

National LGBTI Health Alliance

lesbian, gay, bisexual, transgender, intersex and other
sexuality, sex and gender diverse people and communities
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Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Committee members

The National LGBTI Health Alliance is pleased to comment on Aged Care (Living Longer Living Better) Amendment Bill 2013. While the Alliance broadly supports the principles behind the Living Longer Living Better reform package, we propose to restrict our comments to aspects specifically affecting lesbian, gay, bisexual, transgender and intersex (LGBTI) Australians. Specifically this means the inclusion of LGBTI people as a special needs group and the need to provide assurances to LGBTI people they will be free from discrimination by all aged care providers.

About the National LGBTI Health Alliance

The Alliance is the national peak health organisation for a range of organisations and individuals from across Australia that work together to improve the health and well-being of lesbian, gay, bisexual, transgender, and intersex people and other sexuality and gender diverse people (LGBTI). We support measures which contribute to improved health and well - being for LGBTI Australians.

Formed in 2007, the Alliance includes the major providers of services for LGBTI people in Australia, with Members drawn from each State and Territory. The Alliance provides a representative national voice to: develop policy and to support LGBTI health issues; seek increased commitment to services for LGBTI people; develop the capacities of LGBTI organisations; and support evidence - based decision – making through improved data collection covering sexuality, sex and gender identity.

LGBTI people as a Special Needs group

The Alliance welcomed the inclusion of LGBTI Australians as a Special Needs Status via the Allocation Principles from 1 July 2013¹. This was an important step in increasing visibility of LGBTI Australians within the aged care sector and improving access to culturally appropriate, inclusive and non-discriminatory services. We note and thank all parties for the implied bipartisan support for these changes as this disallowable instrument was not challenged following its introduction.

However at the time we expressed our concern about the distinction between special needs groups located in the principles and located in the Act. We therefore are pleased to see that all

¹ Minister for Health and Ageing, (2012) *Allocation Amendment (People with Special Needs) Principles 2012*, Australian Government, Canberra ACT. Available at <http://www.comlaw.gov.au/Details/F2012L01469>

special needs groups have been included in this bill (Schedule 1, paragraph 6). By including all special needs groups in one location under the legislation, the Parliament is sending a clear non-partisan message that all special needs groups should be viewed to be of equal importance to the aged care sector.

Recommendation 1:

That the committee to note its multi-partisan support for the inclusion of LGBTI people as a special needs group under the Act in its report.

Older LGBTI people – a lifetime of discrimination and persecution

Older LGBTI Australians have lived a lifetime of discrimination. For many, it was illegal to be homosexual for most of their adult life. Additionally, many transgender people were harassed by police or jailed for breaking various laws designed to impose a code of morality upon society that excluded acceptance of LGBTI people. Up until relatively recently, there were increased numbers of family rejection of LGBTI people and increased levels of societal rejection, physical violence and verbal abuse. Some LGBTI people in the 1950's – 1970's were subjected to various medical treatments to "cure" their homosexuality.

It is important to glimpse an insight into the life of older LGBTI Australians in order to appreciate their apprehension about accessing aged care services. For cohorts of older LGBTI people who experienced, supported friends who experienced or simply heard of others subjected to medical treatments, there is an increased level of apprehension of medical services. While aged care services are not strictly medical in nature, many older people in Australia do not make this distinction between "care", "support" and "medical services".

Around 33% of aged care services are provided by faith-based organisations nationally. However on a local level this ranges somewhere between 25% - 100% in a particular aged care region. Most if not all religious aged care providers are committed to providing high quality person centred care irrespective of the client's sexual orientation, gender identity or intersex status. However, many older LGBTI people are fearful of accessing a faith-based service provider. This presents a unique problem in aged care, as some LGBTI people will have restricted geographical access to an alternative provider exacerbated by the lack of availability of services in most areas.

Inclusive practices of providers

The National LGBTI Health Alliance notes that numerous faith-based providers have publicly indicated their non-discriminatory policies towards LGBTI clients. Indeed, some organisations such as UnitingCare NSW.ACT and UnitingCare Wesley in Adelaide have actively sought to engage with older LGBTI people as part of their service delivery plans. Of particular interest are the statements made by three of the largest faith-based service providers in aged care throughout Australia.

