



Australian  
Human Rights  
Commission  
*everyone, everywhere, everyday*

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# UN Questionnaire on the Rights of Older People

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Australian Human Rights Commission Response  
to the UN Secretary General Report

29 April 2011

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## 1 Introduction

1. The Australian Human Rights Commission makes this contribution to the Secretary General Report on the rights of older people, pursuant to the UN General Assembly Resolution 65/182 (December 2010).

### 1.1 **Question 1: Please provide information on the current situation of the human rights of older persons, including particular challenges and threats that may prevent the full realization of their rights.**

2. The *Age Discrimination Act 2004* (Cth) makes discrimination on the ground of age unlawful in a number of areas of public life. The Australian Human Rights Commission has a number of functions under the Act. The Commission receives and seeks to conciliate complaints of age discrimination. The majority of complaints received are in the area of employment and are made by people over the age of 45 years of age (defined as 'mature age'). The focus of the Commission's policy program of work has been on the barriers to the employment of mature age workers. As such this contribution will focus on age discrimination and ageism issues faced by mature age workers as barriers to the full realization of older people's human rights.
3. The Commission's research and consultations have found that age discrimination is the foremost challenge to mature age people's ability to participate in the labour force. The Commission's work has revealed that age discrimination occurs throughout the work-cycle in recruitment (including re-entry into the workforce), during employment and in post-employment arrangements. This form of age discrimination leads to a number of significant impacts on mature age workers including economic, social and psychological impacts. For more detail on these issues please see our publication *Age discrimination – exposing the hidden barrier for mature age workers* and in particular Chapters 2, 4 and 5:  
<http://www.humanrights.gov.au/age/hiddenbarrier/index.html>
4. There is also a concern about intersectional discrimination faced by older women, particularly mature age workers, who often bear a financial impost in retirement because of their role in unpaid caring work. Women in Australia more commonly bear the responsibility for unpaid caring responsibilities - for children, partners, and older family members. This limits their participation in full time paid work, and can impede their career progression. Consequently, this contributes to older women's retirement incomes being substantially lower than that of men in Australia. Research indicates that current average superannuation payouts received by women are less than half those received by men – \$63,000 compared with \$136,000.<sup>1</sup> Of all retired households, those comprised of single women are most likely to be reliant on the full Age

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<sup>1</sup> R Clare, *The Age Pension, superannuation and Australian retirement incomes* (2009), p 22, At [www.superannuation.asn.au/Reports/default.aspx](http://www.superannuation.asn.au/Reports/default.aspx) (viewed 5 March 2010).

Pension as their main source of retirement income<sup>2</sup> with more than half of older single women living in poverty.<sup>3</sup> For more information on this see *Accumulating poverty? Women's experiences of inequality over the lifecycle: An issues paper examining the gender gap in retirement savings*: [http://www.hreoc.gov.au/sex\\_discrimination/publication/gender\\_gap/index.html](http://www.hreoc.gov.au/sex_discrimination/publication/gender_gap/index.html)

5. The Commission believes that one of the biggest challenges to the visibility and full realisation of older people's human rights overall is the lack of a binding international convention on the rights of older people. There is a tendency for governments to track their human rights obligations against existing convention obligations. As there is no one convention protecting the rights of older people, the recognition of their human rights issues is far less likely to emerge within generalised government and non-government domestic human rights reporting mechanisms. For further information on the current state of international legal recognition of age please see Chapter 3 of *Age discrimination – exposing the hidden barrier for mature age workers*: <http://www.humanrights.gov.au/age/hiddenbarrier/index.html>

## **1.2 Question 2: Please provide information on existing legislation, policies and programmes to promote the human rights of older persons.**

6. The Age Discrimination Act proscribes age discrimination in a number of areas of public life. It applies to people of all ages, including older people. The Act gives the Commission a number of functions which include promoting an understanding and acceptance of the Act.
7. The anti-discrimination laws are an important part of recognising and protecting people's right to be free from discrimination. The Age Discrimination Act, together with relevant state and territory laws, confer certain protections against age discrimination in many areas of public life such as employment, education and in access to accommodation and goods and services. Like other federal anti-discrimination laws, the Age Discrimination Act allows one or more individuals to enforce their rights by making a complaint about discrimination. The Age Discrimination Act is also an important tool for raising awareness of unfair practices and influencing policies and structures that support ageism within the community.

