

Caring for Older Australians
Productivity Commission
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20 March 2011

Dear Sir/Madam

Re Caring for Older Australians Inquiry

Thank you for the opportunity to make a final submission to the Commission's Draft Report of the above mentioned inquiry.

In addition to comments contained in this submission, GRAI also wishes to be on record as fully supporting the submission of the National Health Alliance. In particular, GRAI strongly endorses the view that LGBTI¹ elders should be given the status of a **special needs group** (by amending the *Allocation Principles 1997*). This classification can help prompt appropriately tailored programs to meet the very real needs of LGBTI elders, who still remain largely 'invisible' to aged care providers.

LGBTI not a subset of CALD

The tendency of the Draft Report to subsume LGBTI issues as a 'cultural difference' comparable to CALD issues is, we feel, problematic and risks misleading those concerned with aged care as to the scale and nature of LGBTI issues.

We note that although CALD communities are dealing with language and cultural barriers, they are not struggling against centuries-old discriminatory 'moral' codes enshrined in religious texts and discriminatory secular laws. CALD elders are not placed in the invidious position of having to pretend they are 'someone else' to avoid overt or covert discrimination. LGBTI elders live with a fear of homophobia – if not actual experience of discrimination – from staff, residents, health professionals, agencies, and indeed the wider aged care system which, by being complicit in maintaining LGBTI invisibility, discriminates by neglect (GRAI 2010:17).

The deep-seated nature of homophobia (fear of homosexuals) and heteronormativity (the presumption and privileging of heterosexual orientation) and the damage this continues to wreak, needs frank and specialised attention. We commend the Draft Report in highlighting LGBTI issues: this is an important step in combating the general invisibility of LGBTI elders in the aged care sector. However, we recommend that

¹ LGBTI (lesbian, bisexual, transgendered, transsexual and intersex) is used throughout this document. There is much debate on terminology for this group and other terms are also used including gay, GLBTI (gay, lesbian, bisexual, trans, intersex), sexual minority groups, sexual and gender diverse. LGBTI is used here as a general term to include people who are not exclusively heterosexual in identity, attraction and/or behaviour.

the Final Report be constructed to make a clear distinction between CALD and LGBTI issues, thus promoting a more appropriate and separate appraisal of the different problems associated with each community. Some suggestions as to possible wording changes are made in the table under 'Inclusive Language', below.

Legal vulnerability of LGBTI clients of aged care services

LGBTI elders are in an untenable legal situation, with core legislation failing to recognise their needs, and failing to uphold or protect their rights.

Neither the *Aged Care Act (1997)* nor the *Home and Community Care Act (1985)* recognise LGBTI people as a special needs group. As these are the two main pieces of federal legislation governing aged care services and programmes, this omission fails to protect the rights of LGBTI elders. Similarly, the *Australian Government's Code of Ethics and Guide to Ethical Conduct for Residential Aged Care* excludes discrimination based on sexuality, it being left to the discretion of individual providers to add (or not) a non-discriminatory clause based on sexuality, sexual preference and expression (Harrison 2002). This optional approach to discrimination has serious ramifications, especially given the public condemnation of homosexuality by some of the organisations who are aged care service providers.

As noted previously, homophobia is an ancient practice enshrined in many religious texts. That this position is still maintained by many religions has important ramifications in the Australian aged care industry, as religious organisations provide a significant percentage of aged care services.² LGBTI elders accessing services from religious organisations can anticipate no legal protection should they suffer homophobic discrimination from these service providers, who retain the right to discriminate on the grounds of sexuality through exemptions granted by *The Equal Opportunities Act (1984)*.

GRAI submits that these legal silences and loopholes are untenable and leave LGBTI clients of aged care services in a most vulnerable position. The situation is compounded by the fact that legal exemptions are extended to religious organisations, effectively granting them freedom to lawfully discriminate against non heterosexuals. This unacceptable situation must be addressed as a matter of urgency.

Advocating for changes to the abovementioned legislation may be beyond the scope of the Productivity Commission's Report, however other measures appropriate to the Inquiry include using accreditation processes and incentives for the aged care sector to raise awareness of and offer protection to their LGBTI clients.

