



# Submission to National Human Rights Consultation

Council on the Ageing Victoria

Level 4, Block Arcade  
98 Elizabeth St  
Melbourne 3000

Ph. 9655 2139

# **Council on the Ageing Victoria Submission to National Human Rights Consultation**

## **Background**

Council on the Ageing Victoria (COTA Vic) is a community-based organisation of older Victorians working in the interests of older people to bring about positive social change. Our mission is to mobilise older people and those who work with them, to age well in a just society. Our organisation has been effectively representing seniors' views, and facilitating the active participation of older Victorians, since 1951.

COTA Vic is Victoria's leading senior advocacy organisation and engages with over 60,000 senior Victorians annually. COTA Vic has expertise in policy development and community education, particularly peer education by older people. COTA Vic has a city base with statewide coverage through its membership and outreach activities.

COTA Vic believes all people have the right to dignity, security, access to high quality services, and equality in participation in the community regardless of their income, status, background, location or any other social or economic factor.

COTA Vic recognises that consistent with the general population, older people come from many different cultural backgrounds and have diverse social, economic and health status. The economic, health, social and cultural needs and aspirations of older people are, on the whole, no different from the rest of the community.

COTA Vic advocates strongly for the most vulnerable and disadvantaged in the community to ensure they have access to the resources and support they need when they need them. These include access to employment opportunities, housing, information and education, health and the support services necessary to live and age well.

COTA Vic works for a just and equitable society for all, in which older people have the right to be full and participating citizens to the extent of their abilities and wishes.

## **Ageism and Human Rights**

Ageism, negative discrimination against an individual or group on the basis of their age (particularly if they are of older age) is an entrenched feature of Australian society. The community, including older people themselves, are often not aware of the myths and stereotypes they have accepted about the abilities and capacities of older people.

Older workers often struggle against ageist attitudes of employers to be accepted for jobs for which they are well qualified. Their age is not mentioned but they are told they are over qualified or not suitable in some unspecified way. If they receive Centrelink benefits, they suffer the ageist attitudes of the much younger staff who have little respect for their experience but require them to attend training courses when they may be better qualified than the trainer.

Planning of public facilities, access to public transport, including safe bus stops and accessible vehicles, and location of services do not take the needs of older people

seriously. For example, retirement villages are approved and built in isolated locations with no pedestrian access to shops or services. On a bus route used largely by older residents and school children in a semi-rural area, the bus stops have no shelter or seats, are mud puddles when it rains and dust bowls in the dry. A public library is relocated to a school campus several kilometres from its current site, away from the shops and services that older people visit at the same time as the library. Public seating is removed because shopkeepers do not want people sitting outside their shops when the seat may be a convenient place for older people who are now reluctant to walk to do their shopping because they cannot face the whole distance without stopping.

COTA argues that addressing these issues from a human rights perspective benefits all members of a community. It shows respect and consideration for the most vulnerable, least able while providing services and facilities that everyone can enjoy.

### **COTA Vic's Role in Human Rights**

All of COTA Vic's work is underpinned by a strong commitment to human rights and social justice. This commitment is reflected through policy development and advocacy, to which older people have direct input, and in all of its services and programs. COTA Vic's programs provide opportunities for older people to participate in their communities, to develop new skills and to contribute to political and social policy at all levels of government. It is responsible for important services that support older people in exercising their rights, such as Seniors Information Victoria (SIV) and Seniors Rights Victoria (SRV.)

COTA Vic manages the Seniors' Information Victoria Telephone Service (SIV) which responded to nearly 20,000 calls in 2007-08 in person, by telephone, letter and email. The most frequent requests for information relate to finance, general ageing, wellbeing, accommodation and transport. In addition to personal contacts, SIV conducts an information outreach program called "Need to Know". Some of the most popular sessions include powers of attorney, reverse mortgages, legal matters and making wills, all areas with potential for abuse of an older person's human rights. SIV provided many of the examples used in this submission.

COTA Vic is also the lead agency in the management of Seniors Rights Victoria (SRV) funded by the Victorian State Government and the Victorian Legal Aid. SRV was established by agreement between COTA Vic, Public Interest Law Clearing House Incorporated (**PILCH**), Advocacy and Rights Centre Ltd, acting through the Loddon Campaspe Community Legal Centre, and Eastern Community Legal Centre Inc.

SRV is a free service to help identify and reduce the incidence of abuse of older people and to safeguard their rights, dignity and independence. It provides a range of services in relation to abuse of older people, including a telephone information and referral helpline, as well as legal services, research and advocacy regarding elder abuse. It is responsible for providing community education to older people and to the community in general as well as providing professional education to the legal community.

