

# Submission on the potential for a Human Rights Act for South Australia

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## Social Development Committee

Parliament of South Australia

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### Introduction

As South Australia's Commissioner for Children and Young People, I welcome this inquiry into the potential for a Human Rights Act for South Australia.

My mandate is to promote and advocate for the rights, interests and wellbeing of all children and young people in South Australia. My role includes ensuring that the State meets its obligations in relation to the United Nations Convention on the Rights of the Child (UNCRC).

I support the introduction of a Human Rights Act for South Australia to fully implement human rights obligations into domestic law. A stronger human rights framework is needed to improve the realisation of children's rights in South Australia.

I aspire to a South Australia where leaders, decisionmakers, organisations and service providers across all sectors proactively consider children's rights as core business rather than as an afterthought. A rights-focused legal framework would create a much-needed culture of human rights awareness and accountability across government to help ensure all South Australians access their basic human rights. Currently, there are very few formal legal mechanisms to ensure human rights are considered and protected in a consistent and systemic way.

The inadequacy of current human rights protections is evident in my annual *Child Rights Progress Reports*, which monitor the South Australian government's progress in meeting its obligations under the UNCRC in seven key areas: health, child justice, child protection, disability, education, environment and physical punishment. A Human Rights Act would provide the foundation for better outcomes across these areas, both by improving responses to human rights violations but also preventing breaches from occurring in the first place.

The inadequacy of current protections is also evident in my regular engagement with children and young people. While many children are aware that governments have a responsibility to protect their rights, there is often a gap between their expectations and how policies, systems and laws operate in practice. Some children do not know that they have rights, what they are or whether and how they're protected.

When describing the community and world they want to live in, children and young people focus on equality, fairness and respect. A Human Rights Act would articulate and uphold these values and ensure children's rights are at the centre of laws, policies and decision-making.

### Summary of recommendations

This submission highlights the need for a Human Rights Act in South Australia with explicit and comprehensive protection for children's rights. It draws on my engagement with tens of thousands of children and young people across the state since 2017. This includes

insights from children aged 8 to 12 years old as part of my annual Student Voice Postcards initiative.

Excerpts of children's handwritten postcard responses and drawings are used throughout this submission. While children's ages and schools have not been included, they are representative of more than 60,000 postcards I have received from 8- to 12-year-olds across the state since 2019. This submission is also informed by my conversations with a range of adults who raise concerns about the extent to which children's rights are recognised and respected.

The UNCRC and the Universal Declaration of Human Rights both recognise that children require special safeguards and particular support to access their rights. South Australia's human rights framework should reflect this and learn from the implementation of human rights legislation already operating in other jurisdictions.

Specifically, I recommend that the South Australian government:

- 1. Introduce a Human Rights Act for South Australia.**
- 2. Ensure explicit and comprehensive protection for children's rights, including provisions to:**
  - a. Recognise and address poverty as a structural barrier to realising children's rights.**
  - b. Fully uphold children's participatory rights.**
  - c. Protect and fulfil the rights of future generations.**
  - d. Provide comprehensive human rights education for all people and State authorities.**
  - e. Establish a framework for the realisation of children's rights to education and rights within education settings.**
- 3. Enhance human rights scrutiny of proposed laws and policies, with particular regard to children's rights impact assessments.**
- 4. Establish accountability mechanisms and sufficient resourcing to translate the ambition of human rights legislation into practice.**

I would welcome the opportunity to further assist the Committee as the inquiry progresses. In particular, I would like to express my interest in supporting oral evidence to the Committee from young South Australians who can provide further insights about the benefits of stronger human rights protections in South Australia. Please contact [commissionercyp@sa.gov.au](mailto:commissionercyp@sa.gov.au) to discuss.

Yours sincerely,



**Helen Connolly**

Commissioner for Children and Young People South Australia

### a. Introduce a Human Rights Act for South Australia.

A Human Rights Act would fundamentally improve the way decisions, policies and laws are made in South Australia. Clear articulation of human rights in legislation will help to move law, policy and practice away from a needs-based or welfare approach towards a rights-based approach where decision makers ensure children's rights are fulfilled. It will help to:

- Improve visibility and understanding of rights, particularly when supported by comprehensive rights education (see Recommendation 2d and 2e).
- Improve access to services and justice, thereby addressing inequality and discrimination and improving the wellbeing of children, families and communities.
- Put people at the centre of decision-making, improve the quality and transparency of decision-making, and consider long-term points of view, thereby building community engagement and trust.

Despite some welcome effort and investment, our existing laws, systems of government and service systems are failing to adequately and consistently protect the rights of all children and young people. This is evident in the ongoing areas of concern raised in my [2023 Child Rights Progress Report](#), which include:

- High rates of poverty, housing insecurity and food insecurity.
- Few mechanisms to support the engagement and participation of children and young people in decision-making and policymaking.
- High proportion of students with disability, Aboriginal children, and children in out-of-home care being suspended and excluded from school.
- Overrepresentation of Aboriginal children, children with disability and children in out-of-home care in the justice system.
- The legal defence of 'reasonable chastisement' permits violence against children by their parents.
- Disproportionate impacts of climate change on the rights of present and future generations of children.

A Human Rights Act would provide a foundation for better responses to systemic human rights concerns repeatedly raised by the UN Committee on the Rights of the Child and other international treaty bodies. The current absence of a legislative framework that upholds children's rights manifests in significant rights violations and in governments lacking direction and accountability to address violations.

Importantly, in addition to strengthening remedies for breaches of rights, a rights-focused framework can facilitate change across all systems and legislation to proactively build rights-respecting environments and a culture of rights accountability.

Human rights legislation in Victoria, Queensland and the Australian Capital Territory is driving more equitable outcomes in relation to health, wellbeing, safety, education, employment and housing.<sup>1</sup> A range of case studies demonstrate the positive difference human rights legislation can make to children's lives, particularly those who are marginalised and face discrimination on multiple grounds.

