic, Social and Cultural Rights.
- The Act also does not limit or prevent any current rights or freedoms. Although the Act outlines fundamental human rights, it suggests that this list is not exhaustive.
- Whenever new legislation is created, the Act says that this legislation must be scrutinised by parliament based on the Attorney-General's written compatibility statement. A standing committee will be created to report to the legislative assembly if the Attorney-General identifies potential human rights concerns in the proposed legislation.
- The Act gives power to the Supreme Court to make a determination about the compatibility of existing or future legislation but by doing so does not invalidate the provisions in this legislation. The court must notify the Attorney General if it believes that the legislation is incompatible and the Attorney General is responsible for providing Parliament with a written response to this.
- Reasonable limits placed on Human Rights, however these limits must be 'demonstrably justified in a free and democratic society'.

## Discussion Questions

We look forward to further discussions about:

- Whether a South Australian Human Rights Framework should include a list of specific human rights?
- If so, what rights should be on this list?
- Should this be an inclusive or exclusive list?
- Should any of these rights be subject to limitations?
- How should those limitations be assessed?

## How A Human Rights Framework Would Work

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

At the 2020 Human Rights Day event, the participants discussed the fact that a Human Rights Framework can offer a consistent approach to identifying how internationally recognised human





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rights relate to lives of South Australians. Such a Framework can be enshrined in law, imbedded into lawmaking and policymaking practice and/or feature in training programs for public servants. A Human Rights Framework moves the focus away from lawyers and litigation, and emphasises delivering practical outcomes for the community, and efficiency gains and cost savings for agencies, lawmakers and policy makers.

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

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

- Prioritising and highlighting the existing Scrutiny Principles for the Legislative Review Committee which already includes a reference to reviewing certain delegated legislation trespasses unduly on personal rights and liberties,<sup>18</sup> and allocating additional secretariat resources to this Committee to undertake more systematic scrutiny of rights-impacting regulations and proposed legislation.
- Publishing the Explanatory Statements or Explanatory Notes that are currently drafted and circulated to members of parliament when a new Bill is introduced and including a description of the extent to which the Bill trespasses unduly on personal rights and liberties and/or impacts or complies with human rights standards.
- Establishing a Select Committee of the Parliament to consult with South Australians about whether the state would benefit from the introduction of a Human Rights Framework for South Australia or refer this issue to the South Australian Law Reform Institute to consult with the community and provide a report with recommendations.
- Working with the members of the Rights Resource Network SA and the Parliamentary Friendship Group on Human Rights to increase the frequency and accessibility of human rights training and human rights information for parliamentarians and their staff.

We also noted that an alternative or complementary option for improving rights scrutiny of proposed laws would be to implement the recommendations contained in the Select Committee on the Effectiveness of the Current System of Parliamentary Committees' Report<sup>19</sup> which includes an unanimous **recommendation to establish a Scrutiny of Bills and Delegated Legislation**

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<sup>18</sup> Parliament of SA, Legislative Review Committee Information Guide: Report of the Legislative Review Committee (2020).

<sup>19</sup> Parliament of South Australia, Report - Select Committee on the Effectiveness of the Current System of Parliamentary Committees (September 2021), Recommendation 1.





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**Committee** that would incorporate the current role of the Legislative Review Committee but also undertake scrutiny of proposed legislation having regard to:

1. Whether the bill is sufficiently clear;
2. Whether the bill is proportionate;
3. Whether the bill unduly trespasses on rights and liberties;
4. Whether the bill includes administrative powers defined with sufficient precision;
5. Whether the bill has adequate safeguards and adequate review of decisions;
6. Whether any delegation of legislative powers is appropriate; and
7. Whether the exercise of legislative powers is subject to sufficient parliamentary scrutiny.

Other options for a Human Rights Framework for South Australia include enacting specific legislation, such as a Human Rights Act or Charter of Rights and Responsibilities. South Australia is one of the few Australian jurisdictions without a Human Rights Framework or human rights legislation. This means that we can learn from the experience of jurisdictions in Australia (including the ACT, Victoria and Queensland) and overseas when developing human rights legislation to suit our community (Table 2: What do Human Rights Frameworks look like in nearby Jurisdictions pg 32-34).

