

United Nations Questionnaire on the Rights of Older Persons

Australia's Response

May 2011

Introduction:

The Australian Government is committed to the protection and promotion of human rights. Australia is a party to a number of treaties protecting human rights and non-discrimination including the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic Social and Cultural Rights*, the *Convention on the Rights of Persons with Disabilities*, the *Convention on Elimination of All Forms of Racial Discrimination*, the *Convention on Elimination of All forms of Discrimination Against Women* and a number of International Labour Organization Conventions.

The Government takes age discrimination very seriously and believes that people are entitled to respect, dignity and the opportunity to participate in society and receive the protection of the law regardless of their age. There are a number of legislative and non-legislative mechanisms in place to address the various issues affecting the rights of older persons in Australia, which are outlined in this paper.

The Government thanks the Office of the High Commissioner for Human Rights (OHCHR) for the opportunity to respond to this questionnaire.

About Australia's response:

Matters relating to the rights of older persons fall within both the Federal/Commonwealth jurisdiction and State and Territory jurisdictions. Given the short deadline to respond to this questionnaire, this response focuses predominantly on the promotion and protection of the rights of older Australians by the Federal Government.

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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.

AUSTRALIA'S RESPONSE:

In Australia, 13.5% of the population is aged over 65 and it is projected that by 2050 nearly one quarter of the population will be over 65.¹ Over the next 40 years, the number of Australians aged 85 and over—the major users of aged care services—is projected to increase, from around 400,000 in 2010 to 1.8 million by 2050.

Key domestic legislative protections for older Australians include the *Age Discrimination Act 2004* (Cth)² and the *Aged Care Act 1997* (Cth)³. The Age Discrimination Act prohibits age discrimination in many areas of public life, including employment and the provision of goods, services and facilities. The Aged Care Act allows access to aged care by those who need it, regardless of race, culture, language, gender, economic circumstance or geographic location and protects the personal, civil, legal and consumer rights of those persons. The Australian Government has also introduced a Charter of Residents Rights and Responsibilities for aged care residents, which focuses predominantly on ensuring that residents are engaged in all decisions that will impact on their well-being, be they decisions regarding health, accommodation or access to legal services.

However, the National Human Rights Consultation Report (*see Question 2*) identified social inclusion issues such as inadequacy of aged care services, the treatment of persons living in aged care facilities and nursing homes and the financial situation of older Australians as key issues of concern for older Australians. The Australian Human Rights Commission has also identified age discrimination as a barrier to workforce participation.⁴ The Australian Government recognises that older persons may be subject to multiple discrimination and that it is necessary to ensure an integrated approach to human rights protections.

¹ Department of Treasury Australia Intergenerational Report, *Australia to 2050: Future Challenges*, January 2010, p 9.

² <http://www.comlaw.gov.au/Details/C2010C00155>

³ <http://www.comlaw.gov.au/Details/C2011C00162>

⁴ <http://www.hreoc.gov.au/age/hiddenbarrier/index.html>

QUESTION 2:

Please provide information on existing legislation, policies and programs to protect and promote the human rights of older persons.

Summary

The Australian Government accepts that age is a ground for 'other status' discrimination. In recognising this, the Australian Government has established both legislative and non-legislative mechanisms to address discrimination on the basis of age. The Australian Government implements the various non-discrimination obligations in the ICCPR, ICESCR, CERD, CEDAW and the CRPD through various legislative mechanisms that form part of Australia's anti-discrimination regime.

Of most relevance, the *Age Discrimination Act 2004* provides protection to older persons from discrimination on the basis of age. Australia also recently announced at its Universal Periodic Review the establishment of a standalone Age Discrimination Commissioner within the Australian Human Rights Commission (Australia's National Human Rights Institution).

Age Discrimination Act 2004

The *Age Discrimination Act 2004* prohibits age discrimination in many areas of public life, including employment and the provision of goods, services and facilities. The Act applies throughout Australia and is intended to promote a change in people's attitudes about the contributions of older persons to society.

On 30 September 2010, the Government introduced legislation to establish a dedicated Age Discrimination Commissioner in the Australian Human Rights Commission to advocate for the rights of all Australians and to promote greater awareness about age discrimination. The Government committed new funding of \$1 million per year to fully resource this new statutory office.

Each State and Territory also prohibits discrimination on the basis of age.

See response to Question 3 for more information about anti-discrimination measures.

Australia's Human Rights Framework

On the 60th Anniversary of the Universal Declaration of Human Rights, the Attorney-General appointed an independent Committee to undertake a National Human Rights Consultation to seek the community's views on human rights in Australia. The Committee conducted the most extensive consultation on human rights in Australia's history.

The Committee's National Human Rights Consultation report was released in September 2009. In response to report, the Government announced Australia's Human Rights Framework, a set of measures to promote and protect human rights, including measures to strengthen parliamentary and Executive consideration of human rights when considering the impact that policies and laws may have on citizens.

The centrepiece of the Framework is a series of measures to make information about human rights more readily available across the Australian community. Under the Framework, the Australian Government has allocated funding over the next four years for the development and delivery of

human rights awareness and education programs across the community, including primary and secondary schools, by the Australian Human Rights Commission and NGOs.

The Government is also investing in an education and training program for the Commonwealth public sector, including development of a human rights toolkit and guidance materials for public sector policy development and implementation of Government programs. These measures reflect the Committee's recommendation that education be the highest priority for improving and promoting human rights in Australia.

As part of the Framework, the Australian Government has introduced legislation to require that each new piece of legislation introduced into Parliament be accompanied by a statement which assesses its compatibility with the seven core UN human rights treaties to which Australia is a party. The statements will be publicly available along with other explanatory materials which accompany legislation. Government Cabinet and Legislation Handbooks will be updated to include guidance on the need to address consistency with Australia's human rights obligations in developing policies and legislation.

The Australian Government has also introduced legislation to establish a Parliamentary Joint Committee on Human Rights, which will provide greater scrutiny of legislation for compliance with Australia's international human rights obligations under the seven core UN human rights treaties to which Australia is a party. The legislation provides the Joint Committee with the ability to examine proposed and existing legislation, and the Attorney-General will also be able to ask the Joint Committee to conduct broader inquiries into human rights matters.

A further key component of the Framework is the development of consolidated and harmonised Commonwealth anti-discrimination laws (*see response to Question 3*).

As part of the Framework, the Australian Government will also develop a new National Action Plan on Human Rights, working with States and Territories to outline future action for the promotion and protection of human rights.

The Framework is available online at <www.ag.gov.au/humanrightsframework>.

Access to Affordable Health and Aged Care

Australia has a universal health care platform based on three fundamental pillars:

- free public hospital care;
- affordable medical services subsidised through the Medicare Benefits Scheme; and
- affordable medicines subsidised through the Pharmaceutical Benefits Scheme.

A wide spectrum of services are delivered through these three pillars, ranging from preventive health and early intervention services, through to the treatment of illness, chronic disease management, and acute care.

The universal health care platform protects the right to health of all Australians and, in addition, also allows for the delivery of more intensive or tailored efforts to address particular needs of some groups including older persons.

The *National Health Act 1953*⁵ and the *Health Insurance Act 1973*⁶ provide for these arrangements.

Free public hospital care

All Australians are eligible to access free public hospital care, an entitlement that particularly benefits older persons. People aged 55 years and over accounted for 50 per cent of separations in public hospitals in 2007-08 although they represented only 24.3 per cent of the population. Those aged 75 years and over accounted for 20 per cent.⁷

Affordable medical services

Through the Medicare Benefits Schedule (MBS), the Australian Government facilitates universal access to allied health, general practice and specialist medical services by subsidising fee-for-service care.

- In 2009-2010, the per capita benefit paid for patients 65 years and over was approximately \$1,600, compared with approximately \$550 for patients under 65 years.
- In 2009-2010, the per capita number of services for patients 65 years and over was 31.9, compared with 11.1 for patients under 65 years.

As well as subsidising health care services, MBS mechanisms protect people, particularly those on low incomes, from incurring significant financial impacts. Some of these mechanisms include:

- *Bulk-billing*: allows the health practitioner to receive the set payment direct from the Australian Government, enabling the patient to access treatment without outlaying any funds. In 2009-2010, 76.1 per cent of services were bulk-billed for patients 65 years and over, compared with 73.5 per cent of services for patients under 65 year.
- General Practitioners providing care to residents of residential aged care facilities receive a higher Medicare rate for both in-hours and after-hours consultations. Medical assessments for permanent residents of residential aged care facilities are provided through time-based MBS health assessment items. In 2009-2010, approximately 56,800 health assessments were provided to patients 65 years and over, compared with approximately 19,600 for patients under 65 years.
- *Extended Medicare safety net*: provides an additional rebate for Australian families and singles who have out-of-pocket costs for Medicare eligible out-of-hospital services once an annual threshold has been met.

⁵ <http://www.comlaw.gov.au/Details/C2011C00104>

⁶ <http://www.comlaw.gov.au/Details/C2010C00810>

⁷ Productivity Commission, *Report on Government Services 2010*, Chapter 10, Public Hospitals, Report on Government Services 2010, <http://www.pc.gov.au/gsp/reports/rogs/2010>.

