
Submission to the South Australian Parliament's Social Development Committee Inquiry into the potential for a Human Rights Act for South Australia

16 February 2024

JusticeNet welcomes the opportunity to provide a submission to the Social Development Committee's inquiry into the potential for a Human Rights Act in South Australia. **We support the enactment of a Human Rights Act, also known as a Human Rights Charter, in South Australia.** We are available to give evidence to the Committee, should we be invited to do so.

Introduction

JusticeNet is an independent, not-for-profit legal service for South Australians who cannot afford a lawyer or get the legal help they need elsewhere. We leverage the expertise of our pro bono network to help our clients secure just outcomes that improve their quality of life.

This submission will explain why we believe that South Australia should enact a Human Rights Act, and outline how it could improve the lives and rights of every day South Australians: the constituents of Committee Members. South Australians want to help build a society based on a culture of respect for human rights across government, parliament, the courts and our communities. We need a framework that requires the South Australian government to consider everyone's basic rights when it designs new laws, regulations or policies. South Australians also need 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: contrary to the myth that a Human Rights Act would be a 'lawyers' picnic, **we hope and expect that a fully realised Human Rights Act for SA would see less demand for lawyers and pro bono legal representation in SA.**

In 2022, JusticeNet joined more than 150 organisations and individuals from all walks of life in supporting a Joint Statement calling for a Human Rights Act for South Australia and were involved in the *Designing a Human Rights Framework for South Australia Final Report* in February 2022. **It's now time for the South Australian Parliament to take the next step.** We support a legislated Human Rights Act, like those in Victoria, Queensland, and the Australian Capital Territory. South Australia could take the best features of these laws, learn from the experience of these jurisdictions, and consider the position paper released by the Australian Human Rights Commission in March 2023 when drafting its own Human Rights Act.

Statement Addressing the Inquiry's Terms of Reference

Aboriginal people must be involved in all aspects of the Parliament's development of a South Australian Human Rights Act as their living culture has maintained systems of law here for millennia: complex systems that pre-date concepts such as the rule of law and survive now, as they always will. JusticeNet looks forward to learning from the State Voice to Parliament's contributions to the continuation of law and culture in SA, including on the topic of a Human Rights Act.

A South Australian Human Rights Act must include all the human rights Australia has already promised to uphold under international law since 1948, including civil, political, economic, social and cultural rights under the *International Covenant of Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, as well as the rights of children and people with disabilities.

JusticeNet's submission will expand on the example of the rights **Access to Justice** and **Adequate Housing** for all people, however we strongly emphasise that having a Human Rights Act in our experience will set a community and social standard that is likely to lead to a reduction on demand for legal services and alternate avenues of remedy for people who currently turn to JusticeNet with nowhere else to go. Without a Human Rights Act there is often very little we can do to assist, and the lack of dignity, respect and equality that is afforded to those in our community who seek help for their treatment becomes an exacerbating factor – which ends up costing the state much more in the criminal justice system. A Human Rights Act is a preventative measure for an extremely costly – and increasingly more costly issue: injustice.

Access to Justice is a basic principle of the rule of law.

- The **rule of law** is the concept that all people and institutions are governed by the law, are equal before the law, and that the law is known to all. (section 5 of the Australian Constitution and <https://peo.gov.au/understand-our-parliament/how-parliament-works/system-of-government/rule-of-law>)
- **Access to Justice** includes (from <https://lawcouncil.au/justice-project/access-to-justice>):
 - Getting information about the law and how it applies to you;
 - Understanding when you have a legal problem and knowing what to do about it;
 - Getting the right help with a legal problem, including from a lawyer;
 - Being able to deal with your legal problem and being able to understand the outcome; and
 - making sure your voice is heard when laws are made.
- Certain aspects of the rule of law are themselves human rights, including the right to a fair hearing (article 14 of the *International Covenant of Civil and Political Rights*).
- The protection of human rights is dependent on the rule of law: the two concepts are 'indivisible and intrinsic' and 'interlinked and mutually reinforcing' (see chapter 14 of *50 Human Rights Cases that Changed Australia* by Lucy Geddes and Hamish McLachlan).
- This concept of relationality – that everything is interconnected and shifting in a non-static way – is part of knowledge systems that have endured in the living culture and law of Aboriginal people for at least 65,000 years, long before the Magna Carta. (<https://www.commonground.org.au/article/first-nations-systems-thinking>)

Adequate Housing is part of the right to an adequate standard of living in article 25 of the 1948 *Universal Declaration of Human Rights* and in article 11.1 of the 1966 *International Covenant on Economic, Social, and Cultural Rights*.

