

# Human Rights Guide for the South Australian Disability Service Sector



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and Social Inclusion

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Many national and international leaders have dedicated themselves to improving the lives of people living with disability and their families, and from whom there has been much learning. These include, but are not limited to: Dr Michael Kendrick, John O'Brien, Connie Lyle O'Brien, the late Prof Jim Mansell, Helen Sanderson and Beth Mount.

*"As citizens, people with disabilities have rights, responsibilities, aspirations and dreams. People with disabilities make contributions every day to the economic, social and cultural aspects of South Australia. Our community strives to be open, accessible and welcome.*

*We want to ensure everyone is provided the opportunities, knowledge and skills to live a life which is rich, meaningful and rewarding."*

Dr Lorna Hallahan (Flinders University)

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## Introduction

The Department for Communities and Social Inclusion (DCSI) supports the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and in doing so is committed to safeguarding, promoting and fulfilling the human rights of people living with disability by adopting a person-centred approach to the provision of services. It is important that all organisations supporting people with disabilities also adopt a person-centred approach to their services.

People living with disability are valued community members with strengths, expertise, talents, skills and gifts. All people have the right to make decisions about their lives, on the presumption of capacity, and to be afforded the same opportunities as other people. People with lived experience of disability are the experts in and about their own lives and they must be placed at the centre of all planning in regards to their goals and aspirations.

People living with disability have not always had their rights upheld and, in the most part, many people still have some of their most fundamental rights compromised, including the right to make choices about their own lives. Organisations supporting people with disabilities must be committed to providing services that respect and value the knowledge and abilities people possess and to provide individual service responses that are authentic, flexible and promote a person-centred approach to risk.

Whilst some improvements have been made in supporting people living with disability to enjoy their human rights, there remains a challenge in fostering an environment for cultural change within organisations that inspires change across the wider community of South Australia. Genuine active participation can only occur with a change of attitude and this is something that cannot be legislated.

The Human Rights Guide for the South Australian Disability Service Sector has been developed in recognition of the importance of people living with disability realising and claiming their rights. It aims to enable people to make decisions and fulfil their dreams through setting goals for themselves that are achieved through authentic person-centred planning and support in all facets of their lives. It will require the commitment of Boards, managers and all staff to ensure that we really put people with disabilities in charge of their own lives. It will require the commitment of Boards, managers and all staff to ensure that we really put people with disability in charge of their own lives.

The Guide provides a framework for three other key documents:

- Person-Centred Guide for the South Australian Disability Sector
- Restrictive Practices Guide for the South Australian Disability Service Sector
- Positive Behaviour Support Guide for the South Australian Disability Sector

## Background

DCSI is committed to best practice and service improvement not only in the services it provides but also in those organisations it currently funds. DCSI also acknowledges the evolution of service models, which has led to a strong focus on people's rights, increased opportunities and personalised responses for individuals and the strong leadership of some organisations in making those changes.

The United Nations has played a significant role in raising awareness about the rights of people living with disability through the Declaration of Rights of Disabled Persons (1974) and the International Year of Disabled Persons (1981). However, it was not until the UNCRPD (2006) that a genuine recognition of the human rights of people living with disability was clearly articulated. Australia, along with many other nations, has ratified the Convention, and this imposes obligations on all service providers to respect, protect and fulfil the rights of all people living with disability.

## Understanding the United Nations Convention on the Rights of Persons with Disabilities

The UNCRPD articulates clearly and unconditionally that people living with disability are entitled to full and effective enjoyment of all human rights. This includes involving people in decisions that affect their lives, and in the development and implementation of legislation and policy. The purpose of the UNCRPD is:

*“...to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for inherent dignity”.*

### Article 19 – Living independently and being included in the community

The Convention recognises:

*“...the equal rights of all persons with disabilities to live in the community, with choices equal to others, including ‘the opportunity to choose their place of residence and where and with whom they live on an equal basis with others...”*

*b. “...have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community”.*

Refer to [Appendix 2](#): United Nations Convention on the Rights of Persons with Disabilities.

## Purpose of this Guide

- Articulate a clear and unwavering commitment of Boards to **respect, protect** and **fulfil** the human rights of the people it supports.
- Provide leadership to staff on the implementing of human rights.
- Elaborate on rights-based and person-centred approaches, provide clear definitions and inform current and future service delivery options that are underpinned by personalisation and partnership with people living with disability.