The MBS is financed largely from general taxation revenue, including the Medicare Levy, which helps to distribute the cost of the universal health care according to ability to pay. The Medicare Levy is based on a person's taxable income. People on low incomes are either exempt or pay a reduced Medicare levy with the income thresholds being higher for older Australians.

Affordable pharmaceutical medicines

The Pharmaceutical Benefits Scheme (PBS) gives Australians access to a wide range of subsidised medicines, including many that are life-sustaining. The PBS also offers safety net and co-payment arrangements which help to contain the cost of medicines for individuals and households:

- *Co-payments*: Pensioners, other eligible low income earners and holders of Australian Seniors Health Cards, can access PBS medicines at the concessional rate of \$5.40 per prescription. People who do not qualify for a concession pay up to \$33.30 per prescription for PBS subsidised medicines.
- *PBS safety net*: The safety net limits the total annual cost of PBS medicines for families and individuals who require a large number of prescriptions. After reaching the safety net threshold, pensioners, other eligible low income earners and holders of Australian Seniors Health Cards pay no more for PBS medicines for the rest of the year; and older persons who do not qualify for a concession, pay a reduced rate per prescription for the rest of the year.

Aged Care: Long term care and care in the community

The Aged Care Principles in the *Aged Care Act 1997* provide for the Australian Government to give financial support through payment of subsidies for the delivery of aged care services and payment of grants for other matters connected with the provision of aged care. The objects of the Act include facilitating access to aged care services by those who need them, regardless of race, culture, language, gender, economic circumstances or geographic location. Aged care services funded under the Act must meet quality standards designed to protect the health and well-being of care recipients. The Act is designed to encourage diverse, flexible and responsive aged care services and to promote ageing in place through the linking of care and support services to the places where older persons prefer to live.

Other national legislation with provisions that support the care of people as they age include the *Home and Community Care Act 1985*⁸ and the *Hearing Services Administration Act 1997*.⁹ Under the Home and Community Care Act, the Australian Government provides funding to the State governments to assist in the provision of a range of home and community care services for clients, including frail or at risk aged persons, in order to facilitate the maintenance of those persons in their own homes. Under the Hearing Services Administration Act, eligible people including aged pensioners can receive a range of free hearing services including the provision of hearing aids if required.

For more information, see response to Question 5.

⁸ <http://www.comlaw.gov.au/Details/C2004C00501>

⁹ <http://www.comlaw.gov.au/Details/C2007C00207>

Informed consent of older persons to treatment and care

Laws regarding advance care planning, advance care directives and substitute decision making are governed by Australian States and Territories.

Some States and Territories have legislated to allow adults to give a formal “advance(d) care directive” regarding their wishes for medical treatment. Such legislation also provides for the protection of medical practitioners and/or other health care providers from criminal charges and civil proceedings when they act in accordance with a patient’s expressed wishes.

In other jurisdictions, any medical treatment can be refused by a competent adult at the time or in advance and any written document about treatment preferences is strongly persuasive, both for medical practitioners and substitute decision makers. Patients may use advance care planning and advance care directives to record their decisions to refuse medical treatment (including food and drink).

Substitute decision making and enduring powers of attorney are an important part of ensuring consent to medical treatment. Individuals are able to decide who can make decisions for them if they are incapacitated.

The House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Older People and the Law report (2007)¹⁰ made a number of recommendations related to Enduring Powers of Attorney, the assessment of capacity, advance care planning and guardianship. As the Australian Government is conducting work on these issues, these recommendations were partially accepted or accepted in-principle. A formal response was tabled in Parliament on 23 November 2009.¹¹

National Advance Care Directives Framework

The Australian Government, in consultation with State and Territory governments, is working towards a national advance care directives framework. The framework consists of a proposed national terminology, a code for ethical practice and best practice standards for advance care directives.

National consultations were held in October 2010 on a national advance care directives framework. This is the result of work commissioned by the Australian Health Ministers’ Conference in 2008, intended to progress the development of nationally consistent guidelines for advance care directives and related issues concerning end-of-life medical decisions by health professionals.

The National Health and Hospitals Reform Commission Final Report (June 2009)¹² recommended “that advance care planning be funded and implemented nationally, commencing with all residential aged care services, and then being extended to other relevant groups in the population.”

¹⁰ <http://www.aph.gov.au/house/committee/laca/olderpeople/report.htm>

¹¹ <http://www.aph.gov.au/house/committee/laca/governmentresponse/olderpeople.pdf>

¹² <http://www.health.gov.au/internet/nhhrc/publishing.nsf/Content/nhhrc-report>

Respecting Patient Choices (RPC) project

The Australian Government is currently funding the Respecting Patient Choices (RPC) project. The overall objective of this Project is to assist patients across Australia to choose their end of life care and assist them to inform their families, carers and health professionals of the choices that they have made.

RPC is currently trialling implementation in residential aged care services and is expected to report its findings in June 2011. The aim is to establish RPC as a quality assured national standard for advanced care planning in Australia. RPC has a presence in several States and Territories but has not been rolled out nationally.

The Australian Government is currently developing a consultation process to inform a national roll out of advance care planning in residential aged care services.

Informed consent of older persons to medical research

The National Health and Medical Research Council (NHMRC) co-authors with the Australian Research Council (ARC) and Universities Australia the principal ethical guidance and reference document for Australia in the National Statement on Ethical Conduct in Human Research (2007).¹³ Compliance with the provisions of the National Statement is a requirement for receipt of NHMRC and ARC grant money. For other areas, the National Statement would be used as a guide as to what represents best ethical practice.

The National Statement requires informed consent to be obtained for all research involving human participants. There are extremely limited instances where this requirement can be waived, and this decision can only be made by a Human Research Ethics Committee.

Informed consent must always be obtained where research participants are especially vulnerable.

These vulnerable categories include those highly dependent on medical care (chapter 4.4), people in unequal relationships (chapter 4.3) or people with a cognitive impairment (chapter 4.5).

In these categories, additional protections apply and there may be additional requirements for the researcher to demonstrate how informed consent has been obtained and maintained throughout the research process.

¹³ http://www.nhmrc.gov.au/files_nhmrc/file/publications/synopses/r39.pdf

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)

Summary

The Australian Government recognises multiple discrimination as an important issue which affects older persons. A key priority of the Australian Government is to consolidate its Federal Anti-Discrimination legislation to ensure consistency across the anti-discrimination regime. The project to consolidate anti-discrimination legislation into a single law will provide an opportunity to consider the issue of multiple discrimination for all Australians, including older persons.

Federal Anti-Discrimination Law

Federal anti-discrimination legislation is located in four separate and distinct laws:

- *Racial Discrimination Act 1975,*
- *Sex Discrimination Act 1984,*
- *Disability Discrimination Act 1992, and*
- *Age Discrimination Act 2004.*

A fifth Act, the *Australian Human Rights Commission Act 1986*¹⁴, regulates the complaints processes for complaints made under the four Acts (listed above).

Age Discrimination Act 2004

The *Age Discrimination Act 2004* prohibits age discrimination in many areas of public life, including employment and the provision of goods, services and facilities. The Act applies throughout Australia and is intended to promote a change in people's attitudes about the contributions of older persons to society.

In 2009, the 'dominant reason test' was removed from the Act, so that a person's age now only needs to be a reason – not the dominant reason – for the discrimination to be deemed unlawful. This amendment brings the Act into line with the approach used in other federal anti-discrimination Acts in order to create consistency.

Establishment of Federal Age Discrimination Commissioner

On 30 September 2010, the Government introduced legislation to establish a dedicated Age Discrimination Commissioner in the Australian Human Rights Commission to advocate for the rights of all Australians and to promote greater awareness about age discrimination.

The Commissioner will engage with stakeholders to tackle discrimination in workplaces and in the community, promote respect and fairness and tackle the attitudes and stereotypes that can contribute to age discrimination.

¹⁴ <http://www.comlaw.gov.au/Details/C2010C00865>

The Government has committed new funding of \$1 million per year for this important role and is in the process of recruiting our first Commissioner to commence on 1 July this year.

Consolidation Project

The Government has commenced a project to consolidate all five existing pieces of Federal anti-discrimination legislation and replace them with a single, streamlined and harmonised piece of legislation.

The consolidation project (which is also one element of Australia's Human Right's Framework) aims to address current inconsistencies between laws and make the system more user-friendly by clarifying relevant rights and obligations, and reviewing the complaints handling process and the role and functions of the Australian Human Rights Commission. The consolidation project is also intended to support efforts to harmonise anti-discrimination laws nationally, which is being progressed through the Standing Committee of Attorneys-General.

The new draft legislation will be released for public comment this year.

The Aged Care Act 1997

The *Aged Care Act 1997* specifies special needs groups at risk of marginalisation and protections to ensure they can access services. The special needs groups specified in the Act are:

- people from Aboriginal and Torres Strait Islander communities;
- people from non-English speaking backgrounds;
- people who live in rural or remote areas;
- people who are financially or socially disadvantaged;
- people who are veterans (including spouses, widows and widowers of veterans) of the Australian Defence Force or of an allied defence force;
- people who are homeless or at risk of becoming homeless; and
- care leavers (people who were in institutional care or other form of out-of-home care including foster care as a child or youth).