Catholic Health Australia²

Catholic hospitals and aged care services do not discriminate in who they employ, provide care to, or accommodate as residents within their facilities. People who identify as lesbian, gay, bisexual, transgender, or people of indeterminate gender will be cared for within Catholic hospitals and aged care services with respect, compassion, and sensitivity.

Anglicare Australia³

The Anglicare Australia network seeks to engage with ALL Australians to build communities of resilience, hope and justice. Our members provide services right across Australia, and do not discriminate on the basis of culture, religion, sexuality or gender.

UnitingCare Australia and UnitingCare Network on Ageing⁴

We deliver aged care services to people regardless of their age, gender, sexuality, ability, class, race, creed or cultural origin. Our position is informed by the Uniting Church's belief that every person is entitled to live with dignity, and we support efforts that further protect these rights.

Despite these policies and the Alliance's genuine belief that these policies are an accurate reflection of faith-based organisations in the aged care system, such policies will not provide the necessary assurances to LGBTI older Australians that it is safe to access services from these organisations.

Many older people have difficulty recognising the distinction between a church body who espoused opposition to their basic human rights over the years and the care arm affiliated with that church. Accordingly, on top of barriers to the aged care system brought about by a lifetime of discrimination, older LGBTI people are hesitant to access faith-based aged care services knowing that such an organisation has a legal right to discriminate against them.

Limitation on faith-based discrimination exemption remains Government policy

In November 2013, the Australian Government introduced the Human Rights Anti-Discrimination bill as an exposure draft for consultation. Included in that bill were provisions to limit the ability of Commonwealth-funded aged care services from being able to discriminate in the provisions of these services. This specific provision of the bill received wide support during the inquiry and minimal opposition. Indeed, as can be seen above by the leading religious organisations, the provision was consistent with their organisational policies.

² Brennan, F 2013 'Clarifying the Anti-Discrimination muddle. Eureka Street', Sydney. Available from: <http://www.eurekastreet.com.au/article.aspx?aeid=35014>

See also comments by Catholic Health Australia CEO Martin Laverty as reported by Australian Ageing Agenda from the Leading Aged Services Australia Tri-state conference February 2013 – see <http://www.australianageingagenda.com.au/2013/02/26/article/Tri-State-highlights/NSHXAXEDIL>

³ See - http://www.anglicare.asn.au/site/latest_news.php?task=detail&id=43

⁴ Media Release 20 November 2012 'UnitingCare Network recommits to eliminating discrimination', Canberra, see http://www.unitingcare.org.au/images/stories/media_releases/121120_mr_unitingcare_network_recommits_to_eliminating_discrimination.pdf

Although amendments to the Human Rights and Anti-Discrimination bill are being considered, the Government has proceeded with the introduction of LGBTI protections in federal anti-discrimination laws without the inclusion of this important aspect.

We note that during his 20 March press conference the Attorney-General Mark Dreyfus reaffirmed the Government's commitment to ensure discrimination did not occur to older LGBTI Australians accessing commonwealth funded aged care services⁵.

MARK DREYFUS: No. We haven't proposed a change to the exemptions that have been there for religious organisations for many years other than, and I'd stress this, the removal of the exemption for aged care services. And that's government policy. That's something that was clearly set out in the bill. We drew attention to it.

It's something I'd add that the responsible minister for aged care services, Mark Butler, has spent a lot of time consulting about. And we would be proposing to go forward with that, not least because there was very, very little criticism, very few of the hundreds of submissions to the Senate Committee raised any objection at all to the removal of the exemption for religious institutions that provide aged care services

Anti-Discrimination protections needed to enhance LGBTI within aged care.

The Alliance welcomes the Australian Government's National LGBTI Ageing and Aged Care Strategy⁶ along with the provisions of this bill to recognise and protect LGBTI Australians accessing aged care services. However, without legal assurances of non-discrimination, the Alliance remains concerned that such initiatives may not achieve their intended outcome.

The Alliance has provided appendices for the committee's benefit, with real life case studies of discrimination that has occurred in aged care settings. While such case studies have been de-identified, to assure those included of anonymity, they are real life examples over the past 6 years of isolated instances of discrimination within an aged care setting. The Alliance does not believe such cases are wide-spread examples amongst the aged care sector, yet they are nevertheless reminders of the need for redress options widely understood by LGBTI people such as anti-discrimination processes.

In the second appendix, we provide for the committee's benefit the conference recommendation of the 8th National LGBTI Health Conference, attended by some 280 academics, service providers, community workers and LGBTI health advocates from across Australia.