- Support all staff to gain an understanding of what is expected to move to a rights-based service, underpinned by person-centred approaches and thinking, and articulate the significant implications involved for organisations, systems and people in making this move.
- Provide a foundation upon which strategies and tools can be developed to ensure best practice and accountability in order to **respect, protect** and **fulfil** the human rights of people living with disability and in doing so meet the obligations of the UNCRPD and provide more personalised options for individuals.

## Accountability and Leadership

At the core, human rights are about basic values we all share and by which we wish to live.

As a state government agency and member of the Australian federation that is a signatory to the UNCRPD, DCSI is obliged to consider relevant human rights when making decisions or when failing to act or make decisions. This consideration affects policy development, programs and service delivery options for people living with disability. Through both its service provision and engagement with the broader community, we will creatively and dynamically explore how human rights can be incorporated into living reality for the people we support.

By adopting the language and practice of human rights in all aspects of service delivery, organisations will work towards ending discrimination and facilitating equal access to goods, services and life opportunities. Embedding rights-based and person-centred service delivery is not an exercise in ‘ticking the box’ but requires dynamic leadership and a sustained commitment to real change in people’s lives. The challenge is to translate the principles into practical standards and policies that determine how the organisation acts and operates and to transform traditional support models into personalised approaches.

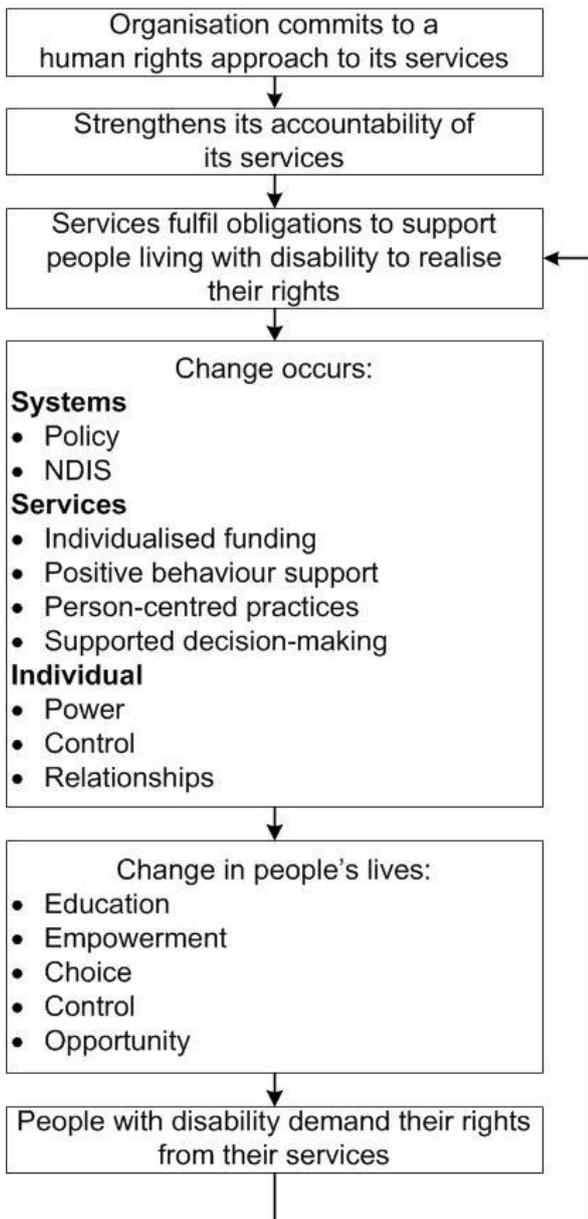
Service providers must aim to see that the human rights of people living with disability flourish, not only within their service structure but also in South Australian communities. The fundamental determinant of success in implementing rights-based approaches to service delivery and personalisation of supports is strong values-based leadership and management commitment (Kendrick 2009).

To ensure accountability and consistency, and achieve progressive outcomes regarding human rights strategies, the following approaches are required:

- Adopt a best practice approach rather than a risk management or compliance approach to service delivery.
- Develop and monitor best practice standards, tools and documents in relation to rights-based and person-centred approaches (for example, authentic person-centred planning and review processes for people living with disability).
- Develop time-limited working groups across the organisation to implement specific human rights strategies, including the development of key performance indicators in order to review, evaluate and measure progress.
- Develop collaborative partnerships with key people in government and non-government sectors.

- Continue to review and evaluate training and education in line with human rights and person-centred principles across all divisions and ensure consistent language and principles in all training opportunities.
- Develop ongoing leadership opportunities and strategic planning in relation to rights-based and person-centred practice.