COTA Vic endorses the submission by SRV Management Committee to the National Consultation.

## **Victorian Charter of Human Rights and Responsibilities**

The Victorian Charter of Human Rights and Responsibilities was enacted in 2006. As with other bills of rights, the human rights set out in the Victorian law are not absolute. They can be limited where the circumstances justify it and the Victorian Parliament still has to make decisions such as how to balance rights of individuals and group between their competing demands.

All Victorian legislation must now be interpreted compatibly with human rights and the Victorian Supreme Court can require the government to reconsider legislation that does not meet the Charter's standards. Moreover, while there is no independent right to legal action for breach of the Charter, human rights arguments may be raised in courts and tribunals.

In fact, most cases arguing human rights abuse are not found in court or tribunals, but are usually day to day negotiations about accommodation, care, medical treatment, services, or access to family, community and recreation. Already there is considerable evidence that the Charter is successfully used to protect and ensure human rights in these areas, especially for vulnerable people who are often dependent on services and support of government and community organisations. For example, after a campaign for their human rights, age appropriate nursing homes are now being provided for young people with acquired brain injury. Previously accommodation for such young people could only be found in aged care nursing homes.

The Charter promotes a consciousness of human rights. Service providers are being challenged to reorient their services to consider the human rights of their clients. They are under considerable financial pressure and may driven by liability insurance, occupational health and safety concerns and the work style or preferences of staff. Often through discussion and negotiation, they find that they can meet clients' human rights with no change in service quality or cost, while maintaining their duty of care, and the client's quality of life is greatly enhanced.

### **1. Which human rights should be protected and promoted in Australia?**

In December 1991, the United Nations adopted a set of United Nations Principles for Older Persons, recommending that all member governments incorporate them into their programs for older people. The Principles are based on the following Declaration on the Rights and Responsibilities of Older Persons. The United Nations General Assembly summarised the Declaration as follows:

*'Add life to the years that have been added to life by assuring all older persons independence, participation, care, self fulfilment and dignity'*

The human rights set out in the Principles for Older Persons are as relevant today as in 1991 and COTA Vic believes they should form the basis of a Human Rights Act that will protect the human rights of older people, and in doing so, protect the rights of all Australians.

## **2. Are these human rights currently sufficiently protected and promoted?**

Australia is signatory to a wide range of international covenants on human rights but has not fully incorporated their provisions into domestic law, so these international covenants do not guarantee protection. The remedies that do exist in current law depend on the older person being able to identify the abuse and the appropriate form of appeal, to press charges and / or to engage legal counsel.

Effectiveness of other forms of redress such as the various Ombudsman, Aged Care Complaints Investigation Service and Charter of Residents Rights and Responsibilities depend largely on the awareness and understanding by, for example, aged care staff that the people they care for have these rights and it is their responsibility to observe them. The non-observance or abuse of the human rights of an older person by service providers may not be deliberate but may result from impatience, a lack of thought and consideration, or putting the demands of a workplace before the older person.

The following table sets out the UN Principles for Older Persons and some cases stories to illustrate how these Principles are ignored so that the rights of older people are abused. These stories come from Seniors Information Victoria, Seniors Rights Victoria and other contacts COTA Vic has with older people.

The UN Principles are:	How they are not protected by existing legislation
<b>Independence</b>	
Older persons have the right:	
<p>1. to access to adequate food, water, shelter, clothing, and health care through the provision of income, family and community support and help;</p>	<p><i>I am 78 and living alone. Some time ago when I was faced with the prospect of surgery I tried to register for some help with house cleaning if or when I might need it. What was offering was not particularly helpful. Here are some of my thoughts about caring for the aged in their own homes.</i></p> <p><i>Firstly it seems impossible to register or make arrangements ahead of time so that if or when the need might arise suddenly due to illness or some other catastrophe, one would be able to access home help immediately. It seems that you have to wait until you actually need the service, then be prepared to go on a long waiting list, by which time the need may no longer exist or you have collapsed in a heap.</i></p> <p><i>Secondly, only light house cleaning is available, such as dusting etc. I was told that cleaners were not allowed to move furniture or do any cleaning above head height due to occupational health and safety regulations. Most elderly people can manage the light cleaning chores themselves. When I asked who I could get who would do the heavier cleaning such as pulling out the bed to clean behind it, or doing the cobwebs on the ceiling, I was told this cannot be done as the cleaners are all women. What about some male cleaners who can do what we elderly people can't manage ourselves?</i></p>
<p>2. to work and pursue other income generating opportunities with no barriers based on age;</p>	<ul style="list-style-type: none"> <li>• <i>I was on NewStart for 8 years – do you know how humiliating that is? The attitude of Centrelink staff, some young thing who tells me I need to do this or that course! I've already done that training, I could run the course myself. And then the employers who won't say it, but they think I'm too old. I really need to, want to work.</i></li> <li>• <i>Visitor's friend suggested he come in to SIV to see about housing options. Currently in private rental in Footscray, 65 next year, &amp; looking for work. His rent is just affordable but if he doesn't find work &amp; the rent increases he will have to move. No assets, would like to stay in western suburbs, but there are very few options in the not for profit housing sector, so he's looking at an area in eastern suburbs where he has lived before.</i></li> </ul>