This includes in situations where:

- Children and families are at risk of homelessness, including in the context of unlawful evictions or domestic violence.<sup>2</sup>
- School fees discriminate against low-income families or children granted refugee status or seeking asylum are being charged to attend public schools.<sup>3</sup>
- Children are at risk of being suspended, excluded or expelled, including due to unidentified or unsupported disability.<sup>4</sup>
- Children living with complex disability, mental health and/or behavioural needs are in voluntary out of home care placements due to being unable to live safely at home.<sup>5</sup>
- Children are denied family relationships and connection to culture, including in the context of out-of-home care placements, youth detention, or parental incarceration.<sup>6</sup>
- Children in youth detention are denied proper education, cultural rights, isolated, remanded in custody for long periods of time or detained in adult prisons.<sup>7</sup>
- Policies and services, including in education and healthcare settings, discriminate against trans or gender diverse young people.



Current legislative protections for human rights in South Australia are limited in scope and enforceability. There is no consistent framework that brings existing protections together or promotes a culture of rights awareness and accountability among decision makers, service providers and the broader community. As the Rights Resource Network SA notes, existing legislative provisions are 'either aspirational in tone and impact or they can only be accessed by some people, some of the time and in specific circumstances'.<sup>8</sup>

Currently, there is a reliance on anti-discrimination laws to 'protect human rights', which is largely a dispute-focused remedial model relying on reporting of discrimination. A Human Rights Act would establish a more proactive model that embeds a positive duty to

consider rights in decision-making ahead of any dispute. To be effective, this requires mechanisms to enhance human rights scrutiny and ensure accountability (see Recommendations 3 and 4).

Evidence from Australian jurisdictions that have enacted human rights legislation indicates a growing culture of rights awareness across government and the community. Yet it can be difficult to measure the success of preventative measures and cultural change. As the Human Rights Law Centre highlights, the ‘best work from a culture of human rights accountability never sees the light of day because it helps prevent bad decisions from being made in the first place, or marginalised people being forgotten in the policy development process’.<sup>9</sup>

I wish grownups would... Not yell or hit any child.

I wish grownups would... Show more respect to children and listen when we need help, trust,

SA would be better for kids if... there wasn't any racism, bullying and a better environment. I also think SA would be better for kids if there was more opportunities.

## 2. Ensure explicit and comprehensive protection for children’s rights as set out in the UNCRC.

It is important for South Australia’s Human Rights Act to provide explicit and specific recognition of children’s rights, taking into account children’s developmental stage, individual circumstances and vulnerability to adult assumptions and power.

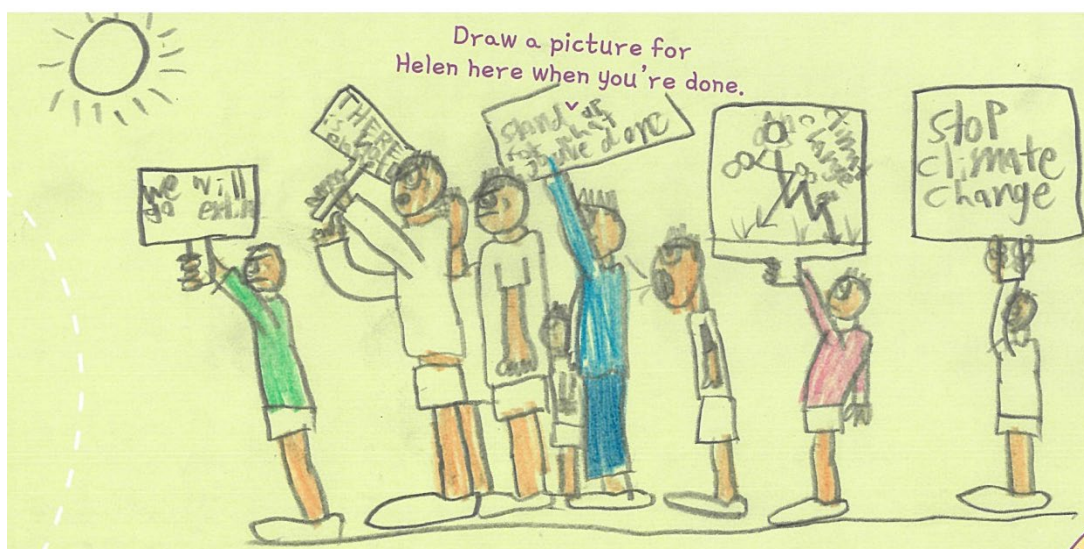
Many of the core international human rights instruments to which Australia is a party recognise that childhood is entitled to special safeguards and rights protection. This includes the Universal Declaration of Human Rights, the UNCRC, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and United Nations Declaration on the Rights of Indigenous Peoples.

In order to achieve its objectives, a Human Rights Act for South Australia should include economic, social and cultural rights as well as civil and political rights. This includes but is not limited to every child’s right to education (Articles 28 and 29); to enjoy the highest attainable standard of health (Article 24); to housing and an adequate standard of living (Article 27); to privacy (Article 16); to enjoy and practice their culture (Article 30) and preserve their identity (Article 8).



Legislation should also recognise rights specific to children as set out in the UNCRC, including:

- The right to be registered as having been born, to grow up in a family environment and to protection of families and children by society and the State, without discrimination.
- Children's right to express their views freely and for their views to be given due weight in all matters affecting them (Article 12).
- Children's rights in the criminal justice process, including a child's right to be segregated from adults in detention and the right of a child charged with a criminal offence to procedures that are age-appropriate and rehabilitation-focused (Article 40).
- Children's right to engage in play and recreational activities (Article 31).
- The best interests of the child will be a primary consideration in all actions concerning children (Article 3).
- Children's rights in relation to physical punishment, including that children should be safe from violence from parents and anyone who looks after them (Article 19), at school (Article 28) and protected against cruel and degrading treatment (Article 37). This means implementing the Committee on the Rights of the Child's recommendation to outlaw corporal punishment in all settings, and to repeal the legal defence of 'reasonable chastisement'.<sup>10</sup>
- The right to a clean, healthy and sustainable environment, including for future generations of children and young people (see Recommendation 2c).<sup>11</sup>
- That the State's responsibility for protecting children's rights extends to addressing the structural and environmental factors that impact the realisation of children's rights, including poverty and climate change (see Recommendation 2a).



