



Australian  
Human Rights  
Commission

# Focus area on “accessibility, infrastructure and habitat (transport, housing and access)”

Australian Human Rights Commission

Input to Open-Ended Working Group on Ageing

12 April 2024

ABN 47 996 232 602  
Level 3, 175 Pitt Street, Sydney NSW 2000  
GPO Box 5218, Sydney NSW 2001  
General enquiries 1300 369 711  
National Info Service 1300 656 419  
TTY 1800 620 241

Australian Human Rights Commission  
[www.humanrights.gov.au](http://www.humanrights.gov.au)



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# 1 National and Legal Policy Framework

## 1.1 National and local legal provisions and policy frameworks recognising older persons' rights to accessibility, infrastructure and habitat (transport, housing and access)

Australia does not have a national Human Rights Act.<sup>1</sup>

There is no constitutional guarantee nor national/Commonwealth law that explicitly enshrines the right of older persons to an adequate standard of living, including the right to housing, as stipulated in Article 11(1) of the ICESCR.<sup>2</sup>

Under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), all new Bills and legislative instruments in Australia must be assessed for compatibility with the rights and freedoms recognised in the seven international human rights treaties that Australia has ratified, which includes ICESCR.<sup>3</sup>

A number of other domestic laws deal with aspects of the right to housing, transport, and access. These include:

- The *Age Discrimination Act 2004* (Cth) protects individuals from direct and indirect discrimination on the basis of age in areas of public life including accommodation; the disposal of land; accessing goods, services, and facilities; accessing premises; employment; education; and in the administration of Commonwealth laws and programs.<sup>4</sup> Similar legislation prohibiting age discrimination exists in each State and Territory of Australia.<sup>5</sup>
- The *Disability Discrimination Act 1992* (Cth) (DDA) makes it unlawful to discriminate against a person on the basis of their disability, in many areas of public life, including renting or buying a house or unit, accessing public places and getting or using services.<sup>6</sup> While not all older persons are persons with disability, the prevalence of disability increases with ageing and one in every two older persons in Australia over 65 years has a disability.<sup>7</sup>
- Disability Standards can be made under the DDA to specify rights and responsibilities about equal access and opportunity for people with disability in more detail. Standards have been made under the DDA in

relation to access to premises, providing minimum national accessibility requirements to ensure dignified access to, and use of, buildings, and in relation to transport, to ensure operators and providers make their services accessible.<sup>8</sup>

- The *Housing Assistance Act 1996* (Cth) provides financial assistance from the Commonwealth to the States/Territories to ensure that people can obtain affordable, secure, and appropriate housing. While older persons may benefit from the objects of this legislation, there is no explicit reference to the rights of older people in the Act.<sup>9</sup>
- The Australian Government is currently developing a new *Aged Care Act* to strengthen the application of a human rights approach to Australia's aged care system, ensuring the rights and needs of older persons are at the centre of the system. The Act specifically recognises a person's right to age in place and Australia's obligations under the ICESCR and the CRPD.<sup>10</sup>

There are a number of policies and programs that relate to older persons' right to live independently and be included in their communities as they age. These include:

- The Australian Government's Support at Home Program which seeks to improve access to services and home modifications to assist older people to live independently at home for longer, and to remain healthy, active, and socially connected to their community.<sup>11</sup>
- Housing Australia Future Fund which will support 20,000 new social housing dwellings, 4000 of which will be allocated to older women on low incomes at risk of homelessness, and to women and children impacted by family and domestic violence.<sup>12</sup>
- Australia's Disability Strategy 2021–2031 which delivers transport, housing and building accessibility outcomes for people with disability, including older persons, to create inclusive and well-designed homes and communities.<sup>13</sup>
- The National Construction Code Liveable Housing Design Standard which provides a set of technical provisions that if complied with, enable dwellings to better meet the needs of older people and people with mobility limitations.<sup>14</sup>

## 1.2 Challenges and barriers faced by older persons

Housing in Australia operates predominantly through policy implementation and service delivery and is conceptualised more as a commodity than a right, with some public housing available for certain eligible people.<sup>15</sup>

Other challenges faced by older people in realising their right to accessibility, infrastructure and habitat include the following:

- The absence of a national housing strategy for older persons.
- Most legislation relevant to property and residential accommodation is generic and, with the exception of retirement village and aged care legislation, does not make specific reference to older people.<sup>16</sup>
- Home ownership, formerly the foundation of the housing, pension and aged care system, is rapidly in decline.<sup>17</sup> Reduced home ownership among older Australians as they retire will have an impact on their ability to enjoy financial stability and security in retirement.
- More Australians are retiring with a mortgage or living in long-term private rental with ever increasing rents and the threat of eviction.<sup>18</sup>
- There are pronounced disparities in access to housing and other economic, social and cultural rights for certain groups, such as Aboriginal and Torres Strait Islander peoples, who experience worse outcomes across many socio-economic indicators.<sup>19</sup>