Some of the key features of human rights legislation that could be subject to consideration in South Australia include:

- Establishing a Parliamentary Committee on Human Rights or an Independent Expert Panel on Human Rights to review existing and proposed laws for compliance with human rights standards and provide advice to Parliament.
- Requiring Bills and legislative instruments to be introduced with a Statement of Compatibility with Human Rights setting out the extent to which they comply with (or otherwise) the rights listed in the Charter. This Statement should then be subject to consideration by the Parliamentary Committee
- Empowering the courts to interpret all legislation, regulations and other rules/directions made so far as reasonably possible in a manner consistent with the human rights legislation.
- Imposing a duty on all public authorities and all bodies carrying out public functions to act compatibly with the human rights legislation.
- Providing a direct and independent right of legal action where a person alleges their rights under the Charter have been violated.

These options could be explored through consultation with the South Australian community to make sure any human rights legislation introduced in this State adequately protects and promotes the rights of our most vulnerable people, and maintains an appropriate level of parliamentary oversight to ensure a proportionate, balanced approach to rights protection is achieved.



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## Survey Results

Almost all responses to the survey supported using the (revised) ACT *Human Rights Act 2004* as a best practice model, with some also suggesting the Queensland *Human Rights Act 2019* and the New Zealand Bill of Rights as possible options (Table 2: What do Human Rights Frameworks look like in nearby Jurisdictions pg 32-34).

Other key elements of the legal framework for rights protection in South Australia included in the survey response were:

- Recognition of both individual and group rights

*Where membership or participation in a group affects their rights or those of others, that should be explicit and open to (re)negotiation. Minority groups should have the benefit of closer scrutiny where a majority or more socioeconomically advantaged group are affecting the rights of minority groups.* <sup>20</sup>

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

*Limitations on some on the list of rights may be required whilst for others there should not be limitations, so each one should be thought through - that is applying a principle which takes into account both the individuals rights and the equal rights of all. A good example here is the covid vaccination, those people currently who do not believe in being vaccinated do so for a variety of reasons, one of those is due to their belief that it is against their civil liberties, they believe in the right to choose for themselves, but that is not taking into account the impact of their individual decision on the rights of others, this is an example of a reason for limitations on certain rights. At the other end of the spectrum is the protection from torture and cruel, inhumane or degrading treatment, when lawfully detained or deprived of liberty, some might argue that torture for the greater good should be allowed in certain circumstances, however this is one human right that should not have limitations, and be assessed as exclusive.* <sup>21</sup>

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

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<sup>20</sup> RRNSA Survey Response

<sup>21</sup> RRNSA Survey Response



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*recognition and respect for the rights and freedoms of others..." However care will need to be taken with how limitations are assessed, so they do not run the risk of further discriminating against poorer people or any people with less power due to their status.<sup>22</sup>*

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

*Human rights protection and fulfillment is for every level of government and every community to adhere to. What feels most pertinent at the moment for South Australia is ensuring our Parliament is required to adhere to these standards when enacting or reform legislation.<sup>23</sup>*

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

*A Human Rights Framework provides for an opportunity for South Australia to arrest the political shift toward society being reduced down by decision makers to a purely capitalist economy driven by market forces, only if there is some teeth that comes with that Framework are we more likely to move in the right direction to protect our environments, our cultures, our diversity, creativity and work toward a better, sustainable future.<sup>24</sup>*

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

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<sup>22</sup> RRNSA Survey Response

<sup>23</sup> RRNSA Survey Response

<sup>24</sup> RRNSA Survey Response

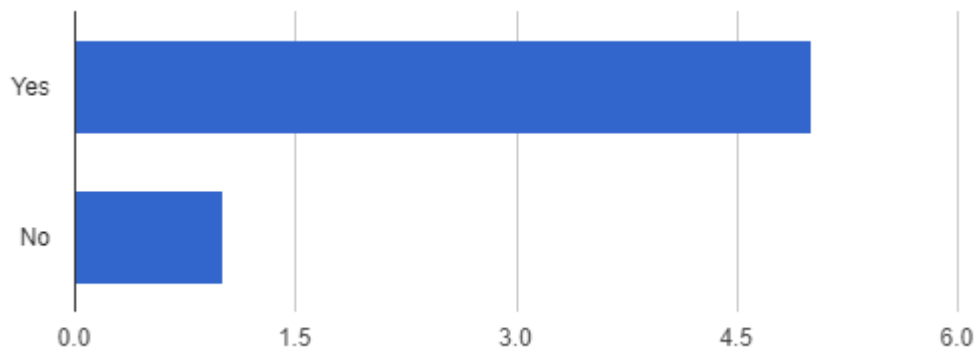


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- A specialist entity developing expertise and relationships around the implementation and evaluation of efforts to integrate the framework into systems and training

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



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

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

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

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

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

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

## Discussion Questions

We look forward to further discussions about how a Human Rights Framework should work in South Australia, having regard to the following questions:



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- Which level of government or public life do you think should be required to think about or adhere to human rights standards?
- How should we make sure that these actors take human rights into account in their decision making?
- Should there be a legal test for working out whether these actors consider or adhere to human rights standard?
- Should there be a legal remedy for an individual who has their rights breached?
- Should there be any other legal obligations on any of these actors relating to human rights standards?

