Rights Resource Network SA

connecting change creators + law makers

The Secretary
Social Development Committee
Parliament of South Australia
GPO Box 572
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Via email: sdc@parliament.sa.gov.au

22 December 2023

Dear Committee Secretary

POTENTIAL FOR A HUMAN RIGHTS ACT FOR SOUTH AUSTRALIA

Thank you for the opportunity to contribute to this important Inquiry.

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

> The Network supports the enactment of a Human Rights Act or Charter for South Australia.

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

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

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

The outcome of the Expert Delegates meeting was the *Designing a Human Rights Framework for South Australia Report* which is attached in full at the end of this submission. On International Human Rights Day 10 December 2022, the Rights Resource Network joined with the Australian Lawyers for Human Rights and the South Australian Council for Social Services to issue a Joint Statement calling for an inquiry into a Human Rights Framework for South Australia signed by over 150 organisations. On International Human Rights Day 10 December 2023 the Rights Resource Network celebrated this Committee's decision to conduct an Inquiry into a Potential Human Rights Act for South Australia. There is momentum for reform, and we are out the front. We are grateful for the generosity and solidarity shown by so many South Australian colleagues and supporters along the way.

The Rights Resource Network SA values our state's proud record of adopting socially progressive legislation. We believe it's now time to consider the next chapter – a Human Rights Act that legally protects the dignity, security and interests of all South Australians.

The framework proposed in the *Designing a Human Rights Framework for South Australia Report* reflects our desire to live in a society that strives for the values we hold most dear - justice, equality and a 'fair go' for all.

As South Australians we seek not just a new law, but concrete action that will foster a society based on mutual respect. We want to help build a society based on a culture of respect for human rights across government, parliament, the courts and our communities.

In Australia, the governments of the Australian Capital Territory, Victoria and Queensland have already enshrined human rights in Acts of Parliament. These laws are delivering meaningful improvements in people's everyday lives. South Australia now has an opportunity to consider learnings from these jurisdictions and take action to put in place similar laws to protect the wellbeing of everyone in our state.

We want a framework that requires the South Australian government to consider everyone's basic rights when it designs new laws, regulations or policies. Importantly, we also want all South Australians to have accessible pathways to resolve any disputes about their rights and achieve effective remedies if their rights have been unjustifiably breached. We want dispute resolution and rights protection that is focused on delivering practical solutions, without involving people in expensive litigation. As the Australian Human Rights Commission's *Free and Equal* report has documented in detail, it is essential that everyday people have access to affordable, meaningful remedies if their rights have been unfair or unjustifiably breached - the are no rights without remedy.[1]

We know big ideas come with lots of detail, and we've thought carefully about how this idea could work in practice – that's why we have attached the *Designing a Human Rights Framework for South Australia* Report to this submission. To further assist the Committee with it's important work, we have responded specifically to each of the Committee's terms of reference.

The Rights Resource Network SA looks forward to continuing to participate in this Inquiry and would welcome the opportunity to assist the Committee further in any appropriate way, including by appearing to give evidence or hosting a community forum. Please contact Rights Resource Network SA Director Dr Sarah Moulds on [redacted] or [redacted] to discuss.

Yours sincerely

[redacted]

Dr Sarah Moulds, Director, Rights Resource Network SA

[1] See ACT Parliament, Inquiry into Petition 32-21 (No Rights Without Remedy) (2022) available at <https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/jcs/inquiry-into-petition-32-21>.

ADDRESSING THE COMMITTEE'S TERMS OF REFERENCE

a) the effectiveness of current laws and mechanisms for protecting human rights in South Australia and any possible improvements to these mechanisms;

Although specific human rights legislation exists in the Australian Capital Territory, Victoria and Queensland [2], at the state level in South Australia there is no human rights legislation or parliamentary Human Rights Committee to scrutinise proposed new laws for compliance with human rights. However, there are features of the current South Australian law-making system that seek to promote and protect human rights. These include:

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

Table 1 of the *Designing a Human Rights Framework for South Australia* Report contains a summary of the existing South Australian laws that include explicit protections for human rights (as at 2022), or that include within their purpose of objectives the aim of protecting or promoting specific individual rights.

