

**Joint submission by AGE Platform Europe, HelpAge International, The Law in the Service of the Elderly,  
National Association of Community Legal Centres Australia<sup>1</sup>  
Open-Ended Working Group On Ageing, 8<sup>th</sup> Working Session, 5-7 July 2017**

**Equality and non-discrimination**

**Authors\***

1. This joint submission is authored by Robin Allen and Dee Masters (Cloisters UK), Andrew Byrnes (Australian Human Rights Centre, University of New South Wales), Israel Doron (The Law in the Service of the Elderly/University of Haifa), Nena Georgantzi (AGE Platform Europe / National University of Ireland Galway), Bill Mitchell (National Association of Community Legal Centres, Australia) and Bridget Sleap (HelpAge International). Our views do not necessarily reflect the broad and consensual positions of the organisations we represent, which will be submitted separately.

**Context of Response**

2. This response addresses the guiding questions from a global perspective. It is an executive summary of a more comprehensive statement which will be provided to the 8<sup>th</sup> working session and can be found [here](#).

**Guiding Question 1**

3. Globally, States' constitutions provide little in the way of specific protections for older persons. Legal protections in legislation include specific guarantees of equality and non-discrimination. Characteristically these schemes are inconsistent with respect to:
  - Key definitions
  - Explicit protections for age (or old age)
  - Application to employment
  - The areas of life they engage and what they prohibit
  - The scope of exceptions and exemptions
  - Coverage for multiple or cumulative discrimination
  - The extent of any special measures
4. Constitutional or legislative protections should:
  - Explicitly recognise age discrimination.
  - Recognise that ageism manifests as stereotyping, prejudice, discrimination, harassment, vilification, abuse, exploitation, neglect and violence and results in social injustice, exclusion and discrimination in every aspect of life.
  - Recognise there is no specific or universal age at which a person can or is likely to experience ageism and related discrimination on the basis of older age.
  - Recognise that age categories can be discriminatory and exclusionary so require careful and detailed justification.
  - Ensure that people are treated equally regardless of age whilst simultaneously permit differential treatment in order to ensure equal opportunity or equal access.
  - Recognise that differential treatment on the ground of age currently considered acceptable is inconsistent with the human rights principles of non-discrimination and equality, and justification tests used to assess acceptability are contaminated by ageist stereotypes, assumptions and exclusionary attitudes.
5. The consequences for a normative framework include:
  - A static, single chronological age-based definition of an older person or older age is an inappropriate basis.
  - Equality in older age is the full participation and inclusion of older persons in all aspects of society based on the equal respect for the dignity of older persons.
  - Discrimination should be defined as including:

*Any act or omission in relation to that person or someone associated with them, including a policy, law, rule, practice, requirement, condition or situation, which directly or indirectly and without objective justification:*

- a) *Creates less favourable treatment*
- b) *Imposes burdens, obligations or disadvantages on*
- c) *Withholds benefits, opportunities or advantages from*
- d) *Undermines the human dignity of*

---

<sup>1</sup> AGE Platform Europe, HelpAge International and the National Association of Community Legal Centres Australia are NGOs that enjoy consultative ECOSOC status. The Law in the Service of the Elderly is an NGO accredited to the OEWGA.

\* For further information contact Bridget Sleap [bsleap@helpage.org](mailto:bsleap@helpage.org)

e) *Adversely affects the equal enjoyment of rights and freedoms by*

*any older person on the basis of their age or perception of their age, or on the combined effect of their age and another personal characteristic, or the combined effect of any two or more characteristics, or causes or perpetuates systemic disadvantage.*

- General obligations on States to ensure both formal and substantive equality in older age must be comprehensive and wide-ranging.
- The material scope of any right should provide for the prohibition of and guarantee of effective legal protection against discrimination in every aspect of life without limitation.
- The right must engage all forms of discrimination in older age including direct, indirect, by association, by perception or imputation, harassment.
- The right should protect older persons from discrimination on the basis of the combined effect of their age and another personal characteristic, whether or not age is the dominant or substantial reason, or the combined effect of any two or more characteristics.
- The right should provide for protection against discrimination on a single occasion or a number of occasions over time, across domains, across generations, or across a life course.
- The grounds upon which multiple discrimination may occur should be comprehensive.
- The right should provide for protection against structural and systemic ageism and the attendant obligations on States should be comprehensive.
- The right should provide protection for particular groups of older persons who suffer discrimination and denial of rights on heightened or systemic basis and/or as a common experience.
- Special measures and positive action should be provided for to ensure equality and non-discrimination in practice and a genuine benefit intended to address disadvantage.
- States should take account of accumulating discrimination when fashioning redress and reparation for age discrimination, including where appropriate in any award of damages. Assistance provided to older persons in making claims should be tailored and comprehensive.

#### **Guiding Questions 2. & 3.**

6. To ensure information, research and public awareness around equality and non-discrimination in older age States should:
  - Raise awareness of the rights and capacities of older persons
  - Counter any discriminatory systemic ageist perceptions of and practices towards older persons and older age
  - Eliminate any harmful traditional practices which affect the human rights and dignity of older persons
  - Promote awareness of the benefits of age equality and of investing in old age
  - Promote a positive image of ageing
  - Eliminate any ageist institutional, systemic or structural practices which affect the human dignity of older persons
  - Undertake or promote research on ageing and on issues particularly affecting people in older age, and ensuring data is collected, disaggregated, analysed, utilised and disseminated by all ages and sex
  - Provide accessible, appropriate information to older persons on their rights and entitlement to benefits and resources
  - Engage and make older persons partners and active participants in shaping social policies and public programmes which relate to their rights and interests.

#### **Guiding Question 4.**

7. Exceptions diminish the importance of age discrimination and the seriousness with which age discrimination is treated and reinforce and perpetuate negative ageist attitudes and practice and magnify the way discrimination is felt. Therefore:
  - The prohibition of discrimination and unequal treatment in older age should not be subject to a wider range of exceptions to the principle of equal treatment than is permitted for any other prohibited ground.
  - Any exceptions, including age proxies, require specific justification and review under a duty to consider the differential impact of all decisions on older persons.
  - Permissible justifications must not undermine human rights principles including those of non-discrimination, equality and dignity.