## Human Rights Advocacy and Strategy

As one survey respondent reminded us, many of us are already involved in human rights work

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

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

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



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

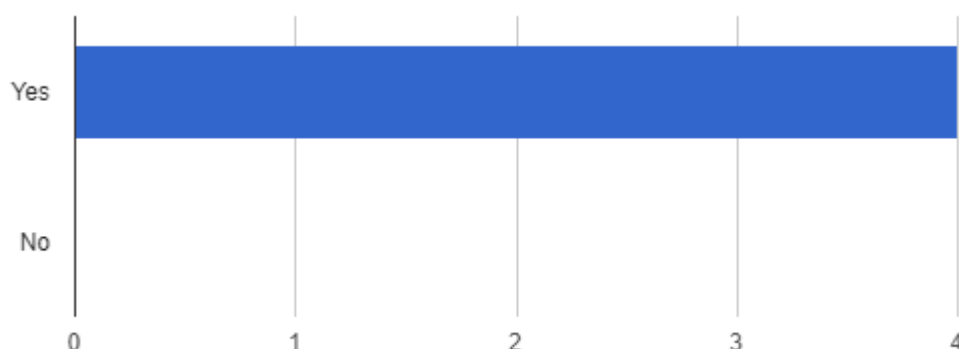
- incorporate human rights principles into policy design and development;
- emphasise the dignity and participation of all members of the South Australian community in the design and development of policies and laws that impact their lives;
- include mechanisms within the parliamentary process for rights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

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

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

## Survey Results

All survey respondents were keen to work together and collaborate to advocate for a Human Rights Framework for South Australia:



Survey respondents also identified individual advocacy strengths, including access to key decision makers and connections with existing community organisations. Some respondents, such as Civil Liberties Australia, identified existing advocacy campaigns (such as those underway



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in the ACT and at the national level) as being important, complementary sites for engagement and support.

The Human Rights Law Centre also has extensive resources developed to assist in formulating accessible and persuasive messages about the protection and promotion of human rights, for example the [Charter Messaging Guide](#) and the [Charter opinion poll released in September](#). The September 2021 Opinion Poll found that:

*There has been a dramatic increase in support for a Charter of Human Rights compared to before the COVID-19 pandemic, new data reveals.*

*An opinion poll of over 1,000 people across Australia found that 83 percent believed there should be a document that sets out in clear language the rights and responsibilities that everyone has here in Australia, an increase from 66 percent in 2019.*

*Seventy-four percent agreed that a Charter of Human Rights would help people and communities to make sure the government does the right thing, compared to 56 percent two years earlier. There was a similar surge in support for the idea of a Charter of Human Rights, with 46 percent supporting a Charter and only 10 percent opposed, compared to 33 percent support and 10 percent opposition in 2019.\* <sup>25</sup>*

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

*Young people are often overlooked especially when looking at non-young people specific issues. It is important to remember that young people are whole people that don't exist in a 'young person' vacuum. Impacts of legislation on the rights of young people specifically should always be considered.<sup>26</sup>*

## Discussion Questions

We look forward to further discussions about how we can work together to advocate for a Human Rights Framework in South Australia, and learning more about:

- Whether your organisation already involved in advocacy on the issue of a human rights framework or
- What considerations do you think are most important when advocating for a Human Rights Framework?

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<sup>25</sup> Charter of Rights Media Release, [COVID-19 sees huge increase in support for a Charter of Human Rights: poll — Charter of Rights](#), 6 September 2021.

<sup>26</sup> RRNSA Survey Response





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- Are there any good examples of advocacy strategies or campaigns that you think would work well in SA?

## About Our Delegates

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

Here are some of their stories. We hope to include more in the Final Report.

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

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

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

**Jana Norman**, PhD, School of Humanities | Faculty of Arts, University of Adelaide, is elected board member of The Hut Community Centre in the Adelaide Hills, an organisation that provides direct support for underserved and isolated populations in the community. Jana was the Assistant Policy Director, Policy Coordination, Australian Royal Commission into Aged Care Quality and Safety. Jana's research at the University of Adelaide, including a completed PhD in law, relates to human rights and the environment. In her former role as a minister of religion, Jana was involved in convening public forums, actions and community responses addressing a range of human rights issues including First Nations rights; LGBTQ rights; refugee and asylum seeker rights; rights of persons with disabilities; homelessness.