⁵ Transcript of 20 March 2013 Press Conference by the Attorney-General of Australia, Canberra <http://www.attorneygeneral.gov.au/transcripts/Pages/2013/First%20quarter/20March2013-TranscriptofpressconferenceCanberra.aspx>

⁶ Department of Health and Ageing (2012) 'National LGBTI Ageing and Aged Care Strategy' Commonwealth of Australia, Canberra. Available from: www.health.gov.au/lgbtistrategy



Recommendation 2:

That the committee introduces consequential amendments to the Aged Care (Living Longer Living Better) Bill 2013 that introduces equitable protections as those contained within the Human Rights and Anti-Discrimination Bill 2012 for the protection of older LGBTI people accessing aged care services.

Such amendments may be through mechanisms of the Aged Care Act or preferably as consequential amendments to the Sex Discrimination Act.

That all parties provide their written support for such protections as part of their committee report into this bill.

We thank you for taking the time to consider this submission. Should you require further information, please contact Warren Talbot

Yours sincerely

Warren Talbot
GENERAL MANAGER

and Corey Irlam
CONVENOR
AGEING & AGED CARE WORKING GROUP

Appendix 1: Case studies of LGBTI aged care discrimination

The following real life examples of discrimination in aged care settings that have been brought to the attention of the National LGBTI Health Alliance. All case studies have been de-identified to respect the need for privacy by the individuals involved.

Case Study 1 – Transgender Client in Residential Care setting

A friend of an elderly transgender woman during a consultation on discrimination issues recounted a story of her transgender friend not being adequately cared for by care staff. The transgender woman was a client of a faith-based residential service and complained to her friend of:

- Overhearing care staff outside her room saying “I don’t want to wash ‘that’ “ and jokes being made around her that she felt was at her expense
- Feeling that staff took longer to respond to her calls than others, including for requests for bedpans
- Being deliberately left without being washed on some days by particular staff
- Being roughly treated during bed washes by a particular staff member

She informed her friend that she didn’t want to make a complaint because it would only make it worse and didn’t want to cause a fuss and had no other choice to accept it and shut up because “church’s have been like that for years to transgender people and they’re still allowed to discriminate against us today”.

The friend however felt this was unacceptable and spoke to the nurse in charge. She was informed that while providing care for residents, the friend need to appreciate that the organisation had a "certain philosophy and religious belief" that was often shared by its workforce. The nurse suggested her friend may be confronting to some staff and people are only human in their reactions. The Nurse in Charge stated that she never knew the staff member in question of being rough with clients and that denied it was possible that it was occurring. No investigation was known to have taken place.

Case Study 2 – Implications of coming out in a residential aged care facility

One older gentlemen living in a low care residential faith-based facility and approached an Alliance member about attending the 2011 conversations by COTA with Minister Butler on the Productivity Commission’s report. In earlier discussions he identified that he was not “out” at the aged care facility, was concerned/fearful about coming out but felt that he would have to disclose his identity as he wanted to discuss being a gay man in a residential facility while at the conversation.

He initially chose to tell select staff members received a mix of responses from supportive, indifference through to disinterest. However when approaching the facility management to arrange transportation, and explaining that he wanted to speak about life as a gay man in a residential facility – managements response was that he should not talk “about that stuff” and refused to / “were unable” to arrange transportation for him to attend. He felt staff stopped speaking to him and those who seemed initially supportive were no longer.

Eventually transportation was organised by a local LGBTI organisation and the man attended the conversation to rapturous applause when he stood up and declared for the first time his sexual orientation and fears about aged care for older LGBTI people.

Case Study 3 – Mental health treatment of ‘gayness’

A gay man over 80 years old who was living in a rural area was admitted to a small faith-based residential facility. After a period of pleasantly being a member of the facility a long-time friend visited and in the course of their discussion with staff the resident’s sexuality was identified. The gentleman started to begin to notice he received less attention and two weeks later was visited by a social worker. Over a period of a few months various consultations related to his “mental health” were taken with a handful of professionals. He commented on a phone call to his friend that he was disturbed by the mental health professionals asking about his sexuality during each of the conversations. The gentleman was transferred from the residential facility to a psychiatric facility. To the friends knowledge he had no history of serious mental health illness and in conversations with the resident after being transferred, the resident indicated he felt his transfer was due to his sexuality and the prejudice of the management at the faith based provider.

