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Chair
Parliamentary Joint Committee on Human Rights

By email: human.rights@aph.gov.au

Inquiry into Australia's Human Rights Framework

Thank you for the opportunity to make a submission to the Inquiry into Australia's Human Rights Framework, including the 2010 Framework and the *National Human Rights Action Plan 2012*. This submission focuses on:

- poverty as a barrier to full enjoyment of human rights
- the 'visibility gap'¹ with respect to our rights as we age
- people with disability
- children and young people affected by family separation and family law proceedings
- carers
- the need for our human rights structure to swiftly adapt to emerging technology, both to maximise enjoyment of human rights and to prevent and remediate use of technology to breach human rights, and
- bolstering existing human rights accountability mechanisms within Government.

The work of Relationships Australia

We are an Australian federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choices, cultural background or economic circumstances. Relationships Australia provides a range of services, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others. Through our programs, we work with people to enhance relationships within families, whether or not the family is together, with friends and colleagues, and across communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We respect the rights of all people, in all their diversity, to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships. Relationships Australia is committed to:

- ensuring that social and financial disadvantage are not barriers to accessing services
- working in rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres

¹ See Herro & Byrnes, 2021.

- collaborating with other local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with older people, men, women, young people and children; a complex suite of supports (for example, drug and alcohol services, family support programs, mental health services, gambling services, and public housing) is often needed by people engaging with our services, and
- contributing our practice insights and skills to better inform research, policy development, and service provision.

Since the publication of the Framework in 2010, and the Action Plan in 2012, there have emerged a range of considerations that should inform development of modern human rights infrastructure. These have included increased understanding of the role of social determinants of health² as enablers of enjoyment of human rights,³ as well as enhanced understanding of the nature and extent of intersectionality as affecting enjoyment of human rights.

Recommendations

Recommendation 1

Government should develop a new Human Rights Framework and Human Rights Action Plan. The Framework should inform an Action Plan that spans at least 10 years and be supported by sub-plans with clear objectives to be met within specified timeframes.

Recommendation 2

Government should introduce a Human Rights Act that provides a positive framework for recognition of human rights in Australia, and that includes:

- an effective Parliamentary oversight mechanism to hold Government to account in recognising and protecting human rights, as well as preventing and remediating breaches
- provisions that clarify the relationships between existing Commonwealth, State and Territory thematic frameworks and strategies, and ground them explicitly in human rights
- provisions that impose duties to protect and promote human rights and to prevent discrimination on unlawful grounds
- meaningful, effective, accessible and proportionate remedies for breaches of human rights, including a standalone cause of action that can be invoked (including against the Crown) in respect of alleged breaches of human rights, proof of which can afford access to a range of remedies, including damages and restitution, as well as injunctive and declaratory relief
- consolidated anti-discrimination provisions with meaningful, effective, accessible and proportionate remedies, as well as preventive mechanisms
- provisions that apply specifically to the Australian Public Service, to embed human rights within the APS Values, so that human rights pervade policy development and implementation, and

² See, eg, Marmot, 2015.

³ See, eg, Genn, 2019; Law Council of Australia, 2018.

advice and service delivery, and for which Agency Heads are accountable (in respect of APS employees and contractors/consultants),⁴ and

- provisions that require the Act to be reviewed every three years, with reports to be tabled in Parliament; that review should include identification of emerging human rights issues.

Recommendation 3

The human rights infrastructure should provide for the establishment and maintenance of public awareness and education campaigns.

Recommendation 4

The Act should expressly recognise:

- the human rights impacts of poverty
- the effect on human rights of systemic and environmental factors
- the implications of intersectionality
- a right to social inclusion and connection
- the rights of older people, and
- a right to privacy and a 'right to be forgotten'.

Recommendation 5

The Act should expressly:

- identify the articulation and protection of human rights of older persons as a national priority within a Human Rights Framework and associated action plans, and
- develop and maintain ongoing public awareness and education campaigns to refute ageist and ableist beliefs and discrimination across care support, health, education and employment, social and cultural domains.

Recommendation 6

The Government should:

- support and commit to working towards the adoption of a United Nations Convention on the Human Rights of Older Persons by:
 - ensuring the involvement of civil society organisations in the drafting, designing and negotiation of the instrument, particularly organisations that represent older persons and diverse communities of older persons
 - engaging with the Human Rights Council, the Open-ended Working Group and other relevant bodies to urgently move forward the agenda for drafting and adoption of a new treaty on the human rights of older persons, and

⁴ Building on the foundations laid in the 2010 Framework (see, eg, p 6).

- supporting the Australian Human Rights Commission’s involvement in the discussion concerning a future convention on the rights of the older persons, both at the international and at the domestic levels⁵
- ensure that:
 - aged care legislation is embedded in human, as distinct from consumer, rights, and
 - human rights form the basis for regulatory policy relating to aged care, and
- implement the recommendations made by the Australian Law Reform Commission in Report 124 in relation to National Decision-Making Principles and supported decision-making.

Recommendation 7 – dedicated Committee hearings

Given the ‘rights gap’ in relation to older persons, the Committee should reserve a day to hear from community members and advocates about the urgency of implementing Recommendations 4 to 6.

Recommendation 8 Elevate and amplify children’s rights

Elevate and amplify children’s rights in the context of family law proceedings, family separation, special medical procedures and the criminal justice system, including by:

- implementing Proposals 7-8 to 7-10 of ALRC DP86⁶
- amending section 68LA of the *Family Law Act 1975* (Cth) to expressly require that Independent Children’s Lawyers must be appointed for proceedings related to special medical procedures, and provide appropriate resourcing to support this⁷
- developing nationally consistent legislation to protect the right to bodily integrity of children and young people with variations in sex characteristics, as modelled by the *Variations in Sex Characteristics (Restricted Medical Treatment) Act 2023* (ACT)
- implementing Recommendation 50 of ALRC Report 135 by establishing a Children and Young People’s Advisory Board, possibly under the aegis of the Family Law Council, to allow systemic advocacy to complement children’s participation in matters affecting them.