The Act enables incentives to ensure all providers share responsibility for providing care for people who are financially disadvantaged, and all aged care services are expected to provide culturally appropriate care in ways that support social inclusion. The Act protects and promotes the rights of care recipients, and gives them a voice, through the Aged Care Complaints Investigation Scheme and the Aged Care Commissioner, advocacy services, and the Community Visitors' Scheme.

The *Report on the Operation of the Aged Care Act 1997* for 1 July 2009 to 30 June 2010, Chapter 7 reports on the support provided to protect the right to health of older persons with special needs.

The Report may be accessed at:

<http://www.health.gov.au/internet/publications/publishing.nsf/Content/ageing-roaca-10-toc>

Older persons and homelessness

The Road Home - The Australian Government White Paper on Homelessness

Capital funding is being made available for the construction of specialist residential aged care facilities for homeless older persons. Proposals for funding are considered through the annual, competitive Aged Care Approvals Rounds. To date, there have been two grants allocated for a new 60 bed facility and for the rebuilding of a 72 bed facility. At least one additional capital grant will be considered through each of the 2009–10 and 2010–11 Aged Care Approvals Rounds.

Older homeless people are also given practical assistance through the Assistance with Care and Housing for the Aged Program (ACHA). Commenced in 1993, ACHA helps low-income frail older persons who are in insecure housing or homeless, by linking them with services able to provide more permanent housing and other community support and care.

In 2008-09 the ACHA program assisted 3430 people. The average age of care recipients supported through the ACHA program is 67. The ACHA Program Guidelines may be accessed at:
<http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-commcare-acha-guidelines.htm>

The Road Home is available at:

<http://www.fahcsia.gov.au/sa/housing/progserv/homelessness/whitepaper/Pages/default.aspx>

Culturally Appropriate Aged Care

Older persons from culturally and linguistically diverse backgrounds are recognised in the *Aged Care Act 1997* as a special needs group as they can face particular difficulties understanding aged care information and services, and receiving care appropriate to their needs. The Australian Government provides funding for two specific programs that are designed to meet this need. The Partners in Culturally Appropriate Care program was developed in 1997 to support aged care service providers in the provision of culturally appropriate care to people from non-English speaking (culturally and linguistically diverse) backgrounds. The Community Partners Program assists older persons from culturally and linguistically diverse communities to gain access to aged care services. The Community Partners Program was established in 2004-05 to provide people from culturally and linguistically diverse backgrounds with access to aged care information and services, by providing grants to organisations representing culturally and linguistically diverse communities.

Further information may be accessed at:

<http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-cpp-index.htm>

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.

Summary

Australia takes the right to liberty and security of the person very seriously. The Australian Government has instituted a number of measures to protect older persons in aged care through the *Aged Care Act 1997*, as well as a National Aged Care Advocacy Program.

The Aged Care Act 1997

The *Aged Care Act 1997* (the Act) provides for the funding of aged care services throughout Australia. The Act aims to ensure that aged care providers are accountable for the services they provide and that recipients of residential and community aged care receive services appropriate to their needs, whilst observing their rights as care recipients and also as citizens of Australia. In addressing this aspect of aged care, the Act includes charters of rights and responsibilities for recipients of residential and community care (see Aged Care Complaints Investigation Scheme).

National Aged Care Advocacy Program (NACAP)

The National Aged Care Advocacy Program (NACAP) provides a free and confidential service promoting the rights of people receiving residential and community aged care services. Advocacy services can provide residents and their representatives with:

- information and advice about rights and responsibilities;
- support to be involved in decisions affecting residents' lives;
- assistance to resolve problems or complaints in relation to aged care services;
- assistance in promoting the rights of older persons to the wider community.

Aged Care Complaints Investigation Scheme

In addition to the existing criminal law framework, the protection of older persons against violence and abuse in Australian Government subsidised aged care services, including residential aged care homes, community aged care packages and flexible care, is governed by the Act. Amongst other aspects of care, the Act clearly sets out the responsibilities of approved providers in relation to the provision of a safe and comfortable environment where care recipients can expect to be treated with dignity and respect and to live without exploitation, abuse or neglect. These rights are common to recipients of residential and community care and are provided for by the following Charters created under the Act.

Charter of resident rights and responsibilities

Amongst other resident rights, The Charter of Resident Rights and Responsibilities, under the Act, explicitly states that people living in aged care homes have the right to:

- a) live in a safe and secure environment;
- b) be treated with dignity and respect;
- c) live without exploitation, abuse or neglect;
- d) complain and take action to resolve disputes.

Charter of rights and responsibilities for community care

Amongst other rights, The Charter of Rights and Responsibilities for community care, under the Act, explicitly states that people receiving community care packages have the right to:

- a) be treated and accepted as an individual, and to have my individual preferences respected
- b) be treated with dignity, with my privacy respected
- c) receive care that is respectful of me, my family and home
- d) receive care without being obliged to feel grateful to those providing my care
- e) full and effective use of all my human, legal and consumer rights, including the right to freedom of speech regarding my care
- f) be treated without exploitation, abuse, discrimination, harassment or neglect

The Aged Care Complaints Investigation Scheme (the Scheme) of the Department of Health and Ageing established in 2007 exists to investigate concerns about care and services, including matters related to dignity, choice and abuse.

The Scheme is a free service available to anyone who wishes to provide information or raise a complaint or concern about Australian Government subsidised aged care. The Scheme can be contacted via telephone, mail or the Internet. If a person (or their friends or family) in an aged care service is concerned about a possible or actual situation about elder abuse they are encouraged to contact the Scheme to discuss the situation and options. Any information provided can be done so anonymously or confidentially.

Under the Scheme there is a power to investigate concerns and take action under the Act where approved providers fail to meet their responsibilities. An investigation may involve authorised officers visiting the home and interviewing management, staff and residents and their families and other relevant individuals and reviewing relevant documentation. If the investigation finds that the approved provider is in breach of their responsibilities the Scheme can require the approved provider takes action to address the breach. Alternatively the matter can be referred for consideration of compliance action which may result in the imposition of sanctions.

Compulsory Reporting

Compulsory reporting and protection requirements commenced on 1 July 2007 following amendments to the Act. The Guidelines that are in place explain the compulsory reporting requirements for approved providers to ensure that:

All approved providers of Australian Government subsidised residential aged care must encourage staff to report alleged or suspected reportable assaults to enable approved providers to comply with their responsibility under the Act. This requirement recognises that in many cases, it may be staff who first notice assaults. The legislation therefore requires that approved providers not only give staff information about how to report assault, but also to actively require staff to make reports if they see, or suspect, an assault on a resident.

The Act requires that, except in very specific and sensitive circumstances, all approved providers of residential aged care must report all allegations or suspicions of reportable assaults. The discretion not to report applies to circumstances involving residents affected by an assessed cognitive or mental impairment, and where there are repeated allegations of the same assault. An approved provider should not wait until an allegation is substantiated – the fact that a person has alleged that someone has assaulted a resident is sufficient to trigger the reporting requirements.

Reports must be made to both the Police and the Department within 24 hours of the allegation being made or the approved provider starting to suspect on reasonable grounds, that a reportable assault may have occurred. These tight timeframes ensure that alleged assaults are acted upon immediately. An allegation usually requires a claim or accusation to have been made to the approved provider and can be associated with physical evidence or the witnessing of an assault. Reporting suspicion allows reports to be made where there is no actual allegation or where an actual assault may not have been witnessed and where staff observe signs that an assault may have occurred.

When incidents of alleged assault are reported, investigation of the incident is the responsibility of the Police. The Police will determine whether the incident is criminal in nature and what further police action is required. Only the Police should investigate criminal activity.

When an alleged or suspected assault is reported, the Department will undertake the following key steps:

- Establish the details of the alleged or suspected assault, including when it took place (and if it has been reported within 24 hours);
- Establish if the alleged or suspected assault has been reported to the Police. If it has not, the Department will make a referral to the relevant state/territory police service;
- Advise any staff member or approved provider who makes a report of the protections in place, and whether and how the discloser qualifies for protection;
- Establish that residents are not at further risk from the alleged perpetrator;
- Undertake an investigation to ensure that the approved provider has met its responsibilities under the Act. This includes ensuring appropriate medical care and support for the victim and notifying legal representatives or family members if required. If an approved provider fails to meet compulsory reporting requirements, the Department may take compliance action.

If a staff member makes a disclosure qualifying for protection under the Act, the approved provider must protect the identity of the staff member and ensure that the staff member is not victimised. This is important in encouraging ongoing reporting by staff members.

Accreditation

In addition, the Act requires approved providers of residential care to meet the accreditation standards and accreditation process to ensure that quality of care and quality of life is provided to all residents. The standards cover a comprehensive range of care outcomes for residents, from health and personal care through to considerations about environment and safety systems. Specifically, standard 4 requires approved providers to provide residents with a safe and comfortable environment to live that ensures the quality of life and welfare of residents, staff and visitors. This includes ensuring that there are systems in place to actively ensure the safety of residents.