Case Study 4: Finding a welcoming environment

A gay man was seeking a residential facility for his partner. He went to two local facilities that happened to be faith-based. During the inspection of the facility he declared his same-sex relationship and inquired if this would be a problem for the facility. He was informed the facility was faith-based and many of its residents were of X denomination and asked if his ‘friend’ would feel comfortable in such an environment. He observed staff was physically uncomfortable after the disclosure. Discussion was initiated by the facility around concerned other residents might act poorly towards his partner if they were to discover he was gay. Both facilities suggested another facility in the area who might be more suited to “your particular needs”. The partner inspected the third facility but felt the financial commitment would be challenging.

He settled on one of the faith-based facilities and his partner moved in. Over a number of months, the partner observed snide remarks, disapproving noises and comments from staff and less than supportive attitudes from the management. He also indicated that he felt he was not given the same information as a husband or wife would be and constantly had to ask probing questions to find out about what was happening with his partner. Eventually after feeling continually uncomfortable and unsupported the partner downsized their home to afford the necessary bond to secure a place in the private sector aged care facility in the area as there were no non faith-based providers in the not-for-profit aged care sector.

Case Study 5: Preaching in your home

An extroverted transgender woman in her late 70s required help to remain in her home following a hip replacement. The local homecare provider was a faith-based provider and arranged for a staff member to attend her home three times a week to help with both domestic and personal support. After the first visit being told of the transgender woman’s colourful history including prostitution and working in an illegal club, the faith-based provider returned for her second visit. Towards the conclusion of her second visit, the worker produced a pamphlet on Jesus Christ and handed it to the client telling her that she had lived a life of sin and should consider finding God. The transgender woman told the worker that she did not appreciate being preached to in her own home and did not believe in God. A colourful discussion bordering on argument ensued during which the worker was asked to leave and take her pamphlet with her. She did leave, but left her pamphlet behind.



The transgender woman's carer rang the provider to complain about the action of the woman and was initially told that the woman was "just doing her job" and as a devout Christian was kindly preaching the good word. The carer sought assistance from the local aged care assessment team to transfer to a secular provider but was informed that the faith-based provider was the only one in the area with available packages. An emailed complaint to the service provider was sent by the carer requesting that another worker would be assigned and this was agreed to by the service provider.

Things appeared to go smoothly for a few weeks until one day the new worker was unavailable and was replaced by a third worker on a temporary shift. The third worker was visibly aghast at the transgender woman's life as they talked and visibly disgusted. Towards the end of the shift she also suggested the transgender woman might like to attend the local church and repent for a lifetime of sin. Following this action, the carer was unable to convince the transgender woman to allow a worker back into her home and she did not receive assistance. A few weeks later an accident occurred at home resulting in the transgender woman being placed back into hospital and finally in a nursing home until she passed away a few months later.



Appendix 2: 8th National LGBTI Health Conference Recommendation

Australia's 8th national LGBTI health conference was held in Melbourne on 18-20 April 2013. Over 287 delegates attended the conference from across Australia. During the conference the below recommendation was passed unanimously and we provide to you for your consideration.

Federal LGBTI Ageing & Aged Care Anti-Discrimination

That the conference resolves:

- 1) to commend the Australian Government and the Minister for Ageing the Hon Mark Butler MP for the development of its National LGBTI Ageing and Aged Care Strategy
- 2) to welcome the introduction of protections for LGBTI people on the basis of sexual orientation, gender identity and intersex status in federal anti-discrimination laws
- 3) to note the Attorney-General confirmed at his press conference on 20 March 2013 that it remains Government policy to prevent older LGBTI people from being lawfully discriminated against by aged care providers, including religiously run providers
- 4) to commend ageing and aged care providers for their stated inclusive policies of providing non-discriminatory services to LGBTI people and notes specifically Catholic Health Australia, Anglicare Australia and UnitingCare Australia for their publicly stated policy positions in this regard.
- 5) to note the significant fear and concerns held by older LGBTI people that ageing and aged care services may continue to discriminate towards them without the protections afforded to them by laws such as anti-discrimination laws.
- 6) to call on the Australian Government to ensure legislation passes before the parliament rises in June to legislate for its stated policy objectives by preventing lawful discrimination by aged care providers against people on the basis of their sexual orientation, gender identity or intersex status.