

Rights Resource Network SA

connecting change creators + law makers

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Department for Health and Wellbeing
Office of the Chief Psychiatrist
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Via email: HealthMentalHealthFeedback@sa.gov.au

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Dear Department Secretary

DRAFT SUICIDE PREVENTION Bill 2020

On behalf of the [Rights Resource Network SA](#) we thank you for the opportunity to provide feedback on the draft [Suicide Prevention Bill 2020](#). The Rights Resource Network is a volunteer-run network designed to share information and research among academics, community organisations and individuals who share an interest in protecting the human rights of South Australians.

We congratulate the South Australian Government on its commitment to prevent suicide in South Australia, and we endorse its decision to work with experts and community members to learn more about the complex, intersecting causes of suicide and effective prevention strategies. In this submission we offer our collective views on how the draft Suicide Prevention Bill (the Draft Bill) could be further improved to ensure that it achieves its stated aims. These views are intended to supplement more detailed submissions provided by individual members of the Network, including those provided by the Lived Experience Leadership and Advocacy Network (LELAN), Mental Health Coalition of South Australia (MHCSA), South Australian Rainbow Advocacy Alliance (SARAA) and Uniting Communities.

Positive features of the Draft Bill

In our view, the draft Bill has a range of positive features that have the potential to advance the human rights and dignity of South Australians. These positive features include:

- a commitment to taking coordinated, effective action to prevent suicide in South Australia informed by a range of different community perspectives;
- explicit recognition of the important role of people with lived or living experience being involved in decision-making, oversight and responding, which aligns with key principles set out in the *Convention on the Rights of Persons with Disability*;
- a commitment to prepare and implement practical plans to prevent suicide in South Australia;
- the creation of an advisory Council made up of senior Government officials, medical experts and individuals with lived experience to help inform and implement suicide prevention strategies in South Australia; and
- mechanisms to collect more accurate and disaggregated data on the rate of suicide and the effectiveness of suicide prevention strategies in South Australia.

If refined according to our suggestions below, these features of the draft Bill could help advance a rights-based approach to addressing the devastating consequences of suicide and suicide distress



or crisis in our State. A rights-based approach to mental health care is one that aligns with the principles set out in the *Convention on the Rights of Persons with Disabilities*, to which Australia is a party, and prioritises the rights, active agency and dignity of individuals experience mental illness in the development of laws, policies and services designed to improve their health outcomes.¹ If accepted, the suggestions below could further reduce the risks of the draft legislation as it currently stands from not complying with other international conventions to which Australia is a party, namely the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

Improving the potential for the Draft Bill to meet its stated objectives

1. Objectives and Principles

The primary objects of the Draft Bill are set out in section 7 as follows:

- (a) to reduce the incidence of suicide in the State; and
- (b) to promote best practice suicide prevention and postvention policies across the State; and
- (c) to articulate the role of the State in implementing suicide prevention and 30 postvention strategies; and
- (d) to provide for training and education in relation to suicide prevention; and
- (e) to provide for the identification of vulnerable population groups and implementing suitable initiatives to prevent suicide within such groups; and
- (f) to provide a framework to ensure that suicide prevention and postvention 35 response is a priority across all levels of government and community

Whilst these aims are strongly supported by the Network, if they are to be realised in practice it is important that they are supplemented by a clear, legislative commitment to adopt a rights-based approach to suicide prevention, focused on preserving and promoting the dignity and rights of any individual subject to suicide prevention or postvention policies, or strategies developed or implemented under the Bill. It is also important that these objects explicitly acknowledge and reflect the complex, intersecting causes of suicide and suicide distress or crisis, which span multiple government portfolios and reflect a range of human rights including the right to housing, the right to health care, the right to education, the right to privacy, the right to equality and freedom of expression. To this end, a commitment to adopting primary, secondary *and* tertiary approaches to suicide prevention would be a valuable inclusion in the objects clause of the Bill that would help shape the scope of other key functions and powers prescribed in the Bill. Without this addition, there is a risk that the objects of the draft Bill could be interpreted as having an unduly narrow focus on the tertiary and medical intervention end of mental health care, at the expense of addressing other key factors contributing to suicide risk such as social media and bullying and inadequate access to housing, employment or health care. This broader approach to suicide prevention also reduces the risk of this Bill inadvertently impacting negatively on other policies to improve human

¹ See e.g. George Szmukler, Rowena Daw, Felicity Callard, 'Mental health law and the UN Convention on the rights of persons with disabilities' (2014) 37 (3) International Journal of Law and Psychiatry, 245-252; [World Health Organisation 'Mental Health' Quality Rights Tool Kit](#) (2012)



rights outcomes in mental health care settings, such as efforts within hospitals to eliminate involuntary or restrictive treatments.