**Sharyn White**, Volunteer – Secretary, Adoptee Rights Australia (ARA) Inc, has led the way in shining a light on human rights abuses inherent in adoption itself, and within the SA adoption





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legislation. Her advocacy lead to important changes to the Adoption Act SA 1988 to promote the 'rights and welfare' of adoptees. She also volunteers as part of the Rights Resource Network SA by providing rights analysis of proposed and existing legislation relating to adoption.

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

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

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

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

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

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



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

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

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

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

## Other Delegates

**Ross Womersley**, Chief Executive Officer, South Australian Council of Social Services

**Tim Green**, Amnesty International, Regional President - SA / NT

**Dr Laura Grenfell**, Associate Professor in Law, Faculty of the Professions, The University of Adelaide

**Dr Alice Clark**, Executive Director, Shelter SA

**Dr Anna Olijnyk**, Senior Lecturer, Adelaide Law School

**Ellie Hodges**, Chief Executive Officer, Lived Experience Leadership and Advocacy Network (LELAN)

**Natalie Wade**, Founder and Principal Lawyer, Equality Lawyers

**Dr Kristine Klugman**, President, Civil Liberties Australia

**Pas Forgione** , Anti Poverty Network



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**Carolanne Barkla** , Chief Executive Aged Rights Advocacy Service

**Hon Connie Bonaros MLC**

**Claire O'Connor SC**

**Hon Mark Parnell**

**Stella Salvemini**, Trainee of the Hon Irene Pnevmatikos MLC

**Professor Eileen Webb**, UniSA

**Christine Carolan**, Executive Officer, Australian Catholic Religious Against Trafficking in Humans (ACRATH)

**Dr Samantha Mead** (CEO) Australian Medical Association (South Australia) Inc

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

**Jennifer Kingwell**, Policy & Communications Manager , Embolden SA

**Catherine Sarre**

## Observers

**Sara Bray**, Ministerial Adviser, The Hon Vickie Chapman MP (Observer Only)

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

**Lisa Adams**, Office Manager, the Hon Rob Simms MLC

## Student Rapporteurs

Matilda Wise

Jennifer Jones

Narelle Perry

Isabella Kelly

Alycia Milla



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

Jurisdiction	Obligations on the Parliament	Obligations on the Government	Obligations on the Courts	Rights included
<b>Australian Capital Territory<sup>27</sup></b> <b>Human Rights Act (2004)</b>	The Attorney-General must prepare a written compatibility statement about each government Bill for presentation to the Legislative Assembly. The Attorney-General is to state whether the Bill is consistent with human rights and, if it is not consistent, how it is not consistent: s 37. A standing committee must report to the Legislative Assembly about human rights issues raised by Bills presented to the Assembly: s 38.	Part 5A, contains: a direct duty on public authorities to comply with the Human Rights Act; and an independent cause of action and right to remedy (but not damages) if a public authority has contravened a human right.  These two provisions came into force on 1 January 2009.	If the ACT Supreme Court finds that a statutory provision is not consistent with the rights contained in the Human Rights Act, it cannot 'strike down' or invalidate the provision in question, nor can the Court rule that any government acts made under the provision are unlawful. The Supreme Court may only make a declaration of incompatibility, and notify the Attorney-General of this. The Attorney-General must notify the Legislative Assembly and present a written response: ss. 32, 33. It will then be up to the elected members of the Legislative Assembly to decide what action (if any) to take.	Recognition and equality before the law Right to life Protection from torture and cruel, inhuman or degrading treatment Protection of the family and children Privacy and reputation Freedom of movement Freedom of thought, conscience, religion and belief Peaceful assembly and freedom of association Freedom of expression Taking part in public life Right to liberty and security of person Humane treatment when deprived of liberty Children in the criminal process Right to a fair trial

<sup>27</sup> Content derived from [The ACT Human Rights Act | Gilbert + Tobin Centre of Public Law \(unsw.edu.au\)](https://www.unsw.edu.au/gilbert-tobin-centre-of-public-law)



