

Australia's response to guiding questions from the Open Ended Working Group on Ageing

Equality and non-discrimination

1. Australia's *Age Discrimination Act 2004* prohibits discrimination against persons on the ground of age in the areas of work, education, access to premises, the provision of goods, services and facilities, accommodation, the disposal of land, the administration of Commonwealth laws and programs and requests for information.

The object of the act is to ensure equality before the law, regardless of age, to recognise the principle that people of all ages have fundamental rights and to allow appropriate benefits and other assistance to be given to people of certain ages (in particular older and younger people) in recognition of their particular circumstances.

2. Information about discrimination against older people is collected through a variety of methods. The Australian Human Rights Commission records and publishes the number of enquires and complaints made. In 2015-16 the Commission received a total of 2013 complaints. Eight per cent of those complaints were lodged under the Age Discrimination Act. The majority of complaints under the Age Discrimination Act related to employment (62 per cent), followed by provision of goods and services (23 per cent)¹.

The Australian Government also maintains an Aged Care Complaints Commissioner for anyone to raise their concerns about the quality of care or services being delivered to people receiving aged care services.

In 2015, the Australian Government commissioned the Australian Human Rights Commission to carry out *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*. The Attorney-General, Senator the Hon George Brandis QC, launched the report on 2 May 2016. The report contains 56 recommendations to government and business. The Commission found that People aged 55 years and over make up roughly a quarter of the population,² but only 16% of the total workforce and unemployed older people face longer periods of unemployment than younger people. The Commission also found in a national prevalence survey that 27 per cent of people over the age of 50 reported experiencing age discrimination at work. The Government is presently considering the recommendations.

3. The Australian Bureau of Statistics (ABS) collects data on health and ageing in the Australian Health Survey and also conducts an annual Patient Experience Survey.

¹ Australian Human Rights Commission complaints statistics, 2015-16, <https://www.humanrights.gov.au/our-work/commission-general/publications/annual-report-2015-2016>

² In 2009-10, there were around 5.5 million Australians aged 55 years and over, making up one quarter of the population. Australian Bureau of Statistics, *Australian Social Trends*, Sep 2010, cat 4102.0 — Older People and the Labour Market (2010). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010> (viewed 26 April 2016).

The ABS includes questions about discrimination, social participation and social issues in its General Social Survey.

In 2013, the Australian Human Rights Commission carried out a study³ into stereotypes of older people, and determined that half of Australians felt that discrimination was present in the healthcare system and also found a broad misapprehension that older people were likely to be unhealthy, in contrast with ABS survey findings that 72 per cent of older people believe they are in good, very good or excellent health. In the same study, the Australian Human Rights Commission found respondents believed they faced discrimination by financial services (for example not being able to get a loan because of age).

4. Differential treatment on the basis of age is permitted for certain purposes, including access to specific benefits or social supports (for example, access to the Age Pension for people over 65 years old or the Commonwealth Home Support Program which supports older people to remain independently in their own homes).

The Age Discrimination Act provides general exemptions for:

- positive discrimination (special measures);
- conferring of charitable benefits;
- superannuation, insurance and credit;
- taxation laws;
- pensions, allowances and benefits;
- Commonwealth employment programs;
- health programs (for example, to provide influenza vaccines to people over a certain age); and
- migration and citizenship laws.

Generally there is no formal retirement age in Australia. However, the Constitution requires federal judges to retire when they reach age 70.

Neglect, violence and abuse

1. In 2016, the Australian Government committed to better protecting the rights of older Australians from abuse. The commitment included funding to build the evidence base about abuse in Australia to better understand its nature and prevalence. The Government is presently funding an initial scoping study to determine the appropriate methodologies.

Existing surveys collecting relevant data on older people include victims of crime data, women's health and wellbeing longitudinal studies and so on. States and territories are also taking steps to better understand the issue of elder abuse in Australia through parliamentary

³ *Fact or Fiction? Stereotypes of Older Australians* - https://www.humanrights.gov.au/sites/default/files/document/publication/Fact%20or%20Fiction_2013_Web_Version_FINAL_0.pdf

inquiries, prevalence studies and consideration of existing data sets.

2. a) The Australian Government is presently considering a national definition of elder abuse in collaboration with state and territory governments, researchers, service providers and advocates. At present, the Australian Government is considering the World Health Organisation Definition as its basis for developing research methodologies and other measures:

“a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person”. Elder abuse can take various forms such as physical, psychological or emotional, sexual and financial abuse. It can also be the result of intentional or unintentional neglect.

b) Service providers, researchers and advocates consider that older persons who are socially isolated, have reduced cognitive capacity, are in poor health or who have a disability, who have a history of family violence and who are ‘old-old’ may be at higher risk of abuse.

The Australian Government’s research will explore risks to certain cohorts such as Aboriginal and Torres Strait Islander older persons and older people from diverse cultural and linguistic backgrounds.

3. Australia does not have legislation specifically addressing elder abuse. Offences may be covered under state and territory criminal law, financial regulation, superannuation, representative decision making and so on.

The Australian Law Reform Commission is due to report on its inquiry into elder abuse in late May 2017. The inquiry investigated Commonwealth laws and frameworks regulating financial institutions, superannuation, social security, living and care arrangements, and health, and the interactions of these laws with state and territory laws.

4. The Australian Government and state and territory governments have a range of laws to help protect older people and vulnerable adults from financial abuse. The laws govern such areas as powers of attorney, the making of wills, guardianship and representative decision making, superannuation, privacy and so on.

The Australian Securities and Investments Commission provides extensive information for older people and families on its Money Smart website, including information about wills, trusts, powers of attorney, government benefits, money management, family pressures and financial abuse warning signs.