

Australia
Response to
United Nations Open-ended Working Group on Ageing request
For additional input to the
11th Session – Focus area - Access to the Labour Market

Legislations and Government programs

The *Australian Human Rights Commission Act 1986*, the *Age Discrimination Act 2004* and the *Fair Work Act 2009* provide a national legislative framework to ensure protections of older persons to enjoy favourable work conditions. This framework of protections is age neutral.

The general protections provisions in the *Fair Work Act 2009* (the Act) prohibit adverse action by an employer against an employee or prospective employee for discriminatory reasons, including age. Protections against age discrimination are also contained in the *Age Discrimination Act 2004*. Under this Act, individuals can seek assistance from the Australian Human Rights Commission and lodge a complaint if they feel they have suffered from discrimination due to their age. The Commission can mediate disputes about discrimination in the workplace, including age discrimination with respect to prospective employees. State and Territory-based anti-discrimination legislation and governing bodies also have complaints handling mechanisms for age discrimination related employment complaints.

The Australian Government recognises the importance of developing a workplace culture in Australia that values the skills and experience of mature age people. Since July 2018, a Collaborative Partnership on Mature Age Employment has been working with employers to reduce age discrimination and promote the benefits of employing older workers. The Australian Government recognises that older Australians face challenges in accessing the labour market and has implemented a range of targeted programs to help overcome these barriers, in addition to the services available to all Australians.

The Australian Government provides a range of assistance to help older Australians gain employment, upskill or remain in the workforce. Mainstream programs, such as the National Work Experience Programme or Australian Apprenticeships, are available to help Australians of all ages to find sustainable employment.

The Age Discrimination Commissioner, the Hon Dr Kay Patterson AO, advocates for the rights of older Australians and has been working to raise awareness about unlawful age discrimination and to help employers remove discriminatory practices from their recruitment processes.

The Restart wage subsidy provides eligible employers with a financial incentive of up to \$10,000 (GST inclusive) over six months if they hire a person 50 years of age or older who is registered with an employment services provider and has been unemployed and on income support or a pension for six months. The Government supports older Australians to upskill or transition into new careers through the Skills Checkpoint for Older Workers Program which assists Australian workers or recently unemployed job seekers aged 40 years of age and over. The Skills and Training Incentive complements this program and provides individuals with access to up to \$2,200 in matched funding to undertake identified training.

The Career Transition Assistance (CTA) program supports eligible job seekers over 45 years of age to become more competitive in their local job market. CTA provides individualised assistance to help

participants with digital literacy training, developing resilience strategies, identifying their transferrable skills and gaining a better understanding of their local labour market. The Launch into Work program funds projects to provide job seekers (particularly women) with training, mentoring and work experience to fill entry-level positions with good career prospects. In partnership with the states and territories, the JobTrainer Fund provides job seekers of all ages with access to free or low cost training places in areas of identified skills needs.

The present employment service, jobactive, will be replaced from 1 July 2022 by a new employment services model, which will provide more tailored support to jobseekers and more responsive service to employers. The most disadvantaged job seekers, including many older Australians, will receive professional, individualised services to help prepare and support them into work. Providers will help address a job seeker's barriers to work through career guidance, mentoring, vocational training, and assistance in accessing non-vocational services such as counselling, work experience, job placements and post-placement support.

Flexible work arrangements

The National Employment Standards (NES) in the Fair Work Act include a right to request flexible working arrangements for certain employees, including those aged 55 years and older who are permanent employees with at least 12 months' continuous service with their employer, or who are casual employees who have worked for their employer for at least 12 months and have a reasonable expectation of continuing employment on a regular and systematic basis. Reasonable accommodation in Australian workplaces (other than the ability to request flexible work), predominantly relates to accommodations for disability. Older Australians are able to request accommodations to their workplace if they age into disability under the relevant legislation, supported by the JobAccess program.

Under transition to retirement rules, older workers who have reached their preservation age may be able to access a Transition to Retirement arrangement where they can reduce their working hours without reducing their income.

Work Health and Safety

Australia has model work health and safety (WHS) laws, which have been adopted in most states and territories. These laws require employers and other people conducting a business or undertaking to ensure the physical and psychological health and safety of all their workers, and other persons who may be affected by the carrying out of work. The definition of a worker under the model WHS laws is broad, and covers paid employees, contractors, trainees and volunteers. WHS laws apply equally to all cohorts of workers, including older workers, in all industries in Australia and in all areas of employment.

Other considerations

The Australian Bureau of Statistics (ABS) is currently conducting the Time Use Survey, which collects comprehensive data on how Australians use their time. The first set of findings are expected to be published in mid-2022. The Survey will provide a greater understanding of the workforce participation gap between women and men and will lead to a more in-depth understanding of women's lives at work and at home. The results will be used by governments, researchers and community groups to better understand people's decisions about employment, family, childcare, unpaid work and volunteering as well as the time pressures they experience.