The following illustration of the approach will be constructive in moving towards full realisation of people’s rights.



### Why a human rights approach?

**Should:** It is the right thing to do.

**Have to:** It is the current landscape and direction – key focus as identified in the Statement of Intent, Strong Voices Report, and National Disability Insurance Scheme (NDIS).

**Want to:** It has benefits for all people we support, the organisation and staff.

## Key Assumptions

*“Human Rights are the basic entitlements that belong to all of us because we are human beings.”*

Human Rights Commission

There are a number of key assumptions contained in this guide that are embedded in universal theory, values, principles and accepted practice. These include, but are not limited to:

- People having the right to seek a good life on their own terms, with equal access to the opportunities that may contribute to this.
- Service providers committing to provide ethical services based on positive assumptions about the capacity of people living with disability and their families.
- All people, regardless of impairment, being entitled to have lives with valued status, and exercising maximum authority in their own lives.
- Supporting people through rights-based and person-centred approaches.
- Service providers transforming services to individualised support options, honouring people’s rights, choice and opportunities in line with the National Disability Insurance Scheme (NDIS) directions.
- Endorsing person-centred planning as the model of planning for people now and into the future.

*“Planning must originate or start with a person’s hopes, dreams, wishes and aspirations.”*

Paul Ramcharan (Associate Professor, RMIT University)

## Understanding Human Rights

*“Human rights are fundamental rights and freedoms that belong to every person by virtue of their status as a human being. Human rights are inalienable, because they can neither be given to, nor taken away from, the person.”*

Dr Jeffrey Chan (Former Senior Practitioner, Victorian Government)

Human rights are universal to all people and independent of each other. In order for people to claim their rights, they need to be able to understand what their human rights are, as well as the obligations and responsibilities of duty bearers. Governments and other duty bearers have the responsibility to respect and protect people’s rights, as well as an obligation to promote and fulfil the rights of their citizens.

## Categories of Human Rights

### Civil rights:

Personal liberties or freedoms that belong to an individual, derived from his or her status as a citizen or resident of a particular country or community. These rights include protection from discrimination, right to life and freedom of movement.

### **Political rights:**

Protection of the person's right to self-determination. Includes natural justice (procedural fairness) in law, right to a fair trial and due process, the right to vote, freedom of conscience and freedom of association.

### **Economic rights:**

Rights that seek to protect and enhance the economic status of people. These include the right to work, the right to social security and the right to an adequate standard of living.

### **Social rights:**

Rights that seek to protect and enhance the social wellbeing of people. These include the right to a standard of living adequate for their health and wellbeing, and the right to education.

### **Cultural rights:**

Rights that seek to protect and enhance the cultural wellbeing of people. These rights include the right to participate in cultural life and the right to rest and leisure.

(Adapted from Chan, 2009)

## **Entitlements that Arise from Human Rights**

Every person regardless of circumstance:

- Is entitled to rights
- Is entitled to claim rights
- Is entitled to hold the duty bearer accountable
- Has a responsibility to respect the rights of others.

## **Obligations that Arise from Human Rights**

The obligation to **respect** requires us to refrain from violating human rights.

The obligation to **protect** requires us to prevent other people from violating human rights.

The obligation to **fulfil** requires us to take active steps (or positive action) to ensure that rights may be fully realised.

*“The ultimate source of human rights is the dignity of the person. Human dignity refers to the essential equality, value and uniqueness of every person. Dignity is also the end goal.”*

Dr Jeffrey Chan (Former Senior Practitioner, Victorian Government)

## Key Principles and Organisational Considerations of Human Rights

Understanding who the stakeholders are and what their rights and responsibilities are is the first step in identifying an organisation's human rights priorities. Our services have relationships with individuals, communities and other organisations; all of which hold certain rights and/or responsibilities. We will integrate human rights and human rights language into all levels of operations and incorporate the following key principles:

### Participation:

Ensure that stakeholders have every opportunity to be involved in assessment, decision-making and implementation of strategies, policies and services. Participation must be free, active and meaningful and move beyond consultation. This will require a commitment to embed a supported decision-making process and framework as well as person-centred planning.

### Accountability:

Respect, protect and fulfil people's rights. All human rights carry corresponding duties. Ensure there is a clear process for people to be able to seek redress if rights are infringed. Through person-centred planning, people are able to communicate what is working and what is not working in their life and are supported to make changes.

