



16 February 2024

The Secretary  
Social Development Committee  
GPO Box 572  
Adelaide SA 5000

Via email: [sdcc@parliament.sa.gov.au](mailto:sdcc@parliament.sa.gov.au)

### **Submission to the Parliament of South Australia Social Development Committee consultation on the potential for a Human Rights Act for South Australia**

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia and seeks to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

PHAA welcomes the opportunity to provide input to the Social Development Committee inquiry into the potential for a Human Rights Act for South Australia. **PHAA strongly supports a Human Rights Act for South Australia.** Herein we will explain reasons why and ways that it has the potential to improve the rights and ultimately lives of everyday South Australians. **Human rights and population health are closely linked, with human rights offering a framework to advance freedoms and entitlements that promote health and well-being.** The right to the highest attainable standard of physical and mental health and other basic human rights are enshrined in international legal instruments that Australia is a signatory to, but basic human rights are currently not well protected in Australian law. Australia is the only liberal democracy that does not have a Human Rights Act (1). Three jurisdictions within Australia have passed Human Rights Acts: the ACT (2004), Victoria (2006) and Queensland (2019). A Human Rights Act for South Australia could build on the experiences from these other Australian jurisdictions. It would also align with South Australia's history of nation leading policy in the women's voting rights, Aboriginal and Torres Strait Islander Voice to Parliament and anti-discrimination laws.

### **The effectiveness of current laws and mechanisms for protecting human rights in South Australia and any possible improvements to these mechanisms**

The current laws and mechanisms in South Australia are unclear, not well known, and have limited enforceability (2). An effective Human Rights Act for South Australia would play an important role in addressing poor protection of human rights for South Australians who experience health inequities, providing rights that are protective of health and key social determinants of health such as education, housing, and employment.

South Australians with poor human rights protection include: women (in the workplace and at home) who face a high incidence of family and domestic violence, sexual harassment, and gender based discrimination; persons with disabilities who experience marginalisation and face barriers to health, education and other services; Aboriginal and Torres Strait Islander people who have high

rates of incarceration, much lower life expectancy and much higher premature mortality, avoidable mortality, and infant mortality rates; persons experiencing mental illness, people experiencing homelessness; LGBTQIA+ persons; refugee and migrant communities; and children and young people (3).

Providing an enhanced human rights framework as called for by the Law Society of Australia (3) would provide effective access to human rights for South Australians who are currently poorly protected under South Australian law, ultimately reducing harmful and inequitable effects of breaches of human rights on health and well-being. A South Australian Human Rights Act would create a legislated framework of the human rights South Australians value most highly, raising broader awareness of and respect for human rights.

### **The operation and effectiveness of human rights legislation in other jurisdictions**

The ACT, Victoria and Queensland have all passed Human Rights Acts, with the ACT legislation now in effect for almost 20 years.

Case studies show concrete benefits delivered by the ACT, Victoria, and Queensland Human Rights Acts, which have promoted human rights focused service delivery and improved policy formation through consideration of human rights (4, 5). The ACT government has published guidelines for the development of legislation and policy which instruct departments on how they can consider the human rights that are protected in the ACT Human Rights Act. These guidelines include instructions for consideration of cultural rights when developing policies that may potentially limit Aboriginal and Torres Strait Islander people or other culturally and linguistically diverse groups from taking part in cultural practices (6).

There are multiple case study examples of the Victorian Human Rights Act protecting Victorians against breaches of the right to housing (5). The right to housing is a key human right for preventing against harmful health effects of housing instability and homelessness and is of utmost importance with the current rental and housing crisis impacting on South Australians. Case studies also provide examples of the Victorian Human Rights Act providing protection for the rights of LGBTQIA+ people, the Queensland Human Rights Act providing protection for Aboriginal and Torres Strait Islander cultural rights, and the ACT, Queensland, and Victorian Human Rights Acts helping people with disability (5).

The Victorian charter also requires that contractors or other third parties performing public functions on behalf of a public authority must take steps consistent with human rights (5). This is key to the effectiveness of human rights legislation in an environment where there is outsourcing of public functions to ensure that human rights are protected even when consultants who are not subject to the same policies and expectations of state government employees carry out public functions.

### **The potential human rights protections in any act**

South Australia could base its legislation on learnings from the ACT, Victorian, and Queensland Human Rights Acts which are based on the United Nations *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, both subsets of the 1948 United Nations Universal Declaration of Human Rights (2).

Rights included in the ACT, Victorian, and Queensland Human Rights Acts focus on civil and political rights, but also identify social, economic, and cultural rights (2). It is vital that a South Australian Human Rights Act follow these examples by including cultural and other rights of Aboriginal and Torres Strait Islander peoples, and rights to key social determinants of health such as the right to housing, the right to education, the right to work (and rights in work), and the right to health services. The right to health should also be included as a key right outlined in the World Health Organisation (WHO) Constitution and the United Nations Universal Declaration of Human Rights (7).

Including these rights in a charter of human rights that protects all South Australians will assist in remedying causes of health inequities for groups that currently have poor protection of human rights, and increasing awareness of rights to determinants that are key to promoting health and assisting in preventing illness.

### **The potential implications of any act for the making of laws, courts and tribunals, public authorities and other entities**

The PHAA supports the policy position of the Law Society of South Australia which calls for the following key features of a South Australian Charter of Rights (3):

*“All Bills and legislative instruments should 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 Human Rights Standing Committee.*

*All legislation, regulations and other rules/directions made under legislative or regulatory authority should be interpreted so far as reasonably possible consistently with their purpose in a manner compatible with the human rights protected by the Charter and taking into account relevant interpretations of those rights adopted by international human rights institutions.*

*There should be a duty on all public authorities and all bodies carrying out public functions to act compatibly with the human rights protected by the Charter, and there should be a statutory right to review the decisions of public authorities on the grounds of failure to have regard to human rights protected under the Charter, for example through the South Australian Civil and Administrative Tribunal (SACAT) and/or a court.*

*There should be a direct and independent right of legal action where a person alleges their rights under the Charter have been violated without justification by a public authority or a body carrying out public functions, for example through SACAT and/or a court, and the Commissioner for Equal Opportunity and public interest groups should have standing to intervene as well as to initiate proceedings on behalf of individuals.*

*Where a person’s rights under the Charter are found to have been violated, there should be an effective remedy and adequate reparation provided.”*

**The PHAA strongly supports the adoption of a Human Rights Act in South Australia.**

**The PHAA recommends any new legislation is aligned with the WHO Constitution and the United Nations Universal Declaration of Human Rights and includes a focus on protecting the right to health and key social determinants of health.**

**The PHAA recommends consultation with specific population groups that are vulnerable to health inequities and currently face poor human rights protection. In particular, this should include consultation with Aboriginal and Torres Strait Islander and other culturally and linguistically diverse groups to ensure new legislation is culturally safe and appropriate.**

The PHAA appreciate the opportunity to make this submission. Please do not hesitate to contact us should you require additional information or have any queries.

Sincerely,



Professor Jacquie Bowden  
PHAA Branch President (SA)  
Public Health Association of Australia

## References

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