

Wednesday 1 February 2023

United Nations Independent Expert on the enjoyment of all human rights by older persons

### **Submission on violence against older persons**

We are pleased to have the opportunity to provide a submission on violence against older persons.

We have been carrying out research on violence against older persons in residential aged care facilities in Australia; and how incorporating human rights protections into Aged Care legislation may help prevent this, depending on the enforcement mechanism.

The findings of our research are contained in an article titled 'A New Aged Care Act for Australia? Examining the Royal Commission's Proposal for Human Rights Inclusive Legislation' that will be published in the *University of New South Wales Law Journal* in the second-half of 2023. We are able to provide a link to the [pre-publication version](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4269729) of this article for your consideration:

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4269729](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4269729)

The [abstract](#) of the article is as follows:

The Royal Commission into Aged Care Quality and Safety (RCAC) revealed that abuse and neglect are widespread in residential aged care facilities (RACFs). In 2021, the RCAC's Final Report recommended that a new Aged Care Act be enacted to replace the *Aged Care Act 1997* (Cth), and the new Act explicitly protect the human rights of RACFs residents. The recommendation included five uniquely-formulated rights to be protected, drawing on international human rights law. The overarching aim of this article is to ensure that the new Act adequately respects, protects and fulfils the rights of residents of RACFs. This article begins by exploring the deficiencies in the current regulatory scheme, documenting the significant opportunity for improvement that rights-based legislation represents. The article then examines and critiques the five RCAC-formulated rights, analysing the source of the rights within international treaties, and the meaning and scope of those rights. In addition to implementing aspects of the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination against Women* and the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, the new Act presents an opportunity to more

fully implement Australia's obligations under the *Convention on the Rights of Persons with Disabilities*. The article concludes by evaluating the proposed enforcement mechanisms for the RCAC-formulated rights against international enforcement obligations. The value of an interpretative function is acknowledged. However, limiting separate and direct enforcement to only one RCAC-formulated right (freedom from restraint), with the filtering of other rights violations through a statutory duty relating to high quality and safe care, fails to provide an effective remedy for violations of rights. Effective and accessible enforcement of rights is key to shifting toward a person-centred regulatory approach to RACFs.

Yours faithfully



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