### Non-discrimination:

Prevent discrimination against any person. Target action to identify infringements or potential infringements, especially for people who are more vulnerable and who have few economic, social or political resources.

### Empowerment:

Promote a shared understanding of human rights and empower people to safeguard those at risk. Empowerment is an outcome of supporting people's participation.

### Link to human rights standards:

Place human rights principles at the heart of policy and practice. Human rights standards set minimum guarantees, identify problem areas and explore what is required to resolve them. We will consider people's lives through the lens of rights, autonomy, valued social roles, inclusion and safeguards.

Services will ask the following questions when interacting with people they support:

|                     |  |
|---------------------|--|
| Rights              | Do you know what your rights are?<br>Do you feel that people in your life respect your rights?   |
| Valued Social Roles | Do you feel you have valued/positive social roles?<br>Can you identify what they are?<br>Are your roles positioned in community or isolated?<br>Do you have a role in relationships such as brother or aunt?<br>Are you supported to fulfil that role?<br>Are you at risk of losing roles?<br>Do you want to develop more roles? |

|            |   |
|------------|---|
| Autonomy   | Do you have a voice and are you heard?<br>Do you make your own choices?<br>Do you have an advocate?   |
| Inclusion  | How are you currently involved in your local community (club, church, volunteering)?<br>Do you freely access your community?<br>Do you have any community memberships?<br>Are there other ways you would like to become included (such as joining a club or team)?<br>Are you excluded from going anywhere? |
| Safeguards | What do you see as your current risks (both at home and in the community)?<br>Are there safeguards in place for these?<br>Are your rights respected in these safeguards?<br>Has 'important to' (you) been considered in these safeguards?   |

*"When people not used to speaking out are heard by people not used to listening then real change is made."*

John O'Brien (The Centre for Welfare Reform, UK)

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## Appendix 1: United Nations Convention on the Rights of Persons with Disabilities

The Convention consists of a number of articles outlining the areas of public life and how to ensure the full inclusion of people living with disability. Some articles explain how States should approach and implement the Convention. Below is a summary of the articles.

- Articles 1 and 2 contain the purpose and definitions surrounding the convention.
- Articles 3 to 9 set out the general obligations on parties.
- Articles 10 to 30 set out specific obligations relating to specific human rights and fundamental freedoms.

The term 'State' refers to the government of a country.

- Article 1**     **Purpose:** Describes the overall purpose of the Convention and the different types of disability. It recognises that barriers prevent people living with disability from participating in society on an equal basis with others.
- Article 2**     **Definitions:** Outlines the meaning of terms in order to correctly understand what the convention means.
- Article 3**     **General principles:** Describes fundamental principles that need to be applied to implement the Convention.
- Article 4**     **General obligations:** Describes actions that States must take to comply with the Convention, both in the short and long term.
- Article 5**     **Equality and non-discrimination:** Guarantees equal rights and protection under the law and freedom from discrimination for people living with disability.
- Article 6**     **Women with disabilities:** Recognises that women and girls are more vulnerable to rights violations. It requires that specific measures are taken to protect their rights.
- Article 7**     **Children with disabilities:** Respects the interests of children with a disability. They must be the main consideration in all actions and need to have the right to express their views freely.
- Article 8**     **Awareness raising:** Requires States to promote the capability and contribution of people living with disability and combat harmful stereotypes.
- Article 9**     **Accessibility:** requires States to ensure that built environment, public facilities, communication and information are accessible for all members of the community.
- Article 10**    **Right to life:** Recognises that every human being has an inherent right to life.
- Article 11**    **Situations of risk and humanitarian emergencies:** Requires States to ensure the protection and safety living with disability in armed conflict, humanitarian emergencies and natural disasters.

