



AUSTRALIAN GOVERNMENT RESPONSE

CALL FOR SUBMISSIONS: REPORT ON IDENTIFICATION OF POSSIBLE GAPS IN THE PROTECTION OF THE HUMAN RIGHTS OF OLDER PERSONS AND HOW BEST TO ADDRESS THEM.

Australia thanks the Working Group for their invitation to provide a submission to inform the Report on identification of possible gaps in the protection of the human rights of older persons and how best to address them.

Please note that Australia's responses include reflections on international frameworks and also reflections on national frameworks which may be applicable in the international context.

Identification of gaps

1. For each of the topics that have been considered by the Open-ended Working Group since its eighth session, please state possible gaps your Government/organization has identified in the normative framework and practical implementation for the protection of the human rights of older persons. (500 words each)

a. Equality and non-discrimination

In spite of legislative settings to prevent age discrimination, Australia's *2023 Employing and Retaining Older Workers* survey results indicate that almost 20% of employers in Australia remain unwilling to hire people over a certain age, although this has improved over time (it was over 50% in 2014). Recent Organisation for Economic Co-operation and Development (OECD) information from the Midcareer Opportunity report indicates that this is a global issue and that employers acknowledge that, when they do hire people over 45, those workers perform on the job just as well as or even better than their younger counterparts.

b. Violence, neglect and abuse

In April 2021, the Department of Health and Aged Care (DoHAC) introduced the Serious Incident Response Scheme (SIRS) in Australia to reduce abuse and neglect among older persons in residential aged care. It was expanded to aged care services delivered in home and community settings in December 2022. The DoHAC continues to closely monitor trends in SIRS data and reporting, alongside broader reform measures, to identify any gaps or service improvement opportunities in Australia.

SIRS requires aged care providers to report eight types of reportable incidents:

- unreasonable use of force
- unlawful sexual contact or inappropriate sexual conduct
- psychological or emotional abuse
- unexpected death



- stealing or financial coercion by a staff member
- neglect
- inappropriate use of restrictive practices
- missing consumer.

The purpose of SIRS is to:

- help strengthen the aged care system and reduce the risk of abuse and neglect;
- increase providers' ability to respond to serious incidents;
- enable providers to review incident information to drive improvements in quality and safety;
- reduce the likelihood of preventable incidents reoccurring; and
- ensure that older persons are receiving the care they need while in aged care.

The National Plan to Respond to the Abuse of Older Australians (2019-2023) was developed in collaboration with Australian state and territory governments, and provides an overview of the issues that all levels of governments need to act on as a priority, as well as early agreed actions to address them. It sets out a framework for ongoing cooperation, action and monitoring against five key priority areas:

- enhancing our understanding;
- improving community awareness and access to information;
- strengthening service responses;
- planning for future decision-making; and
- strengthening safeguards for vulnerable older adults.

As part of the National Plan, the Australian Attorney-General's Department commissioned an extensive empirical examination of elder abuse in Australia (the National Elder Abuse Prevalence Study). The Prevalence Study found that:

- the prevalence of elder abuse in the Australian community (14.8%) is marginally lower than the global prevalence rate, which is estimated at approximately 15.7%;
- one in six older Australians reported experiencing abuse in the 12 months prior to being surveyed; and
- the most common forms of abuse experienced were psychological abuse (11.7%), neglect (2.9%), financial abuse (2.1%), physical abuse (1.8%) and sexual abuse (1%).

The findings indicate:

- elder abuse is often perpetrated by family members (mostly adult children); and
- approximately two thirds of older persons who have experienced elder abuse, do not seek help from a third party.



Australian Government

Department of Foreign Affairs and Trade

c. Long-term care and palliative care

Nil response.

d. Autonomy and independence

Australia state and territory governments are ultimately responsible for legislating on Enduring Powers of Attorney (EPOA), which if made correctly improve an older person's autonomy and independence.