Recommendation 9

Government should review existing internal mechanisms that contribute to government accountability, including:

- the use of statements of compatibility to consider the extent to which they offer effective accountability in the development and scrutiny of legislation, and

⁵ This recommendation reflects the call to action made by Rights of Older Persons Australia (ROPA), of which Relationships Australia is a member. ROPA is comprised of those civil society organisations, individual supporters and advocates who publicly endorse a new UN Convention on the Human Rights of Older Persons. See <http://www.rightsofolderpayers.org.au/>.

⁶ See Relationships Australia’s submission to ALRC DP86, pp 90-95, accessible at <https://relationships.org.au/wp-content/uploads/ALRCDP86-RA-sub-FINAL-for-email.pdf>; for the Discussion Paper, see <https://www.alrc.gov.au/publication/review-of-the-family-law-system-discussion-paper/>

⁷ See section 67ZC of the Act; see also Family Law Practice Direction – Medical Procedure Proceedings (<https://www.fcfoa.gov.au/fl/pd/fam-medical>), accessed 8 February 2023).

- the scope of duties, functions and powers of entities such as the Ombudsman, the Office of the Australian Information Commissioner,⁸ and the Office of Legal Services Coordination.

Recommendation 10

To support access to justice as an enabler of exercising human rights, the Government should re-establish the Administrative Review Council and the National Alternative Dispute Resolution Advisory Council.

Framing principles of this submission

This submission is informed by the various submissions which Relationships Australia has made in recent years, and which can be found at <https://relationships.org.au/what-we-do/#advocacy>. Submissions containing recommendations of particular relevance are:

- submission to the Senate Committee on Legal & Constitutional Affairs about the Family Law Amendment Bill 2023
- submission to the Senate Standing Committee on Community Affairs in relation to its inquiry into the extent and nature of poverty in Australia
- submission to this Committee in relation to its inquiry about the 2021 religious discrimination legislative package
- submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and
- submission responding to the NDIS Consultation Paper: Supporting you to make your own decisions.

Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all.

Principle 2 – Commitment to inclusive and universally accessible services

Relationships Australia is committed to universal accessibility of services, as well as inclusive and culturally safe services. Our clients (and staff) experience stigma, marginalisation and exclusion arising from diverse circumstances and positionalities, including:

- ‘postcode injustice’ in accessing health, justice and other social services
- poverty
- status as users of care and support

⁸ The powers, duties and functions of the OAIIC are crucial to uphold an effective right to privacy and a right to be forgotten/right to erasure. Consideration of the OAIIC should also include whether the OAIIC is sufficiently resourced, and whether reliance on industry dispute resolution schemes can ever be effective mechanisms to ensure that service users have adequate channels through which to assert their rights.

- disability and longstanding health restrictions (including poor mental health)
- intimate partner violence, abuse or neglect as an older person, and/or child maltreatment
- family separation
- being an adult informal carer for a child or other adult
- being a young person caring for a child or an adult
- housing insecurity and instability
- employment precarity, unemployment and under-employment
- misuse of alcohol and other drugs, or who have experienced gambling harms
- people who come from culturally and linguistically diverse backgrounds (including people who have chosen to migrate and people who have sought refuge)
- people affected by complex grief and trauma, intergenerational trauma, intersecting disadvantage and polyvictimisation
- survivors of institutional abuse
- people experiencing homelessness or housing precarity
- people who identify as members of the LGBTIQ+ communities, and
- younger and older people.

None of these circumstances, experiences and positionalities exists at the level of an individual or family. They become barriers to full enjoyment of human rights and full participation in economic, cultural, and social life through the operation of broader systemic and structural factors including:

- legal, political and bureaucratic frameworks
- beliefs and expectations that are reflected in decision-making structures (such as legislatures, courts and tribunals)
- policy settings that inform programme administration, and
- biases or prejudices that persist across society and that are reflected in arts, culture, media and entertainment.

Principle 3 – An expanded understanding of diverse ways of being and knowing

Relationships Australia is committed to working with Aboriginal and Torres Strait Islander people, families and communities. Relationships Australia is also committed to enhancing the cultural responsiveness of our services to other culturally and linguistically diverse individuals, families and communities. Our commitment to human rights necessarily includes a commitment to respecting epistemologies beyond conventional Western ways of being, thinking and doing. Of acute importance is a commitment to respecting epistemologies and experiences of Aboriginal and Torres Strait Islander people as foundational to policy and programme development, as well as service delivery.

For example, connection to Country, and the context-specific experiences of kinship, for example, do not countenance the hyper-individualism that pervades Western assumptions about distribution of resources and obligations between the Western nation-state and individuals, and among individuals. Centring the epistemologies and experiences of Aboriginal and Torres Strait Islander people is a necessary (although not of course sufficient) step in achieving the targets in the National Agreement on Closing the Gap, as well as preventing entry into poverty, ameliorating its effects, and hastening transitions out of poverty.

Principle 4 - Commitment to promoting social connection and addressing loneliness as a serious public health risk

Policy, regulatory and service interventions that strengthen connections and reduce isolation are the most promising and feasible avenues for reducing the risk of abuse and exploitation of people who face structural and systemic barriers to their full participation in society. For example:

Social support has emerged as one of the strongest protective factors identified in elder abuse studies....Social support in response to social isolation and poor quality relationships has also been identified as a promising focus of intervention because, unlike some other risk factors (eg disability, cognitive impairment), there is greater potential to improve the negative effects of social isolation.⁹

Loneliness is a complex social problem and a public health concern. It stems from dissatisfaction with our relationships, a lack of positive and respectful relationships, or both of these, and is often caused by experiences of exclusion due to structural and systemic social realities that form obstacles to participation in social, economic, cultural and political life. As a public health concern (Heinrich & Gullone, 2006; Holt-Lunstad et al, 2015; Mance, 2018), loneliness has been linked to physical health risks such as being equivalent to smoking 15 cigarettes a day and an increased risk of heart disease (Valtorta, 2016). Loneliness is a precursor to poorer mental health outcomes, including increased suicidality (Calati et al, 2019; McClelland et al, 2020; Mushtaq, 2014).¹⁰ Relationships Australia is a foundation member of the Ending Loneliness Together network¹¹ and has, since 2013, been the custodian of Neighbours Every Day,¹² the primary purpose of which is to equip and empower individuals to build sustainable, respectful relationships with those around them. It is an evidence-based campaign aimed at reducing loneliness by raising awareness and, importantly, providing tools to combat social isolation.