- Article 12** **Equal recognition before the law:** Requires States to take necessary measures, if required, to ensure that people living with disability can properly exercise their legal rights.
- Article 13** **Access to justice:** Requires States to ensure effective access to justice for people living with disability.
- Article 14** **Liberty and security of the person:** Requires that people living with disability are not unlawfully deprived of their liberty.
- Article 15** **Freedom from torture or cruel, inhuman or degrading treatment or punishment:** Requires that people living with disability are not subjected to torture or cruel treatment. People should also not be subjected to medical or scientific experimentation without their consent.
- Article 16** **Freedom from exploitation, violence and abuse:** Requires that people living with disability are not subjected to any type of violence. Measures should be taken to detect, investigate and prosecute acts of violence. States should take appropriate measures to support the recovery of people living with disability who have been victims of exploitation, violence or abuse.
- Article 17** **Protecting the integrity of the person:** Requires States to ensure respect for the physical and mental integrity of people living with disability.
- Article 18** **Liberty of movement and nationality:** Requires States to ensure people living with disability have the freedom to choose their residence and nationality on an equal basis with others. This article also requires States to ensure that people are free to leave any country including their own.
- Article 19** **Living independently and being included in the community:** Requires that people living with disability have access to specialist and generic services that are necessary to support independent living and inclusion in the community.
- Article 20** **Personal mobility:** Requires that effective measures are taken so people living with disability have the greatest personal mobility and independence. This can mean easy and affordable access to mobility aids and assistive technologies.
- Article 21** **Freedom of expression and opinion, and access to information:** Requires that public information is provided in accessible formats, via appropriate technologies. Needs to be available in sign language and Braille. Other augmentative communication should be used where possible.
- Article 22** **Respect for privacy:** Requires that people living with disability are not subject to unreasonable or unlawful interference with their privacy, or to unlawful attacks on their reputation. States should protect the privacy of information about people living with disability on an equal basis with others.
- Article 23** **Respect for home and the family:** Requires that discrimination against people living with disability is eliminated in all matters relating to marriage, family, parenthood and relationships.

- Article 24**    **Education:** Requires States to recognise the right of people living with disability to an inclusive education and life-long learning that will enable them to realise their potential.
- Article 25**    **Health:** Requires that people living with disability are able to access the full range of generic and specialised health care services to attain the highest standard of health possible.
- Article 26**    **Habilitation and rehabilitation:** Requires that States provide services to help ensure that people living with disability are able to attain and maintain maximum independence.
- Article 27**    **Work and employment:** Requires States to recognise the right of people living with disability to freely choose or accept employment within a labour market and work environment that is open, accessible and inclusive.
- Article 28**    **Adequate standard of living and social protection:** Requires that States recognise the rights of people living with disability to have an adequate standard of living for themselves and for their families. This includes having adequate food, clothing and housing.
- Article 29**    **Participation in political and public life:** Requires States to guarantee the political rights of people living with disability. It also requires States to ensure that these rights are enjoyed on an equal basis with others.
- Article 30**    **Participation in cultural life, recreation, leisure and sport:** Requires States to take effective measures to ensure that people living with disability are able to access cultural materials in accessible formats. This includes enjoying access to television, film, theatre and other cultural activities. People should also be able to use their creative, artistic and intellectual potential on an equal basis with others.
- Article 31**    **Statistics and data collection:** Requires States to collect statistical and research data that will enable them to formulate, implement, monitor and evaluate policies and programs related to the Convention. Information should be collected in an ethical and legal manner which respects the privacy of people living with disability. All information should be made available to people living with disability.
- Article 32**    **International cooperation:** Requires States to recognise the importance of international cooperation by governments, international and regional organisations, and non-government organisations in efforts to implement the Convention.
- Article 33**    **National implementation and monitoring:** Requires States to coordinate mechanisms within government to ensure the Convention is implemented across different sectors.
- Article 34**    **Committee on the Rights of Persons with Disabilities:** A body will be established to monitor the implementation of the Convention. This article sets out the nomination and election procedure for Committee members, and arrangements for their payment and support.

- Article 35** **Reports by States Parties:** Requires States to submit a comprehensive initial report to the Committee on measures taken to implement the Convention within two years of the Convention coming into force, for the State party concerned.
- Article 36** **Consideration of reports:** The Committee is to consider State reports, and may make suggestions and recommendations to the State.
- Article 37** **Cooperation between States Parties and the Committee:** Each State must cooperate with the Committee and assist its members to fulfil their mandate.
- Article 38** **Relationship of the Committee with other bodies:** The specialist agencies of the United Nations are entitled to be represented in discussions concerning implementation of the convention and measures that fall within their mandate.
- Article 39** **Report of the Committee:** The Committee is to report to the General Assembly and Economic and Social Council on its activities every two years and in doing so may make suggestions and general recommendations.
- Article 40** **Conference of States Parties:** States shall meet regularly in order to consider issues concerning the implementation of the Convention.
- Article 41** **Depositary:** The Secretary-General of the United Nations is the depositary for the Convention.
- Article 42** **Signature:** The Convention shall be open for signature as of 30 March 2007.
- Article 43** **Consent to be bound:** The Convention is subject to ratification by signatory States. It is also open to other States that have not already signed.
- Article 44** **Regional integration organisations:** Defines the term 'regional integration organisation' and establishes their competence and voting powers in relation to the Convention.
- Article 45** **Entry into force:** The Convention will come into force on the thirtieth day after the twentieth State has ratified or joined the Convention.
- Article 46** **Reservations:** Reservations that are incompatible with the object and purpose of the Convention are not permitted. Reservations may be withdrawn at any time.
- Article 47** **Amendments:** Sets out the procedure for the amendment of the Convention.
- Article 48** **Denunciation:** A State may withdraw from the Convention by providing written notification to the Secretary-General of the United Nations. This withdrawal comes into effect one year after the date the notice is received.
- Article 49** **Accessible format:** The text of the Convention will be made available in a range of accessible formats.
- Article 50** **Authentic texts:** The official Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention are all equally authentic.

