



SACOSS

*South Australian Council
of Social Service*

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**Human Rights Legislation Policy
March 2023**



SACOSS HUMAN RIGHTS LEGISLATION POLICY

Why we need Human Rights legislation in South Australia.

Everyone in South Australia deserves to have their human rights legally protected. Currently there is a confusing mix of mechanisms that recognise rights – some of which have legal standing (e.g. Equal Opportunity Act) and some of which have limited enforceability (e.g. Rights Statements/Charters).

SACOSS is calling for the introduction of a Human Rights Act for South Australia because every person – no matter their race, abilities, political beliefs, gender identification, sexuality, religion, age or cultural background or other characteristic – should be treated equitably. To acknowledge this is to acknowledge that we all have human rights. And that these are universal, meaning they are for everyone, everywhere, all of the time.

A South Australian Human Rights Act would create a legislated framework that articulates the values that we hold most dear and protects our human rights. It would significantly improve the way our Parliament, Government and public entities develop laws, policies and make decisions. It will help to create a much-needed culture of human rights in our state that will, in turn, work to improve wellbeing, dignity and equality in our day to day lives.

A Human Rights Act is an ordinary piece of legislation. This means that it is not constitutionally enshrined and can be amended. It is not stuck in time. It should reflect what we are, what we believe and what we aspire to protect and uphold as a community.

South Australia would not be the first jurisdiction to seek address this issue with now two States and one Territory already implementing legislation. South Australia could model its legislation based on learnings from the implementation of human rights legislation already operating in other Australian jurisdictions.

Background; The UN Convention & ACT, Victorian and Queensland HR legislation

Human Rights Acts have already been passed in the Australian Capital Territory (2004), Victoria (2006) and Queensland (2019). These laws provide protection for specific rights and are based on the United Nations *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

Both Covenants are subsets of the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948 [General Assembly resolution 217A]. The resolution sets out the fundamental human rights to be universally protected and has been translated into over 500 languages. It begins:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”

What Rights are Covered within existing state-based Human Rights Acts?

The Human Rights frameworks already enacted in Victoria, the ACT, and Queensland cover broadly similar rights and focus on civil and political rights, with some social, economic and cultural rights also identified and proscribed. These include the cultural and other rights of Aboriginal and Torres Strait Islander peoples, right to education, right to health services, and right to work and rights in work.

A Human Rights Act for South Australia could assist Government departments to look at new laws as they are being developed and identify potential human rights issues before the Bill is introduced into Parliament.

Just like the existing human rights legislation in other jurisdictions, a SA Human Rights Act would create a culture of human rights awareness within and between the three arms of government (Parliament, Executive and Courts) and place obligations on each arm to protect and promote human rights.

In the ACT, Victoria and Queensland, 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 guide decision-making. This is delivering tangible benefits for the people living in those states.

SACOSS members have also identified the right to housing, right to mental health services and right to disability support, *inter alia*, as areas for further consideration and exploration in the context of a proposed public inquiry South Australia.

All participating governments expressly recognise that human rights may be subject to reasonable limits that can be justified as proportionate in a free and democratic society. As such they do not prevent governments from passing legislation or implementing policies that are needed and in the public interest. Nor do they override existing rights under law.

SACOSS Policy position

SACOSS has been a contributor to the Rights Resource Network of South Australia [RRNSA] since 2020.

On 7 March 2022 SACOSS Policy Council formally endorsed the RRNSA Final Report *Designing a Human Rights Framework for South Australia* (February, 2022) and recognised it as a primary resource for SACOSS to consider as part of its broader policy deliberations.

SACOSS's support for a Human Rights Act is based on the following key propositions. That having both one's rights clearly articulated and a mechanism that seeks to help remedy any violation, will help:

- a. Address inequality and discrimination, particularly against vulnerable minorities within our community;
- b. Improve the quality, effectiveness and accessibility of government services and government decision-making;
- c. Identify and address complex and systemic social disadvantage including homelessness, domestic violence and the disproportionate rate of Aboriginal people in custody;
- d. Improve public understanding of existing legal rights and remedies and provide new pathways to challenge unfair or inadequate decision-making or treatment.

SACOSS considers that the key features of any South Australian Human Rights Act should include:

- A list of protected human rights and responsibilities and an acknowledgement that human rights can be subject to proportionate and reasonable limits when necessary to protect or promote other human rights.
- Meaningful remedies for individuals and groups who can show that their human rights have been ignored or unjustifiably burdened or breached. This could include establishing a legal cause of action for breaches of human rights or establishing enforceable remedies following successful complaints proceedings before a Human Rights Commission, the Ombudsman or a similar body.
- Appointment of a Human Rights Advocate or Commissioner within the Public Service, or a separate Statutory Office of Human Rights Commissioner. [Note: It may also be possible to consider that the Equal Opportunity Commission, the Guardian, the Commissioner for Children and Young People, the Commissioner for Aboriginal Engagement *et al* work within an Human Rights Commission and explicitly under a human rights umbrella.]
- A requirement that human rights principles are considered in all forms of government decision-making and parliamentary law-making. This could include 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. It may be desirable to also include a requirement for a human rights impact metric for all Cabinet Submissions.

Human Rights Standards and implementation issues for further consideration

- 1) Clear pathways need to be available for individuals and groups to challenge government decisions on the basis that they have failed to consider human rights principles, or acted in a way that unjustifiably burdens or breaches their human rights. This could take the form of a 'positive duty' – a European approach. It could also take the form of an independent complaints body such as a Human Rights Commission or Human Rights Advocate.
- 2) All public servants, government officials, members of parliament and judicial officers should be required and assisted to undertake regular human rights training, with a focus on the most prevalent human rights issues confronting South Australia (including those relating to First Nations peoples, children, persons with disabilities, and our elders).
- 3) Any legislation should be accompanied by regular, public and independent reviews 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.

What SACOSS wants right now

As a first step, SACOSS calls on the Parliament of South Australia to initiate a Parliamentary Inquiry designed to examine the case for Human Rights legislation in the South Australian context. The Inquiry should be open to the public and examine:

- a) **options for enhancing the consideration and protection of human rights in the legislative process, including through a potential Parliamentary Committee on Human Rights;**
- b) **options for enhancing the consideration and protection of human rights within public entities and entities performing a public function in South Australia;**
- c) **identifying the human rights of South Australians that should be protected, whether through parliamentary process, government policy or legislation;**
- d) **the benefits of legislating for a Human Rights Act in South Australia;**
- e) **possible remedies for rights infringed (e.g. through the jurisdiction of a Human Rights Commission, SA Civil and Administrative Tribunal or Ombudsman SA model).**

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SACOSS acknowledges traditional owners of country throughout South Australia, and recognises the continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures, and to elders past, present and future.