At the Standing Council of Attorneys-General meeting on 22 September, noting the importance of elder abuse law reform, participants agreed to seek public feedback on options for achieving greater consistency in EPOA laws in Australia. A consultation paper on EPOA reform was endorsed for release, and it was agreed that further advice on this work will be provided to Attorneys-General in Australia in 2024, based on consultation feedback.

e. Protection et sécurité sociales (y compris protection sociale minimale)

Australia refers the Working Group to the International Labour Organization Standards Review Mechanism Tripartite Working Group (ILO SRM TWG). In their *2023 report*, SRM TWG concluded that ILO Conventions 35, 36, 37, 38, 39 and 40 on old age, invalidity and survivors' benefits should be considered outdated.

Their review called for follow-up involving targeted promotion and effective implementation of Convention 102 and Convention 128 on old age, invalidity and survivors' benefits by Member States in which the above outdated instruments are currently in force.¹

SRM TWG concluded that there is no gap in coverage in the body of international labour standards under Convention 102 (Social Security (Minimum Standards) Convention), and Convention 128 (Invalidity, Old-Age and Survivors' Benefits Convention) with respect to old age, invalidity and survivors' benefits, while acknowledging the specific challenges faced by agricultural workers particularly in light of the possible exemptions under Convention 102 and Convention 128.²

f. Education, training, lifelong learning and capacity-building

The Department of Health and Aged Care identified a gap in educational resources, communication and lack of awareness and self-capacity in older persons understanding their aged care rights, how to raise and address their concerns with aged care providers and how to navigate aged care services. Gaps were also present in the education and training of families, carers, and representatives of older Australians as well as health and allied professionals.

The National Aged Care Advocacy Program (NACAP) in Australia is delivered nationally through the Older Person's Advocacy Network (OPAN) and a consortia of nine state and territory members organisations. Aged care advocates assist older persons and their carers or

¹ [Report of the eighth meeting of the Standards Review Mechanism Tripartite Working Group](#), page 22

² *Ibid*, page 21



representatives, to understand and exercise their aged care rights, seek aged care services that suit their needs and find solutions to issues they may be experiencing. The Royal Commission into Aged Care Quality and Safety (Royal Commission) recommended improving access to advocacy support, information and education by expanding the NACAP's geographic coverage and activities.

Practical implementations have been directly informed by the Australian National Older Person's Reference Group (NOPRG) established by OPAN. The NOPRG consists of 31 members across Australia who provide strategic advice, from a consumer, carer and community perspective, in relation to aged care. They identify issues and priorities for improvement of OPAN activities and aged care services and participate in consultations with the government and relevant stakeholders for systemic reform across the aged care sector.

Practical activities to improve aged care services include:

- Development of the Self-advocacy Toolkit, a free online resource designed to build capacity and equip people with the skills, information and resources to understand their aged care rights and speak up for better aged care;
- Education sessions and outreach activities for older persons (including their families and representatives) and aged care providers to promote aged care rights and raise awareness of elder abuse and prevention. OPAN has significantly expanded their geographical reach to regional, rural and remote communities;
- The Home Care and Aged Care Cost Education is a program of education, information and advocacy support to build the knowledge, skills and confidence of older persons to understand aged care costs and support choice of providers. The program also upskills advocates to a base level knowledge in aged care cost, with complex cases escalated to the specialist Financial Advocacy Officers;
- OPAN produces webinars for older persons and their families, carers and representatives. These webinars build self-advocacy capability and inform older persons about their aged care rights, address aged care issues, educate people on aged care reforms, and provide practical tips for ageing well and getting the most from their aged care services;
- The Elder Abuse Prevention project delivered an Abuse of the Older Person e-Learning package to assist aged care, health and allied professionals identify, prevent and respond to elder abuse; and
- The #ReadyToListen program delivered a three-part webinar series, resource library and e-learning modules to build the skills of residential aged care service providers to identify and respond to sexual assault in aged care facilities.

g. Right to Work and Access to the Labour Market
See response to a).