Approved providers must also ensure that there are adequate numbers of appropriately skilled staff to meet the individual care needs of residents and have in place arrangements for the ongoing development of staff skills and expertise to meet the needs of residents to ensure quality of life and care.

Police Checks

Under the Act, approved providers are responsible for having robust recruitment practices to ensure protection for older Australians receiving care. All staff and unsupervised volunteers of residential, community and flexible care services funded under the Act are required to undertake a police check every three years to determine their suitability to provide aged care.

Persons with convictions for murder or sexual assault, or assault for which a prison term was imposed, are not eligible to be employed in aged care.

Approved providers have an overarching responsibility to ensure the health safety and well being of their care recipients at all times, and need to have transparent policies and procedures in place to demonstrate suitable management and monitoring of the compulsory police checks.

The police check legislation was implemented in 2007, and strengthened again in 2009, as part of the Australian Government's ongoing commitment to ensure the health, safety and well being of our vulnerable aged care recipients.

QUESTION 5:

Please provide information on existing legislation, policies or 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.

Summary

The Australian Government provides a range of ageing and aged care services, including support for carers and the development of aged care infrastructure. The Australian Government also recognises that disability is a prevalent issue for many older persons and may operate as a barrier to participation. There are specific programmes in place such as the Dementia Initiative, which includes the establishment of Dementia Behaviour Management Advisory Schemes in each of the States and Territories, a National Support Program and community grants to raise awareness.

Another programme, the National Palliative Care Strategy contains four distinct objectives: awareness and understanding, appropriateness and effectiveness, leadership and governance, and capacity and capability.

Long term ageing and aged care programs and services

See also response to Question 2 for legislation protecting older Australians' right to health and to aged care services through:

- *a universal health care platform which delivers a wide spectrum of services ranging from preventive health and early intervention services, through to the treatment of illness, chronic disease management, and acute care; and*
- *ageing and aged care programs that are designed to ensure that access to care is on the basis of need, that services support personal interests and community participation, and that there are particular protections for groups at risk of marginalisation.*

The Australian Government aims to ensure that all frail older Australians have timely access to appropriate care and support services as they age, by providing: information assessment and referral mechanisms; needs-based planning arrangements; support for special needs groups and for carers; a choice of service types; and high quality, accessible and affordable care through a safe and secure aged care system.

Ageing and aged care services include:

- support for carers, through income support payments, financial assistance and subsidised information and support services, including respite services that enable them to have a break from caring and to take some time for themselves;
- care at home and in the community, including through the Home and Community Care Program and through community care packages, which helps older persons to maintain and improve their quality of life and to remain active and connected to their who have been assessed and approved as aged care recipients, including high-level care and low-level care, and care provided on an extra service basis; and

- support for the development of aged care infrastructure, including through zero real interest loans, residential care capital grants and establishment grants, and support for the development of the aged care workforce.

The *Report on the Operation of the Aged Care Act 1997* for 1 July 2009 - 30 June 2010 provides details of services and support provided under the Act together with additional information to aid understanding of aged care policies and programs.

The Report may be accessed at:

<http://www.health.gov.au/internet/publications/publishing.nsf/Content/ageing-roaca-10-toc>.

Older Persons with Dementia

The Australian Government's initiatives for older persons with dementia recognise the importance of having a health and aged care system that responds to emerging challenges including the increasing number of people with dementia. While most older persons with high level care needs are cared for in residential aged care, a range of initiatives support those who wish to continue to live in the community.

As at 30 June 2010, older persons with dementia comprised 51.5 percent of permanent residents in aged care facilities. Government support for their particular care needs is targeted through the level of basic care subsidy as assessed under the Aged Care Funding Instrument.

The Extended Aged Care at Home Dementia (EACHD) program provides individually tailored packages of care for older persons with dementia who: have complex care needs; have been assessed and approved by an ACAT as requiring high level care; and wish to remain living at home, and are able to do so with the assistance of an EACHD package. Expenditure on EACHD packages in 2009-2010 increased 19.2 per cent compared with 2008-09 reflecting older persons' preferences for care at home.

Through the Dementia Initiative, the Australian Government aims to strengthen the capacity of the health and aged care sectors to provide appropriate evidence-based prevention and early intervention, assessment, treatment and care for people with dementia. The Initiative includes:

- The establishment of Dementia Behaviour Management Advisory Services in each State and Territory to provide appropriate clinical interventions to help aged care staff and carers improve their care of people with dementia when their behaviour impacts on their care.
- The National Dementia Support Program, delivered for the Government by Alzheimer's Australia, which provides a wide range of services. Some of these services include a dementia helpline and referral service; dementia and memory community centres, and early intervention programs, such as Living with Memory Loss Program; advice, counselling and support services; education, training and awareness raising services; and support for people with special needs including Aboriginal and Torres Strait Islander people.
- Grants to community groups to support raising awareness about dementia in local communities and encourage innovative local services for people with dementia, their carers

and families. These range from encouraging dementia-friendly businesses to developing programs to support continuing enjoyment of art galleries.

Funding is also provided to promote dementia studies in universities and education and training for carers of people with dementia.

Further information about the Australian Government's initiatives for older persons with dementia is available from: <http://www.health.gov.au/dementia> and <http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-dementia-about.htm>

Long Stay Older Patients Initiative

Through the Long Stay Older Patients initiative, the Australian Government provides funding to States and Territories to assist older public patients who no longer require acute care or rehabilitation and are in hospital waiting for residential aged care. This is achieved through:

- providing more appropriate care for long-stay older patients in public hospitals, particularly in rural areas;
- improving the capacity of rural hospitals to provide more age friendly services, including through making capital improvements such as establishing new multi purpose services;
- reducing avoidable or premature admission of older persons to hospitals through programs providing care to older persons in the community; and
- assisting older public patients requiring long-term care to take up appropriate care options.

Fourth National Mental Health Plan

The Fourth National Mental Health Plan: An agenda for collaborative government action in mental health 2009-2014 (the Fourth Plan), endorsed at the Australian Health Ministers' Conference (AHMC) in September 2010, adopts a population health framework acknowledging the importance of mental health across the lifespan from infancy to old age.

The Plan acknowledges that mental health services, whether in the primary care or specialist sector, cannot be provided as a one size fits all model; and the mental health care for older persons may involve greater support from their family or staff of residential facilities.

The Implementation Strategy agreed by AHMC on 12 November 2010 covers implementation approaches for each of the 34 actions contained in the Plan.

A Cross Sectoral Working Group comprising membership from relevant Ministerial Advisory Councils including ageing has been established to progress Fourth Plan actions that require a whole of government approach. It will assist in progressing implementation of actions such as 'developing integrated approaches between housing, justice, community and aged care sectors to facilitate access to mental health programs for people at risk of homelessness and other forms of disadvantage'.

Further information about the Fourth National Mental Health Plan is available from: <http://www.health.gov.au/internet/main/publishing.nsf/content/mental-pubs-f-plan09>

Psychogeriatric Disorders

There is a small group of older persons with more severe psychogeriatric disorders who sit at the nexus of the aged care and mental health systems and who require high levels of care, including access to specialist psychiatric care.

A Psychogeriatric Care Expert Reference Group (PERG) has been established to monitor developments in this area and provide regular advice to the Ministerial Conference on Ageing on innovations in treatment and service delivery for this client group, and on strategies to foster local collaboration across health service sectors.

Continence Aids Payment Scheme

The Continence Aids Payment Scheme was legislated under the *National Health Act 1953* in July 2010. The Scheme assists eligible people who have permanent and severe incontinence to meet some of the costs of their continence products. The cash payment is indexed annually.

Further information about the Continence Aids Payment Scheme is available from:

<http://www.bladderbowel.gov.au/furtherinfo/caps/default.htm>

Services and Support for Carers

The Australian Government recognises that carers play a vital role in sustaining Australia's system of community-based, person-centred care. Carers are unpaid family members and friends who provide support with activities of daily living for frail older persons and younger people with a disability. Many carers are themselves ageing.

The Australian Government is committed to leading the development of a National Carer Recognition Framework (Framework) to better recognise the contribution of carers.

The *Carer Recognition Act 2010*¹⁵, passed by the Government in November 2010, aims to increase recognition and awareness of carers and to acknowledge the valuable contribution they make to society.

Respite care in residential or community care settings is one of the key supports for carers funded by the Australian Government. It gives carers a break from their usual care arrangements, and by doing so, assists people with care needs to remain living in their community of choice. In addition to providing community based respite services the National Respite for Carers Program provides short-term counselling and emotional and psychological support services for carers through the National Carer Counselling Program. This helps to reduce carer stress, improve carer coping skills and facilitate, wherever possible, continuation of the caring role.

Further information about the National Carer Counselling Program is available from:

<http://www.health.gov.au/internet/main/publishing.nsf/content/ageing-carers-nrcp.htm>

Residential respite provides short term care in aged care homes to people who have been assessed and approved to receive residential respite care. It may be used on a planned or emergency basis.