The Australian Government has adopted an approach that maximises employers' flexibility to make hiring decisions while ensuring that no group within the population suffers from discrimination. The Organisation for Economic Cooperation and Development recommended investing in labour market assistance programs (such as those provided in Australia) as a preferable form of support for older job seekers.

Health, education, caring responsibilities, lower skill levels (including due to lower initial education levels and lack of recent training), lower digital literacy and social attitudes are other examples of barriers to work for mature age people (see 2020 response for an expansive list of challenges). The Government has established the Mature Age Hub as a one-stop shop to provide information, tools and links to support for mature age Australians and employers interested in hiring them.

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11th Session – Focus area – Access to Justice

The Australian Government notes that a number of existing international law obligations may be relevant to access to justice by older persons. For instance, Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which provides, *inter alia*, that all persons are equal before the courts, and that everyone is entitled to a fair and public hearing. Further, Article 2(3) of the ICCPR provides the right to 'effective remedy'. Additionally, Article 13 of the Convention on the Rights of Persons with Disabilities (CRPD) provides that State parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations. The CRPD is of particular relevance to older persons, given the increased potential for older persons to have age-related disabilities or to be persons with disabilities.

Elder Abuse

The Australian Government is committed to supporting measures to reduce the prevalence, severity and impact of elder abuse. The Australian Government is driving a national response to keep older Australians safe, and recognise and promote the rights of older Australians through a range of interconnected initiatives involving national co-ordination; expansion of front-line services; improving access to information and enhancing our knowledge base.

The Australian Government is distributing \$17.2 million over four years from 2018-19, and \$24.39 million over four years from 2022-23 to selected service providers to trial three different models of service provision to support access to legal assistance for those subjected to elder abuse. These services are:

- Specialist elder abuse units: Lawyers, social workers and other specialist and support staff, work side by side with clients to develop a case plan and respond to the individual's needs
- Health-justice partnerships: Older people in the health care system who are identified by health care workers or social workers as being at risk or potentially subjected to elder abuse, can access specialised legal support services. These work in partnership with the health system and related referral agencies, such as community aged care service
- Case management and mediation services (CMMS): CMMS work with the older person and their family, to find solutions to the underlying problems driving abuse.

National Register of Enduring Powers of Attorney

Attorneys-General from each Australian jurisdiction have taken a leading role in pursuing reforms to enduring document arrangements. A mandatory national registration scheme for enduring powers of attorney relating to financial matters has been proposed as one way to reduce the financial abuse of older Australians. Attorneys-General from each Australian jurisdiction have agreed to consult on possible arrangements for a National Register of Enduring Powers of Attorney. The outcomes of this consultation will develop and inform a final proposal for the consideration of Attorneys-General from each Australian jurisdiction.

National Strategic Framework for Legal Assistance

The National Strategic Framework for Legal Assistance (NSFLA) provides the policy framework for all government legal assistance funding. This includes an overarching objective and aspirational principles to guide legal assistance policy development, service delivery and sector planning. The NSFLA recognises that to best meet the legal needs of vulnerable people, where practicable, a client-centred approach should be used to ensure legal assistance services are tailored and appropriate to people's particular legal needs, capabilities and knowledge. To this end, outcome 2 of the NSFLA provides that legal assistance services are delivered in a client centric manner in order to better consider people's legal needs and capabilities.

Premises Standards

The *Disability Discrimination Act 1992* provides protection for everyone in Australia against discrimination based on disability and is supplemented by a series of Disability Standards and Guidelines. These provide more detail on rights and responsibilities about equal access and opportunity.

Access to Courts

Australia's federal courts provide registry services and conduct hearings in Commonwealth Law Courts Buildings in capital cities in each Australian State and in Canberra, and in leased accommodation in Darwin and in other regional locations across Australia. As part of the federal courts' *Accommodation Guidelines and Standards*, disabled persons are to have access to buildings occupied by the federal courts without unnecessary segregation or isolation from other users. The requirements of the Premise Standards are applied to ensure new court premises and modifications to existing court premises meet these legislated requirements. Upgrades to courtroom, audio visual equipment and amplification systems include the installation of an appropriate hearing augmentation systems. The courts work with the Australian Department of Finance (the owner of Commonwealth Law Courts Buildings) to ensure all base building upgrade works that improve physical accessibility to the courts are prioritised. As part of its general operations and supporting policies, key court staff have responsibility to ensure that systems required under work health and safety laws support and facilitate access for disabled staff and members of the public.