Recommendation 1: Amend the objects listed in section 7 of the Draft Bill to include:

- (a) a reference to preserving and promoting the dignity and rights of all South Australians, including those experiencing distress or mental illness and those subject to the policies or strategies developed under the Bill, in line with the principles set out in the *Convention on the Rights of Persons with Disabilities*
- (b) an acknowledgement of the need to address primary, secondary and tertiary responses to suicide prevention and the importance of the social determinants of mental health.

Caution should be exercised when articulating and implementing object (e), which refers to the identification of vulnerable populations and groups, to ensure that objective cannot be misused to stigmatise certain groups, or to permit the implementation of policies or processes that undermine the rights, dignity or privacy of certain groups within our community, including Aboriginal and LGBTIQ+ communities. This risk of misuse could be mitigated by a broader reference to the need to adopt a human rights -based approach to the development of plans and actions under the draft Bill.

2. *Suicide Prevention Council*

The establishment of a Suicide Prevention Council (the Council) is one of the positive features of the draft Bill, that could play a central role in facilitating a rights-based approach to suicide prevention in South Australia. To do this, we suggest that improvements be made to ensure that the Council is:

- representative of the full range of experts and community members with experience and expertise in suicide prevention and in public health;
- able to perform its functions independently and robustly; and
- transparent and accountable for the decisions and contributions it makes.

For example, we suggest that the membership of the Council could be expanded to include representatives from a broader range of government portfolios and statutory officers, including for example, SA Housing Authority and Department for Correctional Services. The process of appointing members to the Council could also be improved through the clear articulation of objective criteria (prescribed in either the Bill itself or via regulation) that would ensure Council members have relevant expertise or lived experience and the capacity to contribute meaningfully to the work of the Council, and to consult with and represent others in the South Australian community. The functions and operations of the Council could be made more transparent by prescribing regular, public reporting requirements (subject to protections for individual privacy) and by clarifying the relationship between the Council and the Minister when it comes to developing and approving Suicide Prevention Plans. If these changes are not adopted, there is a risk that the Council could become ‘tokenistic’ and purely advisory, rather than an active, independent and transparent body.

Recommendation 2: Amend Part 3 of the draft Bill to include:

- (a) A broader range of senior public officials as ex officio members of the Council, including senior officials responsible for housing, education and mental health care;



- (b) Specific criteria for the appointment of Council members, that includes reference to appointee's capacity to undertake the functions set out in section 12 of the Bill;
- (c) A requirement and power for the Council to regularly report publicly on its activities, for example via a website or social media account (in addition to the existing requirement to table an Annual Report);
- (d) A clear power for the Council to approve or disapprove a Suicide Prevention Plan (including the State Suicide Prevention Plan) and to provide reasons for this decision.
- (e) The requirement to develop a set of clear principles to govern the decision making processes of the Council that are made publicly available and are subject to regular community consultation and review.

3. *Suicide Prevention Plans*

The development of a State Suicide Prevention Plan is one of the positive features of the draft Bill. Section 19 could be further improved by clarifying that in the process of developing the State Suicide Prevention Plan:

- consideration must be given to the primary, secondary and tertiary causes of suicide and suicide distress/crisis;
- consultation must occur with government departments and portfolios responsible for basic government services, including housing, education, health care, policing and correctional services and employment;
- direct and early consultation must occur with Aboriginal communities and other relevant organisations in South Australia, including organisations representing young people, rural communities, CALD communities LGBTIQ+ communities and people with lived or living experience of distress and mental health issues

Section 19 could be further improved by clarifying the Council not only has responsibilities for preparing and development of the State Suicide Prevention Plan but is also empowered to endorse or approve (or refuse to endorse or disapprove) the Plan adopted by the Minister. As currently drafted, there is a risk that the Minister could finalise, endorse and implement a State Suicide Prevention Plan that does not adhere to the primary objects of the draft Bill, including the recommended object referring to the need to comply with human rights principles such as those contained in the International Conventions to which Australia is signatory.