¹⁵ http://www.comlaw.gov.au/Details/C2010A00123/Html/Text#_Toc276377308

Further information about residential respite care is available from:

<http://www.health.gov.au/internet/main/publishing.nsf/content/ageing-publicat-qcoa-05info.htm>

National Palliative Care Strategy

The National Palliative Care Strategy – Supporting Australians to Live Well at the End of Life (2010)¹⁶ represents the combined commitments of the Australian, State and Territory governments, palliative care service providers and community-based organisations to the development and implementation of palliative care policies, strategies and services that are consistent across Australia.

The Strategy is the key policy framework for the delivery of palliative care in Australia, ensuring a nationally consistent and coordinated approach to the delivery of palliative care services. The scope of the Strategy is broad, addressing both palliative care provided in all specialist and general settings as well as end of life issues. The Strategy was endorsed by the Australian Health Ministers' Conference in 2010.

Four objectives are identified in the National Palliative Care Strategy: awareness and understanding; appropriateness and effectiveness; leadership and governance; and capacity and capability. Each objective is accompanied by goals, action areas and measures of success.

Under the National Palliative Care Strategy, the National Palliative Care Program supports a range of national initiatives in four broad priority areas: medicines in the community; workforce education, training and support; support for patients, families and carers in the community; and research and quality improvement for palliative care services.

While the National Palliative Care Program supports national approaches, most palliative care service provision occurs within the remit of the state and territory health systems. Each State and Territory has an articulated approach to palliative care in their jurisdiction. The Strategy aims to enhance and build on the work occurring at the jurisdictional level, not duplicate or contradict it.

Primary Health Care/Immunisations

The *National Health Act 1953* provides for designated vaccines to be supplied through the Immunise Australia Program. The target groups for vaccination supplied under the Program range from the universal program for all infants, young children, adolescents and older Australians, to the provision of vaccines for people who are at greater risk of adverse consequences from acquiring the disease; for example, Indigenous Australians or people with co-morbidities in the case of influenza.

Older Australians are offered free vaccination under the National Immunisation Program as follows:

50 years and over

- Influenza (Aboriginal and Torres Strait Islander people)
- Pneumococcal polysaccharide (23vPPV) (Aboriginal and Torres Strait Islander people)

¹⁶ <http://www.health.gov.au/internet/main/publishing.nsf/Content/palliativecare-strategy.htm>

65 years and over

- Influenza (flu)
- Pneumococcal polysaccharide (23vPPV)

Further information about the Immunise Australia Program is available from:

www.immunise.health.gov.au.

The Aged Care Access Initiative

The Aged Care Access Initiative (ACAI) aims to improve access to primary health care services for older Australians. It has two components:

- **General Practitioner Incentive Component:** This component provides incentive payments to encourage General Practitioners to provide more services in Australian Government funded residential aged care facilities. The Incentive recognises some of the difficulties faced by GPs in providing care in these settings and aims to encourage General Practitioners to continue to provide increased and continuing services in residential aged care facilities.
- **Allied Health Component:** The allied health component improves access to allied health services for residents of aged care facilities, through payment for clinical care provided by allied health professionals in residential aged care facilities, where these services are not claimed under Medicare or paid for by other government funding arrangements. Services funded may include care provided by exercise physiologists, dieticians, dental hygienists, podiatrists, physiotherapists, psychologists and speech pathologists.

Health and Aged Care Systems Reforms

Australia's population is ageing and the number and proportion of older persons will increase significantly in coming years.

Through the Council of Australian Governments, the Australian, State and Territory Governments, are working in partnership to implement wide reaching reforms to improve health outcomes and ensure the sustainability of the Australian health system. The reforms include the maintenance and improvement of older persons' right to health.

National Health Reform

The National Health Reforms¹⁷ will deliver a nationally unified and locally controlled health system that will ensure that future generations of Australians enjoy world class, universally accessible health care. The reforms will deliver better health and hospitals by:

- helping patients receive more seamless care across sectors of the health system;
- improving the quality of care patients receive through higher performance standards, unprecedented levels of transparency and improved engagement of local clinicians; and
- providing a secure funding base for health and hospitals into the future.

¹⁷ <http://www.yourhealth.gov.au/internet/yourhealth/publishing.nsf/content/home>

Reforming primary health care

A strong primary health care system is the key to providing patients with the health care they need, when and where they need it. Better integrated primary health care will help manage emerging challenges for the health system, including an ageing population and the increasing burden of chronic disease.

Some of the specific reforms that will benefit older persons include reforms to primary health care, including establishing Medicare Locals (primary health care organisations), GP Super Clinics and support for local after-hours primary health care services.

Medicare Locals will be responsible for coordinating and better integrating primary health care services in their local communities and regions, addressing service gaps and making it easier for patients to navigate the local health care system. This will include Medicare Locals:

- working with Local Hospital Networks (LHNs) to identify the best pathways between services, and to assist with patients' transitions out of hospital and, where relevant, into aged care; and
- delivering health promotion and preventive health programs targeted at risk factors in communities, in cooperation with the new Australian National Preventive Health Agency.

Around 15 Medicare Locals will be operational by mid 2011, a further 15 by early 2012 and the remainder by mid 2012.

New Preventive Health Agency

Australia's first national preventive health agency commenced operations in early 2011.

In response to the high and increasing rates of chronic disease, the Australian Parliament passed the *Australian National Preventive Health Agency Act 2010* on 17 November 2010, which provides for the establishment of the Australian National Preventive Health Agency.

The Agency will support all Australian health ministers in tackling the increasingly complex challenges associated with preventing chronic disease. The Agency will lead Australia's fight against preventable diseases with an initial focus on obesity, along with alcohol and tobacco use.

The Agency is an important part of the Australian Government's health reform efforts and will work across jurisdictions and portfolios, as well as supporting local primary health care organisations (Medicare Locals) to reinvigorate preventive health efforts at the local level, ultimately reducing the burden of chronic health conditions on the health system.

Further information about the ANPHA is available from:

<http://www.health.gov.au/internet/main/publishing.nsf/Content/phd-anpha>

Reforming aged care, mental health and dental health

As part of the national health reform agenda, further reforms will be pursued in mental health, dental health and aged care over the next three years, and the Australian Government will be the level of government with full funding, policy, management and delivery responsibility for a national aged care system.

The Australian Government has asked the Productivity Commission to develop detailed options for Government consideration in redesigning Australia's aged care system to ensure it can meet the challenges facing it in coming decades. The options should have regard to the Government's social inclusion agenda as it relates to older Australians.

The Productivity Commission released its draft report on 21 January 2011 and the final report is due in June 2011. The Terms of Reference and the Commission's Draft Report may be accessed at:

<http://www.pc.gov.au/projects/inquiry/aged-care>

Australian Government Directory of Government Services

To assist older persons to access the services that best meet their needs, the Australian Government Directory of Services for Older People provides a comprehensive guide to health services, options for care, legal rights, finance and employment choices. It contains a brief description of each of the programs and services and contact information for most of the services.

The Australian Government Directory of Services for Older People is available at:

<http://www.health.gov.au/internet/publications/publishing.nsf/Content/ageing-agdos-2011-toc>.

National Urban Policy

Australian cities face the challenges of meeting the needs of a growing but ageing population. To meet these challenges, Australian cities will need to be increasingly planned and designed to cater for the needs of a greater proportion of older persons. This can be achieved by incorporating universal design features in both residential and non residential building, transportation and in the public domain. The need to facilitate age friendly housing and match housing stock to demographic change is also a challenge.

In 2009, the Council of Australian Governments agreed to a national objective for cities, which includes ensuring cities are liveable, socially inclusive and well placed to meet future challenges and growth. Following consultations and research, the Australian Government is planning to release a National Urban Policy in 2011 which will outline the principles, objectives and actions necessary to help Australian cities achieve these goals, for example, to support mixed income housing and improved housing affordability which is linked to accessible public transport.

The principles of the National Urban Policy will also inform the Australian Government's continuing investment into road, rail and public transport infrastructure to ensure these meet the needs of older persons. State and Territory governments are responsible for legislative instruments and regulatory frameworks which guide the design and use of public amenities, transport infrastructure and vehicles which promote the mobility of older and disabled people. The Australian Government works closely with State, Territory and local governments on matters where responsibility is shared, such as appropriate design and regulations guiding the use of motorised mobility scooters.

QUESTION 6:

Please provide information on existing legislation, policies or programmes concerning social protection measures as well as right to work and right to social security with regard to older persons.

AUSTRALIA'S RESPONSE:

Summary

The Australian Government takes age discrimination in employment seriously, with the Age Discrimination Act prohibiting discrimination in employment on the basis of age. Moreover, *Experience+* is an Australian Government initiative that provides practical help to mature age people to stay in the workforce, to move confidently between jobs, and to gain the skills and qualifications they need to supervise or mentor other workers.

Australia also has a non-contributory pension scheme in place to provide social security for older persons. Australia's Retirement System includes the age pension and compulsory and voluntary superannuation.

