

The National Human Rights Consultation Committee held three days of public hearings in the Great Hall, Parliament House, from 1-3 July 2009. From the almost 40,000 submissions received, the committee invited academics and experts in particular areas of human rights and substantive submission makers, the latter being asked to expand upon or clarify elements in their submissions.

The task of the Human Rights Consultation Committee is to report to the Commonwealth Attorney General on 31 August 2009 on matters around the protecting and promoting of human rights in Australia. In particular, a major issue has been the advantages and disadvantages of the enactment of a Commonwealth Human Rights Act or Charter.

Council on the Ageing Victoria (COTA Vic) and Seniors Rights Victoria (SRV) were invited to make an oral presentation. President Janet Wood spoke on Day 1 when the theme was 'How are human rights and responsibilities presently protected and promoted in Australia?' The sub-theme was 'The human face of those who miss out.' The following is an edited version of the presentation.

National Human Rights Consultation
Oral Submission
1 July 2009

1. Thank you for this opportunity to speak to two submissions
 - i. COTA Vic (Council on the Ageing Victoria)
 - ii. Seniors Rights Victoria
2. **COTA Vic** is a community-based organization of, by and for older Victorians aiming to bring about positive change for older persons. (see p.2 of the submission)
3. **Seniors Rights Victoria** is a specialist community legal service funded by the Victorian government to work with and for older people suffering abuse. It is jointly managed by COTA (as the lead auspice), Public Interest Law Clearing House (PILCH), Eastern Community Legal Centre and Loddon Campaspe Community Legal Centre. (see p.6 of the SRV submission)
4. While acknowledging that not all matters of concern to older persons are remediable by legislative action, both COTA Vic and SRV are firm in their support for the introduction of a Commonwealth Human Rights Act/Charter.

5. Why? In this brief time, I wish to emphasise two issues: ageism and its debilitating effects on older people and the abuse of older persons which obviously demeans and disables.
6. The COTA Vic submission expresses concern for the **elimination of ageism and discrimination against people for reasons of age**. Ageism is endemic and entrenched in the language and expectations of our society. Remedying this is a task wider than the enactment of a Human Rights Charter but such an Act would carry with it a significant signal that ageism is real, it is not neutral or funny and that it discriminates and degrades.
7. More particularly, ageist attitudes and misunderstandings about ageing provoke and are used to justify discriminatory legislation and practices. Particular chronological ages are used to reduce or limit participation in employment, access to medical treatments, superannuation, the holding of a driver's licence and in ways which are often a great surprise to hale and healthy Australians on the celebration of particular birthdays.
8. While all people would or should benefit from the enactment of a Commonwealth Charter of Human Rights, COTA Vic believes it is timely to **specify rights of particular applicability to older people**. This is not because all older people are vulnerable in the same way or to the same degree. However, a minority are extremely vulnerable and disadvantaged and most will need to access services to some degree as they age. Health and aged care are obvious areas of interest to older people and the Commonwealth has specific responsibilities for these.
9. When asked about their own needs and aspirations, older people often emphasise qualities such as independence, choice, participation, self-fulfilment, dignity, security and access to high quality care. That is, what older people affirm is that they wish **to continue to be treated as decision-making human beings**. A Commonwealth affirmation of the human rights of each individual in this country offers a base for this.
10. The second issue to emphasise comes from the submission of **SRV**. On p.34, it lists human rights which also focus on a recognition of the on-going self-hood of people, regardless of age. This list is developed in the context of SRV's work with older people and for older people who suffer abuse.
11. This submission points to both **the public and the private spheres** in which there is **overt abuse**. It notes that current Commonwealth legislation and policies do not at this time offer adequate protection for older persons. It also notes that both the UN Principles on Older Persons and the Commonwealth House of Representatives Report on Older People and the Law (2007) indicate an awareness of the importance of recognizing rights of particular relevance to older people.

12. We believe that a human rights base can gradually and subtly alter the assumptions made on behalf of especially the older old by their families or service providers that 'this is for your own good.' In our experience this can actually trigger abuse. 'Mum will be better off in nursing care' 'Dad doesn't really need his car anymore.'
13. The 'infantilisation' of older people assessed as needing care is well-documented. It is certainly feared by older people themselves. Many of the case studies in the submissions relate to the assumption that age and some infirmity together result in a responsibility of family or service providers to **take choice away from that person.** The right to liberty of movement and liberty of association for example ought not to be taken away from any person without the most careful assessment of the balance between personal choice and protection. Another example, a human rights base might not change assessments of best practice for people with dementia but at the least it preserves the sense of the integrity of the individuals so afflicted.
14. The submission acknowledges that legislation is most effective in the public sphere and has limits in its application to the private sphere. This is particularly so where abuse of older persons is the quiet abuse in the home. It can take the form of physical abuse, neglect, and more often financial abuse. We believe that the highlighting of the rights of older people in a Human Rights Act will have the consequential effect of raising awareness of abuse disguised as care.
15. We do not believe that the enactment of a Commonwealth Human Rights Act (Charter) will result in an immediately transformed Australia. We do believe it is a most important part of building a better society. Our submissions point to the need for awareness raising and community education backed by practical assistance to accompany legislative action. Our submissions point to the need to specify older people as a category for particular consideration.

Janet Wood
President
COTA Vic
Chairperson
SRV Management Committee