Consideration should be given to requiring a review of the operation of the Act every four years. Similar to section 44 of Victoria's *Charter of Human Rights and Responsibilities Act 2006*, South Australia's legislation should require that such a review consider whether additional rights should be included in the legislation, including rights under the United Nations Convention on the Rights of the Child.<sup>12</sup>

Alongside the development of a Human Rights Act, consideration should be given to fully incorporating the UNCRC into law and policy at all levels to guide coordinated and holistic investment in current and future generations. This has clear social and economic benefits and is consistent with existing commitments to supporting children's wellbeing and development across the early years and through childhood and adolescence.

Currently, a patchwork of plans guide policy for children and there is a lack of coordination implementation and monitoring. While progress has been made in relation to specific legal issues or policy domains, we need a consistent framework that upholds children's rights as a whole and considers the interconnected nature of children's rights and experiences.


I wish grownups would... Respect children because we are all human beings.


SA would be better for kids if... the adults listen to us and take us seriously.

SA would be better for kids if... we knew that we are protected at all times.

I am not a baby I do not need help to chew my food  
 I don't need help to get changed  
 I am not dumb I can take care of myself. I can have an opinion.  
 I can understand what someone is talking about. I know how the world works.  
 I'm not going to open the door to a stranger.  
 I have things to say

Draw a picture for Helen here when you're done.



 **Tell Helen**



**a. Recognise and address poverty as a structural barrier to realising children's rights.**

Poverty denies fundamental human rights. A Human Rights Act for South Australia should acknowledge and seek to address the multidimensional impacts of poverty on the realisation of children's rights. When governments have a duty to uphold fundamental rights, this will provide a foundation for addressing the structural factors that create and perpetuate poverty.

Despite the clear case for addressing it, child poverty remains widespread in Australia. One in 6 children in Australia are growing up in poverty.<sup>13</sup> In South Australia, more than one quarter (26.2%) of children and young people under 20 years were estimated to be living in the most disadvantaged socio-economic circumstances in 2022 (compared to 19.4% nationally).<sup>14</sup>

Children and young people consistently raise the impact of poverty and cost-of-living pressures on their own lives, their families and other children they know. They focus on the social and emotional dimensions of poverty, including but also extending beyond the impacts of material hardship. They talk about the impacts of poverty on their full participation in education, social and recreational activities, and on their ability to access their rights in the digital environment.

**I worry about...** us going homeless and not having any money because we need to move houses soon and there is no choice about it

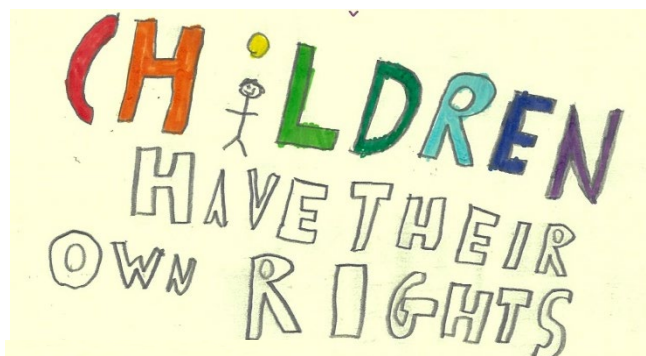
**I wish grownups would...** try much harder to solve the worlds problems like global warming, littering, poverty, and starvation.

**SA would be better for kids if...** there was less Pollution and Prices for food and essential things needed for living would be cheaper and more affordable.

Poverty undermines the connection and inclusion that is key to children's physical and mental health, wellbeing and development. Poverty also increases children and young people's vulnerability to the impacts of climate change. The distinct nature of poverty for children demands a focus on children in their own right rather than as incidentally to adults.

A Human Rights Act should ensure that all levels of governments will have a duty to establish key child poverty reduction measures, indicators and targets. As recommended in my 2023 Submission to the Senate Community Affairs Reference Committee inquiry into the extent and nature of poverty in Australia, this includes investing in multi-sector and non-stigmatising approaches to address poverty that:

- Reduce the true cumulative cost of education.
- Address barriers to children's participation in extracurricular activities.
- Improve access to transport.
- Address food insecurity.
- Expand access to free public wifi and promote digital inclusion.
- Include children and young people in climate change education and disaster prevention and recovery efforts.
- Improve access to period products across schools and community settings.<sup>15</sup>



#### **b. Fully uphold children's participatory rights.**

A Human Rights Act should support children's participation rights, recognising children and young people as active citizens who contribute to society and decision making that affects their lives.

The right of all children to be heard and taken seriously in all matters that affect them is enshrined in Article 12 of the UNCRC. Article 12 not only establishes a right in itself, but it is also one of the four guiding principles of the UNCRC, meaning it 'should also be considered in the interpretation and implementation of all rights'.<sup>16</sup>

Meaningful participation improves the design and delivery of services and drives better outcomes at an individual as well as a system level. It also builds trust, sending a clear message to children that adults and systems care about their rights, interests, and wellbeing.