3. to retire and participate in determining when and at what pace withdrawal from the labour force takes place;	
4. to access education and training programs to enhance literacy, facilitate employment, and permit informed planning and decision making;	<ul style="list-style-type: none"> <li>• <i>I'd do a course but everything I'm interested in is too expensive when you're on a pension.</i></li> </ul>
5. to live in environments that are safe and adaptable to personal preferences and changing capacities;	<ul style="list-style-type: none"> <li>• <i>Caller said she was a "bit stressed". She lives in a caravan park, mainly seniors, and the owners are "picking on her" because of her little dog. Feels she is being harassed and it is making her feel stressed, and she would like to move but can't afford it. The owners are applying pressure about her dog, which she believes is unfair &amp; untrue.</i></li> <li>• <i>Caller's friend is aged 97. Has lived on another friend's property for 11 yrs, and arrangement was for him to live there permanently. Owner of property died, and daughter is selling. Friend wants to be able to stay in home until sold and maybe be able to stay on with new owners, but owner's daughter wants him to move out now.</i></li> </ul>
6. to reside at home as long as possible;	<ul style="list-style-type: none"> <li>• <i>I have an elderly tenant living in half my house. She asked for a railing to be installed to help her up the outside steps to her home. An occupational therapist came to assess her situation and she was told aged care would not provide the necessary aid for a renter. Also even if they did there would be a 6 month wait, and it would cost about 3 times as much as a quote I had already obtained from a builder. Surely, many elderly people who need support are renters, and such a long delay must be due to underfunding. One wonders also why they would not be able to offer an equally high quality but cheaper option.</i></li> </ul>
<b>Participation</b>	
Older persons have the right;	
7. to remain integrated and participate actively in society, including the process of development and the formulation and implementation of policies which directly affect their well-being;	<ul style="list-style-type: none"> <li>• <i>My friend is the primary carer for her husband but when he was in hospital, the staff ignored her. She thinks the reason she's being treated like this is because she's old, too.</i></li> <li>• <i>The daughter told the nursing home staff that her mother was not to have any visitors and her mail was to be sent to the daughter. And the staff did it, even though the daughter had no authority.</i></li> </ul>
8. to share their knowledge, skills, values	<ul style="list-style-type: none"> <li>• <i>Older people value such opportunities, such as literacy, history and environmental programs</i></li> </ul>

and life experiences with younger generations;	that allow them to share with children and younger people
9. to seek and develop opportunities for service to the community and to serve as volunteers in positions;	<ul style="list-style-type: none"> <li>• Older people provide thousands of hours of voluntary work in their communities each year. Many services and programs would not survive without their contribution, therefore governments and agencies relying on older people must ensure they are resourced and supported with training, coordination and re-imburement of costs where appropriate.</li> </ul>
10. to form movements or associations of the elderly.	
<b>Care</b>	
Older people have the right	
11. to benefit from family support and care consistent with the well being of the family;	<ul style="list-style-type: none"> <li>• <i>Caller wanted to know if a person in a nursing home whose husband has died has a right to be told. The person has dementia.</i></li> <li>• <i>The caller is a grandmother who has not seen her grandson from several years and has never seen his younger sister. The caller's daughter (children's mother) had broken off contact. [This seemed to be the typical situation.]</i></li> <li>• <i>Worker has a client in her 80s who lives in outer eastern suburb and wants to be able to visit her brother who is approx 90 years old and lives in western suburbs. How can she do this? Neither drives.</i></li> <li>• <i>Last year my 12 year old grand daughter came to live with us because her mother, my daughter has mental health problems and can't care for her. It isn't a formal arrangement because that would be too difficult for my daughter to cope with. It's very expensive bringing up children but we don't get any help from the government, apart from the tax benefits, not like foster carers. I'm 62 now and I don't know how long I'll be able to continue working.</i></li> </ul>
12. to access health care to help them maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness;	<ul style="list-style-type: none"> <li>• <i>Visitor concerned about friend who now lives in a hostel where "everyone is asleep in their chairs", and the friend is very unhappy. Friend is living in supported accommodation after leaving private rental unit. Has been told that if she wishes to stay in Lodge, she has to come up with \$125,000, visitor said her friend has no money.</i></li> </ul>
13. to access social and legal services to enhance capacity for autonomy and provide protection and care;	<ul style="list-style-type: none"> <li>• <i>An older woman from a non-English speaking background sold her house and gave the money to her son and daughter-in-law to reduce their mortgage in return for a home for the rest of her life. The son's marriage ended, the house was sold and because our client's name was not on</i></li> </ul>