Whilst valuable in their own right, these laws present two intersecting challenges that underscore the need for a Human Rights Act in South Australia:(1) they are limited in scope and enforceability, meaning that they are either aspirational in tone and impact or they can only be accessed by *some people, some of the time and in specific circumstances* and (2) they lack any consistent framework or discourse to tie them together or to promote a broader community or public service understanding of their content and relevance to the lives of South Australians. As a result, the rights concepts included in these Acts might have meant something important at the time they were first legislated but have since lost the power that comes from integrating a culture of rights awareness and observance across the broader community, and among key government service providers and decision makers.

This in turn leads to a situation in which South Australians *expect* decision makers in government and in parliament to carefully consider the impact new laws and policies will have on their rights, interests and wellbeing, but often do not realise that there is *no comprehensive framework or human rights law* that provides them with that general entitlement. 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.

Moreover, these existing laws have *gaps.* They are failing to secure the dignity of individuals and groups of South Australians who fall outside of their scope or prescribed criteria. This includes South Australians experiencing mental distress, persons with disabilities, Aboriginal children in care or correctional facilities, older people in aged care facilities, regional and remote

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

communities who have to pay more or travel further for basic services or essentials, and people experiencing housing stress or homelessness.

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

These gaps are why we need a Human Rights Act or Charter for South Australia. A rights-focused law would make a real difference on the ground, as some members of the Rights Resource Network have explained:

> *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.*
>
> *The lack of clear, authoritative, binding statement(s) regarding the rights of peoples and responsibilities of government and commercial entities to meet those rights has meant there is no consistent guidance for either group when devising social interventions, evaluating them, or proposing new services. A common framework provides a central resource, and supported by statutory bod(ies) provides a common process for design, revaluation, and dispute resolution across government and commercial sectors. This clarity improves individual access to redress, but also a common understanding of who has what responsibilities.*
>
> *Adopting a Human Rights framework and ensuring Parliament are accountable to obligations may see bills either progress or not progress on the basis of human rights. It is marginalised people - women, children, young people, older people, refugees, CALD people etc - that suffer most when policy does not priorities rights. A human rights framework could see a decriminalisation of sex work bill pass or the legislation allowing mandatory youth treatment orders abandoned.*
>
> *In the COVID-19 context that sees lifelong impacts looming for young people, I believe the accountability of governments to reform legislation with a priority on respecting, protecting and fulfilling rights is fundamental to a genuine recovery for young people. Also, in my volunteer work relating to sex work law reform we have seen opportunities to protect and fulfill the rights of marginalised workers missed because Parliament is not under an obligation to take action to progress towards equal access to human rights.*

The below case study examples also illustrate the type of on-the-ground impact human rights legislation can have. They have been complied by our friends at Australian Lawyers for Human Rights and the Human Rights Law Centre.

- A Victorian Aboriginal woman lived in housing owned and leased by a non-Aboriginal community organisation. A condition of her tenancy was that she was required to engage with community services. After her nephew died she went back to her country for a couple of weeks of 'sorry business'. When she returned she started receiving warnings to engage with services, however she wasn't able to do so because she was overwhelmed with family responsibilities, trauma and grief. A possession order was made and the police came to

her door with a warrant. Her advocates made an application for an urgent review and stay. They argued that the community organisation had failed to engage with her cultural rights and the rights of her grandchild and family members in their eviction process. These rights are protected in the Victorian Charter of Human Rights and Responsibilities Act 2006. As a result the community organisation withdrew their possession application and engaged an Aboriginal support service.[3]

- A Victorian student with a learning disability was threatened with expulsion by his school due to his behavioural issues. His advocate outlined to both the school and to the Department of Education and Early Childhood Development the student's relevant human rights as protected in the Victorian Charter of Human Rights and Responsibilities. As a result of the communication, the boy was provided with support, which reduced his behavioural issues and consequently, he was allowed to stay on at the school.[4]
- A young Victorian girl had been abused. Her advocates used the Victorian Charter of Human Rights and Responsibilities Act, and in particular the right to the protection of family and children, to argue that she shouldn't be required to give evidence against the alleged perpetrators. They said that this right should be given proper consideration when determining whether a young person should be required to provide testimony. As a result the girl was not required to give evidence.[5]
- The Victorian Charter of Human Rights and Responsibilities Act was used in a matter relating to the payment of rent and repairs to a property. The woman involved had been forced to flee the property due to domestic violence. The advocate successfully used the Charter in arguing for the reopening of the matter after the limitation period had expired to protect the woman's rights.[6]

