

Intervention by Ms Kim Boettcher, NACL
United Nations Open-Ended Working Group on Ageing, 4th Session New York
Tuesday 13 August 2013.

Thank you Mr Chairman for giving me the floor.

I acknowledge the traditional owners of the land on which we meet and I pay my respects to their elders past and present.

I am an attorney representing the Australian National Association of Community Legal Centres. My organisation forms part of a network of independent Community Legal Centres in Australia.

My organisation congratulates the Member States for making the effort to be so involved in this 4th Session. I would like the Member States to take away something to think about for the benefit of older vulnerable people who are not seen and not heard. My clients tell me of their isolation, fear of management at accommodation facilities and their sadness about the elder abuse they suffer. They only talk to me because they have client legal privilege at my independent legal centre.

There is a lot of money involved in the aged care business. All too often there is a significant conflict of interest between making money and caring for the older person. I find this time and again to be true in the cases I run for older people.

I respectfully request that the Member States start thinking ahead to a time after the Convention on the Human Rights for older people is in place. Based on my clients' experience, an international, independent and annual monitoring mechanism is necessary. In brief, a Convention could allow monitoring of Member States the following five main areas:

1. Member States' licensing regimes in relation to Home Care Providers and Aged Care Accommodation providers. The regime should include surprise visits to facilities and reviews of Member States' regimes in relation to for example:

- minimum staff training for home care visits and at aged care homes;
- fire safety and emergency procedures – these are often missing and no drills are carried out. Older people have a **human right to a safe environment**.
- meals and services. There is often substandard food or no culturally appropriate food provided.
- Eviction rates where older people have security of tenure, particularly for dementia patients. They are often thrown out after a short stay in hospital. Through gentrification of suburbs, older people get pushed out of caravan parks, retirement villages and so on. **It's just like a gym membership**- the company makes more money out of turnover. Older people have the right to quiet enjoyment of their property and not to live on a developer's construction site.
- Managers all too often say "no one has ever complained before!" Many want to work in isolation.

2. Monitoring should include a review of national Complaints Boards – their processes and their compliance mechanisms. The views of older people and relatives who have made complaints should be considered. Complaints Commissions ought to have authority and resources to enforce rulings.

We see a lot of complaints about medication, personal hygiene, bed sores, hydration/nutrition, eviction and thefts (especially after the GFC).

Currently in Australia, there is a lack of accountability in relation to aged care providers. If a provider company is found to have been negligent, they are told to change their policy. If a staff member of the provider has been the abuser, they are often moved on to a different facility. There is a “slap on the wrist” which is disproportionate to the suffering of the older person.

There is a multiplicity of rights involved in health and housing. This could be reflected in the Convention. International monitoring could also cover:

3. Review domestic violence Death Review Team or Coroner’s reports, if they exist;

4. Legal Instruments

Legislation and legal instruments should reflect the Human Rights endorsed in the new Convention. Or as the South African representative stated on Monday “there should be explicit legal instruments at the national level”. The flow on from legislation introduced at National level would be that states are aligned for the protection of Rights of Older People.

Power of attorney and guardianship documents are state based and should be national. Attorney shopping for power of attorney and guardianship documents is common. Is the legal instrument a protection for older person or power over the older person?

We recommend that there should be a Family Agreements Register for loans, guarantees, elder apartments (granny flats) and the agreement should be unenforceable without registration.

We recommend a national standard contract for entry into aged care homes. The contract should translate into many languages.

We recommend there should be international offences such as: administering medication unlawfully, unlawful restraint of an elder, aggravated breach of fiduciary duty, and aggravated undue influence. Many such offences exist as general law but are not designed specifically to protect older people- nor are the responses to transgressions suited to the needs of older victims.

5. Review of criminal prosecutions.

The International monitoring could all be a simple combination of an annual questionnaire as suggested in this morning's panel, combined with activity of a special rapporteur. Whatever works most effectively is better than nothing.

In conclusion, if Human Rights of Older Persons are traduced, there must be a swift, effective response by the criminal justice system to remedy the wrong. The United Nations Monitoring system must also be in place.

Thank you.