

22 April 2026

HE Ambassador Carlos Mario Foradori
Chair Rapporteur
Intergovernmental Working Group on Older Persons
C/- IGWG Secretariat
Office of the High Commissioner for Human Rights
United Nations
Geneva

By email: OHCHR-SecretariatIGWGOlderPersons@un.org

Dear Chair

Input on a legally binding instrument on the human rights of older persons

1. The Law Council of Australia appreciates the invitation of the Intergovernmental Working Group on Older Persons (**IGWG**) to make a submission regarding the general framework, architecture and guiding principles of a legally binding instrument on the human rights of older persons.¹
2. The Law Council represents the Australian legal profession at the national level, speaking on behalf of its constituent bodies on national and international issues, including human rights issues.
3. The Law Council thanks its National Human Rights Committee, National Elder Law and Succession Law Committee, the Law Society of New South Wales, the New South Wales Bar Association, the Law Society of Western Australia, the Queensland Law Society and the Law Society of South Australia for their contribution to the preparation of this submission.
4. At the outset, I would like to underline the Law Council's strong and longstanding support for a legally binding instrument on the human rights of older persons.² The Law Council recognises that older persons face specific human rights challenges including poverty, age-related discrimination and abuse. This has been confirmed in the Australian context in official reports,³ including of the Royal Commission into Aged Care Quality and Safety.⁴ It is also reflected in the Australian Government's

¹ IGWG, [Call for inputs](#) (22 April 2026).

² See eg Law Council, [International Convention on the Rights of Older Persons](#) (Media release, 9 October 2020).

³ See eg Australian Institute of Family Studies, [National Elder Abuse Prevalence Study: Final Report](#) (December 2021).

⁴ [Royal Commission into Aged Care Quality and Safety](#) (Website).

*National Plan to end the Abuse and Mistreatment of Older People 2026–2036.*⁵ The development and implementation of such an instrument would provide the strategic architecture to underpin action by States parties, civil society and communities to more effectively protect the rights of older persons.

Question 1: What overarching framework should guide the international legally binding instrument on the human rights of older persons? Additionally, how can it best reflect and reinforce the recognition that older persons are rights-holders entitled to the full and equal enjoyment of all human rights and fundamental freedoms?

5. The Law Council shares the view of the Global Alliance for the Rights of Older People that a legally binding instrument should be a comprehensive instrument incorporating an overall vision of “transformative change, substantive rights, State obligations and national and international frameworks for accountability”, informed by the lived experience of older persons.⁶
6. We suggest that principles derived from the existing core human rights treaties should be the starting point for the legally binding instrument.⁷ This approach would help to situate the legally binding instrument within the existing international human rights landscape, and appropriately recognise the compounded challenges faced by older people with a range of protected attributes. It should also incorporate, as appropriate, elements of relevant non-treaty instruments such as the UN Declaration on the Rights of Indigenous Peoples.⁸
7. Although existing international treaties apply to older persons, in practice they have not translated into consistent, tailored, practical protections for older persons’ rights. This is due not merely to the existence of isolated gaps, but is the result of a limited perspective and underlying conceptual framework that is not built on the experiences of older people in all their diversity. A dedicated instrument would help to remedy those limitations. The conceptual framework for the legally binding instrument must draw on and be tailored to older persons’ experiences and rights protection needs. It must also draw on relevant Treaty Body and related jurisprudence since the last core instrument was adopted approximately 20 years ago that has advanced human rights standards and protections generally and in relation to older persons

⁵ Australian Government, [National Plan to End the Abuse and Mistreatment of Older People 2026-2036](#) (Report, March 2026).

⁶ GAROP, [Conceptual Framework, Underlying Principles and Possible Scope of a New Legally Binding Instrument on the Human Rights of Older Persons](#) (Discussion Paper, January 2026), 4-6.

⁷ Namely the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976), *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 1965, 660 UNTS 195 (entered into force 1965), *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008); *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), opened for signature 20 November 1989, (entry into force 2 September 1990), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1948, 1465 UNTS 85 (entered into force 26 June 1987).