A Human Rights Act or Charter is also necessary to address gaps in the 'upstream' features of South Australia's law making system, as Associate Professor Laura Grenfell and Dr Sarah Moulds recently wrote in the December 2023 edition of the *Law Society Bulletin:*

> *When we refer to upstream benefits, we mean all the decisions, processes and activities that happen before a law is introduced to parliament, or a policy is implemented by public servants. The stuff that happens 'behind the scenes' in our lawmaking system. Currently in South Australia, people and institutions working upstream are not prompted to think about human rights when they are doing their work – or if they are, it's on an ad hoc basis or as an afterthought. Unlike other jurisdictions with human rights legislation, in South Australia we have no systematic human rights scrutiny structures in place for either policy making or lawmaking.*
>
> *South Australia is presently in a black hole of rights scrutiny. Regardless of whether or not they are urgent, bills in the South Australian Parliament are rushed through without*

[3] Source: Victorian Aboriginal Legal Service Submission to the 8 year review of the Charter, Submission 98 (Case Study 1).

[4] Source: Youth Affairs, Council of Victoria: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006, in Charter of Rights in Action www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf (Case Study 56, p 34).

[5] Source: Fitzroy Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006, in HRLC Charter in Action www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf (Case Study 48).

[6] Source: Australian Lawyers for Human Rights: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006, in Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006; in Charter of Rights in Action www.hrlc.org.au/ files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf (Case Study 74, p 39).

any systematic scrutiny of their rights impact on parts of the population. We have no explanatory memoranda to set out the aims of bills. We have no statements of compatibility which require the executive to turn their minds to how a bill engages with common law rights or internationally recognised rights.[7] *South Australia has no designated parliamentary committee to scrutinise how these bills impact on rights and no system for recording who the government has consulted with in the development of the bill. While most of our leaders strive to make good, fair laws, we have no shared way of checking that the laws promote the values of dignity, equality, freedom and justice, and do not have any unintended consequences for those most at risk of having their rights and dignity infringed.*

When the executive is developing policies and laws, and giving consideration to how these laws and policies might impact on various parts of the population, this process would benefit from a human rights lens, guided by a specific Human Rights Act. This strengthening of the upstream process is important because once laws and policies head downstream, they can be very difficult to remedy.[8] *Our research suggests that resourcing and incentivising parts of the executive to do this form of human rights risk assessment is an excellent investment - it will save millions of dollars that might otherwise be spent on Royal Commissions, courts and tribunals that look at the problems downstream, on the frontline in communities, when the upstream processes have not worked.*[9]

A Human Rights Act for South Australia could also clarify that public authorities have a positive duty to act consistently with human rights, and provide incentives and practical guidance for the executive when it comes to consultation with relevant communities (such as Aboriginal communities and persons with disabilities) about laws and policies that disproportionately impact them.[10] *Currently we have a disconnect between communities vulnerable to rights abuses and the process and practices of parliament. This disconnect is a barrier to the development of practical solutions to local problems, and it erodes public trust in democratic institutions like parliaments.*

Currently we rely on the good will of government offices to act consistently with human rights and to consult with communities most affected when drafting laws and policies. In our view, a Human Rights Act for SA could help to ensure that these executive activities take place in a robust, systematic way – and will make sure public servants are given the right tools and support to perform this role of upstream scrutiny. This also saves parliamentarians valuable time and energy by giving them confidence about

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[7] See e.g. Laura Grenfell, 'An Australian spectrum of political rights scrutiny: "Continuing to lead by example?"' (2015) 26 *Public Law Review* 19; Laura Grenfell and Sarah Moulds, 'The Role of Committees in Rights Protection in Federal and State Parliament in Australia', (2018) 41(1) *UNSW Law Journal* 40; Sarah Moulds, *Committees of Influence: parliamentary rights scrutiny and counter-terrorism lawmaking in Australia*, (Springer, 2020); See also the collection of essays in Julie Debeljak and Laura Grenfell (eds), *Law Making and Human Rights: Executive and Parliamentary Scrutiny across Australian Jurisdictions* (Lawbook Co, 2020).