Principle 5 – Intergenerational stewardship and equity

Fairness to future generations should not be viewed through a reductionist fiscal lens. Relationships Australia takes seriously obligations of stewardship for future generations, which transcend the national balance sheet and require us to invest in social infrastructure (tangible and intangible). This includes fit for purpose human rights infrastructure.

⁹ See Dean, CFA 51, 20, Box 7, citing the United States of America population study described in Acierno et al, (2017); citing also Hamby et al (2016); Pillemer et al (2016).

¹⁰ The campaign Ending Loneliness Together has released a guide that explains how community organisations can use validated scales to measure loneliness: https://endingloneliness.com.au/wp-content/uploads/2021/08/AGuideto-Measuring-Loneliness-for-Community-Organisations_Ending-Loneliness-Together.pdf

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¹² Neighbours Every Day is an evidence-based campaign, evaluated by the Australian National University, aimed at reducing loneliness by raising awareness and, importantly, providing tools to combat social isolation. With adequate resourcing, we are confident that Neighbours Every Day could be scaled to reach a greater number of Australians, in all communities and at all stages of the life course.

Principle 6 – Commitment to centring lived experience in policy and service design, delivery and evaluation

Centring lived experience (including through co-design) in policy and service design supports the development of policy, legislation and services that uphold human rights – especially human rights of individuals and groups who have traditionally been marginalised and excluded from policy discourse, or been the ‘objects’ of such discourse. In addition, centring lived experience can enhance the transparency and public accountability in policy and programme development, and the efficiency of government services, by supporting the delivery of outcomes that are valued by service users, not just administrators.

Discussion

Guided by these framing principles, Relationships Australia makes the following observations and comments that we hope will be of use to the Committee as it considers the structure, approach and content of Australia’s new human rights infrastructure.

Poverty

The international community recognises that poverty is a human rights issue, and Australia has obligations to reduce poverty, defined by the Sustainable Development Goals.¹³ Poverty functions as a powerful barrier to social inclusion¹⁴ and the enjoyment and assertion of human rights; this is a key reason for our commitment to universally accessible services. A robust national approach to articulating, protecting and enforcing human rights must recognise not only that poverty, *per se*, is a human rights issue, but that the treatment in political, social and cultural discourse of people living in poverty exacerbates its impact on the ability to assert and vindicate human rights. Use of stigmatising, punitive (and sometimes criminalising) language in talking about people living in poverty (including people accessing social security benefits, for example) is unnecessarily shaming and stigmatising, and undermines enjoyment of human rights.

Older people

Delivering the Hugh Stretton Oration earlier this year, the Minister for Health and Ageing declared that ‘...age equality must become another of the great human rights issues of our time’ in relation to which ‘societies everywhere must act’. He further declared that ‘governments must provide the leadership.’¹⁵

The Human Rights Framework of 2010 provided a useful basis for considering Australia’s suite of (fragmented) human rights and anti-discrimination legislation. However, the Framework and the 2012

¹³ See <https://un.org/sustainabledevelopment/poverty/>. We note Australian Government reporting on progress against these goals at <https://www.sdgdata.gov.au/goals/no-poverty> [accessed 12 January 2023].

¹⁴ As acknowledged by the 2012 Action Plan; see p 22.

¹⁵ See <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/the-hugh-stretton-oration-with-minister-butler-university-of-adelaide-27-april-2023> [accessed 28 June 2023]

Action Plan offered limited recognition of, and response to, the ageism and age discrimination that perpetuate tolerance of persistent and catastrophic human rights violations against older people.

Our rights as we age are customarily viewed through reductionist medicalised, economic, or technocratic lenses. This impoverished understanding of our rights as we age has facilitated ongoing ageism and age discrimination, as well as amply-documented violence, abuse, neglect and exploitation.¹⁶ The Framework and the Plan did not uphold the basic human rights of older persons and did not promote full and effective participation by and opportunities for older persons in economic, social, cultural and political life. They maintained the well-documented ‘visibility gap’ in public and political recognition of the human rights concerns that engage us as we age.¹⁷

Certainly, Australia is not unique in its conspicuous lack of attention to our rights as we age. Across the world, older persons face entrenched ageism and age discrimination.¹⁸ As the COVID-19 pandemic shows, older persons are disproportionately vulnerable to violation of even the most fundamental rights, such as the right to life.¹⁹ Although the Universal Declaration of Human Rights states that we are all born equal and are all equally entitled to the same rights as everyone else, this does not apply as we grow older.

Relationships Australia urges Government to take concrete steps to exercise the kind of leadership envisaged by the Minister for Health and Ageing in the Stretton Oration. A Human Rights Act must address this gap in visibility in Australian settings, while Australia’s active participation in developing a convention on the rights of older people will support the visibility of older people’s rights in the international community.

Ageism and age discrimination in Australia

A national human rights act, and identification of older persons’ rights as a national priority, would provide a jurisprudential basis for effectively countering ageism and age discrimination in Australia. The Act should be explicit in recognising that, as we age, we maintain our status as rights-bearers. It should counter the prevailing ‘false binary’ of having or lacking capacities with more nuanced sensibilities, articulate dignity of risk, and offer a vigorous riposte to so-called ‘benevolent’ ageism, which recognises older people not as rights-bearers, but as beings to be the objects of ‘care’ and ‘protection’.

In Australia, the evidence of ageism directed at older people and its impact on their status as rights holders is extensive and growing.²⁰ The research establishes that ageism is deeply implicated in the marginalisation of older people from general human rights inclusion and protection, and that human

¹⁶ See the Final Report of the Royal Commission into Aged Care Quality and Safety; Qu et al, 2021.

