

## Guiding questions for the thirteenth session

### Focus area 2: Social inclusion

#### About Community Legal Centres Australia

Community Legal Centres Australia<sup>1</sup> (CLCs Australia) is the national representative voice for the community legal sector in Australia. It has ECOSOC Special Consultative Status with the United Nations. CLCs Australia is an independent, non-profit organisation set up to support the community legal sector to provide high-quality free and accessible legal and related services to everyday people, especially people experiencing financial hardship, discrimination and/or some other form of disadvantage, or who are experiencing domestic or family violence. CLCs Australia's members are the eight state and territory community legal sector peak bodies. Together, they represent about 170 community legal centres, women's legal services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services operating in metropolitan, regional, rural, remote, and very remote communities across Australia.

All CLCs assist older persons, and some specialise in assisting older persons with rights-specific issues including elder abuse, financial exploitation, social protection including social security, aged/long-term care, and accommodation, decision-making and guardianship. Centres have formed an Older Persons Legal Services Network (OPLS) of CLCs Australia. Many CLCs are also experts in discrimination law.

CLCs Australia has engaged in working sessions of OEWGA since the 4th session.

#### National legal and policy framework

Australia is a constitutional federation of six states<sup>2</sup> and two self-governing territories.<sup>3</sup>

Like in many countries, social isolation of older persons is a significant issue without a comprehensive response.

Older persons may experience loneliness and isolation at a higher rate;<sup>4</sup> further, social structures disempower older cognitively-impaired people, leading to or exacerbating social

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<sup>1</sup> Formerly the National Association of Community Legal Centres.

<sup>2</sup> Queensland, New South Wales, Victoria, Tasmania, South Australia, and Western Australia.

<sup>3</sup> Australian Capital Territory and Northern Territory.

<sup>4</sup> Relationships Australia, *Is Australia experiencing an epidemic of loneliness? Findings from 16 waves of the household income and labour dynamics of Australia survey*, working paper, 2018.

exclusion.<sup>5</sup> For older cohorts, loneliness has been found to be a predictor of functional decline and premature death,<sup>6</sup> with loneliness carrying risks to cardiovascular health among people aged over 50.<sup>7</sup>

Further, a recent Parliamentary report in Queensland<sup>8</sup> noted the experience of older Australians during COVID-19 was exacerbated by physical distancing measures, digital exclusion<sup>9</sup> resulting in social isolation, fear and anxiety of contracting COVID-19 due to higher level risk of fatality from the disease and avoiding accessing necessary healthcare due to online models of service delivery.<sup>10</sup>

*What are the legal provisions, policy frameworks and/or measures in your country that explicitly focus on older persons who are marginalized on the grounds of their sex, disability, race, ethnicity, origin, religion, economic or other status? (This may include addressing older populations on frameworks dedicated to other marginalized groups such as women, persons with disabilities, 1 UN DESA (2016) Report of the World Social Situation 2016 migrants, minorities, homeless people etc.; or addressing marginalized groups within frameworks devoted to older persons)*

Australia remains in a minority of countries worldwide without a national human rights charter or statute.<sup>11</sup> Older Australians have no national constitutional or legislative guarantees to the human right to social inclusion. Three of eight states/territories within Australia have human rights laws, which provide limited guarantees through rights to recognition and equality before the law and taking part in public life.

Australia has few national plans addressing the rights and needs of older persons. National plans and frameworks include Age Care Diversity,<sup>12</sup> A National Plan to Respond to the Abuse of Older

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<sup>5</sup> Burholt V, Windle G, Morgan DJ; CFAS Wales team. *A Social Model of Loneliness: The Roles of Disability, Social Resources, and Cognitive Impairment*. *Gerontologist*. 2017 Nov 10;57(6):1020-1030. doi: 10.1093/geront/gnw125. PMID: 27831482; PMCID: PMC5881780.

<sup>6</sup> Perissinotto CM, Stijacic Cenzer I, Covinsky KE. *Loneliness in older persons: a predictor of functional decline and death*. *Arch Intern Med*. 2012 Jul 23;172(14):1078-83. doi: 10.1001/archinternmed.2012.1993. PMID: 22710744; PMCID: PMC4383762.

<sup>7</sup> See, eg, Valtorta NK, Kanaan M, Gilbody S, Hanratty B. *Loneliness, social isolation and risk of cardiovascular disease in the English Longitudinal Study of Ageing*. *Eur J Prev Cardiol*. 2018 Sep;25(13):1387-1396. doi: 10.1177/2047487318792696. Epub 2018 Aug 2. PMID: 30068233

<sup>8</sup> Parliament of Queensland, Inquiry into social isolation and loneliness in Queensland, Report No. 14, 57th Parliament Community Support and Services Committee, December 2021

<sup>9</sup> Thomas, J., Barraket, J., Parkinson, S., Wilson, C., Holcombe-James, I., Kennedy, J., Mannell, K., Brydon, A. (2021). *Australian Digital Inclusion Index: 2021*. Melbourne: RMIT, Swinburne University of Technology, and Telstra.