[8] See e.g. A Mackay, L Grenfell, & J Debeljak, 'A New Aged Care Act for Australia? Examining the Royal Commission's Proposal for Human Rights Inclusive Legislation' (2023) 46/3 *University of New South Wales Law Journal*, 836; L Grenfell, 'Towards human rights compliance in Australian prisons' (2022) 28(1) *Australian Journal of Human Rights* 194-198;
Sarah Moulds & M Knight, 'Legislating for human security: could South Australia lead the way again?', (2023) 48(1) *Alternative Law Journal* 38-46.

[9] These cost savings are also documented by the Australian Human Rights Commission with reference to specific examples including 'Robodebt' and Royal Commission into Aged Care. See Australian Human Rights Commission, *A National Human Rights Act for Australia,* 7 March 2023, pp. 116-118.

[10] This approach would be consistent with the model recently proposed by the Australian Human Rights Commission in its extensive Position Paper entitled *A National Human Rights Act for Australia,* 7 March 2023. See also Sarah Moulds, 'From disruption to deliberation: improving the quality and impact of community engagement with parliamentary law making' (2020) 31(3) *Public Law Review,* 264-280.

the nature and extent of the pre-introduction consultation that has occurred with respect to proposed laws.

b) the operation and effectiveness of human rights legislation in other jurisdictions;

Human Rights Acts have already been passed in the Australian Capital Territory (2004), Victoria (2006) and Queensland (2019) These laws are ordinary acts of parliament that can be amended and they provide protection for rights based on the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

These laws are what is commonly described as a 'dialogue' model of human rights protection. This means that the different parts of government are encouraged to talk to each other about how to define, protect and reasonably limit human rights. The public service, Parliament and the courts each have a role to play in protecting human rights first. For example, under the *Human Rights Act 2019* (Qld), new laws must be introduced within a document called A Statement of Compatibility, which assesses the impact of the law on human rights and explains why the law is compatible with human rights. Existing parliamentary committees will scrutinise these statements when they are assessing new laws, and these committees also receive the benefit of external human rights advice from a panel of Expert Human Rights advisors. Once the law has been made, the courts must interpret laws in a way that is compatible with human rights where possible to do so, and can make a declaration if they find a law is not compatible with human rights. The courts cannot change the law – even if it is considered contrary to human rights standards – but they can flag this for attention of the Parliament. Lastly, public entities which include government departments, public service employees and ministers, must act and make decisions in a way that is compatible with human rights and must consider relevant human rights when making decisions.

Similar dialogue models of rights protection exist in Victoria and the ACT. **Table 2** of the *Designing a Human Rights Framework for South Australia* Report contains a description of **What Human Rights Frameworks look like in nearby Jurisdictions** (current as of **2022**). It should be noted that recently reforms have been enacted in the Australian Capital Territory to create a new complaints pathway to the ACT Human Rights Commission to conciliate complaints relating to alleged breaches of human rights by public authorities in the ACT. This followed a successful community campaign and petition process entitled '**no rights without remedy'**. [11] Under the new amendments,[12] community members who believe their human rights have been breached by an ACT public authority will be able to raise those concerns with the Commission and use its free and accessible conciliation process to have those concerns addressed. The types of outcomes that can result from conciliations at the Human Rights Commission include apologies, changes in policies and procedures, and staff training. In cases where a resolution cannot be reached through conciliation, the Commission will be able to make recommendations to the public authority about any actions they should take to ensure their acts and decisions are compatible with human rights. This means that the ACT Human Rights Commission will provide a 'one stop shop' for many Canberrans to raise concerns about issues that affect their daily lives and participation in public life.