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<sup>2</sup> Department of Families, Housing, Community Services and Indigenous Affairs, Pension Review Background Paper (2008) p 6. At [http://www.fahcsia.gov.au/sa/seniors/progserv/PensionReview/Documents/pension\\_review/default.htm](http://www.fahcsia.gov.au/sa/seniors/progserv/PensionReview/Documents/pension_review/default.htm) (viewed 9 February 2009); Robert Tanton, Yogi Vidyattama, Justine McNamara, Quoc Ngu Vu and Ann Harding, Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians (2008) p 15. At [https://guard.canberra.edu.au/natsem/index.php?mode=download&file\\_id=880](https://guard.canberra.edu.au/natsem/index.php?mode=download&file_id=880) (viewed 9 February 2009).

<sup>3</sup> B Heady & D Warren, Families, Incomes and Jobs, Volume 3: A Statistical Report on Waves 1 to 5 of the HILDA Survey (2008) p.55. This includes: working age couple with no children; working age couple with children; working age lone female; working age lone male; lone mother household; elderly couple household; elderly lone male; elderly lone female. The poverty measurement tool for this study is 50% of the median income poverty line.

8. The Age Discrimination Act, however, contains the broadest exemptions from the protections of the Act of any of the Australian anti-discrimination Acts (namely the *Age Discrimination Act 2004*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*). This provides a somewhat limited legal framework in which to address age discrimination.
  9. Currently there is an Australian Government process called the Consolidation of Federal Anti-Discrimination Laws Project, which aims to harmonise the existing federal anti-discrimination laws. It is unclear at this stage whether this process will narrow the exemptions referred to above, and potentially strengthen age discrimination protections. For information on this project see the Attorney-General's department website at:  
[http://www.ag.gov.au/www/agd/agd.nsf/Page/Human\\_rights\\_and\\_anti-discriminationAustralias\\_Human\\_Rights\\_Framework](http://www.ag.gov.au/www/agd/agd.nsf/Page/Human_rights_and_anti-discriminationAustralias_Human_Rights_Framework).
  10. A positive development in the promotion of older people's human rights was the announcement by the Australian government that it would appoint a full-time Age Discrimination Commissioner. Currently the Age Discrimination Act is the only Australian anti-discrimination Act that does not set up the office of a Commissioner. While an Age Discrimination Commissioner would advocate for people in Australia of all ages this would include advocacy on the rights of older people. For more detail on the benefits of such a position in further advancing older people's human rights please see Part 6 of the Commission's submission below at:  
[http://www.humanrights.gov.au/legal/submissions/2010/20101103\\_inquiry\\_SD\\_A.html](http://www.humanrights.gov.au/legal/submissions/2010/20101103_inquiry_SD_A.html)
- 1.3 Question 3: Please provide information on existing legislation, policies and programmes to address discrimination against older persons, including measures to address multiple discrimination (e.g. discrimination based on age and gender).**
11. The federal anti-discrimination laws, the Commission's procedures and those of the courts allow for complaints to be made on multiple grounds. The Commission notes that state/territory-based anti-discrimination legislation which includes the ground of age co-exist with the federal legislation. However, arguably there is limited provision within the Acts to address intersectional discrimination.
  12. The Australian Government's Consolidation of Federal Anti-Discrimination Laws Project may be a possible avenue for considering how intersectional discrimination can be better addressed through anti-discrimination laws.

**1.4 Question 4: Please provide information on existing legislation, policies or programmes to address violence and abuse against older persons in the private and public spheres.**

13. Unlike the other Australian anti-discrimination Acts, the Age Discrimination Act does not explicitly render age harassment and/or vilification unlawful. However, where a complaint of harassment can be framed as a complaint of less favourable treatment on the ground of age, the Commission can investigate the complaint.
14. In 2006, the House of Representatives Standing Committee on Legal and Constitutional Affairs held an Inquiry on Older People and the Law. The Committee received evidence concerning a wide range of issues faced by older Australians in their interaction with the law. These included substitute decision-making, fraud and financial abuse, barriers to accessing legal services and discrimination. The Committee issued its report in 2007 in which it made 48 recommendations addressing each of these issues. In relation to discrimination the Committee recommended ‘an independent review be undertaken in 2009 of the effectiveness of the Age Discrimination Act 2004. The review should consider, among other things, the nature and range of exemptions provided for under the Act’ (Recommendation 44). The Government issued its response to the Committee’s report in 2009, however, we are unable to generally comment on the status of these responses (i.e. completed or outstanding) to the Committee’s recommendations.