Australia's Retirement System - Overview

Australia has a retirement income system based on three parts, or pillars:

1. a means tested, publicly funded Age Pension
2. compulsory superannuation (or private retirement provision) through the Superannuation Guarantee; and
3. voluntary superannuation, supported by tax concessions, and other private savings.

In most cases retirement incomes of senior Australians are a combination of two or three of the above components, with the Age Pension as the key component for many people.

The Australian Commonwealth Age Pension is a non-contributory scheme. It is governed by legislation and implemented by the Government. The Superannuation Guarantee is a contributory scheme. It is governed by legislation but it is not implemented by the Government, rather through the private sector.

The focus of this response is the Age Pension, which is the main pillar of Australia's retirement income system.

The Age Pension

Legal and institutional framework

The Australian Age Pension is a non-contributory scheme. It is a fundamental part of Australia's social security system and acts as a safety net for seniors with few other resources and supplements the retirement incomes of those with lower levels of private savings.

The Age Pension is targeted through the social security income and assets tests to those most in need. The Age Pension is available to all Australians who meet the residence, means and age criteria. Pension age for men is currently 65 years and for women 64 years (rising gradually to age 65 by 1 July 2013). The general qualifying age for the Age Pension will increase from 65 in 2017 to

67 by 2023. A person must reside in Australia at the time of the claim and have 10 years of continuous residence (5 continuous years if the total residence period exceeds 10 years).

The Age Pension age is not an official retirement age. There is no official retirement age in Australia.

The pension is payable overseas, indefinitely, if the pension begins before the person leaves the country. The pension may be reduced after 26 weeks in proportion with a person's working life residence in Australia (from age 16 to age 65). A full pension can be paid if a person has Australian working life residence of 25 years. A proportional pension can be paid for lesser periods.

The Age Pension is governed by the *Social Security Act 1991*.¹⁸

The Australian Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)¹⁹ is responsible for the management and policy of the Age Pension program.

Centrelink²⁰ is the Government service delivery agency, which delivers the program Australia-wide.

Policies and programs

The Age Pension is a national program. All Australians who meet the residence, means and age criteria are eligible to receive the Age Pension irrespective of their sex, ethnicity or origin. As at December 2010, some 2.2 million Australians were in receipt of the Age Pension. That included 1.2 million female and some 1 million male pensioners. Alongside of the Age Pension, there is also provision for older veterans. As at December 2010, there were some 249,000 veterans over Age Pension age receiving similar income support.

Spending on the Age Pension is estimated at around \$32 billion in the financial year 2010-11 (which represented about 9 per cent of total national government spending). In terms of Gross Domestic Product, spending on the Age Pension was about 2.7 per cent of GDP in 2009-10.

The Age Pension is funded from general revenue, in other words, it is funded by current tax payers. Eligibility for the Age Pension is not related to an individual's previous earnings or workforce participation.

Maximum Age Pension rates, including the base pension and Pension Supplement, at 20 March 2011:

Single rate	\$18,961.80 a year
Partnered rate	\$14,292.20 a year (each)

Pension rates are adjusted twice yearly in March and September to maintain their value. They are indexed by the higher of the movement in the Consumer Price Index (CPI) and the movement in the Pensioner and Beneficiary Living Cost Index (PBLCI). The single base rate of pension is then compared to around 27.7 per cent of Male Total Average Weekly Earnings (41.76 per cent for

¹⁸ <http://www.comlaw.gov.au/Details/C2011C00098>

¹⁹ <http://www.fahcsia.gov.au>

²⁰ <http://www.centrelink.gov.au>

couples combined) and topped up to equal it, if necessary. The Age Pension is paid fortnightly into pensioners' bank accounts by the Australian Government service delivery agency, Centrelink.

Centrelink offers a broad range of services and resources to people from diverse linguistic and cultural backgrounds, including migrants and refugees. There is a range of publications with information about social security support available to all Australians, including information on the Age Pension. These publications are produced by Centrelink and FaHCSIA. Publications and factsheets are available in hard copy and on the internet in English and other languages.

For people who are struggling financially Centrelink has social workers who can assist in a number of ways. They can provide information about, or refer customers to community support services.

Advances on pension payments, including Age Pension payments, are available to pensioners to assist their capacity to budget and meet large or unforeseen costs. The advance is repaid gradually over 13 fortnights.

Centrelink's Financial Information Service (FIS) is an education and information service available to everyone in the community. FIS officers help people to make informed decisions about investment and financial issues for their current and future financial needs. FIS is independent, free and confidential and provides services through seminars, and by phone and appointment. One of the objectives of FIS is to encourage and assist people to maintain or improve their standard of living by planning effectively for their retirement and maximising their overall retirement income.

Commonwealth Financial Counselling services help people in financial difficulty to address their financial problems and make informed choices. Services may include direct casework (e.g. provision of advice and information); advocacy and/or negotiation; referral; community education; and networking/liaison. Financial counsellors assist people with complex financial issues including reviewing financial contracts, accessing hardship policies and preparing for debtors' court.

The Government's Emergency Relief services provide support to address immediate needs in time of crisis. Assistance often includes food parcels and clothing, transport, chemist vouchers, help with accommodation, payment of bills, budgeting assistance and sometimes cash. Importantly, Emergency Relief agencies provide appropriate referrals to other services that help to address underlying causes of financial crisis.

Centrelink customers who are having personal or family difficulties, including experiencing grief or loss, can gain access to counseling services through Centrelink's Social Worker Network.

All Australian residents, including age pensioners, have universal health care coverage through the publicly funded Medicare program. In addition, age pensioners are assisted by concessions for health and aged care services.

Other available social protection schemes that benefit older persons

In addition to the Age Pension, the following additional assistance is available to age pensioners:

- Subsidised prescription medicines under the Pharmaceutical Benefits Scheme,
- Assistance for people who rent,

- Assistance for people in remote areas through an additional allowance,
- Subsidised aged care,
- Subsidised health care and related products,
- Concessions to pensioners by State and Territory Governments, with some financial support from the Commonwealth Government. These concessions include subsidies for rates for home owners, utilities such as electricity and water, and public transport and motor registration fees, and
- Tax concessions for people of Age Pension age, including the Pensioner Tax Offset, which ensures that maximum rate pensioners do not pay income tax, and the Senior Australians Tax Offset, which reduces tax liabilities, so that many seniors pay no tax or Medicare levy.

The Commonwealth Seniors Health Card is also available to senior Australians of pension age who do not receive income support. It is targeted through an income test and gives holders access to reduced-cost prescriptions and medical services, and concessional travel.

The Superannuation Guarantee

The Superannuation Guarantee is the second pillar of the retirement income system. It is a contributory scheme, which involves compulsory, concessionally-taxed savings for retirement through an employment based system. It is governed by legislation and is implemented by the private sector, not the Government.

- Superannuation contributions are made by employers on behalf of their employees to a complying superannuation fund or retirement saving account.
- The Superannuation Guarantee prescribes the level of employer support (currently 9 per cent of an employee's earnings).
- Superannuation coverage is high with 96 per cent of full-time employees and 77 per cent of part-time employees being paid superannuation.

The superannuation preservation age (the earliest time when superannuation benefits can be accessed) is currently 55, phasing up to 60 between 2015 and 2025.

Superannuation funds are principally regulated under the *Superannuation Industry (Supervision) Act 1993*²¹ and the *Financial Services Reform Act 2002*²². Compulsory employer contributions are regulated via the *Superannuation Guarantee (Administration) Act 1992*²³.

Four main bodies regulate superannuation funds to ensure they comply with the legislation:

- The Australian Prudential Regulation Authority (APRA)²⁴

²¹ <http://www.comlaw.gov.au/Details/C2011C00057>

²² <http://www.comlaw.gov.au/Details/C2004A00964>

²³ <http://www.comlaw.gov.au/Details/C2010C00859>

²⁴ <http://www.apra.gov.au/>

- The Australian Securities and Investments Commission (ASIC)²⁵
- The Australian Taxation Office (ATO)²⁶
- The Superannuation Complaints Tribunal (SCT)²⁷

Unlike the returns on most other taxable savings, savings invested in superannuation are generally not taxed according to the individual investors' personal tax rates; they are taxed at 15 per cent. Benefits from a taxed superannuation fund are paid tax free from age 60. Superannuation contributions and earnings are generally concessionaly taxed.

The value of superannuation tax concessions provided to contributions and earnings is estimated to be around \$27.6 billion in 2010-11, increasing to over \$37 billion in 2013-14.

Voluntary Superannuation and Other Private Savings

The third pillar encourages individuals to supplement the first two pillars and provide for themselves as much as possible, through voluntary superannuation and other private savings and investments.

Voluntary superannuation is assisted by tax concessions and managed commercially or self-managed. It is part of the same system as the compulsory system but allows for employers to make additional contributions for their employees over and above the 9 per cent Superannuation Guarantee, and for employees to make contributions on their own behalf.

Other popular forms of voluntary savings for retirement (other than superannuation) are:

- Home ownership and rental properties. Australia traditionally has a very high rate of home ownership, even among Western nations. About 83 per cent of older Australians own their own homes.
- Shares and managed funds.
- Life insurance policies.