⁸ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007).

specifically.⁹ At the same time, the Law Council emphasises that this area is evolving and is dynamic and the new legally binding instrument should embody the most up-to-date thinking about ageing and the human rights of older persons.

8. Australian legal practitioners report that older persons are too often treated as problems to be managed, rather than a societal group with enforceable rights. In practice, laws relating to older people too often operate in systems that assume decline, dependency, or incapacity purely because of age. A new binding instrument will have real legal and normative value if it clearly affirms that growing older does not dilute a person's legal personality, dignity, or entitlement to human rights.

Question 2: What core principles should underpin the legally binding instrument, to ensure it effectively protects the rights of older persons? In addition, how can the legally binding instrument both reaffirm existing human rights for older persons and clearly identify and address gaps where further normative development is required?

9. We acknowledge that 'core principles' have been the subject of discussion at each annual Open-ended Working Group on Ageing meeting since 2010, as well as the inaugural meeting of the IGWG in February 2026.
10. From the Law Council's perspective, core principles that ought to be included in the instrument include:
 - (a) protection for the autonomy, agency and dignity of individuals;
 - (b) freedom from all forms of abuse of older persons, including financial abuse and neglect, as well as treatment that could amount to torture or cruel, inhuman or degrading treatment or punishment;
 - (c) recognition of older persons' legal capacity;
 - (d) guarantees of equality (including gender equality) before, and support to participate meaningfully in, legal and administrative processes and public life more broadly;¹⁰
 - (e) guarantees of non-discrimination on the basis of age (including for intersectional, multiple and cumulative discrimination, as well as discrimination based on perceptions of age) across healthcare, housing, employment, aged care and community services, financial services and other areas of life;
 - (f) guarantees of accessibility and living independently akin to those in the Convention on the Rights of Persons with Disabilities;¹¹ and

⁹ For example, in 2009, the Committee on Economic, Social and Cultural Rights concluded that age is a prohibited ground of discrimination under the International Covenant on Economic, Social and Cultural Rights in "several contexts" – see Committee on Economic Social and Cultural Rights, *General Comment No. 20* (2009), [29]. It should also be acknowledged that the CEDAW (in article 11) and Convention on Migrant Workers (in article 7) specifically refer to discrimination on the ground of age.

¹⁰ The IGWG should draw on the experience of implementation of Article 12 of the CRPD in developing the relevant provisions.

¹¹ See CRPD, article 9 and 19.

- (g) access to affordable, safe, secure and suitable living arrangements.
11. Like the Convention on the Rights of Persons with Disabilities (**CRPD**), a legally binding instrument on the rights of older persons should also include measures to combat ageist stereotypes, prejudices and harmful practices,¹² as well as obligations to include older persons and their representative organisations in national implementation and monitoring of the legally binding instrument itself.¹³
 12. We note that this list should not be taken to be exhaustive, and may be subject to reconsideration further into the drafting process.
 13. In addressing these principles, the new legally binding instrument should build on and strengthen existing human rights law, including any jurisdictional provisions and obligations concerning access to justice and effective remedies. It should reaffirm the application to older persons of civil and political rights, as well as economic, social and cultural rights, while complementing existing language with formulations responding to the diverse experiences of older persons. A new instrument should clearly identify and address gaps as identified by the Open-Ended Working Group on Ageing,¹⁴ and other limitations and deficiencies in the existing international framework identified by the Independent Expert on the enjoyment of all human rights by older persons, the OHCHR, older persons and their representative organisations and other stakeholders.¹⁵ Those gaps, limitations and deficiencies span and intersect with various existing rights and include the issues of equality and non-discrimination; violence, neglect and abuse; autonomy and independence; access to justice; and the right to work.¹⁶
 14. The drafting process should involve working in close consultation with older persons and their representative organisations, and the instrument should be based on the lived experience of older people.

Question 3: What overall structure or architecture should the legally binding instrument adopt to ensure clarity and effectiveness? For example, should it include a preamble, definitions, general principles, general obligations, specific rights, and implementation provisions?