¹⁷ See, eg, Herro & Byrnes, 2021.

¹⁸ World Report on ageing and health (2015) (n 3); Global Report on Ageism (2021) (n 3). See also Izekenova et al, 2015; Iversen, Larsen & Solem, 2009.

¹⁹ United Nations Department of Economic and Social Affairs, Covid-19 Pandemic and Older Persons (Web Page); Inter-American Commission on Human Rights, Resolution No. 01/20: Pandemic and Human Rights in the Americas (adopted 10 April 2020).

²⁰ AHRC Report, 2021a.

rights guarantees are often denied to older people, as older people.²¹ Ageism is at the root of the glacial progress, on the political agenda, of issues of critical concern to all of us as we age. These include the notoriously long-overdue harmonisation of laws relating to enduring powers of attorney and the establishment of a national register.

Recent reports and inquiries demonstrate that the absence of a human rights approach in system design and service delivery is undermining the basic rights of older Australians, and causing pain, suffering and fear.²² If Australia is serious about being an inclusive society which flourishes because all individuals are accorded their human rights, a profound change to underlying social attitudes and policy settings is required. Older persons in Australia suffer from violations to their fundamental human rights such as the right to life, the right to privacy and the right to family life, as well as the right to freedom from cruel, inhuman or degrading treatment. The Royal Commission reported that deliberate acts of harm and forms of abuse occur in residential aged care, including physical and sexual abuse.²³ Physical and sexual violence in residential aged care sometimes occurs at the hands of staff members, and there are situations in which residential aged care providers do not protect residents from abuse by other residents. The Royal Commission Final Report states: 'This is a disgrace and should be a source of national shame. Older people receiving aged care should be safe and free from abuse at all times.'²⁴

Further, ineffectual oversight and reliance on market-based regulatory mechanisms has enabled our society's general and shameful acquiescence in widespread institutionalisation and the use of restrictive practices that arguably breach the Optional Protocol against Torture. Reliance on market-based theory (including on consumer, rather than human, rights) has failed to drive innovation, quality, safety or accountability. This is partly because of factors intrinsic to institutional aged care in Australia, with its relatively small and geographically dispersed population and vulnerability to market failure, and partly due to the particular characteristics and needs of service users. The consumer's right to choose has little meaning in the context of 'transfer trauma', complaints-based mechanisms and the perfunctory 'tick a box' approach by regulators that was highlighted in evidence given to the Royal Commission.²⁵

Abuse of older persons also occurs in the community. The National Elder Abuse Prevalence Study reports that 14.8% of older persons living in the community suffer some form of neglect or abuse - psychological, sexual, financial or physical.²⁶ However, the AIFS study was confined to people living in the community, and people with sufficient cognitive capacity to engage in consultation. The limitations on the study suggest that the figure of 14.8% significantly understates the prevalence of abuse and neglect: the study excluded people living with cognitive impairment and people living in residential aged care facilities, prisons and other institutional settings. The parameters of the study also did not accommodate specific examination of the situations of culturally and linguistically diverse older

²¹ Van Bueren (nd).

²² See Final Report of the Royal Commission into Aged Care Quality and Safety, 2021; North & Fiske, 2013.

²³ Royal Commission Report Final Report, 2021 (n 36); Royal Commission Interim Report, 2019; Royal Commission into Aged Care Quality and Safety, 'Aged Care in Australia: A Shocking Tale of Neglect' (Media Release, 31 October 2019).

²⁴ Royal Commission Final Report, 2021, 68.

²⁵ For example, the evidence of Professor R Paterson. For further discussion, see Relationships Australia's submissions to the Royal Commission and to the Department of the Prime Minister and Cabinet in relation to its draft strategy for the care and support economy.

²⁶ ALRC, 2017; see also Dow & Brijnath, 2019, pp 143-159.

people, and older people experiencing compounded marginalisation through intersecting disadvantage, such as homelessness or membership of LGBTIQ+ communities.

The most common form of abuse is psychological and most commonly, perpetrators are adult children. Most victims do not seek help. The socio-demographic characteristics associated with elder abuse include financial strain, housing stress and individual-level characteristics such as social isolation, loneliness, mental illness, poor physical health and disability. The study reports that elder abuse largely remains a hidden problem, and that increasing recognition and awareness of elder abuse behaviours is essential.²⁷

In the employment context, a 2021 study by the Australian Human Rights Commission reported that over a quarter of respondents experienced age discrimination in the previous two years and almost a third were aware of other people experiencing age discrimination in the workplace.²⁸ Research by EveryAGE Counts establishes that the key settings where ageist attitudes prevail are the workplace, provision of healthcare, aged care and family and local community settings.²⁹ In relation to the provision of healthcare, the Final Report of the Royal Commission found that people receiving aged care, particularly those in residential aged care, do not consistently receive the health care they need and, that in many cases, care is substandard.³⁰ Substandard care can occur in routine areas like provision of adequate food, medication management, dental and skin care, as well as in complex care, such as the management of chronic conditions, dementia or palliation.³¹ Notably, the Commission found that those who run the aged care system do not seem to know about the nature and extent of substandard care and have made limited attempts to find out.³²

Why does this rights gap matter? Impact of COVID-19 on older persons – an illustration

Ageism, discrimination and stigma were at the core of the suffering of older persons brought about by COVID-19. In 2020, the United Nations reported that the COVID-19 pandemic was causing untold fear and suffering for older people across the world.³³ The statistics were shocking. Over 95% of fatalities due to COVID-19 in Europe were of people 60 years or older.³⁴ In the United States, 80% of deaths were among adults 65 and over. In China, approximately 80% of deaths occurred among adults aged 60 years or older. Fatality rates for those over 80 years of age was five times the global average.³⁵

²⁷ ALRC Report 2017 (n 39) 78. See also Qu et al, 2021.

²⁸ AHRC 2021a, 35-44.

