

Community fact sheet: the Age Pension test case

This court case, started in the Federal Court on the 23rd of September 2021, argues for equal access to the age pension for Aboriginal and Torres Strait Islander people.

What is this case about?

Everyone should have the right to retire and age with dignity. The age pension is designed to support people later in life, when they can no longer work. But the system isn't working as fairly as it should.

As a result of the gap in life expectancy, Aboriginal and Torres Strait Islander people do not have equal access to this important support later in life. Because of the ongoing impacts of colonisation and discrimination, Aboriginal and Torres Strait Islander people have, on average, a shorter life expectancy than non-Indigenous Australians. This means they are less likely to reach pension age, and if they do, they are likely to have fewer years to benefit from it than non-Aboriginal people.

This case argues that having the same pension age for all Australians discriminates against Aboriginal and Torres Strait Islander people. For the pension to be fair, Aboriginal and Torres Strait Islander people should be able to access the pension at least three years earlier, based on national data about the gap in life expectancy.

Who is bringing the case?

The main person bringing the case is Uncle Dennis, a 64-year-old proud Wakka Wakka man who lives in Melbourne. Uncle Dennis says that he has seen too many of his people dying young, and the Government has not done enough to acknowledge or fix this. Many people never get a chance to access the pension. Dennis believes it is time to stand up and do something about this problem.

Dennis's lawyers are VALS and the Human Rights Law Centre, who are supported by DLA Piper and pro bono barristers. The case is a 'representative claim', which means Dennis is bringing the case on behalf of other Aboriginal and Torres Strait Islander people in similar circumstances.

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We also want to hear from Aboriginal and Torres Strait Islander women interested in the case, born between 1 January 1957 and 30 June 1958.

What is the argument?

Everyone should be equal under the law and have the same rights and benefits. This includes the right to social security, like the age pension.

Australia's Racial Discrimination Act allows people to challenge laws that disadvantage them because of their race. If a court decides that the rights of some people are being harmed by a law and that harm is based on race, the court has the power to change the law so that everybody enjoys that right equally.

Because of the gap in life expectancy, Aboriginal and Torres Strait Islander people currently have less access to the age pension and the right to social security.

This case argues that the Racial Discrimination Act requires the Government to give Aboriginal and Torres Strait Islander people the same right to the pension as other people. The case says that Aboriginal and Torres Strait Islander people should be able to access the pension at least 3 years earlier, to account for lower life expectancy and health inequalities.

What happens if the case is successful?

If Uncle Dennis wins the case, it would mean that thousands of Aboriginal and Torres Strait Islander people could get the pension earlier in life. This means people will be better supported to live with dignity in their later years.

This could also be one way of holding the Government accountable for not closing the gap in life expectancy.

Improved access to the pension could also help with progressing other Closing the Gap targets. The pension can improve people's financial security, health and wellbeing, which helps people to live longer and better lives.

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The case won't affect things like access to superannuation or concession schemes, but it might pave the way for other important changes in those areas.

What is the gap in life expectancy?

Aboriginal and Torres Strait Islander men have an average life expectancy 8.6 years lower than non-Indigenous men, and Aboriginal and Torres Strait Islander women's lives are on average 7.8 years shorter than non-Indigenous women. This is based on national data. There are a lot of regional differences, but for Uncle Dennis to run this case, he will have to rely on the national data for his evidence.

That gap in life expectancy narrows the older you get because sadly, many Aboriginal and Torres Strait Islander people pass away in their 30s or 40s.

What is the pension age?

The pension age is gradually increasing for everyone. It is currently 66 years and 6 months. By the year 2023, the age at which everyone can access the age pension will increase to 67 years of age.

For many people, it is too hard to keep working to the age of 67, especially for people who have health problems, caring responsibilities, are living with a disability or have survived racist policies and practices such as the Stolen Generation and forcible removal from country.

How much is the pension?

The age pension increased slightly in September 2021. The maximum pension rate is now \$25,155 per year for single people and \$37,924 (combined) for couples.

The pension is important for people who don't have much superannuation or savings to look after themselves when they can no longer work.

The Jobseeker (unemployment) payment is too low and forces people to do work

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assessments and complete tasks to keep getting payments – it is not designed for retirement.

Who are the other parties to the court case?

The court case is brought against the Commonwealth of Australia, the Minister for Services Australia (the government agency responsible for the age pension) and the Minister for Families and Social Services (who is responsible for the Social Security Act).

Who is affected by this case?

This is a representative claim, which means Dennis is representing people in similar circumstances to him - all Aboriginal and Torres Strait Islander men who were born between 1 January 1957 and 30 June 1958.

If we win, every Aboriginal and Torres Strait Islander man born in those years will be able to apply for the pension earlier. But we also expect the Government would make similar changes for all Aboriginal and Torres Strait Islander people. If they don't, there will likely be more legal action to get the same changes for all Aboriginal and Torres Strait Islander people.

How long will the case take?

We don't know how long it will take to get a decision from the court. Important court cases often take between 6 – 18 months. If the Government agrees this is a problem that should be fixed, there could be a quicker outcome.

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How can I help?

You can support Uncle Dennis and the case by talking about it with your community or posting about it on social media. You can find out more about VALS work [here](#) and HRLC's work [here](#).