

# THE NEW OLD AUSTRALIA: HUMAN RIGHTS AND THE ELDERLY

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We are at the very beginning of an unprecedented time in our human history. It is increasingly common for more and more people to live to a greater age than ever before. The proportion of Australians aged over 85 years has doubled in the last decade<sup>1</sup> and the number of centenarians has increased by 235% in the past two decades.<sup>2</sup>

Older people, whether defined as those over 60 years or restricted to those over 85, are as yet, largely invisible under international law. Current international human rights instruments provide limited explicit recognition of the rights of older people.<sup>3</sup> However, the human rights of the elderly are under consideration.<sup>4</sup> This raises particular dilemmas in regard to the issue of health. What might this mean for Australia if we ratified such an instrument?

If a human right to health is to be defended at all costs, it must be definable and able to be interpreted by the judicial system. The World Health Organisation ('WHO') defines the right to health as '*the enjoyment of the highest attainable standard of health*'.<sup>5</sup> This definition is short on specifics, open to interpretation, and its parameters difficult to ascertain. WHO defines health, not as the '*mere absence of disease or infirmity*' but as a '*state of complete physical, mental and social well-being*'.<sup>6</sup> This too, is nebulous, making it difficult to determine what the minimum standard should entail. Also, how much responsibility should an individual bear for maintaining their own health? As medical science continues to diminish the ravages of age and further distances the inevitability of death, does a human right to health for the elderly mean being kept alive against all odds?

Providing such a human right would require greater expenditure by the Australian health system than is current. However, we appear to be already struggling to respond effectively to

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<sup>1</sup> Australian Institute of Health and Welfare *Australia's Welfare 2011* (24 November 2011) Australian Institute of Health and Welfare <<http://www.aihw.gov.au/publication-detail/?id=10737420537&tab=2>>.

<sup>2</sup> Australian Bureau of Statistics 3105.0.65.001 – *Australian Historical Population Statistics, 2014* (18 September 2014) Australian Bureau of Statistics <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3105.0.65.0012014?OpenDocument>>.

<sup>3</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd session, 183 plen mtg, UN Doc A/810 (10 December 1948) Article 25; *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, opened for signature Dec. 18, 1990, 30 I.L.M. 1517 (entered into force July 1, 2003) Article 7.

<sup>4</sup> Office of the High Commission for Human Rights, *Human Rights Council Holds Panel Discussion on the Realization of the Right to Health of Older Persons* (16 September 2011) United Nations Human Rights: Office of the High Commission for Human Rights <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11387&LangID=E>>; HelpAge International, *Strengthening Older People's Rights: Towards a UN Convention: A Resource for Promoting Dialogue on Creating a New UN Convention on the Rights of Older Persons* (January 2010) HelpAge International: A Global Movement for the Rights of Older People <<http://www.helpage.org/what-we-do/rights/strengthening-older-peoples-rights-towards-a-convention/>>.

<sup>5</sup> World Health Organisation, *The Right to Health: Fact Sheet No 323* (November 2013) <<http://www.who.int/mediacentre/factsheets/fs323/en/>>.

<sup>6</sup> World Health Organisation, *WHO Definition of Health* (2003) <<http://www.who.int/about/definition/en/print.html>>.

our aging population, emerging disease trends, and increased costs. A large portion of the health budget is expended prolonging the lives of the very elderly through ongoing long-term management of chronic concomitant diseases. Often this treatment remains medically aggressive even at the very end stages of life. Such practices are occurring in an environment of an aging health workforce, driven by consumer needs, expectations, and sometimes, misconceptions of health and longevity. How much more can we, or should we, spend on survival despite disease?

The concept of aging is unfashionable in contemporary Australian society and the practical realities unpalatable. Managing the reality is ethically and financially challenging. Yet aging we are, with fewer to bear the costs of this unstoppable process. Being and growing old, will not remain invisible for much longer. It compels us to carefully consider an ethical and sustainable way forward so we may meet our responsibilities, whether we subscribe to a universal human right to health for the elderly, or continue on the current path of domestic socioeconomic policy.