For the Commission’s submission (and in particular Part 9) please see:  
[http://www.humanrights.gov.au/legal/submissions/2006/ADA\\_200612/older\\_people\\_and\\_the\\_law\\_dec06.html](http://www.humanrights.gov.au/legal/submissions/2006/ADA_200612/older_people_and_the_law_dec06.html)

For the Standing Committee’s recommendations please see:  
[www.aph.gov.au/house/committee/laca/olderpeople/report/fullreport.pdf](http://www.aph.gov.au/house/committee/laca/olderpeople/report/fullreport.pdf)

For the Australian government’s response please see:  
[http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications\\_Governmentresponse-OlderPeopleandtheLaw](http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_Governmentresponse-OlderPeopleandtheLaw)

15. Complaints and investigation processes exist within the Department of Health and Ageing to deal with forms of abuse against older people in Australian government age care subsidised services. Please see the Office of Aged Care Quality and Compliance (Department of Health & Ageing):  
<http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-quality-about-professional.htm>
16. The independent office of the Aged Care Commissioner is able to review certain decisions made as part of the complaints and investigation process referred to above: <http://www.agedcarecommissioner.net.au/index.php>

**1.5 Question 5: Please provide information on existing legislation, policies and programmes addressing old age-sensitive services and facilities, such as those related to mobility, age-adequate design, long-term care, primary health care and adult continuous education.**

17. The Australian Productivity Commission is currently undertaking a public inquiry into 'Caring for Older Australians'. For more information on this inquiry, including submissions and the Productivity Commission's draft report please see: <http://www.pc.gov.au/projects/inquiry/aged-care>

(a) *Mobility/design*

18. Premises Standards - The Australian government has introduced new requirements for the accessibility of public buildings including places of work, theatres, restaurants, concert halls, educational establishments, sports stadiums, health care facilities, government buildings and retail outlets (due to come into force on 1 May 2011). These new accessibility requirements will have affect on the accessibility and safety of new and upgraded buildings and older people in Australia will benefit from their introduction – for further detail please see <http://www.ag.gov.au/premisesstandards>

19. Universal housing design – the Australian government has supported the development of a voluntary agreement to introduce a number of universal housing design features into all new housing developments. A partnership of developers, industry groups, government and the disability and ageing sectors are working on a strategic plan to achieve the aspirational goal that all new housing will include these features by 2020 – for further detail please see: [http://www.fahcsia.gov.au/sa/disability/pubs/general/Pages/national\\_dialogue\\_on\\_universal\\_design\\_strategic\\_plan.aspx](http://www.fahcsia.gov.au/sa/disability/pubs/general/Pages/national_dialogue_on_universal_design_strategic_plan.aspx)

**1.6 Question 6: Please provide information on existing legislation, policies and programmes concerning social protection measures as well as the right to work and the right to social security with regard to older persons.**

(a) *Right to work*

20. One of the areas of public life in which the Age Discrimination Act proscribes discrimination on the ground of age is employment including recruitment for employment.

21. The Australian Department of Education, Employment and Workplace Relations has a number of employment services that target mature age workers. The program called *Experience +* provides a range of services for job seekers and workers aged 45 years and over and their employers, including career advice, on-the-job support and transition support. The Department of Education, Employment and Workplace Relations also convenes a Consultative Forum on Mature Age Participation which provides advice to

Government on further measures to support mature age job seekers and workers. The Commission contributes to the work of the Forum (see: <http://www.deewr.gov.au/Employment/Programs/ExpPlus/Pages/Overview.aspx>).

(b) *Social security*

22. The Australian government provides an Age Pension. Detail on the eligibility requirements and payment rates generally as at 2011 are available at: <http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm> and specifically for Seniors payment rates see: <http://www.centrelink.gov.au/internet/internet.nsf/publications/co030.htm>
23. The Commission notes that, according to the OECD, in 2009, and before the federal government's increases to the Age Pension, more than one in four senior Australians was living in poverty: <http://www.oecd.org/dataoecd/8/61/43071222.pdf> Further, at the time of the increase in the Age Pension payment (see: [http://www.fahcsia.gov.au/sa/seniors/payments/Pages/pension\\_changes.aspx](http://www.fahcsia.gov.au/sa/seniors/payments/Pages/pension_changes.aspx)) the Australian Government announced a staged increase to the Age Pension eligibility age, which means that people will have to work longer to qualify for the Age pension (see: <http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/056.htm&pageID=&min=wms&Year=&DocType=0>).

