



Guiding questions for defining the normative content of the issues examined at the twelfth session

Focus Area 2: Economic Security

About Community Legal Centres Australia

Community Legal Centres Australia¹ (CLCS Australia) is the national representative voice for the community legal sector in Australia. It has ECOSOC Special Consultative Status with the United Nations. CLCS Australia is an independent, non-profit organisation set up to support the community legal sector to provide high-quality free and accessible legal and related services to everyday people, especially people experiencing financial hardship, discrimination and/or some other form of disadvantage, or who are experiencing domestic or family violence. CLCS Australia's members are the eight state and territory community legal sector peak bodies. Together, they represent about 170 community legal centres, women's legal services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services operating in metropolitan, regional, rural, remote, and very remote communities across Australia.

All CLCs assist older persons, and some specialise in assisting older persons with rights-specific issues including elder abuse, financial exploitation, social protection including social security, aged/long-term care and accommodation, decision-making and guardianship. Centres have formed an Older Persons Legal Services Network (OPLS) of CLCS Australia. Many CLCs are also experts in discrimination law.

CLCS Australia has engaged in working sessions of OEWGA since the fourth session. We refer to and rely upon our input on the substantive issue of the right to economic security submitted to the 12th Session of the Open-ended Working Group on Ageing. This input provides detail about older Australians' economic security.

Context

We enclose an article "Older Persons' Right to Economic Security"² that canvasses many of the issues noted by the guiding questions. It contends that the normative form of the right to economic security must necessarily include economic rights that directly improve older person's economic security (e.g., the right to adequate standard of living, housing, and social security) but also, and importantly, incorporate context (e.g., pandemic, disaster,

¹ Formerly National Association of Community Legal Centres

² William Mitchell, *Older Persons' Right to Economic Security, Pandora's Box 2022 – Poverty and the Law in Australia*, The Justice and the Law Society, The University of Queensland, 2022. Excerpt pp 144-168.

climate change, rurality) and intersections (e.g., disability and indigeneity) that address the multi-dimensional nature of poverty and the drivers of economic insecurity for older persons.³

Definition

National legal and policy framework

Australia is a constitutional federation of six states⁴ and two self-governing territories⁵.

1. How are the key human rights relating to older persons' economic security defined in the national legislation in your country? If definitions are not available, how should such rights be defined considering relevant existing national, regional, and international legal frameworks?

Australia remains in a minority of countries worldwide without a national human rights charter or statute⁶. Older Australians have no national constitutional or legislative guarantees for the right to economic security. Three of eight states/territories within Australia have human rights laws, and none guarantee older Australians' right to economic security.

Scope of the rights

2. Please provide references to existing national legal standards relating to older persons' economic security on normative elements such as:

a) right to social security; including regular adjustment of benefits with changes in living costs;

Older Australians have no national constitutional or legislative guarantees of the right to social security. Three of eight states/territories within Australia have human rights laws but they do not include the right to social security.

Specific payments to older Australians include the Age Pension⁷. The age proxy for entitlement⁸ is not adapted to relevant circumstances such as gaps in life expectancy⁹. Social security payments are indexed on a roughly quarterly basis.¹⁰

³ Ibid, pp.167-168

⁴ Queensland, New South Wales, Victoria, Tasmania, South Australia and Western Australia

⁵ Australian Capital Territory and Northern Territory

⁶ <https://www.hrlc.org.au/charters-of-human-rights>

⁷ <https://www.servicesaustralia.gov.au/age-pension>

⁸ Services Australia describes the eligibility thus: On 1 July 2021, Age Pension age increased to 66 years and 6 months for people born from 1 July 1955 to 31 December 1956, inclusive. If your birthdate is on or after 1 January 1957, you'll have to wait until you turn 67. This will be the Age Pension age from 1 July 2023

⁹ <https://www.hrlc.org.au/news/2022/5/31/case-challenging-age-pension-discrimination-for-aboriginal-and-torres-strait-islander-people-heads-to-full-federal-court>; See the Court documents at: <https://comcourts.gov.au/file/Federal/P/VID545/2021/3923412/event/31076747/document/1952366>

¹⁰ <https://www.dss.gov.au/about-the-department/benefits-payments/previous-indexation-rates>

b) right to adequate standard of living, including housing, clothing, food and water, among others;

Older Australians have no national constitutional or legislative guarantees of the right to adequate standard of living, including housing, clothing, food and water, among others. Three of eight states/territories within Australia have human rights laws but they do not include the right to adequate standard of living, including housing, clothing, food and water, among others.