## 2 Data and research

The Australian Institute of Health and Welfare (AIHW) collects and publishes data on older persons' housing and living arrangements, including home ownership amongst older persons (74%), renting (14%) and social housing (public housing: 21%, community housing: 19%).<sup>20</sup>

In relation to access to public transport, AIHW also publishes data on the proportion of older people with a disability who can use all forms of public transport with no difficulty (63%).<sup>21</sup>

### 3 Equality and non-discrimination

The Australian Human Rights Commission (the Commission) has worked/is working on specific projects to enhance older persons' rights to housing. This includes:

- Publishing a background paper on Older Women's Risk of Homelessness (2019) which provided an in-depth analysis of the issue and possible solutions. The Commission's primary focus was to raise awareness of the issue of homelessness among older women and explore opportunities to facilitate secure, ongoing housing solutions for this cohort.<sup>22</sup>
- Undertaking a project to raise the profile of the right to adequate housing and advocate for a rights-based approach to housing policy. It includes the development of a framework that outlines the key features of the right to housing in the Australian context and housing landscape, and a research report which will assess the existing housing policy/legislative landscape and make recommendations for system reform.

### 4 Accountability

If an older person feels they have been treated less favourably because of their age in an area of public life covered by the ADA, it is open for them to lodge a complaint with the Commission's Investigation and Conciliation Service.<sup>23</sup> This process is free, voluntary and confidential. If the matter is terminated by the Commission, they may have the option of pursuing the matter further with the Federal Court or Federal Circuit and Family Court. Similar complaints processes are also available at the State and Territory level with the relevant anti-discrimination bodies.<sup>24</sup>

Due to the lack of a national Human Rights Act in Australia, in many cases an older person who claims that their human rights have been breached cannot obtain an enforceable remedy. It is open for an older person to lodge a complaint with the Commission if they feel that their human rights have been breached by the Australian Government. However, if the Commission cannot conciliate a human rights complaint, and the Commission finds that a breach of human rights has occurred, the Commission can only make recommendations and there is no available recourse to enforceable remedies through the courts – only if the matter amounts to 'unlawful discrimination' under the Age Discrimination Act.<sup>25</sup>

- <sup>1</sup> Australian Human Rights Commission, 'How are human rights protected in Australian law?' (Webpage), accessed 9 April 2024 <<https://humanrights.gov.au/our-work/rights-and-freedoms/how-are-human-rights-protected-australian-law>>.
- <sup>2</sup> The Committee on Economic, Social and Cultural Rights (ICESCR Committee) has emphasised that the right to adequate housing should not be narrowly defined as a right to physical shelter only, but instead should include the broader right to live in security, dignity, and peace. ICESCR Committee has identified seven characteristics intrinsic to housing adequacy at a minimum including legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. See also Australian Constitution; Australian Human Rights Commission, 'Ten common questions about a Human Rights Act for Australia' 2 <[https://humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA\\_questions.pdf](https://humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA_questions.pdf)>.
- <sup>3</sup> Attorney-General's Department, 'Human rights scrutiny' (Webpage), accessed 8 April 2024 <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny>>.
- <sup>4</sup> *Age Discrimination Act 2004* (Cth).
- <sup>5</sup> *Discrimination Act 1991* (Australian Capital Territory); *Anti-Discrimination Act 1977* (New South Wales); *Anti-Discrimination Act 1996* (Northern Territory); *Anti-Discrimination Act 1991* (Queensland); *Equal Opportunity Act 1984* (South Australia); *Anti-Discrimination Act 1998* (Tasmania); *Equal Opportunity Act 2010* (Victoria); *Equal Opportunity Act 1984* (Western Australia).
- <sup>6</sup> *Disability Discrimination Act 1992* (Cth).
- <sup>7</sup> Australian Bureau of Statistics, 'Disability, Ageing and Carers, Australia: Summary of Findings' (Webpage 2018), accessed 5 April 2024 <<https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release>>.
- <sup>8</sup> Attorney-General's Department, 'Right to an adequate standard of living, including food, water and housing – Public sector guidance sheet' (Webpage), accessed 8 April 2024 <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-adequate-standard-living-including-food-water-and-housing>>; Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 'Reform of the Disability Standards for Accessible Public Transport 2002 (Transport Standards)' (Website), accessed 8 April 2024 <<https://www.infrastructure.gov.au/infrastructure-transport-vehicles/transport-accessibility>>.
- <sup>9</sup> *Housing Assistance Act 1996* (Cth).
- <sup>10</sup> Department of Health, 'Consultation on the new Aged Care Act' (Webpage 2024), accessed 8 April 2024 <<https://www.health.gov.au/our-work/aged-care-act/consultation>>.
- <sup>11</sup> Department of Health and Aged Care, 'About the Support at Home Program' (Webpage 27 February 2024), accessed 9 April 2024 <<https://www.health.gov.au/our-work/support-at-home/about>>.
- <sup>12</sup> The Treasury, 'Improving housing supply and affordability – Housing Australia Future Fund' (Webpage), accessed 8 April 2024 <<https://www.treasury.gov.au/housing-policy>>.
- <sup>13</sup> Australian Government, 'At a glance – Australia's Disability Strategy' (Webpage), accessed 9 April 2024 <<https://www.disabilitygateway.gov.au/ads/glance>>.
- <sup>14</sup> Commonwealth of Australia and the States and Territories of Australia, 'Livable Housing Design Standard' (Webpage 2022), Australian Building Codes Board, accessed 8 April 2024 <<https://www.ncc.abcb.gov.au/sites/default/files/resources/2023/Livable-Housing-Design-Standard-2022-1.3.pdf>>.



