



27 January 2023

Inspector-General of Aged Care Taskforce,
MDP 411,
GPO Box 9848, Canberra ACT 2601

Via email: IGTF@health.gov.au

Dear Aged Care Taskforce

Draft Inspector-General of Aged Care Bill

LGBTIQ+ Health Australia (LHA) welcomes the opportunity to provide comments on the draft Inspector-General of Aged Care Bill (the Bill). LHA is the national peak organisation promoting the health and wellbeing of LGBTIQ+ people and communities. We are uniquely placed with membership across states and territories and strategically positioned to provide a national focus to improving the health and wellbeing of LGBTIQ+ people.

LHA supports the aims of the Bill to drive improvements in persistent, sector-wide 'systemic issues' in the aged care system. Issues that, according to the Royal Commission into Aged Care Quality and Safety (Royal Commission), included inadequate funding, variable provider governance and behaviour, an absence of system leadership and governance, and poor access to health care.

Lack of a human rights framework

The Bill as currently framed does not include a rights-based approach in line with the recommendations of the Royal Commission for an explicit focus on rights in the new *Aged Care Act*. Specifically, the Bill:

1. Does not mention human rights.
2. Does not mandate the Inspector-General to participate in relevant international human rights procedures or mechanisms.
3. Does not ensure the Inspector-General is enabled to participate in any review of the human rights of older people in aged care as may be undertaken by the Australian Human Rights Commission.
4. Does not commit to funding the Inspector-General to the level required to ensure its capacity to fulfil the above functions.

We call for the inclusion in the Bill of appropriate references to human rights standards and mechanisms, relevant to aged care. In particular, there needs to be stronger alignment with the planned human rights approach of the new Act and to ensure the Inspector-General is able to enforce it.



Health and wellbeing for lesbian, gay, bisexual, trans, intersex, queer [LGBTIQ+] people and sexuality, genders, and bodily diverse people and communities throughout Australia.

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Addressing the needs of LGBTI older people.

In its submissions to the Royal Commission, LHA identified key issues facing LGBTI people with the aged care system. LHA's submission from 4 October 2019 provides an overview of current concerns.¹ LHA's submission from 24 January 2020 on the Future Design of the Aged Care System provides recommendations on the systemic steps needed to properly address the needs of LGBTI older people.² In addressing Future Design, LHA called for the entire aged care system to be re-designed so that LGBTI older people are at the centre of the system rather than resorting to 'safety nets' or adding things onto the system to make it inclusive.

Ensuring future aged care services for older LGBTI people are delivered to high standard of quality and safety – comments to the Royal Commission

In LHA's submission addressing the Royal Commission's Future Design consultation, LHA called for the aged care system to report on the number of LGBTI older people who are accessing aged care services, and those who fall out of the system. This data needs to be made publicly available to ensure equity in service provision for LGBTI older people.

Significant improvements need to be made to the structure of audits and the knowledge and skills of assessors. Consumers, families, carers and all levels of staff should participate in assessments. There needs to be much more rigour, accountability and sanctions for non-compliance.

It is important to involve older LGBTI older people at the organisational governance level. This will strengthen transparency and ensure accountability to maintaining high standards of quality and safety.

Robust and protective complaints and feedback mechanisms provide essential tools for addressing instances of discrimination and abuse of LGBTI older people. Appropriate tools and knowledge enable complaints to be fairly investigated and addressed. However, relying on people to make complaints about poor or discriminatory care unfairly puts the onus on the person to be able to speak up for themselves. Many LGBTI older people do not feel empowered or safe to do this. Embedding processes that enable people accessing aged care services to provide critical feedback in ways that are not perceived as making a complaint will enable LGBTI older people to engage in a safe way.

There needs to be consequences for non-inclusive practices. When service providers cannot demonstrate that they are providing high quality, culturally safe inclusive services this should be reported and acted upon as a serious failure in meeting the requirements of the standards with serious consequences. Failing to be inclusive can cause significant harm to LGBTI older people.

¹ https://d3n8a8pro7vnm.cloudfront.net/lgbtihealth/pages/562/attachments/original/1585600957/National-LGBTI-Health-Alliance_RC_Submission_Oct19.pdf?1585600957

² https://d3n8a8pro7vnm.cloudfront.net/lgbtihealth/pages/562/attachments/original/1594616720/RC_Submission_Future_Design_of_Aged_Care_24Jan20.pdf?1594616720



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Reforms since the Royal Commission

LHA recognises that important reforms have occurred since the conclusion of the Royal Commission. Of note is the introduction of individual package funding from July 2024, as well as the recent roll-out of star-ratings system for residential aged-care services.

These reforms will likely provide for improved services for older people generally. However, they provide no certainty of significant improvements for LGBTI older people. To address the diverse needs of LGBTI older people, the Aged Care system – providers and regulators – must introduce measures to address the specific experiences and needs of older LGBTI people. Improvements are needed in provision of mainstream Aged Care services, given the very limited number of LGBTI specific aged-care facilities that exist, currently less than a handful.

LHA's recommendations in its submission to the Royal Commission focussing on specific communities, identify in detail the necessary steps.³ These measures are grouped into four categories; Training and Education, Cultural Safety, Staff and Systems, and Care and Personal Needs.

LGBTI older people

“Do visibility safely – so that gay consumers/staff aren’t the only people who become advocates for inclusion.”

“People who come out are vulnerable.”

“Remove the pervasive idea that our communities are controversial.”

LGBTI older people have experienced prejudice and discrimination (which may include bullying, harassment, verbal, physical, psychological and/or sexual abuse) over the life course, from government, agencies, faith-based organisations, health providers, businesses, LGBTI communities, families, friends, and individuals. This includes a fear of prejudice and discrimination, which may or may not be warranted in specific circumstances.

These experiences cause LGBTI older people to remain in or return to the closet; be reluctant to reveal their sexual orientation and/or sex and/or gender identity to government agencies and service providers; and be reluctant to make complaints when they experience prejudice or discrimination. As a result, these older people often do not disclose their identities or histories to aged care services and therefore remain isolated or invisible in the sector and the broader community.

Combined with general societal ignorance around LGBTI issues, this results in a lack of awareness of the unique needs of LGBTI older people, including targeted services to support them. In addition, the fear of being mistreated from aged care providers can lead to LGBTI older people delaying seeking care until their health deteriorates or a crisis occurs. LGBTI older people may suffer many forms of discrimination within the aged care environment. These include:

- threats of eviction and refusal of admission to aged care facilities

³https://d3n8a8pro7vnm.cloudfront.net/lgbtihealth/pages/562/attachments/original/1594616717/RC_Submission_Focusing_on_specific_communities_30Jun2020.pdf?1594616717



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- denying of visitors or personal care services
- refusal to allow LGBTI older people to display public affection, to display cultural tokens, artefacts, pictures or memorabilia or couples to share rooms
- preventing partners from participating in medical decision making
- withholding medications
- physical or psychological abuse, neglect and/or abandonment
- being involuntarily 'outed' or threatening to out somebody's gender or sexuality
- being prevented from dressing or presenting according to ones identified gender.

To discuss this submission, the Taskforce can contact Michael Frommer, Policy and Research Lead – Ageing:

Thank you for your consideration.

Yours sincerely

James Zanotto
Policy, Research and Communications Director
LGBTIQ+ Health Australia