15. Existing core treaties such as the CRPD provide a sound model for the structure of a new legally binding instrument. As the UN Independent Expert on the enjoyment of all human rights by older persons suggested at the IGWG Organisational Session in February 2026, a legally binding instrument should include a preamble, general principles, definitions, general obligations and specific rights concerning older persons, remedies, and implementation and monitoring provisions (including specific

¹² See CRPD article 8.

¹³ See CRPD articles 4(3) and 33(3).

¹⁴ United Nations, [Report of the Open-Ended Working Group on Ageing](#), UN Doc A/AC.278/2024/2, 6-10.

¹⁵ See in particular OHCHR, [Update to the 2012 analytical outcome study on the normative standards in international human rights law in relation to older persons](#) (Working paper, March 2021); also OHCHR, [Normative standards and obligations under international law in relation to the promotion and protection of the human rights of older persons - Report of the United Nations High Commissioner for Human Rights](#), UN Doc A/HRC/49/70 (2022).

¹⁶ United Nations, [Report of the Open-Ended Working Group on Ageing](#), UN Doc A/AC.278/2024/2, 8.

reporting obligations, oversight mechanisms and age-disaggregated data collection).¹⁷

16. Definitions will need to be carefully drafted to support the overall clarity and effectiveness of the new legally binding instrument. The Law Council supports the development of an inclusive definition of “older persons”, given that conceptions and definitions of that term and “older age” differ from one social context to the next.¹⁸ UN documents in the past have defined an older person as someone over 60.¹⁹ However, more recently the OHCHR has observed that:

*Older persons are the most heterogeneous of all age groups and cannot be defined through a single age limit. For human rights purposes, age is not merely a numerical designation. It is a social construct based on custom, practice and the perception of the role a person plays in the community.*²⁰

17. A legally binding instrument should affirm this social variability, and recognise that an older person’s experiences over the course of their lives can significantly affect the enjoyment of their rights in older age.²¹ Life expectancy—particularly for social groups facing particular health challenges—may also be relevant in this discussion.²²
18. In developing a legally binding instrument, the IGWG should also seek to ensure robust protections for older persons’ rights against the full range of challenges to their enjoyment. These include, but are not limited to, poverty, climate change, armed conflict, risks posed by emerging technologies, disasters, public health emergencies, financial and economic crises and burdens on health systems, including from ageing populations.²³

Additional comments

A legally binding instrument’s potential impact in Australia

19. As recently recognised by the Human Rights As We Age Network, the development of this instrument is a “critical step in affirming and articulating the human rights of older persons and helping to frame domestic law and policy in a rights-consistent manner”.²⁴ We note in this respect that there is a long-running civil society campaign

¹⁷ Claudia Mahler, [Oral Submission to the Intergovernmental Working Group on the human rights of older persons](#) (18 February 2026). See further GAROP, [Conceptual Framework, Underlying Principles and Possible Scope of a New Legally Binding Instrument on the Human Rights of Older Persons](#) (Discussion Paper, January 2026), 9-12.

¹⁸ Carroll L. Estes, Simon Biggs and Chris Phillipson, *Social Theory, Social Policy and Ageing: A Critical Introduction* (Open University Press, 2003); also Chris Phillipson, *Reconstructing Old Age: New Agendas in Social Theory and Practice* (London, Sage Publications, 1998).

¹⁹ See eg UN Department of Economic and Social Affairs, *World Population Ageing 2019: Highlights*, UN Doc ST/ESA/SER.A/430 (2019).

²⁰ United Nations OHCHR, [About the human rights of older persons](#) (2026).

²¹ GAROP, [Conceptual Framework, Underlying Principles and Possible Scope of a New Legally Binding Instrument on the Human Rights of Older Persons](#) (Discussion Paper, January 2026), 4-5.

²² See eg Australian Institute of Health and Welfare, [Older Aboriginal and Torres Strait Island people](#) (2024).

²³ United Nations, [Report of the Open-Ended Working Group on Ageing](#), UN Doc A/AC.278/2024/2, 8.