- There are limited human rights protections for people experiencing homelessness in SA and no clear obligation on local or State governments to protect people against homelessness or treat people experiencing homelessness with dignity.
(https://humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA_homeless.pdf)

We utilise the case studies of JusticeNet clients throughout the statement addressing the terms of reference. **Sally's story is one about Access to Justice. Leo's story is one about Adequate Housing.** Their names have been changed to protect their privacy, but they are real people: citizens and constituents with families, friends, and dignity.

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

- i. **Sally's story:** *effectiveness of current laws and mechanisms to enable Sally's access to justice.*

Sally's former domestic partner filed a civil claim against her in a South Australian Court. That claim alleges that Sally's former domestic partner is entitled to more than \$1million dollars in damages from her. Sally cannot afford to pay a private lawyer and she is not eligible for legal aid in a matter that would bankrupt her if she lost. Sally is not eligible for legal aid and has no right to legal representation, contrary to article 14 of the *International Covenant of Civil and Political Rights*.

- ii. **Sally's story:** *possible improvements to current mechanisms to enable Sally's access to justice.*

Family and civil law matters, which disproportionately impact women, are largely unfunded by legal aid while most of scarce legal aid funds are directed to criminal offences where there is a limited right to have a trial postponed if an accused person is unable to obtain legal representation. (see *Dietrich v The Queen* [1992] 177 CLR 292 and chapter 10 of *50 Human Rights Cases that Changed Australia* by Lucy Geddes and Hamish McLachlan). An expansion of the eligibility criteria of, and funding for, legal aid would mean Sally could obtain representation from the Legal Services Commission.

- iii. **Leo's story:** effectiveness of current laws and mechanisms to protect Leo's right to adequate housing.

For the past 13 years, Leo and his daughter have lived in their vans on the Fleurieu Peninsula after health challenges forced Leo to sell his business and home on the east coast of Australia. Despite attempting to rebuild his life, his mental health declined, leading to a diagnosis of clinical depression and severe anxiety. In his pursuit of community and connection, Leo faces the harsh reality of being constantly asked to "move on" without any viable alternatives to park his van more permanently. This not only displaces vulnerable individuals further from towns, but also exacerbates feelings of worthlessness and isolation.

- iv. **Leo's story:** possible improvements to current mechanisms to protect Leo's right to adequate housing.

Leo and his daughter have a van, which they enjoy the freedom of, but their right to an adequate standard of living is constantly interfered with when they are asked to move on from public places. Although some SA Councils have 'rough sleeper management guidelines' and the like, Council staff and Police have treated Leo with hostility when he is not infringing on any other community members' rights. Leo advocates for greater education, training, and awareness among law enforcement and council workers to address the public perception of

homelessness. He suggests a more compassionate approach, focusing on communication and genuine concern rather than hostility.

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

- i. What if Sally lived in a jurisdiction with a Human Rights Act?

There is no right to legal representation in civil matters in any Australian court (*NSW v Cannellis* [1994] 181 CLR 309 at 328) or in any Australian jurisdiction with a Human Rights Act.

- ii. What if Leo lived in a jurisdiction with a Human Rights Act?

Protecting and promoting the rights of people who are homeless or at risk of homelessness is not just about providing adequate housing. It is also about understanding and addressing the complex range of factors that lead to homelessness and protecting the dignity of all people, including those who are homeless. If Leo lived in a jurisdiction with a Human Rights Act, it is more likely that, the public servants who make decisions and deliver services that would address the root issues – as opposed to constant shifting of problems and intrenching further trauma.