## Appendix 2: Policy Context

The Human Rights Guide for the South Australian Disability Service Sector operates within the Commonwealth legislative framework and South Australian legislation.

The Human Rights Guide for the South Australian Disability Service Sector has been developed in consideration of related policy and other significant national initiatives to ensure consistency and contemporary relevance. The following key documents and policy are acknowledged:

- United Nations Universal Declaration of Human Rights (1948)
- United Nations Convention on the Rights of Persons with Disabilities (2006)
- Strong Voices – A Blue Print to Enhance Life and Claim the Rights of People with Disability in South Australia (2012-2020)
- National Standards for Disability Services (2012)
- Australian Human Rights Framework (2010)
- National Disability Strategy (2010-2020)
- HCSCC Charter of Health and Community Services Rights (2010)

Relevant DCSI policy, supporting documents and resources include:

- Statement of Intent (2013)
- Safeguarding People with Disability Overarching Policy
- Safeguarding People with Disability Supported Decision-Making and Consent Policy
- Safeguarding People with Disability – Restrictive Practices Policy
- Safeguarding People with Disability – Management of Care Concerns

## Appendix 3: Legislative Context

### ***Commonwealth Disability Services Act 1986***

An Act relating to the provision of services for people living with disability, necessary to enable them to work towards full participation as members of the community and to achieve positive outcomes such as increased independence, employment opportunities and integration in the community; and for other related purposes.

### ***Disability Services (Rights, Protection and Inclusion) Amendment Bill 2013***

The objects of this Act are to acknowledge and support the rights of people living with disability to exercise choice and control in relation to decision-making; and to promote the protection of people living with disabilities from abuse, neglect and exploitation. It ensures that disability services provided by the government or funded under this Act are of the highest standard and are provided in a manner that is safe, accountable and responsive to the needs of people living with disabilities, their families and carers; and for other related purposes.

### ***National Disability Insurance Scheme Act 2013***

This Act establishes the National Disability Insurance Scheme, and gives effect to Australia's obligations under the UNCRPD; and for other related purposes.

### ***Health and Community Services Complaints Act 2004***

The objects of this Act are to improve the quality and safety of health and community services in South Australia through the provision of a fair and independent means for the assessment, conciliation, investigation and resolution of complaints; and for other related purposes.

### ***Consent to Medical Treatment and Palliative Care Act 1995***

This Act deals with consent to medical treatment, to regulate medical practice so far as it affects the care of people who are dying; and for other purposes.

### ***Guardianship and Administration Act 1993***

This Act provides for the guardianship of persons unable to look after their own health, safety or welfare; or to manage their own affairs and for the management of the estates of such persons; and for other purposes.

### ***Mental Health Act 2009***

This Act makes provision for the treatment, care and rehabilitation of persons with serious mental illness with the goal of bringing about their recovery as far as is possible; to confer powers to make orders for community treatment, or inpatient treatment, of such persons where required; to provide protections of the freedom and legal rights of mentally ill persons; and for other purposes.

### ***Disability Discrimination Act 1992***

Provides protection against discrimination based on disability.

***Equal Opportunity Act 1984***

This Act promotes equality of opportunity between the citizens of South Australia; to prevent certain kinds of discrimination based on sex, race, disability, age or various other grounds, and to facilitate the participation of citizens in the economic and social life of the community; and for other related purposes.

***Work Health and Safety Act 2012***

An Act to provide for the health, safety and welfare of persons at work and for other purposes.

***South Australian Carers Recognition Act 2005***

An Act to provide for the recognition of carers and other related purposes.