



Australian  
Human Rights  
Commission

# Australia's response to the right of older persons to social protection and social security (including social protection floors)

Submission to the Open-ended Working Group on Ageing

31 October 2019

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## 1 Introduction

1. The Australian Human Rights Commission (the Commission) makes this submission. The Commission is an 'A status' national human rights institution established and operating in compliance with the Paris Principles. Information about the Commission can be found at: [www.humanrights.gov.au](http://www.humanrights.gov.au)
2. The submission provides an overview of Australia's rights of older persons with regard to social protection and social security.

### 1.1 Right to social security and social protection

3. Australia is party to seven core international human rights treaties.
4. The right to social security is contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and four conventions.<sup>1</sup>
5. The Committee has stated that particular care should be taken to ensure vulnerable people are not directly or indirectly excluded from access to social security through inadequate access to information.<sup>2</sup>

### 1.2 Legal provisions and policy frameworks

6. A number of existing laws are relevant to the realisation of the right to social security for seniors.
  - The *Social Security Act 1991* (Cth) and the *Social Security (Administration) Act 1999* (Cth) govern entitlement to and administration of a number of benefits, including the age pension.
  - The *Health Insurance Act 1973* (Cth) underpins Medicare, Australia's universal health insurance scheme.
  - The *National Health Act 1953* (Cth) makes provision for pharmaceutical, sickness and hospital benefits, and for medical and dental services.
  - The *Aged Care Act 1997* (Cth) facilitates access to aged care services based on need.

- The *Veterans' Entitlements Act 1986* (Cth) provides for the payment of disability and survivor pensions, other benefits, and provision of treatment and counselling services to veterans and their dependents.

## 2 Scope of the right

### 2.1 Key normative elements

(a) Availability of contributory and non-contributory schemes

7. Australia has a three-pillar retirement income system comprising:

- A means-tested government age pension that provides a minimum standard of living based on residency and need. It is a safety net for people without savings and a supplement for those with insufficient savings. The pension is paid from consolidated revenue and is not pre-funded. It is calculated on the assumption that both retired singles and couples own their home outright.
- Compulsory saving through the Superannuation Guarantee (SG) that applies to all employment income. Currently set at 9.5% of wages, the SG is legislated to increase gradually to 12% by July 2025. Most employees have the right to nominate their own choice of superannuation fund.
- Voluntary contributions made to superannuation funds with various tax concessions.<sup>3</sup>

(b) Adequacy of benefits to guarantee adequate standard of living and access to healthcare

8. The Australian Government announced a Retirement Income Review in September 2019.<sup>4</sup> The review will consider three pillars of the retirement income system, that is the Age Pension, superannuation and voluntary savings, including home ownership. A consultation paper will be released in November 2019, with the final report to be provided to Government by June 2020.

9. Prior to this review, policy reform of retirement income arrangements responds to three major reviews:

- 2009 Hamer Pension Review<sup>5</sup>
- 2009 Henry Tax Review<sup>6</sup>

- 2010 Cooper Superannuation Review<sup>7</sup>
10. Policy responses include:
- Increase of the age pension rate by \$30 per week in 2009
  - Planned phased increase of the qualifying age for the age pension from 65 to 67 by 1 January 2024
  - Planned phased increase in the Superannuation Guarantee rate from 9% to 12% by 2025/26
  - Removal of same-sex discrimination from Acts governing Commonwealth superannuation schemes.<sup>8</sup>
11. The 2009 pension increase significantly reduced poverty in households relying mainly on the age pension in 2018 to 15%. This is well below its rate in 2005 (19%) and in 2007 (27%).<sup>9</sup>
12. However, a critical factor that determines whether seniors are poor is their housing status: 43% of tenants aged 65 and over are in poverty, compared with 12% of all older people.<sup>10</sup>
13. The 2016 Senate Inquiry into Economic Security for Women in Retirement recommended an urgent review of Commonwealth Rent Assistance.<sup>11</sup> The government response noted these recommendations.<sup>12</sup>
14. The Age Discrimination Commissioner the Hon Dr Kay Patterson AO has identified older women's risk of homelessness as a portfolio priority.<sup>13</sup>
- (c) Accessibility, including coverage by social security systems, eligibility criteria and affordability of contributions
15. Two in three people aged 65 and over receive the age pension, with two-thirds (62%) on full-rate and a third (38%) on part-rate.<sup>14</sup>
16. The age pension is supplemented by payments such as Carer Allowance, Commonwealth Rent Assistance, Energy Supplement, Pension Supplement, and Work Bonus.<sup>15</sup>
17. Veterans receive alternative old-age payments.<sup>16</sup>
18. Seniors holding a Pensioner Concession Card or Commonwealth Seniors Health Card are entitled to access subsidised health care and medicines.<sup>17</sup>