**1.7 Question 7: Please provide information on existing legislation, policies, programmes and capacities to systematically collect, update and analyse information disaggregated by age.**

24. The Commission has the ability, subject to resourcing, to analyse and disaggregate complaints data on the basis of age. The Commission has included age disaggregated data in its *Annual Report 2009-10* (see: page 86, Table 29: [http://www.humanrights.gov.au/about/publications/annual\\_reports/2009\\_2010/index.html](http://www.humanrights.gov.au/about/publications/annual_reports/2009_2010/index.html)).
25. The Australian Bureau of Statistics (ABS) is Australia's official statistical organisation. It is set up as an independent statutory authority and its role is to assist and encourage informed decision-making, research and discussion within governments and the community, by providing an objective and responsive national statistical service. It has the capacity to and does disaggregate data by age: <http://www.abs.gov.au/websitedbs/D3310114.nsf/51c9a3d36edfd0dfca256acb00118404/339a2ca3e39bc7e8ca2569d8000085ff!OpenDocument>
26. Australia's population, like that of most developed countries, is ageing as a result of sustained low fertility and increasing life expectancy. This is resulting in proportionally fewer children (under 15 years of age) in the population. The median age (the age at which half the population is older and half is younger) of the Australian population has increased by 4.8 years over the last two



decades, from 32.1 years at 30 June 1990 to 36.9 years at 30 June 2010. Between 30 June 2009 and 2010 the median age remained relatively steady at 36.8 years. Over the next several decades, population ageing is projected to have significant implications for Australia, including for health, labour force participation, housing and demand for skilled labour (Attorney-General's Department, *Australia to 2050: Future Challenges, 2010* - [www.treasury.gov.au/igr/igr2010/report/pdf/IGR\\_2010.pdf](http://www.treasury.gov.au/igr/igr2010/report/pdf/IGR_2010.pdf)). See ABS data *Population by Age and Sex, Australian States and Territories, Jun 2010*: <http://www.abs.gov.au/Ausstats/abs@.nsf/mf/3201.0>.

27. The ABS has produced the following statistical reports on older peoples in recent years:
- 4430.0 - *Disability, Ageing and Carers, Australia: Summary of Findings, 2009* (see: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>).
  - 4837.0.55.001 - *Health of Mature Age Workers in Australia: A Snapshot, 2004-05* (see: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4837.0.55.001Main+Features12004-05?OpenDocument>).
  - 4833.0.55.001 - *Health of Older People in Australia: A Snapshot, 2004-05* (see: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4833.0.55.001>).
28. However, in general there continues to be limited disaggregated data available on older people, particularly disaggregated by their gender, race, disability and other grounds.

**1.8 Question 8: Please provide information on existing legislation, policies and programmes to enhance participation and active engagement of older men and women in community, political and cultural life.**

29. The Australian government has a social inclusion portfolio, the stated objective of which is a socially inclusive society in which all Australians feel valued and have the opportunity to participate fully in the life of our society (through access to resources, opportunities and capability to learn, work, engagement in the community and having a voice). However, the priority areas listed do not specifically focus on older people living in Australia: <http://www.socialinclusion.gov.au/SIAGenda/Priorities/Pages/default.aspx>

- 1.9 Question 9: Please provide information on existing legislation, policies and programmes to ensure access to justice and judicial remedies for violations of the rights of older persons, including references to specific mandates of institutions such as national human rights institutions to address their rights.**
30. The Commission's mandate as a national human rights institution includes addressing the rights of older people. The Commission is an independent statutory agency established in 1986 by the *Australian Human Rights Commission Act*. The Act sets out the Commission's responsibilities and functions.
31. The Commission also has functions under the four federal discrimination acts – the *Sex Discrimination Act*, the *Racial Discrimination Act*, the *Disability Discrimination Act* and the *Age Discrimination Act* (see responses to questions 1-3 above for information about the functions of the Commission under the Age Discrimination Act). We note that the objects of the Age Discrimination Act make specific reference to the Political Declaration adopted in Madrid, Spain on 12 April 2002 by the Second World Assembly on Ageing (see section 3 of the Age Discrimination Act at: <http://www.comlaw.gov.au/Details/C2010C00155>)
32. The Commission also has more general human rights responsibilities to protect and promote the rights and freedoms contained in certain international human rights treaties, including the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child*, the *Convention on the Rights of Persons with Disabilities* and the *International Labour Organisation Convention 111* which relates to equal opportunity in employment.
33. To execute its responsibilities the Commission has a range of statutory functions:
- we accept and attempt to resolve by conciliation individual complaints about discrimination and human rights
  - we monitor the government's human rights performance and make recommendations on how Australian law and policy could better meet our human rights obligations
  - we provide education about human rights – we maintain an extensive website, develop publications and educational resources to improve awareness, understanding and respect for rights in our community
  - with the leave of the court concerned, and subject to such conditions as the court imposes, we intervene in legal proceedings where we consider it important to make submissions on human rights issues.
34. For further information on the Commission's complaints mechanism please see: [http://www.humanrights.gov.au/complaints\\_information/ADA\\_complaints.html](http://www.humanrights.gov.au/complaints_information/ADA_complaints.html)