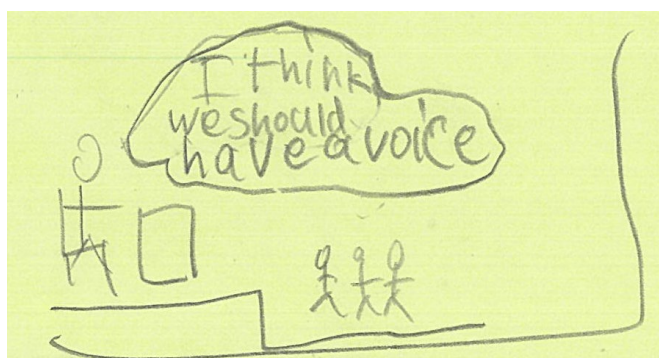
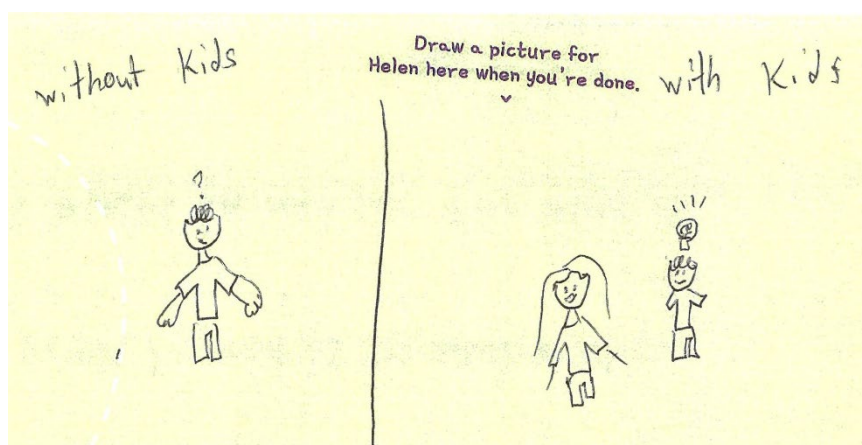
While the right to be heard is incredibly important to children and young people, it is also the right they consistently report having least access to. There is an opportunity for a Human Rights Act to address the gaps in existing mechanisms supporting children's participation in decision-making at a systemic level. This means establishing legal requirements and mechanisms to:

- Ensure children are fully informed, have opportunities to make complaints and provide feedback, and are involved in decision-making processes in ways that are accessible to children of different ages and backgrounds.
- Identify and remove barriers to participation.

- Include scrutiny and oversight mechanisms, which should demonstrate how children's views have been taken into account and should themselves facilitate children's participation.

Legislation should comply with requirements of the UNCRC in relation to Article 12, as set out in the Committee on the Rights of the Child's *General Comment No. 12*. The Australian Human Rights Commission proposed a 'participation duty' in its proposed model for a federal Human Rights Act, which would contribute to addressing these requirements. The duty would require public authorities to ensure the participation of children in decisions that 'directly or disproportionately affect their rights'.<sup>17</sup>

Children and young people should also be supported to participate in different stages of the development of South Australia's human rights framework, including in the Committee's current inquiry and subsequent stages of decision-making. They have unique insight into their experiences of human rights in their own lives, including barriers and priorities that need to be addressed.



**SA would be better for kids if...**

We could vote in election days and if there were more activities for us to do.



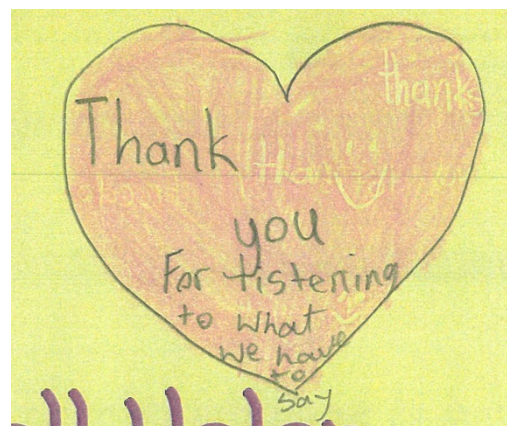
I wish grownups would...

listen to me a bit more.

Play more often

SA would be better for kids if...

we had a choice more in things



### c. Protect and fulfil the rights of future generations.

Children and young people want decision makers to focus more on the future and to think about the planet and people equally and interdependently. Many children fear that adults often make decisions in the short-term interests of a few rather than considering the longer-term interests of the whole community.

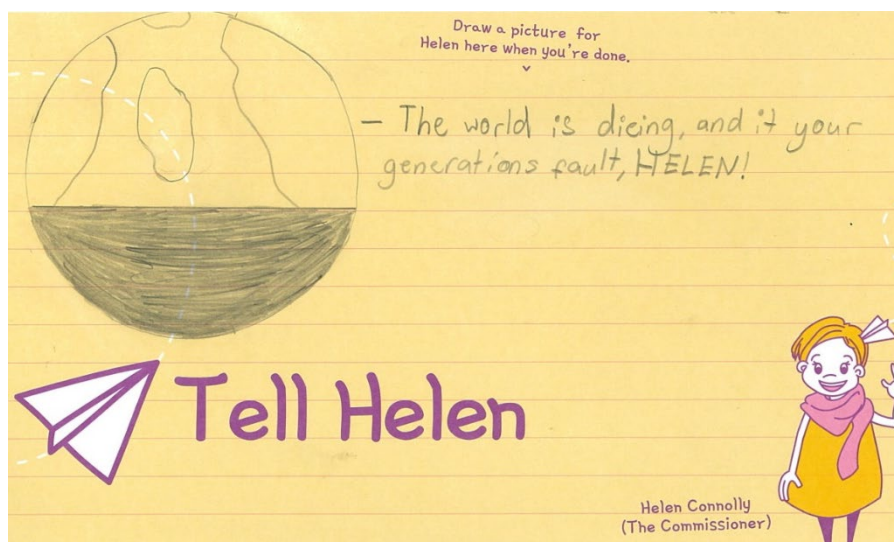
A Human Rights Act for South Australia should explicitly protect the rights of future generations in order to promote intergenerational equity, wellbeing and trust. Recognising that the actions or omissions of States today can have discriminatory impacts on future generations is critical to advancing human rights. Among the benefits of a stronger human rights framework is its potential to enable consideration of long-term points of view in planning and decision-making.

The *Maastricht Principles on the Human Rights of Future Generations*, adopted in February 2023 and endorsed by international legal and human rights experts, clarify that future generations are inherently covered by the existing body of human rights law.<sup>18</sup> The Principles provide guidance for States to fulfil their obligations to future generations, including by:

- Adopting legislation that allocates clear roles, responsibilities and time-bound targets in relation to the fulfilment of the rights of future generations;
- Taking measures to eradicate the intergenerational transmission of poverty and disadvantage;
- Designing and implementing educational and awareness programs on human rights of future generations;
- Providing adequate resources to fulfil obligations, and establishing mechanisms to monitor and report on the extent to which public authorities are setting and meeting their obligations towards future generations.