²⁹ EveryAGE Counts, 'The drivers of ageism: Foundational research to inform a national advocacy campaign tackling ageism and its impacts in Australia' (Full Report, 2017) 9. See also EveryAGE Counts, 'Ageism Report 2021' (Full Report, 2021); Leah Nemiroff, 'We can do better: Addressing ageism against older adults in healthcare' (2022) 35(2) Healthcare Management Forum 118-122.

³⁰ Royal Commission Report 2021, 7-13.

³¹ Royal Commission Report 2021, 69-73.

³² Royal Commission Report 2021, 72.

³³ United Nations Report 2020.

³⁴ UN Report, 2020,5.

³⁵ UN Report, 2020,5.

The broader effects of the pandemic were equally shocking. Across the world, older persons were denied healthcare for conditions unrelated to COVID-19, were neglected and abused in institutions and care facilities, suffered hunger and poverty, loneliness and isolation, and endured the trauma of stigma and discrimination.³⁶ Older persons living in precarious conditions – such as refugee camps, informal settlements and prisons – were particularly at risk, due to overcrowded conditions, limited access to health services, water and sanitation facilities, as well as potential challenges accessing humanitarian support and assistance.³⁷ Older persons, often women, were among the caregivers responding to the pandemic, increasing their risk of exposure to the virus. Older persons were subjected to hate speech targeting older persons in public discourse and on social media as expressions of intergenerational resentment.³⁸

The final recommendation of the United Nations report into COVID-19 and its effect on older persons was that stronger legal frameworks are required at both national and international levels to protect the human rights of older persons, including by accelerating the efforts of the General Assembly's working group to develop proposals for an international legal instrument to promote and protect the rights and dignity of older persons.³⁹

Relationships Australia is committed to advocating for the recognition of the rights of older persons. We have joined the EveryAGE Counts Campaign and the Rights of Older Persons Australia network. We consider the absence of an international convention on the rights of older persons to be a key influence on perpetuating ageism and abuse and neglect of older people. We further consider that ageism underlies yawning policy and service delivery gaps, including in the 'postcode lottery' of availability of services that can help older people affected by abuse or neglect, and reflected in short-term funding envelopes for elder abuse services that come nowhere close to matching the prevalence of abuse and neglect of older people (Qu et al, 2021).

The Royal Commission into Aged Care Quality and Safety identified that abuse and neglect are endemic in residential aged care settings. The AIFS study of the nature and prevalence of abuse and neglect of older people in the community demonstrated the pervasiveness and gravity of abuse and neglect in other settings. Research undertaken by the Australian Human Rights Commission has identified the prevalence and harms of age discrimination in employment and our social and cultural lives (eg the *Willing to Work* and the *What's Age Go to Do with It?* Reports). The weight of evidence is overwhelming - as we age, we cannot be confident that our rights will be respected, protected, supported or vindicated. Any Human Rights Act, framework or action plan simply must elevate and amplify our rights as we age as a matter of urgency. Proposed aged care legislation must be expressly grounded in human rights and abandon market-based mechanisms (including consumer rights) as a failed experiment that has brought grave harm and suffering through egregious human rights violations.

³⁶ UN Report, 2020, 2-4, 9.

³⁷ UN Report, 2020, 7.

³⁸ UN Report, 2020, 9.

³⁹ UN Report, 2020, 14. See also Inter-American Commission on Human Rights, Resolution No. 01/20: Pandemic and Human Rights in the Americas (10 April 2020).

People with disability

The significant barriers and intersecting challenges faced by people with disability directly impedes the full enjoyment of human rights. While the development of a Human Rights Act will, by its very nature, apply to all members of the Australian community, Relationships Australia considers that it is incumbent on governments to ensure that disability does not, in any way, diminish the entitlement of a person to enjoy all the human rights that would otherwise be available to them. Rather, impairment requires additional frameworks and structures to support the fundamental principles of dignity and integrity within the spectrum of human diversity. This must be supported by a system which:

- empowers users to express their individuality and draw on their own strengths/abilities as they see fit
- offers high quality services that support users to access their preferred providers, in place-based and culturally safe formats
- enables real choice with adequately trained workforces who are remunerated fairly and appropriately within a system that minimises employment precarity
- listens to and centres the voices of those with disability, who are the experts in their own lives, experiences and needs, and
- for those living in care facilities – these should aim to be ‘residential’, by providing a home, not an institution, allowing freedom of movement within and outside the facility, independence, choice of activities, ability to attend activities that they enjoy, and engage with risk.

Through our work providing counselling and support services to people impacted by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Relationships Australia has reflected that the ability of this historically marginalised group to have choice and control over all aspects of their life is challenged by the ongoing and permeating experiences of violence, abuse, neglect and exploitation that they face.

The social model of disability recognises that ‘disability’ is socially constructed. Disability is a one-dimensional term used to illustrate medical ‘abnormalities’ in comparison to a putative ‘normal’ population. The social model acknowledges the impact of impairment on individual experience, but sees ‘disability’ as a result of the interaction between people living with impairments and an environment filled with physical, attitudinal, communication and social barriers.⁴⁰

The social model of disability recognises that the physical, attitudinal, communication and social environment must change to enable people living with impairments to participate in society on an equal basis with others. Importantly, it acknowledges that any accommodations for impairment should be an *expected* incident of human diversity, and not an ‘optional extra’.

Relationships Australia considers that for this to be realised in Australia, a robust legal framework for human rights will be a critical enabler.

⁴⁰ For further discussion of the social model of disability and examples of the interaction between human rights and the experiences of people with disability, please see our submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, at: https://relationships.org.au/wp-content/uploads/Submission_DRC_FINAL.pdf

Children

Relationships Australia is committed to ensuring that children's rights are honoured and fully upheld across all domains of Australian life. This includes, but is not limited to, ensuring that children's voices and children's developmental needs and safety are centred in all systems and processes with which they engage. It appears, however, that in the eyes of our legal systems and public discourse, children and young people are divided into two groups: those worthy of care, protection and support and those who should be criminalised.

