



Australian
Human Rights
Commission

Normative content on the right to social inclusion

Australian Human Rights Commission

Input to Open-Ended Working Group on Ageing

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1 Definition of rights relating to social inclusion

1.1 How the rights are defined in national and local legislation

Australia does not have a national Human Rights Act, instead, protections for human rights may be found in the Constitution and in legislation passed by the Commonwealth Parliament or State or Territory Parliaments.¹

There is no national/Commonwealth legislation that explicitly enshrines older persons' rights to social inclusion.

Discrimination is a barrier to social inclusion. Under Australia's four national anti-discrimination laws, it is unlawful to treat a person less favourably because of their age, disability, race, sex, intersex status, gender identity and sexual orientation in certain areas of public life.² Discrimination can be direct or indirect, such as when a rule or policy has an unfair effect on people who share a particular protected attribute. Similar legislation prohibiting discrimination exists in each State and Territory.³

1.2 How such rights should be defined

Rights related to older persons' social inclusion should:

- Recognise the serious impacts of ageism on older persons' enjoyment of their human rights and include measures to combat ageism and eliminate age discrimination.⁴
- Allow provision for positive measures or special measures that aim to foster greater inclusion of certain groups who face, or have faced, entrenched discrimination or disadvantage.^{vi} This includes older people with disability, Indigenous populations, culturally and racially marginalised communities and neurodiverse people.
- Recognise the abuse of older persons as a significant barrier to social inclusion and include measures to prevent and protect older persons from abuse.⁵
- Provide appropriate avenues for redress and enforceable remedy when older persons' rights to social inclusion are infringed.

2 Scope of the right – existing national legal standards

Normative elements of the rights of older persons to social inclusion are largely absent from Australian national legal standards.

Regarding older persons' inclusion in the digital sphere, the Digital Service Standard (the Standard), updated in December 2023, establishes the requirements for designing and delivering digital government services. The Standard guides digital teams to create and maintain digital services that are user-friendly, inclusive, adaptable and measurable.⁶

The eSafety Commission is Australia's national regulatory agency for keeping Australians safe online and exercises powers under Australian legislation, primarily the *Online Safety Act 2021* (Cth).⁷ The eSafety Commission's purpose is to safeguard all Australians, including older people, from online harms and promote safer and more positive online experiences.⁸

The Aged Care Quality Standards apply to all Australian Government-funded aged care providers and ensure that the care and services a provider delivers are safe, high quality and meet the needs and preferences of the people receiving care.⁹ Additionally, the Charter of Aged Care Rights sets out the rights of all people receiving Government-subsidised aged care services. The Charter states that a person using aged care has the right to have their identity, culture and diversity valued and supported, have control over and make choices about their care and personal and social life, and has a right to their independence.¹⁰

3 State obligations

Australia currently has four national anti-discrimination laws covering the areas of age, disability, race and sex.¹¹ This creates an unnecessary level of difference and complexity to the definitions, processes and protections against discrimination. It also causes confusion and makes it difficult for communities to use these laws to claim discrimination, especially when discrimination occurs on multiple intersecting grounds. The Australian Government should reform and consolidate national anti-discrimination laws in order to simplify and enhance existing protections, improve consistency and implementation of Australia's international obligations.¹²

Australia should introduce a national Human Rights Act and Framework to respect, protect and fulfil the human rights of older persons. Informed by

extensive consultation and research, the Commission's five-year project *'Free and Equal: An Australian conversation on human rights'* proposes a model for a national human rights law and framework. This model, if adopted, would incorporate Australia's international obligations domestically and create legal protections for the human rights of all Australians. This model would also increase the responsibility that governments have, to consider how their laws, policies, and actions might affect people's human rights, including older people's rights to social inclusion.¹³

The Australian Government should also support the development of an international Convention on the Rights of Older Persons to strengthen existing international and domestic frameworks for protecting the rights of older persons.

4 Special measures and considerations

The digital divide can affect older people's rights to social inclusion by limiting their access to information. While there is evidence that older people are engaging in a notably broader range of online activities across different devices and connecting to the internet more than ever before, many older Australians continue to feel overwhelmed by technology changes and 38.4% are still not using the internet.¹⁴ Special measures to support older people to access and use new technologies as well as the provision of non-digital alternatives should be considered to ensure the social inclusion of older persons.

Specific consideration should also be given to diversity of older people and their differing needs including relevant intersections between older people and people with disability, Indigenous and culturally and linguistically diverse communities.

Additionally, more than a third of older Australians live in regional, rural or remote communities.¹⁵ Specific consideration should be given to the impacts of physical remoteness on older people's ability to access information, services and facilities.