	<p><i>the title, she got nothing. But Centrelink treats it as though she gave the money away in order to get a pension. She has no money, no home and waiting lists for public housing are so long.</i></p> <ul style="list-style-type: none"> <li>• <i>Resident for 20 years in ministry housing has a neighbour who is dealing drugs from his unit. Been to the police, the ministry, and the magistrate's court without success. Would like to know what rights she has as a senior in this situation? Not afraid of her neighbour even though he is threatening, and tells lies about her. She says, "he is all talk." She just wants to stop the drug dealing outside her home. Not prepared to move, believes neighbours &amp; ministry have breached their agreement to a "peaceful neighbourhood"</i></li> </ul>
14. to utilise appropriate levels of institutional care which provide protection, rehabilitation and social and mental stimulation in a humane and secure environment;	<ul style="list-style-type: none"> <li>• <i>Case manager - client is to be discharged from hospital next week. Is being evicted from unit - has nowhere to go.</i></li> <li>• <i>My mother was in a nursing home, in her nineties, physically dependent but mentally very alert. She was put in with mostly people with dementia and she had no one to talk to.</i></li> </ul>
15. to exercise human rights and fundamental freedoms when residing in any shelter, care and treatment facility including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and quality of life.	<ul style="list-style-type: none"> <li>• <i>Independent living unit (ILU) resident where operator wants all residents to have emergency buttons, which the residents feel they do not want or need. It is not in the contracts that they signed. While the owners say that the devices will be provided free, the residents do not want to pay the yearly charge.</i></li> </ul>
<b>Self - fulfilment</b>	
Older persons have the right:	
16. to pursue opportunities for the full development of their potential;	<ul style="list-style-type: none"> <li>• <i>Worker concerned about client with disability aged 59/60 living in hostel who is still mentally active &amp; being given no activities to challenge her. Provided details from Human Rights Charter re accommodation rights. Referred caller to Commissioner.</i></li> </ul>
17. to access the education, cultural, spiritual and recreational resources of society.	<ul style="list-style-type: none"> <li>• <i>Caller lives in an ILU &amp; wants to get an electric scooter, but has been told by the administrator that it has to be locked up. She has offered the foyer but the scooter would not be available after 5pm. Has had someone from the local service club come along &amp; identify a place for locking up the scooter but the administrator is not happy about this.</i></li> </ul>

<b>Dignity</b>	
<p>Older persons have a right;</p> <p>18. to be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and to be valued independently of their economic contributions;</p>	<ul style="list-style-type: none"> <li>• <i>The people at Centrelink treat me as if I did something illegal. ...she stood on a raised platform looking down on us, a whole queue, all elderly folk. I asked if there was somewhere I could sit down and she said "No, you stand there!" I've never done anything dishonest in my life.</i></li> <li>• <i>Caller ringing on behalf of a friend, who is in her 80s and rejected by Multi-purpose Taxi Program (MPTP) because her disability was not considered permanent or severe enough. Friend has vertigo but also recently had a fall. Caller also added that there is no public transport in her friend's area and she lives a distance from her doctor and shops.</i></li> <li>• <i>A COTA member encouraged a friend to ring about extremely poor service by "disability taxi" services. She spoke of people booking a disabled taxi and having to wait an hour, sometimes missing medical appointments.</i></li> <li>• <i>Caller aged 80 lives in the country, has twice applied for MPTP &amp; been refused. Has regular doctor's visits; cost of taxi is \$20, no other option for travel. Has tried council, they referred caller to Carelink, referred to Red Cross. No assistance available.</i></li> </ul>
<p>19. to live in dignity and security and to be free of exploitation and physical or mental abuse;</p>	<ul style="list-style-type: none"> <li>• <i>Worker assisting a couple about to be evicted from a retirement village (RV). Helping them to find alternative accommodation. Names are down at various independent living units etc, and in the meantime they have found private rental. Worker concerned that the RV will probably end up retaining \$40,000 of the \$70,000 deposit that they paid for their unit, which will mean that it has cost them \$5000 a month to live there over the past 8 months.</i></li> <li>• <i>She rents a rundown unit. Gets rent assistance, but she's finding general cost of living too much. Right now she has a refrigerator that isn't properly sealed and is costing her a lot in electricity. But there are only low-cost loans available to help her replace it. She's been on a waiting list for a couple of Independent living units, but the waiting lists are very long. She also has health problems, and her private doctor doesn't seem very helpful. Her landlord lives in the unit to which her rented granny flat is connected: she's expected to do the gardening, which she can't do. Doesn't even have a separate mailbox, so doesn't always get her mail. Is afraid to make any complaint.</i></li> <li>• <i>Caller concerned about mother who is living in rented accommodation without heating - landlord refuses to supply heating other than in the bathroom.</i></li> <li>• <i>Person gathering info for older friend, who has been renting a room for the past 15 years in a</i></li> </ul>