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

- i. What would happen to Sally if there was a Human Rights Act in SA?

If Sally had the right to get help from a lawyer in a civil matter (a cost that would otherwise bankrupt her), the benefits to Sally, her children, and the community would be immense. It is discussed further below at e), but having lawyers on matters that cannot be resolved through alternative dispute resolution including mediation, means that less of the Court's time is taken on assisting unrepresented litigants.

- ii. What would happen to Leo if there was a Human Rights Act in SA?

Leo would be a connected member of a small community. His interactions with public servants and their interactions with him would be more likely to be based on respect rather than hostility.

d) the potential human rights protections in any act;

i. Access to Justice

- Getting information about the law and how it applies to you;
- Understanding when you have a legal problem and knowing what to do about it;
- Getting the right help with a legal problem, including from a lawyer;
- Being able to deal with your legal problem and being able to understand the outcome; and
- making sure your voice is heard when laws are made.

These human rights protections do not always mean that a person needs a lawyer. An Allied Justice approach, supported by a Human Rights Act, would go a long way to protect the human rights of South Australians (see <https://www.churchilltrust.com.au/project/to-evaluate-practical-models-to-improve-access-to-justice-in-isolated-and-disadvantaged-communities/>)

ii. Adequate standard of living.

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

- i. What would be the impact on laws, courts and tribunals, public authorities, and other entities if access to justice was protected by a Human Rights Act?

Access to justice does **not** mean that every person whose rights are infringed gets a lawyer. Access to justice means that citizens are empowered to resolve their legal problems themselves, rather than needing lawyers.

When people truly do need the assistance of a lawyer in a Court, that does not slow down the process or 'clog up the Courts'. The savings to the Courts time are immense – but not measured – when parties are appropriately represented.

- ii. What would be the impact on laws, courts and tribunals, public authorities, and other entities if an adequate standard of living was protected by a Human Rights Act?

The Committee should carefully consider that the protection of housing rights should not give rise to an increase in tribunal hearings where citizens are disadvantaged by not having legal representation. We also note that in Victoria and ACT, the protection of human rights in relation to housing cannot be heard in Tribunals <https://www.hrlc.org.au/human-rights-case-summaries/right-not-to-have-home-or-privacy-unlawfully-or-arbitrarily-interfered-with-is-not-part-of-tribunal-jurisdiction-in-eviction-proceedings#:~:text=With%20reference%20to%20the%20decision,acted%20compatibly%20with%20human%20rights>

f) Any other related matters.

- i. JusticeNet's ProBono Connect service made 99 completed referrals (with the same amount will ongoing files) to our pro bono law firms and barristers in 2022/23: these are people or organisations who would have gone without legal assistance in matters that required legal assistance if not for pro bono work.
- ii. JusticeNet's Homeless Legal outreach clinics at four Adelaide metropolitan locations assisted 204 people experiencing homelessness with their legal matters in 2022/23.

Conclusion

JusticeNet assists approximately 700 people annually who are falling through the gaps of the justice system, and we must turn away almost that many again. The demand on the justice system is at breaking point – and the alternative to funding more and more lawyers is to have a society with greater access to fair, just and equitable outcomes that are restorative and preventative.

In our experience, having a Human Rights Act will set a community and social standard that is likely to lead to a reduction in demand for legal services and alternate avenues of remedy for people who currently turn to JusticeNet with nowhere else to go.

Without a Human Rights Act there is often very little we can do to assist some of the most disadvantaged people in our community. The lack of dignity, respect, and equality that is afforded to those in our community who seek help for their treatment becomes an exacerbating factor, a criminogenic factor – which ends up costing the state much more in the criminal justice system.

A Human Rights Act is a preventative measure for an extremely costly – and increasingly more costly issue: injustice.

Recommendation: The inquiry recommends the South Australian Parliament legislate a Human Rights Act.

Yours sincerely,

JusticeNet SA