5 Implementation – best practices and key challenges

As noted by the WHO, education and intergenerational programs are some of the most effective ways to counteract ageism.¹⁶

The Commission's 2023 research report *Changing perspectives: testing an ageism intervention* found that a brief, one-off educational intervention can be a

powerful tool in creating positive changes in attitudes and behaviours towards older people and in reducing ageist attitudes.¹⁷

The Commission also supported *The Centenarian Portrait Project by Teenagers*, a 7-year nation-wide intergenerational initiative, which involved teenage artists painting people aged 100 years or older. The project demonstrated the positive impacts intergenerational programs can have in promoting social cohesion and inclusion across generations.¹⁸

A key challenge is that in the absence of a national Human Rights Act in Australia, there are limited avenues for enforcing rights and accessing appropriate remedies and redress when an older person's human rights, including rights related to social inclusion, are infringed.

¹ Australian Human Rights Commission, 'How are human rights protected in Australian law?' (Webpage), accessed 9 April 2024 <<https://humanrights.gov.au/our-work/rights-and-freedoms/how-are-human-rights-protected-australian-law>>.

² *Age Discrimination Act 2004* (Cth); *Disability Discrimination Act 1992* (Cth); *Race Discrimination Act 1975* (Cth); *Sex Discrimination Act 1984* (Cth).

³ State and Territory Acts include: *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1977* (NSW); *Anti-Discrimination Act 1996* (NT); *Anti-Discrimination Act 1991* (Qld); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1998* (Tas); *Equal Opportunity Act 2010* (Vic); *Equal Opportunity Act 1984* (WA)

⁴ United Nations Human Rights Council, *Resolution adopted by the Human Rights Council on 7 October 2021* (14 October 2021) A/HRC/RES/48/3, 2 <<https://documents.un.org/doc/undoc/gen/g21/287/79/pdf/g2128779.pdf?token=kRwWs3Iz43nT92cCYF&fe=true>>.

⁵ World Health Organisation, *Global Report on Ageism* (2021) 164 <<https://www.who.int/teams/social-determinants-of-health/demographic-change-and-healthy-ageing/combating-ageism/global-report-on-ageism>>.

⁶ Digital Transformation Agency, 'Digital Service Standard v2.0' (Webpage), accessed 28 March 2024 <<https://architecture.digital.gov.au/digital-service-standard-v2-full-text>>.

⁷ eSafety Commission, 'Our legislative functions' (Webpage 22 December 2023), accessed 9 April 2024 <<https://www.esafety.gov.au/about-us/who-we-are/our-legislative-functions>>; *Online Safety Act 2021* (Cth).

⁸ eSafety Commission, 'What we do' (Webpage 29 January 2024), accessed 9 April 2024 <<https://www.esafety.gov.au/about-us/what-we-do>>.

⁹ Aged Care Quality and Safety Commission, 'About the Quality Standards' (Webpage), accessed 28 March 2024 <<https://www.agedcarequality.gov.au/providers/quality-standards/about-quality-standards>>.

¹⁰ Aged Care Quality and Safety Commission, 'Charter of Aged Care Rights' (Webpage), accessed 28 March 2024 <<https://www.agedcarequality.gov.au/older-australians/your-rights/charter-aged-care-rights#the-charter>>.

¹¹ *Age Discrimination Act 2004* (Cth); *Disability Discrimination Act 1992* (Cth); *Race Discrimination Act 1975* (Cth); *Sex Discrimination Act 1984* (Cth).

- ¹² Australian Human Rights Commission, *Free and Equal: A reform agenda for federal discrimination laws* (December 2021) <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-reform-agenda-federal-discrimination-laws>>.
- ¹³ Australian Human Rights Commission, *Free and Equal: An Australian conversation on human rights* (2023) <<https://humanrights.gov.au/free-and-equal>> and Australian Human Rights Commission, *Free and Equal – Position paper: A Human Rights Act for Australia* (2023) <<https://humanrights.gov.au/human-rights-act-for-australia>>.
- ¹⁴ Australian Bureau of Statistics (ABS), *Use of information technology by people with disability, older people and primary carers* (Webpage July 2020), accessed 12 April 2023 <<https://www.abs.gov.au/articles/use-information-technology-people-disability-older-people-and-primary-carers>>.
- ¹⁵ Department of Health and Aged Care, *‘Delivering aged care in rural and remote settings’* (Webpage 2024), accessed 27 March 2024 <<https://www.health.gov.au/topics/aged-care/providing-aged-care-services/support/rural-remote#:~:text=More%20than%201%20in%203,are%20to%20access%20aged%20care>>.
- ¹⁶ World Health Organisation, *Global Report on Ageism* (2021) <<https://www.who.int/teams/social-determinants-of-health/demographic-change-and-healthy-ageing/combating-ageism/global-report-on-ageism>>.
- ¹⁷ Australian Human Rights Commission, *Changing perspectives: testing an ageism intervention* (13 July 2023) <<https://humanrights.gov.au/changingperspectives>>.
- ¹⁸ *The Centenarian Portrait Project by Teenagers* (Webpage) Embraced, accessed 9 April 2024 <<https://www.embraced.com.au/centenarian-protrait-project>>.