	<p><i>private home. Owner has developed a psychiatric illness and may need to go in to care. The older friend is concerned that the family will then sell the home.</i></p> <ul style="list-style-type: none"> <li>• <i>Caller, a pensioner, living in private rental. Rent has recently gone up \$170 per month. He has been to Centrelink &amp; has been told he is currently receiving maximum in rent assistance. Caller said he would have to move. Has lived in the area all his life.</i></li> <li>• <i>Caller asking for assistance with housing for both her &amp; her husband. Currently in private rental. Appeared very distressed, crying, and pleading for help. She said both she &amp; her husband were unwell.</i></li> </ul>
<p>20. to exercise personal autonomy in health care decision making, including the right to die with dignity by assenting to or rejecting treatment designed solely to prolong life.</p>	<ul style="list-style-type: none"> <li>• <i>Caller aged 80, had pneumonia &amp; was put into coma, is now in a wheelchair - wants to die.</i></li> <li>• <i>In the hospital in the same room with my mother, there was a woman with dementia. She was fed by tube and she was constantly pulling the tubes out, used to get very agitated when the staff put them back in. The rest of the time she was quiet, no trouble at all. To me, it was quite clear she didn't want to be fed; she wanted to be allowed to die.</i></li> <li>• <i>My father's over 80 and has been in a coma for a long time now. I know he'd hate it if he was aware of what's going on. I've asked his doctor why Dad can't be let die but the doctor says my sisters won't agree to it.</i></li> </ul>

### **3. How could Australia better protect and promote human rights?**

A Human Rights Act would require the Federal Government, its public servant and funded organisations to take human rights into account when drafting laws and implementing policies, particularly relating to vulnerable people such as older people.

A Human Rights Act would underpin a rights based framework for service providers so that the rights of older people are a key focus and primary concern when assessing their needs and interests and in delivering services to them. Family members, friends and those providing professional services to older people could be held morally, if not legally, accountable and in some instances, a Human Rights Act could support legal action.

Human rights may not be protected from abuse within the sphere of a person's private life, however a Human Rights Act gives moral guidance for ethical behaviour by those in a position of trust in relation to vulnerable people. A Human Rights Act will help to foster a community culture of respect for human rights. It will raise awareness and understanding of human rights to underpin all levels of society and hopefully develop a philosophy of placing human rights at the centre of all service delivery and care for vulnerable people.

A Federal Human Rights Act must be accompanied by a community education campaign to raise awareness of human rights and responsibilities in the general community and amongst service providers. Demands that our human rights must be protected also mean that we all have a responsibility to respect the rights of others.

### **Recommendations**

COTA Vic asks the National Human Rights Consultation to recommend that:

- Australia adopt a Charter of Human Rights and Responsibilities
- A national education campaign promotes human rights and responsibilities as the underlying community value for all Australians, to be particularly emphasised in the care of vulnerable people. Such an education campaign would be targeted at service providers, families and carers of older people and of people with disabilities, employers, businesses and the public generally.
- Information, telephone assistance and referral support about the human rights and legal avenues are available to older people;
- A specific education campaign is conducted focusing on financial abuse of older people; the campaign to include financial literacy, targeting seniors, the general community and those in the financial sector, as well as development of protocols by the financial sector to prevent financial abuse;
- Increased funding for legal services for older people.

COTA Vic endorses the submission from Seniors' Rights Victoria and its focus on elder abuse. Their examples of elder abuse and those cited from Seniors Information Victoria clearly demonstrate the need to protect the rights of older Australians with a comprehensive federal human rights framework.