Australian Government

Department of Foreign Affairs and Trade

h. Access to justice

Nil response.

i. Contribution of Older Persons to Sustainable Development

Nil response.

j. Economic security

Nil response.

k. Right to Health and Access to Health Services

Nil response.

l. Social Inclusion

The Home Care Check-in (HCCI) activity in Australia is funded as part of the expanded National Aged Care Advocacy Program and provides consent-based proactive follow up and 'scaffolding' of supports to reduce the risk of older persons falling through the gaps. HCCI is aimed at people already connected to federal government-funded aged care services, who are vulnerable to risk of harm or neglect. Through the HCCI, community support advocates establish trusted relationships with regular, in-person visits and over the phone support to build an understanding of the circumstances that affect the older person's well-being and refer them to existing supports to assist them to actively engage with the community and services. The service is available for an extended length of time and when appropriate, advocates will plan the client's exit strategy with them. The activity is currently being piloted in several regions in three Australian states until June 2025.

The Community Visitors Scheme (CVS) commenced in Australia in 1992-93 to support organisations to recruit volunteers to provide friendship and companionship through one-on-one visits to older persons receiving Australian Government subsidised residential aged care who are socially isolated.

The final report of the Royal Commission into Aged Care Quality and Safety in Australia was published on 1 March 2021. Recommendation 44c stated the Australian Government should promote volunteers and volunteering in aged care to support older persons to live a meaningful and dignified life and supplement the support and care provided to them through the aged care system whether in their own home or in a residential care home.

In response to the Royal Commission's Recommendation 44c, the Government has provided a budget increase of \$49.78 million (GST exclusive) over 5 years for the transition to the more sustainable, effective and expanded renamed Aged Care Volunteer Visitors Scheme (ACVVS). This increases total ACVVS funding for the 2023-24 to 2025-26 grant period by \$39.63 million from \$60.22 million to \$99.84 million.

To strengthen the protection of older persons engaging with the ACVVS, ACCVS Guidelines requires the ACVVS community organisations (auspices) to provide volunteer visitors with



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training, to ensure they can confidently take on their role and are clearly aware of their obligations, responsibilities and surroundings. The training should include but is not limited to:

- code of conduct - the role and behavioural expectations of the volunteer visitor to act with integrity, honesty and transparency;
- the rights of the care recipient;
- privacy and confidentiality;
- duty of care and boundaries; and
- essential steps required to report and assist care recipients suspected to be experiencing abuse or neglect.

Funding has been provided to 141 community organisations across Australia to provide a total of 18,163 ACVVS placements for the life of the grant (1 July 2023 to 30 June 2026).

m. Accessibility, infrastructure and habitat (transport, housing and access)

Nil response.

n. Participation in the public life and in decision-making processes

In certain circumstances, the use of a restrictive practice in relation to an older person may be necessary as a last resort to prevent harm to the older person or others. The *Quality of Care Principles 2014 (Cth) (the Principles)*, made under the *Aged Care Act 1997 (Cth)*, contain protections and safeguards that must be satisfied by residential aged care providers before using restrictive practices:

- the restrictive practice is used only as a last resort to prevent harm to the care recipient or others, and after consideration of the likely impact of the use of the restrictive practice on the care recipient;
- to the extent possible, best practice alternative strategies have been used with the care recipient before the restrictive practice;
- the alternative strategies have been documented in the Behaviour Support Plan (BSP) (which must form part of the existing Care and Services Plan for care recipients);
- the restrictive practice is only used to the extent necessary and in proportion to the risk of harm to the care recipient or others;
- the use of the restrictive practice complies with any provisions outlined in the care recipient's BSP;
- the use of the restrictive practice complies with the *Aged Care Quality Standards*;
- the use of the restrictive practice is not inconsistent with the Charter of Aged Care Rights set out in the *User Rights Principles*; and
- the use of the restrictive practice meets requirements (if any) of the law of the state or territory in which it is being used.