Recent groundbreaking evidence (see Mathews et al, 2023; Higgins et al, 2023) shows the shocking prevalence, across the population, of child maltreatment, as well as revealing the ongoing and multi-faceted impacts of child maltreatment. It is important to note that one form of child maltreatment examined in the Australian Child Maltreatment Study is exposure to domestic and family violence.⁴¹ All children are vulnerable to maltreatment and all children merit the protection of the law; accordingly, a modern Human Rights Act must transcend the destructive and false binary that suggests otherwise.

The family law system is one of many examples where the status of children as rights-bearers, and the protective potential of a cohesive and clear articulation of their rights, has yet to be translated into daily practice (although improvements have and continue to be made through discrete legislative and service delivery reforms, including the Family Law Amendment Bill 2023). The existing family law system derives from how common law civil disputes have traditionally been resolved and has been consistently and unequivocally shown to harm children. That harm is intrinsic to the nature of the system, which assigns innately combative roles to parents. Nearly half a century of 'retrofitting' the *Family Law Act 1975* (Cth) to centre children, and to soften the edges of win/loss litigation dynamics, has failed to mitigate this harm. Children and young people suffer from entanglement in this system, and continue to suffer in their adult lives and relationships – including the relationships that they develop with their own children. Relationships Australia has elsewhere expressed its view that the Australian family law system does not uphold the rights of children as articulated in the Convention on the Rights of the Child.⁴²

In 1997, ALRC Report 84 found that children believed that the family law system was 'dominated by legal strategizing by competing parties to maximise their chances of winning the case...The interests of the child often get lost between the warring parties.'⁴³ From the binary win/loss outcomes that litigation is designed to produce flow all manner of serious and sometimes irreparable harm to children and their families, including by:

- entrenching and deepening conflict between parents
- incentivising litigation tactics such as burning off and making unfounded allegations

⁴¹ The Study took a narrower approach than is taken in the *Family Law Act 1975* (Cth) to what constitutes exposure to family violence, confining that to seeing or hearing family violence. Following amendments that commenced in 2012, the Family Law Act considers a child to have been exposed to family violence *not only* if they see or hear the violence, but also if they 'otherwise experience the effects' of it: ss 4AB(3).

⁴² Including its recent response to a survey undertaken by the Family Law Council in February 2023.

⁴³ ALRC Report 84, *Seen and heard: priority for children in the legal process*, paragraph 4.25.

- incentivising other misuse of court processes and other legal and administrative systems, and
- incentivising aggressive behaviours intended by one parent to incapacitate the other parent from co-parenting effectively (as mentioned below, we welcome the proposed harmful proceeding orders as a potentially valuable tool in responding to such behaviours; it will be necessary to see if, over time, these orders prove effective in both hindering systems misuse – and deterring it – against the weight of other countervailing incentives).

These harms should have evoked policy responses grounded in the Convention on the Rights of the Child. However, these concerns were recently repeated to researchers from the Australian Institute of Family Studies in their investigation into the experiences of children and young people in the family law system (Carson et al, 2018a). In light of our obligations under the Convention on the Rights of the Child, this cannot be allowed to continue. A Human Rights Act would provide a solid conceptual basis for the urgently needed structural transformations to ‘give children a bigger voice, more of the time’ (Carson et al, 2018b) and for the transformation of the system from a harmful adversarial and court-centric system to an approach that holistically centres children’s rights and wellbeing as something other than the outcome of a legal process.

Relationships Australia provides a range of services to children and young people who are affected by intersecting systems, including the family law, family violence and child protection systems, and the criminal justice systems. The complexities faced by children in these circumstances are traversed in the 2015 and 2016 reports of the Family Law Council, as well as the Australian Child Maltreatment Study.⁴⁴ In submissions to the ACT government concerning raising the age of minimum responsibility, and to the Parliamentary Joint Committee on Intelligence and Community concerning proposed (and subsequently passed) amendments to the *Australian Security Intelligence Organisation Act 1979*, we have expressed concerns about expectations of children and young people that do not align with the research literature or practical experience and observation about their capacities – or with their rights under the Convention on the Rights of the Child. A robust Human Rights Act would mandate greater scrutiny of proposals that are misaligned with evidence-based understanding of children’s needs and potentialities.

We take this opportunity to again support the recommendations made by the Family Law Council in its 2012 reports on improving the family law system for First Nations people and people from culturally and linguistically diverse communities.

Carers

Relationships Australia has recently made a submission to the Department of the Prime Minister and Cabinet commenting upon the draft care and support economy strategy. A key theme of that submission was the critical importance of shifting public language around care and support from narratives that focus on burdens, and deficits, and that reinforce stereotypes and prejudices about those who care and those who access care. Too often, public and political discourse around the ‘care and support economy’ reinforces gendered, ageist and ableist assumptions which undermine the human rights of all those concerned. In addition (or the alternative), discussions about caregiving

⁴⁴ See <https://www.ag.gov.au/families-and-marriage/family-law-council/family-law-council-published-reports>

instrumentalise and commodify care and support, viewing it through a primarily financial and economic prism. This inhibits full appreciation of the human rights and intrinsic dignity of us all. Relationships Australia will shortly make a submission to the current inquiry into the *Carer Recognition Act 2010* (Cth).

Technology and human rights

A modern human rights infrastructure should engage with the challenges to human rights posed by emerging technology. Particular attention should be paid both to how governments rely on emerging technology to carry out their functions, and government expectations of how users of government services have, or are disenfranchised from, accessing those services. We have discussed the prevalence and impacts of digital exclusion in a range of our submissions to governments. We emphasise that digital exclusion is not simply a matter of willingness to use technology; the availability of safe, private, reliable and affordable digital services affects the ability of a range of our clients to access services.