<sup>10</sup> Ibid, p.33.

<sup>11</sup> <https://www.hrlc.org.au/charters-of-human-rights>

<sup>12</sup> <https://www.health.gov.au/our-work/aged-care-diversity-framework-initiative>

Australians,<sup>13</sup> Disability Support for Older Australians Program,<sup>14</sup> and the National Aged Care Advocacy Program.<sup>15</sup> There are developing programs for social inclusion.<sup>16</sup>

There are calls for national plans on older homeless persons, including on its gender dimensions,<sup>17</sup> and ageism.<sup>18</sup> Social isolation and loneliness are major social and public health issues<sup>19</sup> and there are developing programs to address the issue.<sup>20</sup>

No national plan exists for older migrants and refugees despite existing and developing need.<sup>21</sup>

*What legal age limits exist in your country that prevent the full and equal participation of older persons in societies in areas such as employment, education, healthcare, financial goods and services, or others?*

Age proxies exist in many aspects of life and affect older Australians by constraining eligibility or entitlement, including receipt of government pensions, entry into disability, health and care schemes, goods and services such as insurance and credit, superannuation and workplace arrangements.

Federal discrimination laws include distinct statutes on employment, race, sex, disability, and age. Complaints that involve multiple areas of discrimination must be made separately under each statutory scheme. This differs from state/territory arrangements where single anti-discrimination statutes more easily facilitate intersectional complaints. All laws prohibit direct and indirect discrimination and apply to age generally.

Exemptions and exceptions from age discrimination are diverse.<sup>22</sup> Exceptions and exemptions in federal law include for charities, religious bodies and voluntary bodies,

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<sup>13</sup> <https://www.ag.gov.au/rights-and-protections/protecting-rights-older-australians#national-plan-to-respond-to-the-abuse-of-older-australians>. This plan is due to expire in 2023.

<sup>14</sup> <https://www.health.gov.au/our-work/disability-support-for-older-australians-dsoa-program/about-the-disability-support-for-older-australians-program>

<sup>15</sup> <https://www.health.gov.au/our-work/national-aged-care-advocacy-program-nacap>

<sup>16</sup> <https://www.dss.gov.au/communities-and-vulnerable-people-programs-services/seniors-connected-program>

<sup>17</sup> <https://www.older tenants.org.au/ageing-edge-national-action-project>

<sup>18</sup> <https://www.everyagecounts.org.au/>

<sup>19</sup> <https://www.aihw.gov.au/reports/australias-welfare/social-isolation-and-loneliness-covid-pandemic>; Heinrich L & Gullone E 2006. *The clinical significance of loneliness: A literature review*. Clinical Psychology Review 26:695–718; Holt-Lunstad J, Smith T, Baker M, Harris T & Stephenson D 2015. *Loneliness and Social Isolation as Risk Factors for Mortality: A Meta-Analytic Review*. Perspectives on Psychological Science 10:227–37; Valtorta, N., Kanaan, M., Gilbody, S., Ronzi, S., & Hanratty, B. (2016b). *Loneliness and social isolation as risk factors for coronary heart disease and stroke: systematic review and meta-analysis of longitudinal observational studies*. Heart, 102(13), 1009-1016. doi:10.1136/heartjnl-2015-308790.

<sup>20</sup> <https://www.dss.gov.au/communities-and-vulnerable-people-programs-services/seniors-connected-program>; see also Thompson C, Morris D and Bird S (2022) *Evaluation of the Improving Social Connectedness of Older Australians project pilot: Informing future policy considerations*. Centre for Health Service Development, Australian Health Services Research Institute, University of Wollongong.

<sup>21</sup> Wilson, T., McDonald, P., Temple, J. et al. *Past and projected growth of Australia's older migrant populations*. *Genus* 76, 20 (2020). <https://doi.org/10.1186/s41118-020-00091-6>

<sup>22</sup> Blackham, Alysia, *A Compromised Balance? A Comparative Examination of Exceptions to Age Discrimination Law in Australia and the UK*. Melbourne University Law Review, Vol. 41, No. 3, 2018, U of Melbourne Legal Studies Research Paper No. 785, Available at SSRN: <https://ssrn.com/abstract=3216895>

superannuation, insurance and credit—actuarial data etc, superannuation legislation, direct compliance with laws, orders etc, taxation laws, pensions, allowances and benefits etc, commonwealth employment programs, health and migration and citizenship etc.<sup>23</sup>

Blackham (2018) notes that “overall, the extensive exceptions to age discrimination law under the ... ADA, and state and territory statutes send a clear message that age equality and intrinsic ends are secondary to other, competing considerations.”<sup>24</sup>

*What measures are in place, if any, to ensure that older persons in institutions segregated from their communities – such as institutional care systems or prisons – can continue participating in their society?*

State/territory human rights acts include the right to taking part in public life and the protection of families. These laws do not provide an enforceable right to social inclusion while in an institutional setting.

