



Shelter SA: Housing is a Human Right

Submission to the South Australian Parliament's Social Development Committee

Inquiry into the potential for a Human Rights Act for South Australia

Shelter SA is the peak body for housing in South Australia. Established in 1977, we conduct housing systems advocacy, policy and legislative work, research and community engagement. Our members include many of the major charities and human services, homelessness and social housing providers.

We welcome the opportunity to contribute to the inquiry into the potential for a human rights act in South Australia and outline the areas that signify a lack of access to basic human rights in our submission below. We would be pleased to attend in person to provide evidence to the Committee.

Shelter SA Supports a Legislated Human Rights Act

The people in Victoria, Queensland, and the Australian Capital Territory have developed human rights laws that are working to protect ordinary people's rights on the ground. South Australia could take the best features of the laws of Victoria, Queensland and the Australian Capital Territory, learn from their experiences and consider the position paper released by the Australian Human Rights Commission in March 2023 when drafting its own Human Rights law. We look forward to hearing more about the South Australian Parliament's Social Development Committee's progress.

A South Australian Human Rights Act should include the human rights Australia has already promised to uphold under international law, 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. Special consideration should also be given to the rights of Aboriginal people in South Australia, who should be consulted in the development of all aspects of the South Australian Human Rights Act.

A South Australian Human Rights Act should be designed with a focus on delivering real change for those experiencing the most severe rights abrogations (including those experiencing homelessness or insecure housing) and include mechanisms to prevent rights abuses from happening in the first place.

Introduction

Australia has been a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) since 1973, yet there is a raft of human rights that are not guaranteed in this country.

The International Bill of Rights is made up of the ICESCR, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Signatories to these treaties recognise that every person has the right to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of their living conditions.

The right to adequate housing and the right to the highest attainable standards of physical and mental health are intrinsically linked.

Adequate shelter does not mean just a roof over your head, it means access to adequate levels of privacy, space, security, lighting, ventilation, basic infrastructure, location and facilities, all at a reasonable cost¹.

The human right to housing is not assured in South Australia, nor is access to redress when this right is not met.

Australia and South Australia are amid a housing crisis and people experiencing homelessness face violations of a wide range of human rights. The Australian Institute of Health and Welfare (AIHW) dataset reveals that for the last several years, approximately 20,000 South Australians received homelessness services². Homelessness is more than rough sleeping, even though those people living without any shelter are the most vulnerable group in this cohort. When people are living in temporary, insecure, inappropriate, unsafe, overcrowded, unaffordable accommodation they are also experiencing homelessness.



There are more citizens experiencing homelessness than the AIHW data reports. In addition to the number of citizens receiving homelessness services, Infrastructure SA reported that one-third of South Australian households were living with housing stress before the pandemic, and therefore were unable to afford other necessities of life due to their housing costs including meeting basic needs for food, transport, clothing and health services. The lack of access to the basic human right to housing is not a small problem, it affects many thousands of households. Homelessness services and charities are overwhelmed by trying to meet the needs of families who cannot feed their children and do not have a place to call home.

¹ <https://humanrights.gov.au/about/news/speeches/housing-and-human-rights-rights-where-it-matters>

² <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/state-and-territory-summary-data-and-fact-sheets>

Domestic violence was once the top reason for people seeking homelessness assistance but has now been overtaken by “housing crisis” indicating that the lack of affordability and availability of housing is now affecting a larger cohort of citizens³.

How many people were assisted?

In South Australia one in 94 people received homelessness assistance, higher than the national rate (one in 95). The top 3 reasons for clients seeking assistance were:

- housing crisis (56%, compared with 38% nationally)
- family and domestic violence (25%, compared with 36%)
- inadequate or inappropriate dwelling conditions (20%, compared with 27%).

Poverty affects access to adequate shelter and income support payments below the poverty line mean that people cannot afford to pay for their housing costs. The rate of JobSeeker and youth allowance must be raised immediately to ensure that poverty is not contributing to homelessness and housing stress. Commonwealth Rent Assistance is poorly targeted, is insufficient to alleviate housing stress among all renters and requires review. We understand that social security is a Federal Government responsibility but would like to see the South Australian Parliament advocating strongly for increases to income support that lift citizens out of poverty based on meeting basic human rights.

The inclusion of housing as a human right in the introduction of human rights legislation in South Australia would provide an imperative for governments to adequately fund and prioritise shelter for all South Australians to meet their human rights obligations. We should aspire to end homelessness by ensuring that any experiences of homelessness are short-lived and do not reoccur. This aspiration must be underpinned by law and policy-making systems that place human dignity at their centre.