²⁴ AHRC, [Advancing the Human Rights of Older Persons in Australia: Support for a national Human Rights Act](#) (Media release, 6 March 2026).

for Australia to adopt a federal Human Rights Act,²⁵ for reasons including to advance the rights of older persons.²⁶

20. A legally binding instrument could have constructive implications across a range of areas of Australian law, particularly in relation to guardianship and administration regimes, aged care legislation and healthcare consent frameworks. While Australia has had major reforms in key areas, significant inconsistencies and protection gaps remain across State and Territory legal frameworks—particularly for older persons with cognitive impairment.
21. A major issue facing some older Australians is their ability to exercise their legal capacity and to have their will and preferences respected in decisions about their lives, including in contexts such as healthcare, housing and finance. Concerns persist that existing guardianship and administration regimes can, in practice, limit participation by older persons, particularly where capacity assessments are applied in a way that does not adequately support decision-making.
22. Under Australia’s federal system, guardianship is regulated by State and Territory laws. Some States and Territories have moved to align their guardianship laws with the CRPD, by replacing the previous “best interests” test with a supported decision-making framework in which the objective is to ensure that the older person’s will and preferences are respected. Efforts to bring about harmonised laws on this issue that are consistent with the CRPD have not yet succeeded; nor has harmonisation proved possible in relation to powers of attorney and advance care directives.
23. Australia’s ratification of the CRPD was subject to an interpretive declaration which relevantly states:

*Australia recognises that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards.*²⁷
24. Decision-making supports need to be considered in the development of a legally binding instrument. Care should be taken to avoid States parties interpreting the treaty in a manner that unduly restricts the exercise by older persons of their legal capacity. There should be clear acknowledgment that the simple fact of a person being “older” or of having a diagnosis of a neurological disorder such as dementia in and of itself should not diminish the person’s agency to participate in decision-making processes (ie there must always be a baseline presumption of autonomy and legal capacity, and any assessment of capacity should be functional and decision-specific rather than based on age or diagnosis alone). The development of the new instrument should also account for dignity of risk, a concept that is increasingly well-recognised, for example in relation to persons with disabilities.²⁸ Apart from decision

²⁵ Law Council, [Federal Human Rights Charter](#) (Policy statement, November 2020).

²⁶ AHRC, [Advancing the Human Rights of Older Persons in Australia: Support for a national Human Rights Act](#) (Media release, 6 March 2026).

²⁷ UN Treaty Collection, Ch IV (Human Rights), [15. Convention on the Rights of Persons with Disabilities – Ratification Status](#).

²⁸ See eg Aged Care Quality and Safety Commission, [What is dignity of risk?](#) (2022).

making by older people about their own lives, it would also be appropriate to explicitly guarantee older people's opportunities to participate more broadly in social decision making, including the ability to participate in civic and political life.²⁹

25. One group experiencing intersectional and/or multiple forms of discrimination in Australia is older First Nations Australians. In a written submission to the IGWG Organisational Session held in February 2026, Community Legal Centres Australia observed that:

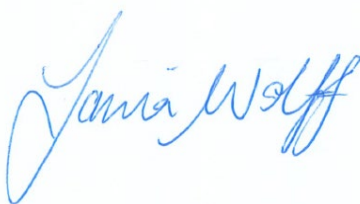
*Older First Nations people have unique human rights needs that reflect their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition and Torres Strait. Older First Nations peoples' participation is also critical to ensure inputs that addresses the intersectional barriers to their self-determination in the context of their older age.*³⁰

26. The Law Council recommends that First Nations representatives of each IGWG Member State (including Australia) be invited to consult on any drafts of the new instrument as early as possible.

Concluding remarks

27. The Law Council welcomes the IGWG's establishment and looks forward to supporting its work in elaborating a new legally binding instrument.
28. If you would like to contact the Law Council in response to this submission, in the first instance please contact Dr Adam Fletcher, Senior Policy Lawyer, [REDACTED], [REDACTED], and Janina Richert, Senior Policy Lawyer, [REDACTED]. We would be pleased to discuss any of the matters mentioned above further.

Yours sincerely



Tania Wolff
President

²⁹ OPAN, [An older person's right to vote doesn't diminish with age](#) (2025).

³⁰ Community Legal Centres Australia, [Written Submission to the Intergovernmental Working Group on the human rights of older persons](#) (8 February 2026).