Right to Work

Australia is a party to a number of instruments protecting the right to work and the right to be free from discrimination. Some of the international instruments include the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic Social and Cultural Rights*, the *Convention on the Rights of Persons with Disabilities*, the *Convention on Elimination of All Forms of Racial Discrimination*, the *Convention on Elimination of All forms of Discrimination Against Women* and a number of International Labour Organization Conventions.

Every Australian of working age may seek and partake in paid employment. The Government, through programmes and services, assists the unemployed in the transition into work and assists mature age workers in employment to continue to participate. The *Age Discrimination Act 2004* makes it unlawful to discriminate on the basis of age in a number of areas of public activity, including

²⁵ <http://www.asic.gov.au/>

²⁶ <http://www.ato.gov.au/>

²⁷ <http://www.sct.gov.au/>

work, accommodation, education, access to goods, facilities, services and premises, requests for information and the administration of Commonwealth laws and programs.

Age Discrimination Commissioner

The Government will create a new, dedicated position of Age Discrimination Commissioner from 1 July 2011. The new commissioner will advocate the rights of older Australians across all areas of public life. This initiative will particularly benefit mature age workers and jobseekers.

Experience+

Experience+ describes a range of services available under the Productive Ageing Package (with funding of \$43 million over four years). *Experience+* provides practical help to mature age people to stay in the workforce, to move confidently between jobs, and to gain the skills and qualifications they need to supervise or mentor other workers. *Experience+* includes:

- *Career Advice*: free telephone career advice (45+),
- *On the Job Support*: help for workers whose job is at risk due to their health condition, injury or disability,
- *Job Transition Support*: help for construction/manufacturing workers living or working in Priority Employment Areas to transition to less physically demanding roles, and
- *Experience+ Training*: training grants for employers of mature age workers to increase the capacity of the worker to supervise/mentor apprentices or trainees.

Once in work, Australian employees are protected by a comprehensive system of workplace protections, which apply regardless of age. A national workplace relations system, established under the *Fair Work Act 2009*²⁸, covers the majority of employees in Australia. The Act establishes a safety net of 10 minimum National Employment Standards (including maximum weekly hours and annual leave entitlements); modern awards that apply nationally on an industry or occupational basis; a process for setting national minimum wages and conditions; a good faith enterprise bargaining framework and protection from unfair dismissal, among other things.

Work Bonus

Age Pensioners are always better off in terms of their total gross income (pension plus employment income and any other private income) because of the operation of the social security income test and the *Work Bonus*.

The *Work Bonus*, a beneficial income test concession for pensioners of pension age was introduced as part of the Pension Reform in 2009 to improve incentives for pensioners to undertake paid employment. The *Work Bonus* allows pensioners to keep more of their pension when they work and reduce workforce participation barriers for those seniors who wish to work.

²⁸ <http://www.comlaw.gov.au/Details/C2009A00028>

QUESTION 7:

Please provide information on existing legislation, policies and programmes to systematically collect, update and analyse information disaggregated by age.

Summary

The Australian Bureau of Statistics has an increased focus on ageing population data, including developing a website with all relevant data collected. The Australian Government collects data through a number of national surveys, including the Dynamic Analyses to Optimise Ageing Project to identify key issues relating to older persons.

Data and Statistics

Australian Bureau of Statistics

The Australian Bureau of Statistics (ABS) is Australia's central statistical authority, responsible for providing statistical services to all Australian governments, and the community more generally. The ABS's six functions are to:

- operate as Australia's central statistical authority and to provide services for the Australian and State governments,
- collect, compile, analyse, and disseminate statistics,
- co-ordinate the statistical operations of official bodies,
- develop standards for statistics and ensure that they are complied with,
- give advice and assistance on the production and use of statistics, and
- liaise with international organisations on statistical issues.

It also has a responsibility to provide information on how Australia is changing. As Australia is experiencing a shift in the age structure of the population, with an increase in the number and proportion of older persons, the ABS has increased its focus on data on population ageing, including the development of a dedicated website.

ABS Topics @ a Glance – Ageing website²⁹ has links to:

- all ABS data and statistics relevant to ageing,
- other related sources of information including research centres, and
- ABS contact details.

National Surveys relating to Older Persons

The *Report on the Operation of the Aged Care Act 1997 for 2009 to 2010*³⁰ describes the operation of the Act during 2009-10 and includes additional information to aid understanding of aged care

²⁹<http://www.abs.gov.au/websitedbs/c311215.nsf/20564c23f3183fdaca25672100813ef1/66b71e8a3afcb529ca257126000ab2df!OpenDocument>

programs and policies. The annual report is the primary source of statistics on all aspects of the Australian aged care system.

In addition the Australian Institute of Health and Welfare undertakes analysis and research relating to ageing, aged care, and palliative care. This may be accessed at: <http://www.aihw.gov.au/ageing-disability-and-carers/>

Dynamic Analyses to Optimise Ageing (DYNOPTA) project

The Dynamic Analyses to Optimise Ageing (DYNOPTA) project is a multidisciplinary program aimed at building on Australia's investment in longitudinal studies of ageing. DYNOPTA draws together data from nine Australian longitudinal studies containing questions on ageing, with a combined pool of over 50,000 participants. The contributing studies are:

- The Longitudinal Study of Ageing
- Australian Longitudinal Study of Women's Health (see further below)
- Australian Diabetes and Obesity Survey
- Blue Mountains Eye Study
- Canberra Longitudinal Study
- Household, Income and Labour Dynamics in Australia Survey (HILDA - see further below)
- Melbourne Longitudinal Study Healthy Ageing
- Personality and Total Health Through Life
- Sydney Older Person's Study

The collective information provided by the studies is used to identify key incidence rates and risk factors for health outcomes. HILDA Survey data is also an important source of information for analysis of common mental disorders and mental health problems.

More information about the project is available at: <http://dynopta.anu.edu.au>

Australian Longitudinal Study of Women's Health

The Australian Longitudinal Study on Women's Health (ALSWH)³¹, now in its 16th year, delivers information about the health and well-being of Australian women, including at their later age. The study provides information on women across three generations, as a guide to future policy. It explores factors that influence women's health including: physical and emotional health; use of health services; health behaviours and risk factors; time use; socio-demographic factors; life stages and key events.

³⁰ <http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-reports-acarep-2010.htm>

³¹ <http://www.alswh.org.au/>

Research findings are used to plan prevention and early intervention strategies to reduce health risk factors, preventable morbidity and avoidable mortality among Australian women. It is expected that the next major report *Women Health and Ageing: Findings from the Australian Longitudinal Study on Women's Health*, will be released in early 2011. This report will focus mainly on changes affecting the oldest group of women for whom ALSWH have a wealth of data. The report examines changes in older women's health, especially in regards to chronic conditions and major risk factors affecting older women. The report also looks at the impacts of social networks and support, transport, volunteering and abuse on older women's health and wellbeing. The report will also foreshadow some of the conditions that are becoming increasingly prevalent among the next cohort of women as they move into their 60s.

Household, Income and Labour Dynamics in Australia (HILDA) Survey

The Household, Income and Labour Dynamics in Australia (HILDA) Survey³² is a large nationally representative household panel-based study which began in 2001. HILDA is owned and funded by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the design, development and conduct of HILDA has been contracted to the Melbourne Institute of Applied Economic and Social Research (Melbourne Institute) at the University of Melbourne. In addition to collecting extensive information about employment, income, household and family structure, HILDA also contains key data items about wealth, expenditure, housing, poverty, child care, financial stress, satisfaction, health and wellbeing. Survey respondents are aged 15 years and older, therefore researchers are able to look at outcomes for different age cohorts including economic, social and health outcomes for older respondents. Data specific to older Australians (including superannuation, retirement, and age pension receipt) is also available for analysis.

National Housing Supply Council

As part of the Council of Australian Governments (COAG) reform agenda, the National Housing Supply Council was established by the Australian Government in May 2008. The Council's Terms of Reference include producing an annual State of Supply Report that assesses information on land supply and demand for housing from all levels of government and the private sector.

The ageing of the population and the housing needs of older persons are being considered in the Council's State of Supply Report³³ and in commissioned research including *Projections of Housing Demand in Australia, 2008-2038: Housing Needs of Older Australians Narrative Report*.³⁴ This report provides a narrative description of results of the projection of future housing demand in the capital cities and balances of state for the eight States and Territories of Australia for the period, 2008-38.

Australian Incontinence Data Analysis and Development Report

³² <http://www.melbourneinstitute.com/hilda/>

³³ http://www.nhsc.org.au/state_of_supply/2009_ssr_rpt/sosr_keys_finding.htm

³⁴ http://www.nhsc.org.au/housing_demand_08_38/older_housing.htm

The Australian incontinence data analysis and development report³⁵ investigates the prevalence, experience and burden of incontinence in Australia and the related monetary costs and expenditure associated with the condition. It also describes the sorts of data items recommended to improve the collection of incontinence data.