We also support proposals for an overarching right to privacy and related ‘right to be forgotten’ or ‘right of erasure’, currently under consideration by the Attorney-General. Relationships Australia welcomes his intention to modernise privacy laws. We consider that such rights should be included in a national Human Rights Act (see Recommendation 4) as a matter of urgency, given recent massive data leaks that have seen the compromise of personal information belonging to a sizeable proportion of our population. An aggravating circumstance of some of these breaches has been that the information was collected by an entity in dealings decades ago, with no legitimate reason for the information to be retained and inadequate safeguards against breaches. There is little meaningful recourse for those whose personal information has been released, particularly given the reliance of the OAIC on external dispute resolution schemes – no doubt because of under-resourcing of the OAIC. Of particular concern to Relationships Australia, data leaks of the kind that have been seen at Optus, Medibank and Latitude carry the potential to endanger the lives and wellbeing of people who have experienced domestic and family violence, including coercive control that involves ongoing surveillance by the perpetrator. In this way, a ‘right to be forgotten’ should be seen not only as complementary to a traditional right to privacy, but also as an essential pillar of government policies relating to domestic and family violence (see, eg, the National Plan to End Violence Against Women and Children).

A Human Rights Act and government processes

The aspirations of a national Human Rights Act will remain unmet in the absence of robust and meaningful mechanisms to hold governments to account in centring human rights in policy and legislation, service delivery and regulation. Mechanisms intended to ensure that the Australian Government complies with human rights obligations are too often degraded by chronic under-resourcing, inadequate or impractical enforcement options, as well as political and regulatory cultures that valorise ‘political responsiveness’, ‘light touch’ or ‘co-regulation’ approaches.⁴⁵ They are often reduced to being performative, tick a box processes. While Relationships Australia acknowledges

⁴⁵ The deficiencies of industry co-regulation and ‘light touch’ regulation, particularly in sectors serving people who experience substantial asymmetries in relation to providers, have been highlighted in a range of Royal Commissions and other inquiries, including (for example, the HIH Royal Commission, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, and the Royal Commission into Aged Care Quality and Safety).

appropriate limitations on such mechanisms to provide direct relief by way of damages or compensatory payments, accountability entities⁴⁶ should be empowered and resourced to ensure that human rights are not violated through, for example, policies and programmes that deny procedural fairness, that take unfair advantage of the power disparity between the Commonwealth and citizens in litigation, or that do not respond appropriately to service users' circumstances of vulnerability.

A further example of a potentially powerful tool in human rights accountability is seen in the use of statements of compatibility with human rights that are contained in explanatory memoranda. The requirements to prepare these statements could potentially ensure that human rights are front of mind from the start of policy development, and enhance the capacity of Parliamentary Committees to carry out scrutiny functions. However, these statements can end up being 'last minute' tasks carried out in haste and that engage at superficial levels with human rights concerns. The use of explanatory memoranda should be evaluated and consideration given to whether their value as human rights accountability mechanisms could be enhanced.

Finally, Government should ensure that its consultation processes afford sufficient time to engage in authentic co-design. This is of particular importance when those affected by government proposals have been marginalised in or traumatised by other processes and contexts or who experience circumstances that may affect their capacity to engage to the extent that they would otherwise wish to do so.

Conclusion

Thank you again for the opportunity to contribute to this critical inquiry. Should you require any clarification of, or elaboration on, any aspect of this submission, or information on the services that Relationships Australia provides, please contact me or Dr Susan Cochrane, National Policy Manager, Relationships Australia (ntebbey@relationships.org.au and sochrane@relationships.org.au).

Kind regards



Nick Tebbey
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⁴⁶ Whether standalone, like the Commonwealth Ombudsman, or within other agencies, such as the Office of Legal Services Coordination in the Attorney-General's Department, which *inter alia* oversees the conduct by the Commonwealth of litigation and dispute resolution to ensure that the Commonwealth does not take improper advantage of its power and resources.

REFERENCES

- Acierno, R., Hernandez, M. A., Amstadter, A. B., Resnick, H. S., Steve, K., Muzzy, W., & Kilpatrick, D. G. (2010). Prevalence and correlates of emotional, physical, sexual and financial abuse and potential neglect in the United States: The National Elder Mistreatment Study. *American Journal of Public Health, 100*(2), 292–297
- Australian Human Rights Commission (2021a) What's age got to do with it? A snapshot of ageism across the Australian lifespan
- Australian Human Rights Commission (2021b) Human Rights and Technology (Final Report)
- Australian Law Reform Commission (1991) Report 84 *Seen and heard: priority for children in the legal process*
- Australian Law Reform Commission (2014) Report 124. *Equality, Capacity and Disability in Commonwealth Laws*
- Australian Law Reform Commission (2017) *Elder Abuse – A National Legal Response: Final Report*
- Australian Law Reform Commission (2018) *Discussion Paper 86: Review of the Family Law System*
- Calati, R., Ferrari, C., Brittner, M., Oasi, O., Olié, E., Carvalho, A. F., & Courtet, P. (2019). Suicidal thoughts and behaviors and social isolation: A narrative review of the literature. *Journal of Affective Disorders, 245*, 653-667.
- Carson, R., Dunstan, E., Dunstan, J., & Roopani, D. (2018a). Children and young people in separated families: Family law system experiences and needs. Melbourne: Australian Institute of Family Studies
- Carson R & Williams N (2018b) Give children a bigger voice more of the time. Webinar, available at <https://aifs.gov.au/webinars/give-children-bigger-voice-more-time-childrens-and-young-peoples-experiences-family-law> [accessed 27 June 2023]
- Crockenberg, S., & Langrock, A. (2001). The role of specific emotions in children's responses to interparental conflict: A test of the model. *Journal of Family Psychology, 15*(2), 163–182. <https://doi.org/10.1037/0893-3200.15.2.163>
- Dean, A. (2019) Elder Abuse: Key Issues and Emerging Evidence. CFCA Paper No. 51. <https://aifs.gov.au/cfca/publications/cfca-paper/elder-abuse>
- Dow B & Brijnath B 'Elder abuse: context, concepts and challenges' in Australia's welfare 2019 data insights (Australian Institute of Health and Welfare, 2019) 143-159
- EveryAGE Counts (2017) The drivers of ageism: Foundational research to inform a national advocacy campaign tackling ageism and its impacts in Australia'
- EveryAGE Counts, 'Ageism Report 2021' (Full Report, 2021)

Family Law Council. (2012) *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*

Family Law Council. (2012) *Improving the Family Law System for Culturally and Linguistically Diverse Clients*.