As noted below, a similar model should be considered in South Australia, with the potential to streamline existing complaints pathways, and save time and money both for those who have

[11] See ACT Parliament, Inquiry into Petition 32-21 (No Rights Without Remedy) (2022) available at <https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/jcs/inquiry-into-petition-32-21>.

[12] *Human Rights (Complaints) Legislation Amendment Act 2023* (ACT)

experienced human rights breaches *and* for busy statutory agencies and members of parliament who are often tasked with responding to complex or multi-dimensional complaints arising from sub-standard public service delivery, or decision making by public bodies.

c) the strengths and weaknesses of adopting a Human Rights Act in South Australia;

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

a. Articulate a set of common values and principles that define and preserve our modern democracy

b. Address the inequality and discrimination, and lack of access to fundamental services, experienced by many vulnerable groups within our community

c. Clearly define the expectations we have of each other and our State institutions

d. Improve community engagement with and trust in public institutions

e. Assist members of parliament to respond to and resolve concerns raised by their constituents in a consistent, effective and efficient way

f. Increase accessible and easy to understand resources for members of the public to consult when they believe their rights have been infringed

g. Improve the quality, effectiveness and accessibility of government services and government decision-making

h. Reduce waste and inefficiencies by identifying practical alternatives to rights-abrogating practices or policies

i. Improve the quality of parliamentary lawmaking by increasing access to information about the intended objectives and impacts of proposed legislation

j. Improve public understanding of existing legal rights and remedies and provide new pathways to challenge unfair or inadequate decision-making or treatment

k. Identify and address complex and systematic social disadvantage including homelessness, domestic violence and the disproportionate rate of Aboriginal people in custody

l. Clarify and consolidate existing statements and charters of rights that currently exist in South Australian law and policy with respect to certain groups or services.

During the Expert Workshop at the end of 2021, these ideas were expressed eloquently by some of delegates as follows:

> *It is crucial we have a framework that is focussed on people's needs cognizant of their rights, promoting the human rights of each person and each group of people marginalised and with less power, to ensure the balance of power is assured in this space. To ensure that democracy is working and that we do not accidently 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 prioritise 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 Expert Delegates also observed that an advantage of a human rights framework is that it can shift the context of risk assessments and planning cycles to longer-term points of view and do so in an organic way. That may be one of the most important potential benefits of an obligation to consider human rights in policy-making and in day-to-day operations of government.

The Committee's terms of reference also request information about the weaknesses of a potential Human Rights Act for South Australia. The Rights Resource Network SA does not consider our proposal to have weaknesses, but we have thought carefully about the arguments *against* a Human Rights Act for South Australia. For example, it could be argued that:

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

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

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

- Adopting an *inclusive* list of protected human rights, based on Australia's international commitments but developed and articulated following consultation with the South Australian community;
- Ensuring that any list of protected human rights, and all other components of the Human Rights Framework or Human Rights Act, are *subject to regular parliamentary and community review* (for example through the use of sunset clause or review provision) so that additional rights could be added or existing rights reformulated to better meet the needs of the South Australian community;
- Drawing upon and *consolidating existing South Australian legislation* that includes statements of rights or human rights principles or that permits Charters of Rights to be developed as part of Government policy;

- *Identifying and addressing gaps* in existing legal protections for human rights, in close consultation with the South Australian community, and providing *clear, accessible legal pathways* and *enforceable remedies* for breaches of rights;
- Building on existing best practice by incorporating a '*duty of due regard'* to make it clear that government officers and service providers must consider the human rights of individuals when making decisions that impact their lives; and
- *Preserving and promoting parliamentary sovereignty* and robust political debates on rights issues by recognising that most rights can be subject to reasonable and justifiable limitations, and ensuring that parliament is able to develop, introduce and even enact rights-impacting laws provided they do so in full public view, and following consideration of the full range of rights impacts arising from their proposals.

d) the potential human rights protections in any act;

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

It is important to note that during the development of many of these instruments, particularly the UN Declaration of Human Rights, conflicts arose over the primacy of 'political' rights as against 'economic' rights. These conflicts were not resolved at the international level until the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights was finalised in 1976. This resolution brought with it a renewed focused on Indigenous rights, education rights and social justice which we value so highly today, and which really matter for the lives of South Australians. These rights protect things like the right to clean water, the right to adequate housing and shelter, the right to education and the right to health. Delegates considered it critical that these rights be included in any South Australian Human Rights Framework.

