

Human rights and *Older people*



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

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This information sheet talks about some of the human rights issues relevant to older people in Australia. It also highlights how a federal Human Rights Act could help deal with these issues.

Which human rights are we talking about?

Human rights are about everyone, and they are very important for older people in Australia. We are all entitled to the enjoyment of human rights without discrimination of any kind, including discrimination on the basis of our age.

There are certain human rights and freedoms that are particularly relevant to older people, including the right to:

- an adequate standard of living including access to adequate food, clothing and housing
- the highest possible standard of physical and mental health
- work and fair working conditions
- be safe and free from violence
- be free from cruel, inhuman or degrading treatment
- privacy
- family life.

What are some of the human rights problems faced by older people in Australia?

Some of the major human rights problems faced by older people in Australia include:

- workplace discrimination – older people may face prejudice when applying for jobs, seeking promotions, accessing training or may be harassed in the workplace
- balancing paid work with caring responsibilities – older people often care for adult children, grandchildren, spouses and/or elderly parents
- access to appropriate and adequate aged care facilities and health care
- abuse – including financial, physical and psychological abuse of elderly people
- homelessness, poor living standards and dependency on social security payments
- barriers in accessing government services and other opportunities to participate in community/public life.

Older people have identified a range of barriers that prevent their full participation in various aspects of life. These include: public transport not being linked to key public buildings and services, requiring people who are less mobile to walk long distances; and barriers in public infrastructure such as not having chairs in airports for people to be able sit down when taking off shoes to go through security.

Australian Human Rights Commission, *Gender equality: What matters to Australian women and men*, Report on the Sex Discrimination Commissioner's Community Listening Tour (2008), Chapter 5.

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What are the limitations of existing human rights protections for older people?

There are limited human rights protections for older people at the moment.

If you feel you have been discriminated against because of your age, you can make a complaint to the Australian Human Rights Commission under the federal *Age Discrimination Act 2004* (Cth) (ADA). You can complain about discrimination in employment, education, accessing accommodation, accessing goods and services or in the administration of Commonwealth government laws and programs. Alternatively, you could make a complaint under state or territory anti-discrimination laws.

However, the federal ADA does not protect an older person from age discrimination if it is:

- done by a voluntary body – for example when offering membership or providing benefits, facilities and services to members
- done in direct compliance with certain other laws (this can include aspects of taxation and superannuation laws).

Also unlike other anti-discrimination laws, relatives and people who are carers of older people are not protected from discrimination.

How could we improve human rights protections for older people?


The Australian Human Rights Commission supports a Human Rights Act for Australia.

A Human Rights Act that includes human rights such as the right to adequate housing, health and an adequate standard of living (commonly known as economic, social and cultural rights) would make a difference to the lives of older people in Australia. It would improve the policies, procedures and services that impact on the daily lives of older people. It could help prevent human rights breaches and could provide remedies in cases where those breaches occur. It would require our government to examine how decisions impact on the human rights of older people.

If Australia had a Human Rights Act, it could:

- make the **federal Parliament consider how laws impact on human rights** – for example, they would need to consider whether a change to a law breaches the human rights of older people
- make the **federal government respect human rights when developing policy** – for example, when developing aged care policies, the government would have to protect the human rights of older people, including their right to adequate housing and health care
- make **public servants respect human rights when making decisions and delivering services** – for example, this could include ensuring that services are accessible to older people
- provide a **range of enforceable remedies** where a government department breached human rights.

Over the longer term, a Human Rights Act would also be a powerful tool for fostering a stronger human rights culture within the Australian community by promoting greater understanding and respect among all people in Australia.



Older people may face prejudice when applying for jobs, seeking promotions, accessing training or may be harassed in the workplace.

In addition to a Human Rights Act, there is a range of ways in which the human rights of older people could be better promoted and protected in Australia. For example:

- enhanced protection of human rights in the Australian Constitution
- strengthening protections under the ADA
- adoption of an Equality Act (one law including all federal discrimination protections)
- a National Human Rights Action plan, including a focus on the rights of older people in Australia
- a national education campaign, targeted at employers, recruitment agencies and the public, with the aim of increasing community awareness about age discrimination.

These and other measures could make a positive difference to human rights protection.

UK human rights act helps restore dignity and independence to nursing home residents

The United Kingdom has had a Human Rights Act since 1998. The British Human Rights Institute tells the story of a nursing home in London that had a practice of routinely placing residents in special 'tilt-back' wheelchairs, regardless of whether they could walk or not. As a consequence, residents who were able to walk unaided were stopped from doing so. This had a severe impact on their ability to make choices about everyday activities, as well as their capacity to feed themselves and use the bathroom. A consultant pointed out to staff that their failure to consider the different circumstances of individual residents was contrary to human rights principles. She drew particular attention to the right to respect for private life, which emphasises the importance of dignity and autonomy, and the right not to be treated in a degrading way. This 'one-size-fits-all' practice was stopped as a result. Residents who could walk were taken out of the chairs and encouraged to maintain their walking skills.

British Institute of Human Rights, *The Human Rights Act – Changing Lives* (2nd ed, 2008), p 15.

UK human rights act helps reunite a couple who had been separated after 65 years together

The United Kingdom has had a Human Rights Act since 1998. The British Human Rights Institute tells the story of a husband and wife who had lived together for over 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and used her husband as her eyes. They were separated after he fell ill and was moved into a residential care home. She asked to come with him but was told by the local authority that she did not fit the criteria. A public campaign launched by the family, supported by the media and various human rights experts and older people's organisations, argued that the local authority had breached the couple's right to respect for family life. The authority agreed to reverse its decision and offered the wife a subsidised place so that she could join her husband in the residential care home.

British Institute of Human Rights, *The Human Rights Act – Changing Lives* (2nd ed, 2008), p 14.

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Where can I find more information about older people and human rights?

Australian Human Rights Commission:
www.humanrights.gov.au/age/index.html