- <sup>15</sup> Russell Solomon, 'Australia's Engagement with Economic and Social Rights' (Springer, 2021), 119; Dr Ronli Sifris, Andrea Olivares Jones, and Scott Walker, 'Older Persons and the Right to Adequate Housing – Submission to the Independent Expert on the enjoyment of all human rights by older persons' (2022) *Castan Centre for Human Rights Law*, 27 <<https://www.ohchr.org/sites/default/files/documents/issues/olderpersons/2022-report-older-persons/academics/2022-08-03/submissions-older-persons-right-to-adequate-housing-Castan-Centre-en.pdf>>.
- <sup>16</sup> Eileen Webb, 'Housing An Ageing Australia: The Ideal of Security of Tenure and the Undermining Effect of Elder Abuse' (2018) *Macquarie Law Journal* 18, 58 <<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/journals/MqLawJl/2018/5.html#>>.
- <sup>17</sup> Housing for the Aged Action Group, 'A Home for Life: Towards an older persons housing strategy' (2016), 1 <[https://www.older tenants.org.au/sites/default/files/older\\_persons\\_housing\\_strategy\\_nov\\_2016.pdf](https://www.older tenants.org.au/sites/default/files/older_persons_housing_strategy_nov_2016.pdf)>.
- <sup>18</sup> Housing for the Aged Action Group, 'A Home for Life: Towards an older persons housing strategy' (2016), 1 <[https://www.older tenants.org.au/sites/default/files/older\\_persons\\_housing\\_strategy\\_nov\\_2016.pdf](https://www.older tenants.org.au/sites/default/files/older_persons_housing_strategy_nov_2016.pdf)>.
- <sup>19</sup> Australian Human Rights Commission, *Free and Equal: An Australian Conversation on Human Rights* (Issues Paper, April 2019) 19.
- <sup>20</sup> Australian Institute of Health and Welfare, 'Older Australians: Housing and living arrangements' (Webpage 28 June 2023), accessed 8 April 2024 <<https://www.aihw.gov.au/reports/older-people/older-australians/contents/housing-and-living-arrangements>>.
- <sup>21</sup> Australia Institute of Health and Welfare, 'Public transport usability' (Webpage 30 November 2022), accessed 8 April 2024 <<https://www.aihw.gov.au/australias-disability-strategy/outcomes/inclusive-homes-and-communities/public-transport-usability>>.
- <sup>22</sup> Australian Human Rights Commission, *Older Women's Risk of Homelessness: Background Paper* (2019) <<https://humanrights.gov.au/our-work/age-discrimination/publications/older-womens-risk-homelessness-background-paper-2019>>.
- <sup>23</sup> *Australian Human Rights Commission Act 1986* (Cth) s 46P.
- <sup>24</sup> The state and territory agencies are: Australian Capital Territory Human Rights Commission, Anti-Discrimination New South Wales, Equal Opportunity Commission South Australia, Equal Opportunity Commission Western Australia, Equal Opportunity Tasmania, Northern Territory Anti-Discrimination Commission, Queensland Human Rights Commission, Victorian Equal Opportunity and Human Rights Commission.
- <sup>25</sup> *Australian Human Rights Commission Act 1986* (Cth) ss 20A and 29.