Importantly, the *Maastricht Principles* highlight that children and young people occupy a unique position in terms of their proximity to future generations and thus their perspectives and participation in decision-making must be accorded special weight.



SA would be better for kids if...  
 There was more evidence that our future is safe for us


**d. Provide comprehensive human rights education for all people to know their rights and State authorities to know their obligations.**

For a human rights framework to be effective, people of all ages and backgrounds need to understand their rights, and individuals and authorities need to understand their obligations.

Comprehensive human rights education should be a foundation of a new human rights framework for South Australia, with a particular focus on ensuring consistent human rights education across all stages of schooling, from early and primary years through to secondary. This aligns with the Mparntwe Education Declaration's aspiration for all young Australians to become 'confident and creative individuals, successful lifelong learners, and active and informed citizens'.<sup>19</sup>

Many children and young people reach the end of their schooling without learning about human rights or the key systems and democratic processes that affect their lives. Young people in Years 10 to 12 who are members of my Advisory Council have reported that their education covered rights in a 'very basic' way if at all. Some older students who completed certain elective subjects such as legal studies reported covering rights in more depth. However, most young people want to have more information about rights from a

younger age, including about what rights are, why they are important, and what they can do if their rights are breached.

 SA would be better for kids if... we learn more about Diversity and learn more of rights and in high school we learn how to pay bills

I wish grownups would... realise that I want to be part of the the Action!

SA would be better for kids if... if there was a kids voice in parliament and more Aboriginal Education and better Education

Although human rights are mentioned in Australian Curriculum documents, the delivery of the curriculum is inconsistent across schools and sectors. According to results from the most recent National Assessment Program Civics and Citizenship (the NAP-CC) 2019, only 53% of Year 6 students and only 38% of Year 10 students across Australia attained the proficient standard for civics and citizenship.<sup>20</sup>

Young people are calling for rights education that ‘puts rights into context’ and highlights how rights are relevant to their lives in Australia in the twenty-first century. This is particularly important in light of young people’s reporting that rights education can often be limited to other places and historical time periods, such as in the context of the Second World War or in the American Constitution.

Legislation in South Australia could include similar provisions to the *Curriculum and Assessment (Wales) Act 2021*, which requires all education settings to promote knowledge and understanding of the UNCRC and UNCRPD. Understanding and promoting respect for human rights is a cross-cutting theme of the curriculum in Wales and is visible in the Welsh Government’s curriculum guidance.

Importantly, human rights education is not just learning *about* rights. Comprehensive human rights education extends to:

- Learning *through* human rights (i.e., developing and experiencing values, attitudes and behaviours that reflect human rights principles);
- Learning *for* human rights (i.e., being empowered as active citizens to advocate for their own rights and the rights for others).

This is why legislation should establish a framework to guide the proactive consideration and realisation of children’s right to education and within education.

**e. Establish a framework for the realisation of children’s right to education and rights within education settings.**

One of the most effective ways of promoting children’s understanding of rights is to create environments where their own rights are respected. Education settings are particularly important as a starting point for making rights real in everyday life.

A Human Rights Act, along with amendments to South Australia’s *Education and Children’s Services Act 2019*, could outline the duty of schools and education providers to promote knowledge and understanding of human rights, including the UNCRC and the UNCRPD.

Like Wales, South Australia’s legislation should provide guidance for embedding rights-based principles into practice across all aspects of school life, including school governance, relationships and interactions between members of the school community, curriculum, and environments in which people learn.

We cannot expect children and young people to be informed about their rights if they are telling us that their rights are not consistently being upheld in their interactions with adults and service systems, including in education settings.

Children and young people want everyone to be able to fully engage in education, regardless of who they are and where they live. Yet they are aware that not all students are treated fairly or supported to participate fully in their education. They highlight the impacts of exclusion and discrimination, including on the basis of gender identity or sexuality, cultural background, disability or chronic illness, and poverty, homelessness or food insecurity.

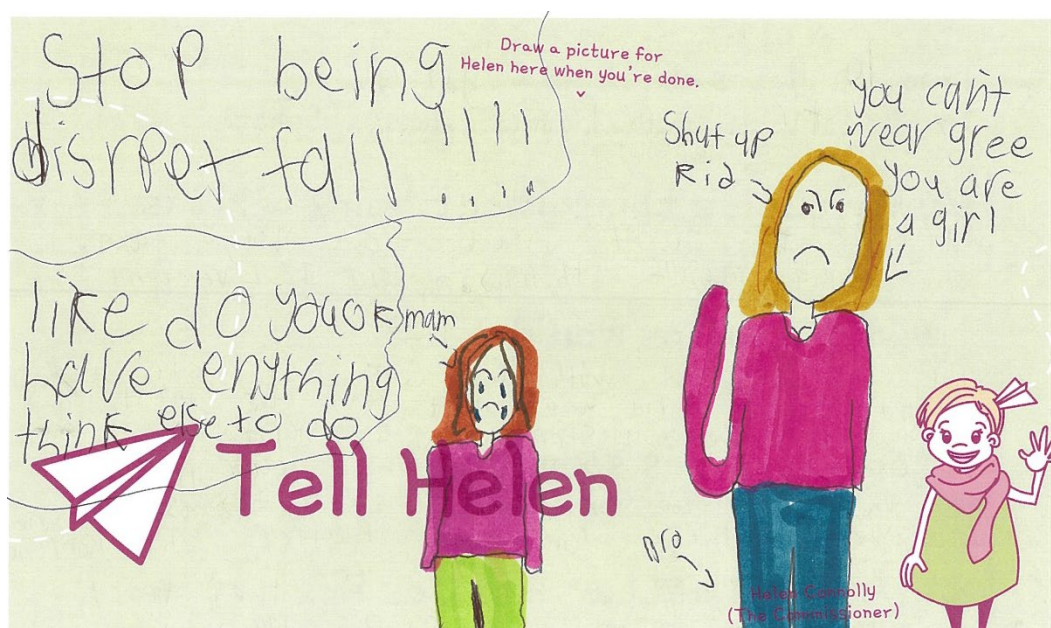
Children and young people often describe the lack of voice, choice and influence they have at school. They want more opportunities to be heard in relation to how they learn, what they learn, where they learn, and the support they need to learn.