Intergenerational Report

The Intergenerational Report³⁶ provides a comprehensive analysis of the challenges that Australia will face over the long term with a particular focus on the impact that an ageing population will have on the sustainability of economic growth and government finances. Other issues, such as climate change, are also considered. The report includes information on and analysis of the health and aged care sectors, disaggregated by age, as well as a number of other spending categories that are driven by demographic changes.

³⁵ <http://www.aihw.gov.au/publications/index.cfm/title/10201>

³⁶ <http://www.treasury.gov.au/igr/igr2010/>

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.

Summary

The Australian Government has key measures in place to ensure social inclusion of older persons through participation in employment and public life. The Australian Government has established a Consultative Forum on Mature Age Participation, which provides advice to the Government on practical solutions to address barriers to employment for older persons and other mature age people.

The Australian Government recognises the importance of new technologies for accessing information and participation. *Broadband for Seniors* is an initiative that supports seniors in gaining confidence and skills in using new technology, and builds community participation and social inclusion amongst older Australians.

Employment and Education Programs

Experience+

Experience+ is a suite of services and practical assistance under the Productive Ageing Package (\$43 million over four years). *Experience+* is designed to keep mature age Australians engaged in the workforce, help them to move confidently between jobs and to gain the skills and qualifications they need to supervise and monitor other workers. *Experience+* includes:

- *Career Advice*: free telephone support offering career planning and resume assistance to job seekers and workers over 45 years of age,
- *Job Transition Support*: in priority employment areas tailored assistance and training for mature age construction and manufacturing workers wishing to move to less physically demanding role,
- *On-the-job Support*: support and training for workers and employers where a mature age worker's job is in jeopardy due to a health condition, injury or disability, and
- *Experience+ Training*: targeted training grants to encourage employers to support their mature workers to gain new skills to supervise/mentor apprentices and trainees.

More information on *Experience+* can be found at:

<http://www.deewr.gov.au/Employment/Programs/ExpPlus/Pages/default.aspx>

Golden Gurus Program

Golden Gurus Program as part of the Productive Ageing Package encourages skilled mature age people (50 years and over) who are retired, semi-retired or not working full time to provide voluntary mentoring support to small business and the community.

Consultative Forum on Mature Age Participation

The Consultative Forum on Mature Age Participation has been established to provide advice to Government on practical solutions to address barriers to employment for mature age people, including employer and community attitudes, age-based discrimination, reskilling and career transitions, mentoring, suitability of training and retaining the expertise of older workers.

For more information, see response to Question 6.

Broadband for Seniors

Broadband for Seniors is a Government initiative to give senior Australians free access to computers and the internet, as well as training in basic computing. This initiative supports seniors in gaining confidence and skills in using new technology, and builds community participation and social inclusion amongst older Australians. There are 2,000 Broadband for Seniors kiosks established nationwide.

More information can be found at:

<http://www.fahcsia.gov.au/sa/seniors/progserv/broadbandseniors/Pages/default.aspx>

Support for Seniors' organisations and productive ageing

The Australian Government also supports organisations such as National Seniors Australia and the Council of the Ageing (COTA) 50+ to facilitate their participation, as peak bodies representing consumers, in the policy development processes of government. These organisations provide a channel for seniors' views to be represented to government through, for example, contributing to Australian Government consultation processes, participating in government advisory forums, providing input to emerging policy issues, and promoting positive images of healthy ageing and the value of older Australians to their communities.

The National Seniors Productive Ageing Centre³⁷ was established by National Seniors Australia to advance the knowledge and understanding of productive ageing to improve the quality of life of people aged 50 years and over. The Centre receives support from the Australian Government to provide advice on productive ageing matters, undertake consumer-orientated research and education, promote and inform productive ageing and support productive ageing decisions by seniors.

Active engagement of older men in the community

The Australian Government supports better health and active ageing for all Australians. Australia's first National Male Health Policy was released in May 2010. The overarching aim of the Policy is to provide a framework for improving the health of all males and achieving equal health outcomes for population groups of males at risk of poor health.

Older males are particularly vulnerable to social isolation, as they often live on their own, may not have access to transport, and are no longer in the workforce. The Policy recognises that older males

³⁷ <http://www.productiveageing.com.au/site/>

have much to offer their peers and younger generations through their friendship, skill-sharing, mentoring, and father and grandfather roles.

Initiatives to include older men's health include Men's Sheds through the Australian Government Shed Development Program³⁸. Men's Sheds have long been recognised as meeting places where men can find social support and camaraderie, and continue to enjoying practical skills. A significant number of older Australian men participate in Shed activities.

See also under Question 5, 'Care at home and in the community'; and 'Services and support for carers'

³⁸ http://www.mensshed.org/page14837/Start-a-Shed---_Shed-Development-Plan.aspx

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.

Summary

The Australian Government has established an independent Age Discrimination Commissioner within the Australian Human Rights Commission (Australia's National Human Rights Institution) to address key issues affecting the rights of older persons. As an independent statutory authority the Australian Human Rights Commission has the capacity to receive complaints from older persons experiencing discrimination, not only on the basis of age, but also on the basis of gender and race.

The Australian Government also has an Access to Justice Framework based on the five key principles of accessibility, appropriateness, equity, efficiency and effectiveness. Australia implements its international treaty obligations through legislative and non-legislative measures as well as recognising and protecting many basic rights and freedoms enshrined in common law.

Access to Justice

The Australian Government recognises that access to justice is an essential element of the rule of law and therefore of democracy. Justice institutions enable people to protect their rights against infringement by other people or bodies in society, and allow parties to bring actions against government to limit executive power and ensure government is accountable. If people are unable to access these institutions to protect their rights, respect for the rule of law is diminished.

To better coordinate reform of the justice system nationally, all State and Territory Attorneys-General have endorsed the Australian Government's Access to Justice Framework, comprising five key principles: accessibility, appropriateness, equity, efficiency and effectiveness, together with a methodology for translating the principles into practice. The Framework is intended to guide future decisions about the federal civil justice system, with a particular focus on overcoming barriers to justice.

Australia provides a system of public funding — 'legal aid' — to enable people who would otherwise not be able to afford legal services to obtain those services. Under the National Partnership Agreement on Legal Assistance Services which came into effect in July 2010, the Australian Government, in partnership with State and Territory Governments, funds legal aid commissions in each State and Territory to provide legal assistance to disadvantaged persons, which would include older persons experiencing disadvantage. The Australian Government also funds 138 Community Legal Centres and a range of Indigenous legal services across Australia.

Australia's legal system

Under Australia's legal system, the recognition and protection of many basic rights and freedoms is enshrined in common law. The common law has also developed principles of statutory interpretation that function to protect human rights. The first principle is that when interpreting legislation, courts will presume that Parliament did not intend to interfere with fundamental human rights. The second principle is that in cases of ambiguity, courts will presume that legislation is

intended to be consistent with established rules of international law, including Australia's international human rights obligations.

Australia has a comprehensive framework for independent review of administrative decisions. The merits of many decisions can be reviewed by tribunals such as the Administrative Appeals Tribunal. A person aggrieved by most decisions made under federal laws can apply for an order of review on various grounds. Australia's Constitution also separately guarantees a broad scope of judicial review of government action.

Australian Human Rights Commission

The Commission is Australia's national human rights institution. It is an independent statutory authority and meets the criteria for human rights institutions set out in the Paris Principles. It has been accredited as 'A-Status' by the International Coordinating Committee of National Human Rights Institutions.

The Commission is a collegiate body made up of a President and five Commissioners. The Commissioner offices are: Human Rights Commissioner; Disability Discrimination Commissioner; Race Discrimination Commissioner; Sex Discrimination Commissioner; and Aboriginal and Torres Strait Islander Social Justice Commissioner. The Sex Discrimination Commissioner is currently also responsible for age discrimination issues. However, the Government introduced legislation in September 2010 to establish a stand-alone Age Discrimination Commissioner.

The Commission's functions include public education and human rights awareness and the power to inquire into and conciliate individual complaints made in relation to a person's race, sex, disability or age. It also has broader policy and promotional functions, including: advising the Australian Government on human rights questions; examining the potential domestic impact of draft treaties; reviewing existing and proposed legislation to ensure compliance with human rights principles; and conducting research into human rights issues.

On 1 October 2010, the Commission released its Age discrimination – exposing the hidden barrier for mature age workers paper, which seeks to expose and raise awareness about this issue. The paper can be found on the Commission's website at:

<http://www.humanrights.gov.au/age/hiddenbarrier/>.

The Commission can also inquire into complaints concerning alleged breaches of human rights by the Australian Government or an Australian Government authority, or discrimination in the area of employment on numerous grounds including sexual preference, criminal record, trade union activity, political opinion, religion or social origin.

One of the most significant and innovative powers of the Commission is the power to conduct public inquiries into human rights matters. The Commission can also intervene in court proceedings concerning human rights, and apply to be amicus curiae in court matters concerning discrimination issues.

Each State and Territory also has its own body dedicated to promoting human rights, anti-discrimination or equal opportunity. These bodies each have similar powers as the Commission

in relation to activities within the State or Territory. Together with the AHRC, these bodies constitute the Australian Council of Human Rights Agencies.