Family Law Council. (2015) *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems. Interim Report (Terms 1 and 2)*

Family Law Council. (2016) *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems. Final Report (Terms 3, 4 & 5)*

Family Law Practice Direction – Medical Procedure Proceedings (<https://www.fccoa.gov.au/fl/pd/fam-medical>)

Genn, H When Law is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice, *Current Legal Problems*, Volume 72, Issue 1, 2019, Pages 159–202, <https://doi.org/10.1093/clp/cuz003>

Hamby, S., Smith, A., Mitchell, K., & Turner, H. (2016). Poly-victimization and resilience portfolios: Trends in violence research that can enhance the understanding and prevention of elder abuse. *Journal of Elder Abuse & Neglect*, 28(4/5), 217–234. doi:10.1080/08946566.2016.1232182

Heinrich L & Gullone E (2006). The clinical significance of loneliness: A literature review. *Clinical Psychology Review* 26:695–718.

Herro A & Byrnes, A (2021) 'Transcending framing contests over the human rights of older persons' (2020) 38 *Australian Yearbook of International Law* 253-284

Higgins DJ, Mathews B, Pacella R, Scott JG, Finkelhor D, Meinck F, Erskine HE, Thomas HJ, Lawrence DM, Haslam DM, Malacova E, Dunne MP. The prevalence and nature of multi-type child maltreatment in Australia. *Med J Aust* 2023; 218 (6 Suppl): S19-S25. <https://doi.org/10.5694/mja2.51868>

Hill, T, Thomson, C & Cass, B. (2011) *The costs of caring and the living standards of carers*. Social Policy Research Paper No. 43. Social Policy Research Centre, University of New South Wales.

Holt-Lunstad J, Smith T, Baker M, Harris T & Stephenson D (2015). Loneliness and Social Isolation as Risk Factors for Mortality: A Meta-Analytic Review. *Perspectives on Psychological Science* 10:227–37.

Inter-American Commission on Human Rights, Resolution No. 01/20: Pandemic and Human Rights in the Americas (adopted 10 April 2020)

Iversen T N, Larsen L & Solem P E 'A conceptual analysis of Ageism' (2009) 61(3) *Nordic Psychology* 4

Izekenova A K et al, 'Trends in ageing of the population and the life expectancy after retirement: A comparative country-based analysis' (2015) 20(3) *Journal of Research in Medical Sciences* 250

Law Council of Australia (2018) Justice Project, <https://lawcouncil.au/justice-project> [accessed 28 June 2023]

Mance, P. (2018). Is Australia experiencing an epidemic of loneliness? Findings from 16 waves of the Household Income and Labour Dynamics Survey.

https://relationships.org.au/pdfs/copy_of_Anepidemicofloneliness20012017.pdf

Marmot M. *The health gap*. London: Bloomsbury, 2015.

Mathews B, Pacella RE, Scott JG, Finkelhor D, Meinck F, Higgins DJ, Erskine HE, Thomas HJ, Lawrence D, Haslam DM, Malacova E, Dunne MP. The prevalence of child maltreatment in Australia: findings from a national survey. *Med J Aust* 2023; 218 (6 Suppl): S13-S18. <https://doi.org/10.5694/mja2.51873>.

McClelland, H., Evans, J. J., Nowland, R., Ferguson, E., & O'Connor, R. C. (2020). Loneliness as a predictor of suicidal ideation and behaviour: a systematic review and meta-analysis of prospective studies. *Journal of Affective Disorders*, 274, 880-896.

Mushtaq, R. (2014). Relationship Between Loneliness, Psychiatric Disorders and Physical Health? A Review on the Psychological Aspects of Loneliness. *Journal of Clinical and Diagnostic Research*.

Nemiroff L *We can do better: Addressing ageism against older adults in healthcare* (2022) 35(2) *Healthcare Management Forum* 118-122

North M S & and Fiske S T 'Act Your (Old) Age: Prescriptive, Ageist Biases Over Succession, Consumption, and Identity' (2013) 1(1) *International Perspectives Psychology Research Practice Consultation* 72

Pillemer, K., Burnes, D., Rifn, C., & Lachs, M. S. (2016). Elder abuse: Global situation, risk factors, and prevention strategies. *Gerontologist*, 56, S194–S205. doi:10.1093/geront/gnw00

Qu, L., Kaspiw, R., Carson, R., Roopani, D., De Maio, J., Harvey, J., Horsfall, B. (2021). National Elder Abuse Prevalence Study: Final Report. (Research Report). Melbourne: Australian Institute of Family Studies

Royal Commission into Aged Care Quality and Safety (2019) Interim Report
<https://agedcare.royalcommission.gov.au/publications/interim-report>

Royal Commission into Aged Care Quality and Safety, 'Aged Care in Australia: A Shocking Tale of Neglect' (Media Release, 31 October 2019)

Royal Commission into Aged Care Quality and Safety (2021) Final Report
<https://agedcare.royalcommission.gov.au/publications/final-report>

United Nations Sustainable Development Group (2020). Policy Brief: The Impact of COVID-19 on older persons

United Nations Department of Economic and Social Affairs, Covid-19 Pandemic and Older Persons (Web Page)

Valtorta, N., Kanaan, M., Gilbody, S., Ronzi, S., & Hanratty, B. (2016). Loneliness and social isolation as risk factors for coronary heart disease and stroke: systematic review and meta-analysis of longitudinal observational studies. *Heart*, 102(13), 1009-1016.

Van Bueren QC, G 'The case for a convention on the rights of older persons' (Web Page)

Wheelahan, E (2016). Model Litigant Obligations: What are they and how are they enforced? Federal Court Ethics Seminar Series [accessed 28 June 2023 at www.fedcourt.gov.au]

World Health Organization. (2015). World report on ageing and health. <https://apps.who.int/iris/handle/10665/186463> [accessed 29 June 2023]

World Health Organization (2021) Global Report on Ageism <https://www.who.int/teams/social-determinants-of-health/demographic-change-and-healthy-ageing/combating-ageism/global-report-on-ageism> [accessed 29 June 2023]