Crisis Accommodation

The provision of crisis accommodation is not sufficient to meet the needs of all South Australians who require immediate protection and shelter. The South Australian Government funds daytime services to meet the immediate needs of people living in poverty and experiencing a housing crisis, which are greatly needed, but it does not fund enough safe places for people to sleep overnight. Families are forced to sleep in their cars and tents, stay in caravan parks and reside with family and friends in overcrowded dwellings.

When motel accommodation was introduced as a response to crises, it worked well, as housing outcomes could be attained through the social housing system. However today, motel accommodation is very expensive to clients and taxpayers, is strictly rationed, is not available to all who need it and costs have escalated as the need for it has grown. Exits into appropriate and affordable housing are limited due to the shortage of social housing available, as evidenced by the extended length of stay of people accessing the system.

³ <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/state-and-territory-summary-data-and-fact-sheets>

Motel accommodation is theoretically much safer than staying in a home where violence is occurring or sleeping in a car, but it is not suitable for children for anything other than a short time due to a lack of space, privacy, security, ability to store and prepare food, access to school, affordability and experiences of trauma, therefore violating human rights.

Overcrowding

Severely overcrowded households are one of the largest cohorts reported in homelessness data indicating the precarious housing situation of families that are living together in properties that are unsuitable for large numbers of people, adversely affecting high numbers of Aboriginal and Torres Strait Islander families who need social housing due to unaffordability, unavailability and discrimination in the private rental market.

Social Housing

Given the number of South Australians receiving homelessness services each year, it is no coincidence that the waiting list for public housing has sat at approximately 20,000 applicants for many years. Recent investment into public housing by the South Australian Government is acknowledged however, it will not meet the current or future demand for social housing.

As social housing has moved towards a welfare model, housing only those with the highest levels of vulnerability, we are now in a situation where people with extremely complex needs and anti-social behaviours are being placed in tenancies at cluster sites where there are long-term tenants who are vulnerable, but who do not exhibit anti-social behaviours.

A system based on priority due to vulnerability does not ensure the safety of existing tenants. Physical assault, threats of assault, arson, and frequent police and ambulance attendance at social housing sites can continue for years without resolution when allocations are conducted through vulnerability.

Those tenants exhibiting anti-social behaviour are also victims of human rights violations, as their needs are not met by a range of services including health, mental health, drug and alcohol misuse or tenancy support and may be further impacted by domestic violence, criminal justice and child protection issues.

Anti-social behaviour policies in social housing do not enable the timely resolution of these situations and allocation policies combined with the shortage of vacancies negatively impact existing tenants, who may have a roof over their heads, but are living with ongoing stress and trauma and do not have access to basic human rights.

The maintenance backlog in social housing means that the housing stock is not well maintained or safe for all tenants. Nor is the stock fit for purpose for the profile of those most in need of social housing, in particular single households and large families.

Every vacancy that occurs in social housing represents a person or a family that has fallen out of that housing and has not succeeded in their tenancy. It is highly unlikely that those people affected are moving on to private rental or home ownership, so they are destined for experiences of homelessness, mandatory systems and further trauma. People can also be excluded from social housing and homelessness services if they are evicted or have debts related to their housing and this situation leaves them with nowhere to turn to for assistance.

Supported Accommodation

More supported accommodation is needed to ensure that people with high and complex needs can access their right to adequate shelter without being set up to fail in social housing properties when support is not provided to sustain their tenancies.

The Terraces, managed by Unity Housing Company, is the gold standard of supported accommodation. The physical structure was purpose-built and provides a self-contained, secure, safe and supported home for people who cannot successfully live alone and should be replicated in every region of South Australia to alleviate the problems outlined above.

Carrington Cottages, while only providing bedrooms and shared bathrooms/living space, is also providing accommodation and support for people who have long histories of trauma and not sustaining independent living situations. This is a model that could also be replicated in metropolitan and regional areas until the demand for supported accommodation better matches the needs of citizens.

Rooming Houses

For-profit rooming houses, often provide accommodation of last resort to people with high and complex needs, leaving hospitals, mental health services and prisons. The sector is largely unregulated and is not fit for purpose to accommodate our most vulnerable citizens who do not have access to their legal rights, their human right to safe, appropriate and secure housing, nor the ability to recover. Despite policies that are meant to prevent discharges into homelessness, the practice of placing people in rooming houses has continued unabated for many years.

Supported Residential Facilities

Supported Residential Facilities (SRFs) also provide shelter for some of our most vulnerable citizens with complicated health, mental health, drug and alcohol, behavioural and other issues. While residents may have a roof over their heads, these low support facilities do not enable people to recover and there is little evidence of residents moving on from that sector to more independent accommodation. The sector is largely privately operated, for-profit and locates the landlord and support function with one provider which is not recommended for vulnerable residents. This accommodation should be slowly phased out and replaced with not-for-profit, purpose-built supported accommodation that is funded to adequately meet the complex support needs of residents and ultimately, enable their recovery.