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Department of Foreign Affairs and Trade

From December 2022, the Principles include a hierarchy of persons or bodies authorised to provide informed consent to the use of restrictive practices on behalf of a care recipient who is unable to provide consent for themselves. The hierarchy facilitates consumer-directed care by giving priority to a person who is appointed by a tribunal or to a person with a close continuing relationship with the care recipient.

DoHAC will continue to closely monitor trends in restrictive practice data, alongside broader reform measures, to identify any gaps or service improvement opportunities.

Options on how best to address the gaps

1. Please state how your Government/organization has engaged with international and regional human rights mechanisms (for example: universal periodic review (UPR) treaty bodies, special procedures, regional mechanisms), specifically with regard to older persons. (500 words)

Australia is committed to promoting and protecting the rights of older persons internationally and at home. Australia is a party to the seven-core international human rights treaties:

- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social and Cultural Rights;
- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on the Elimination of All Forms of Discrimination against Women;
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the Convention on the Rights of the Child; and
- the Convention on the Rights of Persons with Disabilities.

Australia considers the rights and freedoms of older persons within these United Nations human rights treaties and advocates for human rights mechanisms to promote older person's rights.

Australia seeks opportunities to raise older persons' rights through resolutions of the Human Rights Council, and through the Universal Periodic Review. For example, Australia has directly referenced older persons during the UPR's of Bosnia and Herzegovina and Slovenia at the 34th session; and the UPR of Norway at the 33rd session.

Australia has also completed three of its own UPR cycles, participating in interactive dialogues most recently in 2021. In its 2021 appearance, Australia accepted 177 of the 344 recommendations, three of which related to the rights of older persons.

Australia maintains a standing invitation for all UN Special Procedures Mandate Holders to visit Australia and gives careful consideration to their recommendations. Australia encourages existing Special Rapporteurs to consider the application of their mandate to older persons in close collaboration with the Special Rapporteur on the enjoyment of all human rights by older persons.



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As an International Labour Organization Governing Body member, Australia voted to approve the SRM TWG's recommendation that ILO Conventions 35-40 be considered outdated.³

2. Have those engagement resulted in positive impact in strengthening the protection of the human rights of older persons? Please elaborate. (500 words)

Nil response.

3. What other options can be considered to strengthen the protection of older persons? Please elaborate. (500 words)

In regards to strengthening the protection of older persons in employment and workplace relations, the Australian Government committed in the White Paper on Jobs and Opportunities to reducing barriers to employment so all Australians have the opportunity to participate to their full potential. The White Paper explicitly recognises that mature age workers, among others, may need help to remain in the workplace longer and to overcome challenges such as discrimination. It sets out a roadmap for reform, including for innovative recruitment and job design, to overcome these obstacles.

4. If applicable, what is your assessment on the protection of the human rights of older persons according to regional and international instruments? (500 words)

In regards to the protection of older persons in employment and workplace relations according to regional and international instruments, Australia notes that the International Labour Organization Standards Review Mechanism Tripartite Working Group (ILO SRM TWG) will review the *Older Workers Recommendation, 1980* in their 2024 meeting (16-20 September 2024).⁴ The *Older Workers Recommendation* outlines measures including eliminating age discrimination in employment, promoting equality of opportunity for older workers, ensuring adequate social security for older workers and promoting lifelong learning for older workers. SRM TWG's review may yield critical insights into the protection of the human rights of older persons according to international labour standards. The ILO Governing Body traditionally supports the SRM TWG's conclusions as they represent tripartite consensus and serve to modernise international labour standards.

³ [GB.349/LILS/1/Decision: Decision concerning the report of the eighth meeting of the Standards Review Mechanism Tripartite Working Group \(Geneva, 11-15 September 2023\) \(ilo.org\)](#)

⁴ [Report of the eighth meeting of the Standards Review Mechanism Tripartite Working Group, page 25](#)