19. Each state and territory have a Seniors Card scheme for transport concessions and discounts on selected goods and services.<sup>18</sup>
20. Eligibility is based on age, Australian residency status and an income and assets test. Relationship status is also considered to determine the amount of those deemed eligible.<sup>19</sup>
21. Contributions are made indirectly via the income tax system.
- (d) Equitable access to enjoyment of right to social security, with special attention to groups in vulnerable situations
22. The latest estimates by Australian Bureau of Statistics (ABS)<sup>20</sup> show that in 2015–2017, life expectancy at birth for Aboriginal and Torres Strait Islander men was 71.6 years and 75.6 years for women. This suggests that Aboriginal and Torres Strait Islander men, on average, live 8.6 years less than non-Indigenous men, while Aboriginal and Torres Strait Islander women, on average, live 7.8 years less than non-Indigenous women. While this gap has reduced over the last five years by 2.0 years for men and 1.7 years for women, the reduced life expectancy is not reflected in age requirements for access to the pension for Aboriginal and Torres Strait Islander Peoples.
23. Issues of access may also arise for other groups of Australians, such as people with disability.<sup>21</sup>
- (e) Participation in design and administration of social security system.
24. There are limited formal mechanisms for older persons to participate in the design and administration of the social security system.
25. Submissions to inquiries and reviews are one mechanism for advocacy groups and individuals to participate.
- (f) Adequate and affordable health care.
26. Medicare, Australia's universal health insurance scheme, guarantees free treatment in public hospitals and provides subsidies for out-of-hospital medical services, excluding dental, some allied health, and ambulance services.<sup>22</sup>
27. The Pharmaceutical Benefits Scheme subsidises the cost of a wide range of pharmaceutical medicines.<sup>23</sup>

28. The National Immunisation Program provides free vaccines for influenza, herpes zoster and Pneumococcal disease to people aged 65 and over. National cancer screening programs provide free screenings for breast cancer, bowel cancer and cervical cancer to people aged 50–74.<sup>24</sup>

### **3 State obligations**

#### **3.1 Measures that should be taken to respect, protect and fulfil the right to social security**

29. We have no comment on this topic.

### **4 Special considerations**

#### **4.1 Special measures and specific considerations of right to social protection and social security**

30. A human rights-based approach be integrated into national legislative and policy programs with regards to social security and social protection.
31. Specific consideration should be given to the differing needs of groups in vulnerable situations, as well as policy impacts on, among others, First Nation Peoples, people with disability, women and Culturally and Linguistically Diverse communities.

#### **4.2 Defining the responsibilities of non-State parties**

32. We have no comment on this topic.

### **5 Implementation**

#### **5.1 Best practices**

33. We have no comment on this topic.

#### **5.2 Main challenges**

34. Addressing ageism, including reframing the policy framework around social security for older persons from being seen from the perspective of the

burden of an ageing population to recognising the value and potential older people contribute to the community.

35. Addressing ageism in the labour market so older persons who wish to continue to participate in or re-enter the labour market have the opportunity to do so.
36. Examining the impact that reduced home ownership<sup>25</sup> among older Australians as they retire will have on their ability to enjoy financial stability and security in retirement and developing policies to mitigate this.

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<sup>1</sup> Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Further detail is provided in article 5(e)(iv) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), articles 11(1)(e) and 14(2)(c) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), article 26 of the Convention on the Rights of the Child (CRC), and article 28 of the Convention on the Rights of people with disability (CRPD).

<sup>2</sup> Attorney-General's Department, *Right to Social Security*, 2019. At <https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Righttosocialsecurity.aspx> (viewed 23 October 2019).

<sup>3</sup> Department of Social Services, *Social Security Payments – Residence Criteria*, March 2017. At <https://www.dss.gov.au/about-the-department/international/policy/social-security-payments-residence-criteria> (viewed 23 October 2019); Michael Rice, *The Age Pension in the 21<sup>st</sup> Century: Paper prepared for the Financial Services Forum 2018*, 22 May 2018. At <https://www.ricewarner.com/wp-content/uploads/2018/05/The-Age-Pension-in-the-21st-century-220518.pdf> (viewed 23 October 2019).



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- <sup>7</sup> Jeremy Cooper, *Review into the Governance, Efficiency, Structure and Operation of Australia's Superannuation System*, 30 June 2010. At <https://treasury.gov.au/publication/super-system-review-final-report> (viewed 23 October 2019).
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- <sup>9</sup> Australian Council of Social Service (ACOSS) and University of New South Wales Sydney, *Poverty in Australia 2018*, 13. At [https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS\\_Poverty-in-Australia-Report\\_Web-Final.pdf](https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS_Poverty-in-Australia-Report_Web-Final.pdf) (viewed 23 October 2019).
- <sup>10</sup> Australian Council of Social Service (ACOSS) and University of New South Wales Sydney, *Poverty in Australia 2018*, 12. At [https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS\\_Poverty-in-Australia-Report\\_Web-Final.pdf](https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS_Poverty-in-Australia-Report_Web-Final.pdf) (viewed 23 October 2019).
- <sup>11</sup> Senate Standing Committees on Economics, 'A husband is not a retirement plan': *Achieving economic security for women in retirement*, 29 April 2016, Recommendations 18 and 19. At [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Economic\\_security\\_for\\_women\\_in\\_retirement/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Report) (viewed 23 October 2019).
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- <sup>16</sup> Department of Veterans' Affairs, *Factsheet IS30 – Pension Rates, Limits and Allowances Summary*, 1 January 2019. At <https://www.dva.gov.au/factsheet-is30-pension-rates-limits-and-allowances-summary> (viewed 23 October 2019).
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- <sup>19</sup> At <https://www.humanservices.gov.au/individuals/services/centrelink/age-pension>
- <sup>20</sup> At <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/3302.0.55.003~2015-2017~Main%20Features~Frequently%20asked%20questions~14>
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- <sup>25</sup> Parliament of Australia, *Declining Home Ownership Rates in Australia*. At [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook46p/HomeOwnership](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/HomeOwnership) (viewed 18 October 2019).