Private Rental

Private rental accommodation is now out of the financial reach of a growing number of South Australian households, increasing the need for social housing as their only alternative. Vacancy rates are at their lowest in a decade and the lowest in the nation at the time of writing. Recent improvements to the Residential Tenancies Act in South Australia are welcome but given the very low proportion of tenants who access their legal rights through the South Australian Civil and Administrative Tribunal (less than 5% of all tenancies), there are still human rights violations occurring in the private market related to evictions, rent increases, lack of attention to maintenance and sub-standard properties.

While South Australia has a service to advise and inform renters, it is the only jurisdiction in Australia that does not fund a tenant union to both assist and represent individuals in the tribunal and to conduct systems advocacy.

South Australia is the only jurisdiction though with a Housing Safety Authority to protect renters from sub-standard properties, but its existence is not widely known and consumer awareness should be increased through marketing and education.

Home Ownership

The cost of land and home purchase is out of the financial reach of a growing number of South Australian households and rates of home ownership are in decline. Simultaneously the number of people retiring from paid work without completing their mortgage has increased significantly. This situation places greater pressure on various systems including the private rental market, the social housing system and human services.

Shelter SA has developed a modern village concept that aims to restore fair access to home ownership by overcoming the obstacles related to home ownership – high prices, expensive land, building delays and labour shortages. The concept includes modular dwellings and lend-lease arrangements over land that does not require subdivision, representing disruption to the traditional housing market and a price point that would enable low-income households to purchase homes. The concept is user-pays and enables both profit margins therefore offering exit strategies to investors. While continuing to invest in social housing, crisis accommodation and supported accommodation, the South Australian Government should incentivise alternative home ownership projects to ameliorate poverty and homelessness.

Priority Lists

The allocation of social housing is a process that is placed under severe pressure because of the number of people waiting to be housed who have high levels of vulnerability and need and there are multiple ways in which those in need of housing are identified. The Adelaide Zero Project identifies rough sleepers in the City of Adelaide and prioritises them through a vulnerability assessment. In December 2023, of 115 people sleeping rough in the City, 50 were listed as residing in temporary shelters and the average number of people housed was 10⁴. Clearly, with new people experiencing rough sleeping each month, ten homes are not enough to reach functional zero.

Specialist homelessness services are working to provide support to people who need a home and advocate for their clients. The Aspire Project has a high success rate and provides ongoing case management to participants but cannot achieve a 100% housing rate. Interestingly, the Aspire Project Evaluation⁵ reports saving the State Government money within the health and corrections systems and its evaluation should provide an imperative for funding from other portfolios to be dedicated to the provision of crisis, supported and long-term accommodation.

The Zero and Aspire participants, people accommodated in motels, people in crisis accommodation and domestic violence victims are all waiting for a home, as well as those leaving prison and hospital. The success of projects, programs and movement through support services and crisis accommodation are all limited by the lack of supply of social housing and sometimes by a lack of funded support services.

⁴ <https://saaeh.org.au/azp-monthly-dashboard/>

⁵ <https://www.treasury.sa.gov.au/Growing-South-Australia/social-impact-investment/Aspire-evaluation-report-final.pdf>

Domestic Violence

Thousands of domestic violence victims return to violent homes due to a lack of available and affordable alternative housing options to re-establish their households. The demand for specialist domestic violence shelter accommodation for women and children fleeing violence is overwhelmed and leaves no safe alternative for people experiencing violent relationships, whether through emotional, mental, financial or physical violence and the system operates predominantly at the crisis end, after acts of physical violence have occurred.

Children and Young People

Many of the people accommodated in motels are accompanied by their children. Young people without a place to call home and living without their parents are not a priority group for social housing. While this situation continues, we are creating the next generation of people experiencing homelessness, unable to recover from trauma and who are likely to need services in the future.

Older Single Women

One of the fastest growing cohorts of people experiencing homelessness, older single women can have lower incomes, less superannuation, periods out of the workforce due to caring responsibilities and experiences of domestic violence, dooming them to housing insecurity and homelessness. There are no specific programs that seek to house older women who do not have high and complex needs, but who simply need an affordable and safe home. While some of the recent Taskforce on Older Women and Housing Security recommendations⁶ have been actioned, the majority await action.

Crisis Response Systems

The South Australian human services system is heavily focussed on responding to crises and does not have enough capacity to focus on prevention and early intervention. When individuals and families come to the attention of mandatory systems such as justice, child protection, mental health and health for example, there is little in place to ameliorate further deterioration on pathways to being detained, hospitalised or the removal of children from families. Without a safe, secure place to call home, it is much more difficult for service providers to engage those who need support to recover.