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

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

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

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

> *The rights of Aboriginal nations should have explicit recognition, consultation, and consideration in the framework and its operation. There are many benefits to all members of SA society for active engagement with Aboriginal cultures and peoples.* [13]

For these reasons, the Rights Resource Network SA submits that any list of rights included in a South Australian Human Rights Framework should pay particularly close attention to the rights of First Nations peoples and the rights of children, and should include economic, social and cultural rights as well as civil and political rights. This should include, for example, the right to health care, the right to education and the right to shelter. Consideration should also be given to extending any list of rights to include environmental rights and to accommodate group rights as well as individual rights.

[13] RRNSA Survey Response

e) the potential implications of any act for the making of laws, courts and tribunals, public authorities and other entities;

During the Expert Workshop, delegates identified a number of features of a South Australian Human Rights Framework can be achieved without legislative change and should be actioned immediately. These include:

a. Prioritising and highlighting the existing Scrutiny Principles for the Legislative Review Committee which already include a reference to reviewing whether certain delegated legislation trespasses unduly on personal rights and liberties, and allocating additional secretariat resources to this Committee to undertake more systematic scrutiny of rights-impacting regulations and proposed legislation.

b. Publishing the Explanatory Statements or Explanatory Notes that are currently drafted and circulated to members of parliament when a new Bill is introduced and including a description of the extent to which the Bill trespasses unduly on personal rights and liberties and/or impacts or complies with human rights standards.

c. Establishing a Select Committee of the Parliament to consult with South Australians about whether the state would benefit from the introduction of a Human Rights Framework for South Australia or refer this issue to the South Australian Law Reform Institute to consult with the community and provide a report with recommendations.

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

e. Identifying human rights champions within the public service and embed rights into Key Performance Indicators for public servants and integrate human rights considerations within cabinet approval processes for proposed policy and legislation.

2. Other features of a South Australian Human Rights Framework should be set out in stand-alone legislation (such as a Human Rights Act or Charter of Rights) that should be developed in close consultation with the South Australian community. Key features of such legislation should include:

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

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

      i. This could be supported by a Human Rights Advocate or Commissioner within the Public Service or a separate Statutory Office of Human Rights Commissioner with a mandate to undertake this type of training and public awareness.

   c. A requirement that human rights principles are considered in all forms of government decision making and parliamentary law-making. This could include:

i. Establishing a Parliamentary Committee on Human Rights or an Independent Expert Panel on Human Rights to review existing and proposed laws for compliance with human rights standards and provide advice to Parliament.

ii. Requiring Bills and legislative instruments to be introduced with a Statement of Compatibility with Human Rights setting out the extent to which they comply with (or otherwise) the rights listed in the Charter.

d. Clear pathways for individuals and groups to challenge government decisions on the basis that government authorities have failed to consider human rights principles, or acted in a way that unjustifiably burdens or breaches individuals' or groups' human rights.

    i. This could take the form of a 'duty of due regard' modelled on that contained in section 1 of the *Equality Act 2010* (UK).

    ii. It could also take the form of an independent complaints body such as a Human Rights Commission or Human Rights Advocate.

e. Meaningful remedies for individuals and groups that can show that their human rights have been ignored or unjustifiably burdened or breached.

    i. This could include establishing a legal cause of action for breaches of human rights or establishing enforceable remedies following successful complaints proceedings before a Human Rights Commission or similar body.

f. Regular, public and independent review of South Australia's progress towards improving human rights outcomes and preventing human rights abuses.

    i. This could include opportunities for community organisations to evaluate the human rights performance of government departments or provision of government services.

It could also involve consideration of the establishment of an independent Human Rights Commission or Human Rights Advocate.

The Rights Resource Network SA encourages the Committee to consider the full text of the *Designing a Human Rights Framework for South Australia* Report and looks forward to assisting the Committee with any aspects of its work that may be appropriate.