Recommendation 3: Amend Section 19 of the draft bill to ensure development of the State Suicide Prevention Plan:

- (a) gives full consideration to primary, secondary and tertiary suicide prevention strategies
- (b) creates performance indicators inclusive of the social determinants of mental health
- (c) consults widely with relevant departments and portfolios, and examines the role of such agencies within the final Plan
- (d) consults directly and early with Aboriginal communities, Aboriginal community-controlled health services and other relevant non-government organisations about culturally appropriate strategies to prevent suicide and support those affected by suicide



- (e) consults directly with young people and members of regional and rural communities
- (f) is independently ratified by the Suicide Prevention Council, with consideration of the *Convention on the Rights of Persons with Disabilities*

4. *Measures to Prevent Suicide*

Part 5 of the draft Bill contains a range of provisions that empower the Minister to declare specified methods (section 26) or means by which people take their own life to be ‘controlled lethal means’ and gives the Minister a very broad discretion to make recommendations to advance the objects of the Act, including recommendations prohibiting certain actions or restricting access to certain items (sections 27-28). Although these recommendations can be reviewed by a Tribunal (section 30), they constitute a broad discretionary power to be exercised by the Minister without any clear criteria or principles to guide the exercise of this discretion beyond the broad requirement to further the objects of the Act. While the obligation on the Minister to consult with the Suicide Prevention Council is welcome (section 26), there is nothing in these provisions that would prevent the Minister from making a recommendation that is contrary to the advice of the Council, or that would at least require the Minister to disclose the fact that the Council advised against the making of the recommendation. There is also no obligation on the Minister to make public any advice it receives from the Council, or to provide reasons for making a recommendation, or to make the recommendations themselves publicly available. This could inhibit the transparency and oversight that is required to ensure that the recommendations made by the Minister do in fact advance the objects and purposes of the Act.

In addition, we are concerned that this Part of the Act has an unduly narrow focus on the most acute stage of suicide prevention – immediate prevention of physical self-harm. Primary and secondary prevention strategies should focus on social determinants of mental health and community-engaged strategies to build resources for wellbeing and resilience, including among at-risk groups such as young people and people in regional, rural and remote communities as well as CALD and LGBTIQ+ communities.²

Specific strategies and targets are also needed to reduce suicide for any and all people held in custody, including strong accountability mechanisms for police and correctional officers. This is important to ensure that South Australian laws and policies adhere to international human rights standards, including for example, the United Nations Standard Minimum Rules for the treatment of prisoners and the United Nations Convention on the Rights of the Child.³

² Fitzpatrick et al, 2019, Rethinking Suicide in Rural Australia: A Protocol for Examining and Applying Knowledge of the Social Determinants to Improve Prevention in Non—Indigenous Populations <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6719075/> ; JM Dickson et al, 2019 - A Systematic Review of the Antecedents and Prevalence of Suicide, Self-Harm and Suicidal Ideation in Australian Aboriginal and Torres Strait Islander Youth - International Journal of Environmental Research and Public Health

³ Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 10 February 2021]



We also draw attention to the potential for the recommendations made by the Minister under this Part of the draft to overlap with pre-existing legislative provisions that prohibit the possession or use of certain items that may pose significant risk in this context. We consider it important that the proponents of the draft Bill clearly outline how proposed provisions 26 and 27 would interact with the *Mental Health Act 2009* (SA), *Guardianship and Administration Act 1993* (SA), *Firearms Act 2015* (SA) and *Summary Offences Act 1953* (SA) and identify with precision the gaps this Part of the Bill intends to fill.

Recommendation 4: Amend Part 4 of the draft Bill to include:

- (a) A requirement that, prior to making a recommendation under section 27 of the draft Bill, the Minister publish a summary of the advice received from the Suicide Prevention Council, including a statement indicating whether or not the Suicide Prevention Council supports the making a recommendation in the terms proposed by the Minister;
- (b) Reference to the need to work with the Suicide Prevention Council to develop recommendations that address primary, secondary and tertiary suicide prevention strategies, including those that focus on the social determinants of mental health.