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				Rights in criminal proceedings Compensation for wrongful conviction Right not to be tried or punished more than once Freedom from retrospective criminal laws Freedom from forced work Rights of minorities
Jurisdiction	Obligations on the Parliament	Obligations on the Government	Obligations on the Courts	Rights included
<b>Victoria</b> <sup>28</sup> <b>Victorian Charter of Human Rights and Responsibilities Act 2006</b>	When introducing new laws into Victoria's Parliament, a Statement of Compatibility must be tabled in Parliament, indicating how the proposed law is compatible or incompatible with the rights set out in the Charter.  The Scrutiny of Acts and Regulations Committee reviews Bills and statutory rules and reports to	The Charter requires public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights in the Charter.  Individuals can raise a complaint about human rights directly with any public authority through their	When introducing new laws into Victoria's Parliament, a Statement of Compatibility must be tabled in Parliament, indicating how the proposed law is compatible or incompatible with the rights set out in the Charter.  The Scrutiny of Acts and Regulations Committee reviews Bills and statutory rules and reports to Parliament as to whether they are compatible with human rights.	Right to recognition and equality before the law (section 8) Right to life (section 9) Right to protection from torture and cruel, inhuman or degrading treatment (section 10) Right to freedom from forced work (section 11) Right to freedom of movement (section 12) Right to privacy and reputation (section 13)

<sup>28</sup> Content derived from [Human rights | Victorian Equal Opportunity and Human Rights Commission](#)



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	<p>Parliament as to whether they are compatible with human rights.</p> <p>In exceptional circumstances, Parliament may declare a law as being incompatible with one or more of the rights in the Charter but still pass the law.</p>	<p>internal complaint handling procedures.</p> <p>Public authorities can demonstrate best practice by managing human rights complaints consistently with the Charter and the public sector values. The Good Practice Guide: Managing Complaints Involving Human Rights (see Part 7: Further resources) provides practical guidance to help public authorities effectively deal with complaints about human rights.</p>	<p>In exceptional circumstances, Parliament may declare a law as being incompatible with one or more of the rights in the Charter but still pass the law.</p>	<p>Right to freedom of thought, conscience, religion and belief (section 14)</p> <p>Right to freedom of expression (section 15)</p> <p>Right to peaceful assembly and freedom of association (section 16)</p> <p>Right to protection of families and children (section 17)</p> <p>Right to take part in public life (section 18)</p> <p>Cultural rights (section 19)</p> <p>Property rights (section 20)</p> <p>Right to liberty and security of person (section 21)</p> <p>Right to humane treatment when deprived of liberty (section 22)</p> <p>Rights of children in the criminal process (section 23)</p> <p>Right to a fair hearing (section 24)</p> <p>Rights in criminal proceedings (section 25)</p> <p>Right not to be tried or punished more than once (section 26)</p> <p>Retrospective criminal laws (section 27)</p>
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Jurisdiction	Obligations on the Parliament	Obligations on the Government	Obligations on the Courts	Rights included
<b>Queensland<sup>29</sup></b> <b>Human Rights Act 2019 (Qld)</b>	<p>In order to act compatibly with the Human Rights Act, the parliament must scrutinise all proposed laws for compatibility with human rights. This includes through accompanying all new bills introduced into Parliament with a statement of compatibility and requiring portfolio committees to examine bills and report to the legislative assembly about any incompatibility with human rights.</p> <p>The parliament's obligation is to consider the impact of new laws on human rights. It continues to be able to pass laws that are not consistent with human rights.</p>	<p>Public entities – such as state government departments, local councils, state schools, the police and non-government organisations and businesses performing a public function must act compatibly with human right</p> <p>All legislation introduced into parliament must be accompanied by a statement of compatibility. The statement has to be written by the Member of Parliament introducing the bill. It has to state clearly whether or not, in the Member's opinion, the bill is compatible with human rights and the nature and extent of any incompatibility.</p>	<p>Courts and tribunals, so far as is possible to do so, must interpret legislation in a way that is compatible with human rights.</p> <p>There is a mechanism for the court to inform the government if legislation is inconsistent with human rights, but it doesn't affect the validity of the legislation and Parliament has the final say.</p>	<p>Right to recognition and equality before the law (section 15)</p> <p>Right to life (section 16)</p> <p>Right to protection from torture and cruel, inhuman or degrading treatment (section 17)</p> <p>Right to freedom from forced work (section 18)</p> <p>Right to freedom of movement (section 19)</p> <p>Right to freedom of thought, conscience, religion and belief (section 20)</p> <p>Right to freedom of expression (section 21)</p> <p>Right to peaceful assembly and freedom of association (section 22)</p> <p>Right to taking part in public life (section 23)</p> <p>Property rights (section 24)</p>

<sup>29</sup> Content derived from Queensland Human Rights Commission Website, [QHRC : Human rights](#)





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