Under the *National Legal Assistance Partnership 2020-25* (NLAP), older people (aged over 65 years or Aboriginal and Torres Strait Islander people aged over 50 years) are identified as a national priority client group. Identification as a national priority client group recognises these people are more likely to experience legal problems, less likely to seek assistance and/or less able to access services for a range of reasons. The NLAP delivers the majority of Commonwealth funding for legal assistance services, though funding for legal assistance is a shared responsibility with the states and territories. Under NLAP states are to ensure legal assistance services are planned and focused to people in national priority client groups, including through collaborative service planning processes. The Australian Government has established, in partnership with the state and territory governments, a single free-call phone line which automatically redirects callers seeking information and advice on elder abuse with the existing phone line service in their jurisdiction.

The NLAP requires states and territories to report on the number and percentage of legal assistance services delivered to individuals in specific national priority client groups, including older people (aged over 65 years or Aboriginal and Torres Strait Islander people aged over 50 years).

The NLAP also requires the Commonwealth, states and territories, and the legal assistance sector to work together through collaborative service planning processes to coordinate and maximise the reach of mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services and ensure they are focused on where they are most needed. This includes consideration of an appropriate evidence base for legal need.

The Australian Human Rights Commission

A function of the Australian Human Rights Commission (AHRC), established under the *Australian Human Rights Commission Act 1986* is to inquire into, and attempt to conciliate, complaints of unlawful discrimination, including under the Age Discrimination Act. To this end, the Commission acts as an independent third party which investigates complaints about discrimination and breaches of human rights.

Advocacy and guardianship bodies

Separately, states and territories are responsible for the regulation and establishment of advocacy and guardianship bodies to assist vulnerable persons, whose role can include undertaking investigations in tribunal proceedings in relation to older persons that have lost decision making capacity.

Alternate dispute resolution

The Australian Government encourages the use of alternative dispute settlement mechanisms as a more flexible, inclusive, timely and cost-effective means to assist people to resolve their legal problems. The *Legal Services Directions 2017*, made under the *Judiciary Act 1903*, establish model litigant obligations which require Australian Government agencies to act honestly and fairly in handling claims and litigation brought against or by the Commonwealth or a Commonwealth agency. The Directions require agencies to endeavour to settle claims by ADR and, where litigation is commenced, to keep the costs to a minimum by looking for opportunities to resolve the litigation, including through ADR. The model litigant obligation also requires the Commonwealth and Commonwealth agency to not take advantage of a claimant who lacks the resources to litigate a legitimate claim. Where the Commonwealth or Commonwealth agency is participating in ADR, the Directions require their representatives to participate fully and effectively, and have authority to settle the matter so as to facilitate appropriate and timely resolution of a dispute.

The separation of powers doctrine inherent in the Australian Constitution requires that judges only exercise judicial power (except where engaged in a personal capacity) and do not act in a way that damages or undermines public confidence in the judiciary. It is generally agreed, however, that disputes can be disposed of more effectively where judges are given powers to order the parties to participate in ADR. Judges may order mediation without the consent of the parties, but constitutional limitations prevent them from ordering parties to undertake binding private arbitration or other determinative processes. The *Civil Dispute Resolution Act 2011* encourages parties to a dispute to take genuine steps to resolve their disputes before instituting proceedings in the Federal Court of Australia or the Federal Circuit and Family Court of Australia. This Act requires parties to file a 'genuine steps' statement indicating what steps (if any) they have taken. What action constitutes a 'genuine step' is up to the parties to determine within the context of their particular dispute and could include participating in an ADR process. ADR requirements are also sometimes included in specific Acts. For example, the *Family Law Act 1975* requires that family dispute resolution must be undertaken before a party can commence proceedings in the Federal Circuit and Family Court of Australia in relation to disputes about children.

The Family Law Act recognises grandparents as a category of persons whom, as a general principle, children have the right to spend time with and community with on a regular basis. The Family Law Act also provides legal standing for grandparents to apply to court for parenting orders that set out care arrangements for their grandchildren following family separation or divorce.

The federal courts encourage their judicial officers to participate in professional development activities both internally (e.g. judicial education sessions) and externally (e.g. National Judicial College of Australia programs and the Supreme Courts and Federal Court Judges' Conference). Activities relevant to the elderly and age discrimination include development of knowledge and ability in discrimination law, judicial skills including case management and dealing with vulnerable persons, judicial conduct/ethics and social contexts (e.g. equality, diversity, culture and disability) and technology.

All judicial officers are also provided access to relevant online resources such as the Judicial Commission of New South Wales' Equality before the Law Benchbook which, in part, deals specifically with older people in Australia, their particular barriers to justice, and practical considerations, as well as the United Kingdom's Equal Treatment Bench Book. The federal courts also offer online and face to-face learning packages and training in a range of areas which deal, in part, with the needs of the aged and age discrimination. All staff employed in the registries of the federal courts are Australian Public Service (APS) employees and are bound by the APS Code of Conduct, including the obligation to treat everyone with respect and courtesy. They must also uphold the APS values including respecting all people and their rights, and being professional in providing the best results for the Australian community.