Adults who understand children as rights-holders are not only better able to teach about rights, but they can also improve children’s experiences of rights in school. Children who know they have rights as well as how to make a complaint or challenge decisions are able to claim their rights.

While a number of settings may already be promoting and respecting rights, a consistent legal framework and guidance will ensure rights-respecting practices are the rule rather than the exception. Such a framework could make a real difference in terms of:

- Addressing structural inequality, persistent disadvantage and other systemic barriers that impact educational experiences and outcomes.
- Guiding actions that expressly tackle systemic discrimination, including addressing poverty-based exclusion and discrimination and embedding anti-racist, anti-sexist or anti-ableist approaches.
- Building a culture where children are respected and valued.
- Engaging parents and local communities and supporting schools as centres for community connection and development.





### SA would be better for kids if...

Their were more free stuff that come with the school.

I wish grownups would... have more respect and teachers don't always take the kid with difficulties side and understand that we live in the year 2023.

### SA would be better for kids if...

School was less money so homeless children can go to school to.

Queensland Advocacy for Inclusion's Young People's Program has found Queensland's Human Rights Act effective in normalising human rights considerations in the state education system. This includes promoting restorative and inclusive rather than punitive and exclusionary responses to behaviour, which disproportionately impact children and young people with disability. When making decisions about suspending or excluding a student, school leaders must prove they have considered the student's human rights. Even where consideration of rights has been questionable, the legislation has provided a foundation for ongoing dialogue between advocates and the school.<sup>21</sup>

The Children's Commissioner for Wales has developed a specific principled and practical framework for a children's rights approach to education.<sup>22</sup> The Right Way guide helps education settings meet key elements of the curriculum and broader legislated duties to promote rights and wellbeing, highlighting the positive difference a legislated human rights framework can make.



There is an opportunity to embed the following principles of a children's rights approach, as outlined in *The Right Way* resources developed by the Children's Commissioner for Wales:

- **Embedding children's rights** – children's rights are at the core of decision-making, planning and service delivery.
- **Equality and non-discrimination** – every child has opportunities to make the most of their talents and potential.
- **Empowering children** – every child has access to information and resources that enable them to exercise their rights, and hold accountable the individuals and institutions that affect their lives.
- **Participation** – every child has meaningful opportunities to influence decisions about their lives.
- **Accountability** – public authorities are accountable to children for decisions, actions and outcomes that affect children's lives.<sup>23</sup>

The examples below are indicators of a children's human rights approach in education settings, as explained by young people in Wales. Their examples resonate with what South Australian children and young people tell me about their experiences of education and their aspirations for improving the system.

### Indicators of a human rights approach in education settings

We know rights are **embedded** when:

- The school council is involved as an integral part of decision making
- There is mutual respect between staff and pupils
- Our learning is linked to our rights

We know there is **equality and non-discrimination** when:

- We have a safe place to go to if we feel we are experiencing discrimination
- We have space to practice our faith and halal food is available in the canteen
- Our school is honest about bullying

We know we are **empowered** when:

- We have an opportunity to explore and discuss our rights in school

We know we can **participate** when:

- We all experience our right to have a say, including through participation in curriculum design
- Our school lets us all know about opportunities to have a say

We know our setting is **accountable** to us when:

- Teachers tell us how our views have been taken into account
- We get regular communication about how our school uses our feedback
- We know what is done when we raise issues like bullying or discrimination.

💡 If I could make things better for kids in South Australia I would... give equal learning rights

💡 If I could make things better for kids in South Australia I would... try to treat students fair and the same when someone needs to go to the toilet let them

“In co-ed schools when the boys did something bad, the girls were asked to sit between them or walk to the front office.”

– 11 year old, female

“Educate the teachers about racism & making sure that they are aware of what they say & impact it can have on the person they are saying it. Teachers are not always right and they more racist than the students”

– 16 year old, female

### 3. Enhance human rights scrutiny of proposed laws and policies, with particular regard to Child Rights Impact Assessments.


In addition to strengthening remedies for breaches of rights, legislation should strengthen proactive consideration of human rights in all forms of law-making, policy making and decision making across government. Currently there is no requirements nor guidance for South Australian policy and law makers to consider the impacts of laws, policies and decisions on the human rights of South Australians.

As noted by the Rights Resource Network, South Australia is ‘in a black hole of rights scrutiny’, with no explanatory memoranda explaining the aims of proposed legislation, and no statements of compatibility or designated parliamentary committee to scrutinise the rights impacts of proposed laws.<sup>24</sup>

Proposed Bills or delegated legislation should be subject to proper scrutiny before they are enacted. Once decisions are made or laws passed, they can be difficult to remedy. Resourcing and incentivising proactive consideration of human rights before mistakes are made or breaches occur can save millions of dollars that would otherwise be spent on costly Royal Commissions or other mechanisms ‘that look at the problems downstream ... when the upstream processes have not worked’.<sup>25</sup>

When it comes to fulfilling human rights for children, particular consideration should be given to using Child Rights Impact Assessment (CRIA) tools as an integral part of enhanced human rights scrutiny. The UN Committee on the Rights of the Child has

endorsed the use of CRIA tools since 2003. CRIA support a systemic focus on children's rights by measuring the impact of proposed laws on the wellbeing of children and families.

**I wish grownups would...** let us have more rights and more of a say. 


**I wish grownups would...** Listen to children more because childrens mental health matters.

**I wish grownups would...** listen to kids more and believe us more

In Australia, the Australian Human Rights Commission has developed a national CRIA tool, which is designed to apply across all Australian jurisdictions and in all circumstances affecting children and young people.<sup>26</sup>

In Wales, the Rights of Children and Young Persons (Wales) measure 2011 places duties on all Welsh Ministers to have due regard to the UNCRC and to promote knowledge and understanding of the UNCRC. CRIA is the main tool Welsh Government uses to meet legislative requirements to pay due regard to children's rights. All fully completed CRIA documents relating to legislation must be published on the Welsh Government website. The Children's Commissioner for Wales has developed a template CRIA document.<sup>27</sup>

**SA would be better for kids if...**

people respect children the same as they do adults. As well as that I would like more childrens crossings. 