c) right to work; and whether a national minimum wage or any alternative mechanism is in place to ensure an adequate standard of living, and whether a system of indexation and regular adjustment exists;

Older Australians have no national constitutional or legislative guarantees of the right to work. Three of eight states/territories within Australia have human rights laws that include the right to freedom from forced work only. Federal and state/territory laws do make age discrimination in work unlawful with certain exceptions.

d) prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to economic security;

Federal discrimination laws including distinct statutes on employment, race, sex, disability, and age. Complaints that involve multiple areas of discrimination must be made separately under each statutory scheme. This differs from state/territory arrangements where single anti-discrimination statutes more easily facilitate intersectional complaints. All laws prohibit direct and indirect discrimination and apply to age generally. None of the laws specifically address economic security.

Australia's federal age discrimination laws exempt certain relevant matters such as pensions, benefits and allowances, and superannuation laws.

e) the connections between relevant economic, social and cultural rights with the right to freedom of expression, including freedom to seek, receive and impart information; and rights to peaceful assembly and freedom of association;

Civil and political rights are generally protected in the three states/territories with human rights laws. Economic, social and cultural rights have limited protection within state/territory human rights laws. For example, the most comprehensive state law only guarantees the right to education and health services.

f) active, free and meaningful participation of older persons and their representative organizations in all matters related to ensuring their economic security, including in political processes;

Older Australians have no national constitutional or legislative guarantees of the right to active, free and meaningful participation in all matters related to ensuring their economic security, including in political processes.

Three of eight states/territories within Australia have human rights laws that provide limited rights to active, free and meaningful participation in all matters related to ensuring their economic security, including in political processes. This includes the right to recognition and equality before the law, freedom of thought, conscience and belief, freedom of expression, peaceful assembly and freedom of association, taking part in public life, and cultural rights, including cultural rights for Aboriginal and Torres Strait Islander people.

g) access to prompt remedies and redress when older persons' above mentioned rights are violated.

Remedies for denial of the right differ depending on national and state/territory arrangements and governing legislation. The state/territory human rights laws do not provide a stand-alone, court-based cause of action

State obligations

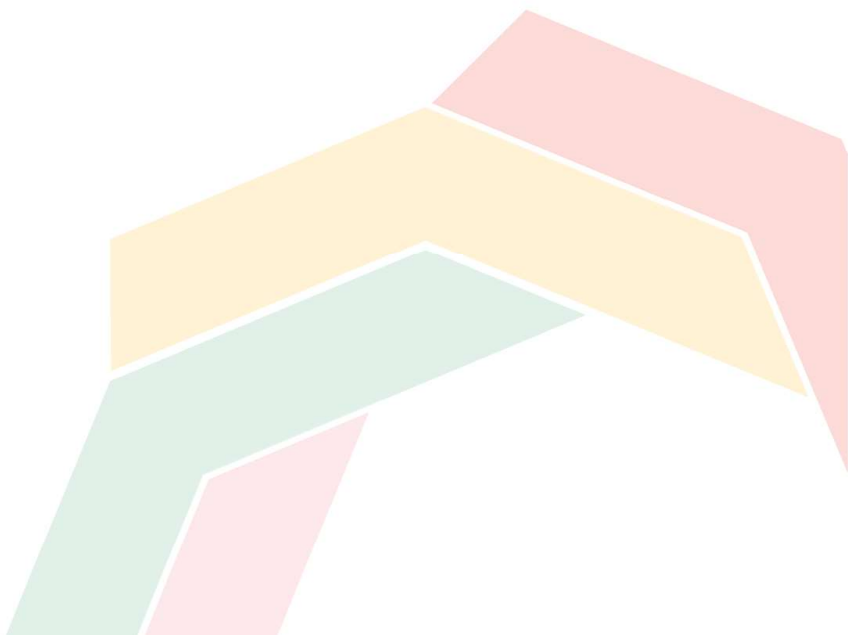
3. What measures and special considerations should be undertaken by the State to respect, protect and fulfil the above-mentioned rights to ensure older persons' economic security?

Australia should develop and enact a national Human Rights Act or Charter¹¹.

Implementation

4. What are the best practices and main challenges faced by your country in the adoption and implementation of the above-mentioned normative framework to ensure older persons' economic security?

The biggest challenges faced by older Australians include the absence of a national human rights Charter or Act, and the absence of a guiding normative standard for older persons' human rights.



¹¹ <https://www.hrlc.org.au/charters-of-human-rights/>; <https://charterofrights.org.au/>