It is further recommended that the South Australian Government ensure that the Bill is accompanied by:

- an explanatory memorandum that clearly outlines how proposed provisions 26 and 27 would interact with the *Mental Health Act 2009* (SA), *Guardianship and Administration Act 1993* (SA), *Firearms Act 2015* (SA) and *Summary Offences Act 1953* (SA) and any other relevant legislation;
- the learning framework and appropriate resources for government services and contracted in government services to build long term healthy, stable, collaborative, flexible, inclusive cultures and systems, where respect, and empowerment underpin all aspects of the work performed.

5. Information Gathering and Sharing

The collection of accurate, reliable, disaggregated data on rates of suicide and those at risk of suicide is a positive feature of the draft Bill. It is critical that an accurate, precise and nuanced picture of the risk posed by suicide in South Australia is identified and considered by the Council and addressed specifically in Suicide Prevention Plans. However, the collection and use of this highly sensitive information also has the potential to abrogate the rights of individuals, and to have negative or unintended consequences for the development of effective prevention strategies. For this reason, further improvements to the draft Bill should be made to ensure the collection, use and sharing of this type of highly sensitive information preserves and promotes the dignity and rights of vulnerable individuals, and adheres to national and international privacy standards. For example, the draft Bill could be amended to include the need to preserve the privacy of any individual identified as being at risk of suicide or having attempted suicide, and people who may be bereaved or impacted by the suicide of a loved one, as a key object or principle. This could be supported by provisions that clarify that unless exceptions apply, no information that identifies an individual should be collected, shared



or used without the informed consent of that individual (or if the individual is deceased, their next of kin). Exceptions to this general rule should be explicitly prescribed in the draft Bill itself and not made reliant on the exercise of discretion by the Minister. It is also important for prevention purposes that Indigenous status is established and documented by the coroner for all those who die by suicide in South Australia.

We suggest that broadly expressed exceptions be removed or modified, such as those currently contained in section 40 that authorise disclosure:

- (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or*
- (f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.*

Such disclosure should only occur when there is no other alternative means of advancing the purposes or proper functions of a government agency or instrumentality. If such disclosure occurs, then the individual should be informed of the disclosure and of their rights with respect to the third party. We further recommend that an independent privacy impact assessment be undertaken of the draft Bill and any State Suicide Prevention Plan, prior to enactment and implementation.

Recommendation 5:

- (a) Require an independent privacy impact assessment to be undertaken of the draft Bill and any State Suicide Prevention Plan, prior to enactment and implementation
- (b) Amend section 7 of the draft Bill to include as an object of the Bill that the privacy and dignity of individuals should be preserved in all functions and powers exercised under the Bill
- (c) Amend section 40 of the draft Bill to provide that, as a guiding principle, no information that could be used to identify an individual should be collected, shared or disclosed without that individual's informed consent.
- (d) Amend the exceptions to this guiding principle to limit disclosure among government agencies and public officers to exceptional circumstances wherein no alternative sources of information could be relied upon to achieve the same ends.
- (e) Amend section 40 to require any agency, department or official to inform any individual (or their next of kin if deceased) whose personal information has been disclosed pursuant to section 40 of the circumstances of disclosure, and their rights to be informed about how their personal information has been used by any third parties.
- (f) Ensure Indigenous status and causal factors are documented confidentially by the Coroner for all Aboriginal or Torres Strait Islander people who die by suicide in South Australia

Should the above improvements be made to the draft Bill, we consider this legislative framework to be an important positive step in South Australia's response to suicide, and a model for other forms of rights-based, community informed policy development. We wish to again congratulate the South Australian government on its leadership in this area.

We also wish to offer to help facilitate further community consultation on this important reform and on the forthcoming Suicide Prevention Plan process. In our view, the South Australian community is

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eager and well placed to assist in the development of effective prevention plans, and should be supported to contribute – particularly those with lived or living experience of suicide distress or crisis. Please be in touch with Dr Sarah Moulds on sarah.moulds@unisa.edu.au to arrange a meeting with the relevant members of the Network.

Yours sincerely

Dr Sarah Moulds,

Director, Rights Resource Network SA

This letter was co-authored by the following Network members:

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SA LIVED EXPERIENCE LEADERSHIP & ADVOCACY NETWORK



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