⁶ https://www.housing.sa.gov.au/other_services/housing-security-for-older-women-taskforce

Case Studies

In 2022 the media reported the situation of people residing in Prospect who were being terrorised by their neighbour. The neighbour had left prison and was housed in a public housing property, being managed by a not-for-profit service. The tenant was reported to be standing in the middle of the road yelling in the middle of the night, climbed onto the roof of a neighbour's home threatening the occupants and at one point was walking around with a metal bar. Despite the media attention and police attendance to the tenant, he did not receive a single visit from any government or non-government agency – corrections, housing, mental health or the support service. The neighbours were sympathetic and wanted the man to be properly supported, as well as wanting to feel safe in their own homes.

A woman with seven children was residing in motel accommodation as a crisis response to their family situation. The stress of living in a motel, while trying to secure alternative accommodation and other daily issues became too much for the women, who decided to leave the motel. The family went to stay with another family in a two-bedroom unit, a severely overcrowded situation, with no other alternative available.

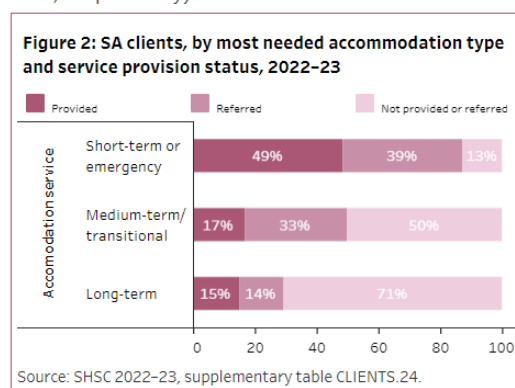
Civil Society

People living in poverty and experiencing homelessness often cannot advocate for themselves or participate in civil society. Not-for-profit peak bodies aim to ameliorate this situation by addressing the systems that negatively impact people's daily lives and their futures. South Australia has around fifty peak bodies funded by governments and a range of other sources. The various cohorts and services they represent are all affected by the housing crisis, yet South Australia is the only Australian jurisdiction that does not fund its peak body for housing, Shelter SA, nor a homelessness peak body. The role of a peak body is to conduct research, policy, legislative and systems advocacy as well as sector development and community engagement activities, to ensure systemic issues that affect vulnerable citizens and address human rights concerns are addressed.

Unmet Housing Need

Accommodation services

A smaller proportion of clients in South Australia than nationally needed accommodation (49% and 60%, respectively).



The Australian Institute of Health and Welfare data enables quantification of the size of the violation of the human right to housing and the numbers indicate that this is not an insurmountable problem. The unmet need for housing among South Australians receiving homelessness services is represented above with the greatest need shown for long-term housing (AIHW).

Conclusion

The above case studies and evidence provide a glimpse into the size of the ‘gap’ in human rights protections in South Australia, with a focus on economic and social rights like the right to housing and related rights such as the right to an adequate standard of living and the right to equality.

The experience of human rights laws in Victoria, ACT and Queensland (as documented in case study examples set out in the Human Rights Law Centre’s 101 Case Studies report and the Australian Human Rights Commission’s Free and Equal Report of 2023) shows how we can use human rights concepts to re-orientate lawmaking and policy making practices towards an approach that focusses on human dignity, and has the potential to offer holistic, sustainable solutions for real people, on the ground. This is because human rights laws – whilst not a silver bullet to complex challenges like housing – incentivise, reward and demand *all* branches of government to turn their minds to the *human* that is impacted by their decision or the exercise of their power.

The laws in other jurisdictions set out protected rights, clarify obligations for lawmakers and service providers, and enable access to remedies for citizens. The laws set out criteria for *balancing competing rights* that help create a much-needed distance from the immediate *political* context in which decisions are being made, or powers exercised. Lawmakers for example are required to explain to the community why it is legitimate to limit a person’s right to housing, or their right to privacy, to pursue another public interest. If that other interest is also rights enhancing in nature, for example, to promote the right to health – it might be a proportionate limitation. If it is not, then the community at least has the chance to understand the nature of the choices being made by their elected representatives.

The human rights laws enacted in other jurisdictions also provide clearer pathways for people facing complex or intersecting challenges to seek redress or assistance from service providers. Currently, in South Australia, people experiencing unfair decisions about housing *and* discrimination due to a disability *and* harassment by police, for example, are often required to interact with multiple complaints bodies, sometimes with no clear outcome. In human rights jurisdictions, these matters can be viewed holistically, and solutions can be developed with public servants and service providers who have legal obligations to consider human rights.

There are many urgent steps the South Australian government should take without enacting a human rights law that would improve access to the right to housing in our State as outlined above and Shelter SA will continue to advocate for fairer systems and policies. We consider the enactment of a South Australian Human Rights Act to be an integral structural component of ensuring the long-term sustainability of immediate reform priorities, and an opportunity to begin to develop a culture of human rights awareness observance in our community.

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