**SA would be better for kids if...**

We feed the hungry and stop racism, also parents stop smoking around kids.

**SA would be better for kids if...**

Everyone helped fight Climate change. People were nice. People didnt discriminate people with 'disabilities'. There was a learning opportunity for everyone.


#### 4. Establish accountability mechanisms and sufficient resourcing to translate the ambition of human rights legislation into practice.

A human rights framework will be meaningless without accountability mechanisms and sufficient resources to translate ambition into real action and practice. National human rights action plans in Australia are considered to have achieved limited outcomes in the past, primarily due to a lack of funding, lack of measurable indicators or targets, and a lack of monitoring and oversight.

It is important South Australia learns from the past and from the experience of other jurisdictions with human rights legislation by establishing effective legal and non-legal accountability mechanisms. This includes:

- Independent monitoring and reporting on South Australia's progress in advancing human rights, including the extent to which children are experiencing their rights and how this can be improved. As part of the Children's Rights Scheme in Wales, the Welsh Government publishes a compliance report every two and a half years, explaining how they have paid due regard to children's rights.<sup>28</sup> Similar reporting could be applied to all human right obligations under the Act.
- Establishing requirements to ensure any 'override' mechanism is only used in exceptional circumstances. This includes a requirement for any member of Parliament seeking to introduce a Bill with an override provision to issue an explanatory statement that justifies the override and proves how it will result in better outcomes with reference to research evidence. Significant concerns have been raised in Queensland regarding recent moves to override the state's human rights legislation without proper consideration of the rights impacts, including to enable children to continue to be detained in police watch houses and adult detention facilities. In South Australia, every effort should be made to avoid a situation where leaders can 'gain social capital for legislating with respect to human rights, but in practice, obfuscate their commitment to human rights in order to actuate their policy goals by "overriding" the Act's applicability'.<sup>29</sup>
- Enhancing human rights scrutiny to build human rights considerations into decision-making processes and to establish political and legal consequences for failing to respect rights.
- Providing comprehensive human rights education so that people are aware of their rights and authorities are aware of their obligations (see Recommendation 2d).
- Providing independent cause of action for rights violations. Legislation in Queensland and Victoria are international outliers in that they *only* allow a person to raise a human rights violation by 'piggybacking' a human rights claim on to a separate proceeding. Such 'piggybacking' provisions may unfairly restrict access to legal remedy and limit accountability of public authorities.<sup>30</sup> Legislation in the ACT, on the other hand, provides independent cause of action, allowing a person to start a proceeding against a public authority that has acted inconsistently with their rights.



 If I could make things better for kids in South Australia I would... make it the law that everyone has to be treated fairly and make sure everyone is safe from sicknesses

I wish grownups would... let us kids have more freedom in what we can do and in what we say

SA would be better for kids if... the government was nicer.

- <sup>1</sup> Charter of Rights website, 101 Cases of how charters of human rights make our lives better, 2022, accessed 15 January 2024, <https://charterofrights.org.au/101-cases>.
- <sup>2</sup> Queensland Human Rights Commission. *Putting People First: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20*. (2020). [https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0005/29534/Human-Rights-Act-Annual-Report-2019-20.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0005/29534/Human-Rights-Act-Annual-Report-2019-20.pdf), 112.
- <sup>3</sup> ACT Human Rights Commission. *Annual Report 2013-14*. (2014). [https://hrc.act.gov.au/wp-content/uploads/2015/04/2014-09-15-Final\\_-\\_WCAG-2-0-Compliant\\_.pdf](https://hrc.act.gov.au/wp-content/uploads/2015/04/2014-09-15-Final_-_WCAG-2-0-Compliant_.pdf), 39.
- <sup>4</sup> Human Rights Law Centre. *Victoria's Charter of Human Rights and Responsibilities in Action: Case studies from the first five years of operation*. (March 2012). [www.hrlc.org.au/files/VictorianCharter\\_in\\_Action\\_CASESTUDIES\\_march2012.pdf](http://www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf), Case Study 56.
- <sup>5</sup> Queensland Human Rights Commission. *Putting People First: The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20*. (2020). [https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0005/29534/Human-Rights-Act-Annual-Report-2019-20.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0005/29534/Human-Rights-Act-Annual-Report-2019-20.pdf), 114. See also Commissioner for Children and Young People. Submission to the Social Development Committee Inquiry into NDIS participants with complex needs living in inappropriate accommodation. (August 2022). <https://www.ccyp.com.au/wp-content/uploads/2022/09/2022-08-31-Submission-to-SDC-Inquiry-re-NDIS-participants-with-complex-needs-in-inappropriate-accommodation.pdf>.
- <sup>6</sup> ACT Human Rights Commission. *Annual Report 2019-20*. (2020). <https://hrc.act.gov.au/wp-content/uploads/2020/12/ACT-HRC-Annual-Report-2019-20-2.pdf>, 28.
- <sup>7</sup> Human Rights Law Centre and Certain Children v Minister for Families and Children [2017] VSC 251. Charter of Rights. Case 86: Supreme Court finds that children held in maximum security prison were deprived of their human rights. <https://charterofrights.org.au/101-cases/2022/10/25/case-86-supreme-court-finds-that-children-held-in-maximum-security-prison-were-deprived-of-their-human-rights>.
- <sup>8</sup> Rights Resource Network SA, Submission to the Inquiry into the Potential for a Human Rights Act for South Australia, 2023, accessed 16 January 2024.
- <sup>9</sup> Human Rights Law Centre and RMIT, Human Rights Scrutiny in the Australian Parliament, 2022, accessed 16 January 2024, <https://www.hrlc.org.au/reports-news-commentary/human-rights-scrutiny-aus-gov>, p 25.
- <sup>10</sup> United Nations Committee on the Rights of the Child, *Concluding Observations on the combined fifth and sixth periodic reports of Australia*, 2019, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).
- <sup>11</sup> Australian Conservation Foundation, Save the Children and Australian Youth Climate Coalition, Children's Right to a Healthy Environment: An Australian Perspective 2023, 2023, [https://assets.nationbuilder.com/auscon/pages/22809/attachments/original/1699489436/2311\\_ACF\\_ROT\\_C\\_Report\\_FINAL.pdf?1699489436](https://assets.nationbuilder.com/auscon/pages/22809/attachments/original/1699489436/2311_ACF_ROT_C_Report_FINAL.pdf?1699489436).
- <sup>12</sup> Charter of Human Rights and Responsibilities Act 2006 (Victoria), <https://content.legislation.vic.gov.au/sites/default/files/2022-06/06-43aa015%20authorised.pdf>, section 44(2)(a)(ii).
- <sup>13</sup> Australian Council of Social Service and UNSW Sydney, *Poverty in Australia 2023: Who is affected*, 2023, accessed 23 January 2024, <https://povertyandinequality.acoss.org.au/poverty-in-australia-2023-who-is-affected/>.
- <sup>14</sup> Australian Bureau of Statistics, *Regional Population by Age and Sex*, 2022; ABS, *Socio-economic Indexes for Australia (SEIFA) 2021*.
- <sup>15</sup> Commissioner for Children and Young People, *Submission to the Inquiry into the extent and nature of poverty in Australia*, 2023, <https://www.ccyp.com.au/wp-content/uploads/2023/02/2023-02-14-Submission-to-the-Inquiry-into-the-extent-and-nature-of-poverty.pdf>.
- <sup>16</sup> United Nations Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, 2009, <http://www.refworld.org/docid/4ae562c52.html>.