Social isolation in aged care is a significant issue and access during COVID-19 was constrained causing greater isolation of older Australians in care.<sup>25</sup> This was particularly noted for older Australians with dementia, those with communication disabilities, those in rural, regional and remote areas, older Aboriginal and Torres Strait Islander people, those without family and friends to visit, older persons from culturally and linguistically diverse backgrounds, older veterans, older care leavers, older lesbian, gay, bisexual, transgender and intersex people and those with diverse backgrounds and life experiences.<sup>26</sup>

Community visitors schemes have been identified as successful interventions<sup>27</sup> and recommendations about aged care visitors were made by the recent Royal Commission.<sup>28</sup> Also recommended by the Commission was a social supports category within the aged care program that provides supports that reduce and prevent social isolation and loneliness among older people. Services available should include social activities, transport, delivered meals and centre-based day care.<sup>29</sup> This also included specific supports such as the importance of LGBTI volunteers for people from LGBTI communities receiving aged care, helping reduce their isolation and maintain connection to their LGBTI identity and communities.<sup>30</sup> Low cost interventions to promote connection to community have also been evaluated as successful; for example, Neighbours Every Day, auspiced by Relationships Australia.<sup>31</sup>

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<sup>23</sup> Age Discrimination Act, secs 34-43.

<sup>24</sup> Ibid, p.1119.

<sup>25</sup> Final Report of the Royal Commission into Aged Care Quality and Safety, Volume 2: The Current System, 2021, Chapter 2.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid, p.29, Recommendation 44.

<sup>28</sup> Final Report of the Royal Commission into Aged Care Quality and Safety, Volume 1: Care, Dignity and Respect, Summary and Recommendations, 2021.

<sup>29</sup> Ibid, Recommendation 33.

<sup>30</sup> Ibid.

<sup>31</sup> See the evaluation of Neighbour Day (re-named as Neighbours Every Day in 2021), by Cruwys, T., Fong, P., & Rathbone, J. A. (2022). Neighbour Day Evaluation 2021: Creating Connection to Community. The Australian National University.

The AAG recently noted the challenges faced by older prisoners, noting approximately one in five Australians in prison are presently considered 'older', with the ageing of people in prison outpacing population growth outside of prisons.<sup>32</sup>

AAG concluded that Australian prisons often lack appropriate infrastructure, resources, expertise and programs to respond to these issues or support people to age adaptively. While some jurisdictions have tried introducing correctional policies to better respond to the needs of older people in prison, most facilities lack the funding and capacity to provide adequate ageing-related support to older people in prison.<sup>33</sup> Older prisoners with cognitive impairment or dementia have extremely limited opportunities for participation in the community.<sup>34</sup>

Institutional settings can also include in-home care where an older person has limited mobility and community engagement. Recent research by Siette et al (2020) in community care noted that services and systems that can identify and address gaps and variations in older adults' social participation should be explored for their potential to reduce isolation and loneliness and their harmful consequences.<sup>35</sup>

*States have an obligation to use maximum available resources to progressively achieve the full realization of economic, social and cultural rights. What is the share of national public expenditure budget targeted to older persons as a distinct group?*

The Australian Government can provide this information.

Australia's most recent budget did include reform measures for older Australians following the recent Royal Commission.<sup>36</sup> Despite this, many of the wide-ranging measures sought by the Council on the Ageing (COTA) were not funded.<sup>37</sup> While service trials of responses to neglect and abuse of older people are continued in the current Budget, there is no indication of a national rollout, or any measure to fund such services in proportion to the prevalence of abuse and neglect of older persons.

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<sup>32</sup> Adrienne Withall, Rhys Mantell, Ye In (Jane) Hwang, Natasha Ginnivan and Susan Baidawi. (2022). Background Paper: *Issues facing older people who are leaving prison*. Australian Association of Gerontology (AAG), p.7.

<sup>33</sup> Ibid, p.13.

<sup>34</sup> du Toit SHJ, Withall A, O'Loughlin K, Ninaus N, Lovarini M, Snoyman P, Butler T, Forsyth K, Surr CA. *Best care options for older prisoners with dementia: a scoping review*. Int Psychogeriatr. 2019 Aug;31(8):1081-1097. doi: 10.1017/S1041610219000681. PMID: 31412973.

<sup>35</sup> Siette, J., Berry, H., Jorgensen, M., Brett, L., Georgiou, A., McClean, T., & Westbrook, J. (2021). *Social Participation Among Older Adults Receiving Community Care Services*. Journal of Applied Gerontology, 40(9), 997–1007. <https://doi.org/10.1177/0733464820938973>

<sup>36</sup> <https://www.cota.org.au/news-items/older-australians-reflect-on-federal-budget/>;  
<https://www.agedcareguide.com.au/talking-aged-care/budget-breakdown-what-is-in-it-for-older-australians>

<sup>37</sup> <https://www.cota.org.au/information/resources/submission/pre-budget-submission-2022-23/>