

4 July 2023

Committee Secretary
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600
By email: human.rights@aph.gov.au

Dear Parliamentary Committee Members

Inquiry into Australia's Human Rights Framework 2023

National Seniors Australia (NSA) welcomes the opportunity to make a brief contribution to the Parliamentary Joint Committee on Human Rights *Inquiry into Australia's Human Rights Framework*.

As the peak body representing older people in Australia, NSA has a strong interest in ensuring age is no impediment to the enjoyment of the full range of human rights. Further, our work enables us to observe and engage with human rights issues affecting older people across many domains of Australian life. NSA's community engagement, research and advocacy around older people in aged care, health care, employment and economic security have given us insight into the status of human rights awareness, violations and protections affecting this diverse group of Australians. For example, we see problems regularly emerge for older people accessing:

- the right to work;
- the right to mental and physical health;
- the right to community participation;
- the right to be free from cruel or degrading treatment.

The experience of older people living in residential aged care during the early stages of the COVID-19 pandemic highlighted the ease with which a number of these and other human rights were put aside for this age group. However, this suspension of rights does not just occur in times of serious community-wide crisis. As a prominent, founding member of the EveryAGE Counts campaign to end ageism directed at older people, NSA believes ageism is embedded in our social norms and sits at the heart of the denial of some human rights to older people. Yet this source of discrimination and exclusion is not recognised or addressed in our human rights framework.

Therefore, the purpose of our submission is to request the Committee urgently consider, as part of its broader remit, whether the current Australian Human Rights Framework is fit-for-purpose for the protection of the human rights of older people. We contend the evidence shows there are gaps and shortcomings in the rights protections for this group that need urgently to be addressed and the Committee has the opportunity to make recommendations that could improve this situation.

As the AHRC *Free and Equal* discussion paper makes clear, Australia's human rights framework is a patchwork of measures, and this is nowhere more so than in the area of older person rights.

The federal Age Discrimination Act is limited in its positive impact on access to human rights violation remedies for older persons in the following ways:

- the matters covered under the Act are limited;
- there is no positive duty embedded in the Act; and
- the complaints handling mechanism is unwieldy and notoriously ineffective.

At the State and Territory level, the patchwork continues for older people. Equal opportunities and anti-discrimination laws and the patchy coverage of human rights acts often outlaw discrimination on the basis of age, but the performance of these systems in protecting the rights of older persons is poor.ⁱ In response to this situation NSA proposed the following.

Firstly, NSA supports a new federal Human Rights Act as long overdue, agreeing with the argument made in *Free and Equal: A Human Rights Act for Australia*ⁱⁱ that it is the best way to anchor the promotion and protection of human rights in Australia. The inclusion of older persons in this Act as a specific category of rights holders facing specific barriers to the enjoyment of rights would be an important development for this group of people. In addition to offering a currently missing pathway towards rights enforcement, the explicit inclusion of older persons in a new Human Rights Act would assist in including older people in the “cultural shift towards rights-mindedness, becoming part of the national psyche...”ⁱⁱⁱ.

Secondly, NSA asks the Committee to recommend the Australian Government express its support for and commitment to working towards the creation of a United Nations Convention on the Human Rights of Older Persons. The broad-based Australian network, Rights of Older Persons Australia ([ROPA](#)), makes the case in the following way:

Existing treaties offer inadequate protection of our rights as we age. What protection exists is scattered and lacks a coherent focus on older persons. Focused treaties exist for other groups, including children, women and persons with disability. Treaties have helped these groups in Australia by establishing internationally endorsed frameworks to scaffold effective advocacy, legislation, accountability, and the provision of fit for purpose services.^{iv}

In conclusion, as Australia’s Age Discrimination Commissioner Dr Kay Patterson so aptly observed; “Human rights should not diminish with age, and the culture we set now is the one we will inherit.”

NSA would be pleased to discuss our submission and proposals with the Committee staff or in public hearings. Please do not hesitate to contact us if you have any questions. Please direct these to Susan McGrath, Senior Policy Advisor, s.mcgrath@nationalseniors.com.au or 0460836395.

Yours Sincerely



Ian Henschke
Chief Advocate
National Seniors Australia

ⁱ Alycia Blackham, *Why Do Employment Age Discrimination Cases Fail? An Analysis of Australian Case*. Sydney Law Review 2020

<https://www.ohchr.org/sites/default/files/Documents/Issues/OlderPersons/AgeismAgeDiscrimination/Submissions/Academics/University-of-Melbourne-4.pdf>

ⁱⁱ Free and Equal: A National Human Rights Act for Australia. Australian Human Rights Commission 2022. P9

<https://humanrights.gov.au/human-rights-act-for-australia>

ⁱⁱⁱ Ibid P10

^{iv} ROPA, *Call for Action*. <http://www.rightsofolderpersons.org.au/wp-content/uploads/2022/09/ROPA-Call-to-Action-October-2022.pdf>