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- <sup>17</sup> Australian Human Rights Commission, *Free and Equal Position Paper: A Human Rights Act for Australia*, 2022, accessed 22 January 2024, [https://humanrights.gov.au/sites/default/files/free\\_equal\\_hra\\_2022\\_-\\_main\\_report\\_rgb\\_0\\_0.pdf](https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf).
- <sup>18</sup> Maastricht Principles on the Human Rights of Future Generations, 2023, accessed 18 January 2024, <https://www.rightsoffuturegenerations.org/the-principles/english>.
- <sup>19</sup> Department of Education, Skills and Employment, *The Alice Springs (Mparntwe) Education Declaration*, Australian Government, 2019, accessed 16 January 2024, <https://www.education.gov.au/alice-springs-mparntwe-education-declaration>.
- <sup>20</sup> Australian Curriculum Assessment and Reporting Authority, *National Assessment Program – Civics and Citizenship 2019 National Report*, 2020, accessed 5 February 2024, <https://nap.edu.au/docs/default-source/default-document-library/20210121-nap-cc-2019-public-report.pdf>.
- <sup>21</sup> Queensland Advocacy for Inclusion, Submission to the Parliamentary Joint Committee on Human Rights Inquiry into Australia’s Human Rights Framework, 2023, accessed 18 January 2024, <https://www.qph.gov.au/DocumentStore.ashx?id=ba6b699f-0f4c-4847-82ef-d0d9e4eaa622&subId=744783>, Submission 140, p 8.
- <sup>22</sup> Children’s Commissioner for Wales, *The Right Way: A Children’s Human Rights Approach to Education in Wales*, 2022, [https://www.childcomwales.org.uk/wp-content/uploads/2022/03/TheRightWayEducation\\_ENG.pdf](https://www.childcomwales.org.uk/wp-content/uploads/2022/03/TheRightWayEducation_ENG.pdf).
- <sup>23</sup> Children’s Commissioner for Wales, *The Right Way: A Children’s Rights Approach in Wales*, 2017, <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>.
- <sup>24</sup> Rights Resource Network SA, Submission to the Inquiry into the Potential for a Human Rights Act for South Australia, 2023, accessed 16 January 2024.
- <sup>25</sup> Laura Grenfell and Sarah Moulds, *A Human Rights Act for South Australia? Time for a public discussion on how to protect and promote human rights in our community*, Law Society of South Australia Bulletin, December 2023, accessed 18 January 2024, [https://bulletin.lawsocietysa.asn.au/Bulletin/Content/Articles/2023/December/time\\_for\\_a\\_public\\_discussion\\_on\\_how\\_to\\_protect\\_and\\_promote\\_human\\_rights\\_in\\_our\\_community.aspx](https://bulletin.lawsocietysa.asn.au/Bulletin/Content/Articles/2023/December/time_for_a_public_discussion_on_how_to_protect_and_promote_human_rights_in_our_community.aspx).
- <sup>26</sup> Australian Human Rights Commission, *Safeguarding Children: Using a child rights impact assessment to improve our laws and policies*, 2023, accessed 22 January 2024, [https://humanrights.gov.au/sites/default/files/document/publication/cria\\_2023\\_-\\_final\\_-\\_18aug2023\\_1\\_1\\_1.pdf](https://humanrights.gov.au/sites/default/files/document/publication/cria_2023_-_final_-_18aug2023_1_1_1.pdf).
- <sup>27</sup> Children’s Commissioner for Wales, Children’s Rights Impact Assessment (CRIA) Resources, <https://www.childcomwales.org.uk/faqs/resources/>.
- <sup>28</sup> Welsh Government, Rights of children and young persons: compliance report (October 2020 to March 2023), How the work we do conforms to the United Nations Convention on the Rights of the Child (UNCRC) due regard duty, 2023, <https://www.gov.wales/sites/default/files/pdf-versions/2023/7/3/1689156208/rights-children-and-young-persons-compliance-report-october-2020-march-2023.pdf>.
- <sup>29</sup> Queensland Youth Policy Collective, Submission to the Inquiry into Australia’s human rights framework, 2023, accessed 14 January 2024, Submission 141, <https://www.qph.gov.au/DocumentStore.ashx?id=190873c9-ec57-42f5-b6c8-28a6bfd6ce&subId=745401>.
- <sup>30</sup> Australian Human Rights Commission, *Free and Equal Position Paper*, pp 269-270.