Towards solutions for equity of access to quality care services for LGBTI elders

GRAI submits that part of the solution to address the current legal deficit regarding LGBTI elders' rights lies in utilising the accreditation arrangements of aged care services, and requiring compliance to measures aimed at protecting their LGBTI clients. This could include **mandatory LGBTI cultural competency training** for proprietors, managers and staff of aged care services (both residential and community based). A national roll out of this curriculum would also usefully include staff of the Aged Care Complaints Investigation Scheme, and staff of the proposed Gateway Agency, as well as staff at the proposed Carer Support Centres.

Other measures – as similarly recommended by the LGBTI Health Alliance – include:

1. establishing a National LGBTI Aged Care Plan
2. establishing a National LGBTI Aged Care Advisory Council to the Minister for Ageing
3. addressing LGBTI invisibility through appropriately designed forms, and
4. resourcing NGOs to provide LGBTI advocacy and support services (eg through NACAP funding).

² Religious organisations provide 28.5% of aged care residential services nationally, rising to 36.7% in Western Australia, (GRAI 2010:18)

We note that the Draft Report emphasises the importance of staff and managers' attitudes, and also acknowledges the importance of cultural training and consumer advocates³. Our recommendations specifically address these criteria. Also, a National LGBTI Aged Care Plan would include strategic goals to guide education programs, policy and research and, together with a National LGBTI Aged Care Advisory Council, would maintain momentum on core issues.

It would be desirable that an incentives approach is also used to drive the cultural change implicit in the acknowledgment of LGBTI needs within the aged care sector. Such incentives could include:

- Targeted supplements (mentioned in the Draft Report p 272) be used to reward agencies who exceed minimum mandatory requirements of training and/or institute an Ally program within their organisation. An Ally program uses a formal training framework to enable people to register as a visible Ally to LGBTI staff and clients. Such a system has been widely implemented within the university setting in Australia. For example see Curtin University's program (<http://unilife.curtin.edu.au/sexualdiversity/ally.cfm>) ; and
- The development of a diversity award within the aged care sector. Such awards systems are widely used in other sectors and provides an opportunity to reward workplaces that have shown active programs that respect diversity and become employers of choice for diverse staff.
- Finally, an invaluable cornerstone to the protection of LGBTI elders' rights would be the inclusion of an **LGBTI Ombudsman within the Complaints investigation Scheme** (p 397).

Inclusive language

We thank the Productivity Commission for paying attention to the important issue of LGBTI needs within the aged care sector. As mentioned above, we request that LGBTI inclusive language is used consistently throughout the Report, and make the following suggestions (many of them minor).

Page Chapter	Existing wording	Suggested changes/comment
VI	Ensure access to... culturally and linguistically diverse communities, and veterans.	Ensure access to... culturally and linguistically diverse communities, veterans, and LGBTI elders.
XXIV	.. a greater desire for ... culturally relevant care. This is particularly relevant for many culturally and linguistically diverse and indigenous communities.	This is particularly relevant for many culturally and linguistically diverse and indigenous communities and for people with differing sexualities and/or gender identities.
XLIII	differing preferences	differing sexuality and/or gender identity
LXI	... newer diversity needs	... other diversity needs. [The need is not new, just previously unrecognised].
35 3	The population needing aged care services will be increasingly diverse	ADD: - LGBTI elders wanting a safe environment in which to be themselves.
51 3.2	[Heading] <i>Other special needs that affect demand</i>	ADD: [Heading] <i>LGBTI elders</i>

³ Draft Report pp XLII, L, 269, 405

270 9	.. including culturally and linguistically diverse communities	... including culturally and linguistically diverse communities and those with diverse sexuality and gender identities
273 9.2	[Heading] People from culturally and linguistically diverse backgrounds	THIS HEADINGSHOULD NOT BE USED TO INCLUDE LGBTI people. The heading LGBTI people (p 280) should be numbered <u>9.3</u>
281 9.2	.. sensitivity in decor and staff	Delete this phrase as it is inaccurate and trivialising. Already stated in this paragraph is 'safe and inclusive environment' which better covers the need to recognise LGBTI culture

Other comments on the Draft Report:

Care Giving: The Draft Report (page 280) mentions that: 'LGBTI people have distinct cultural and support networks which have shaped their attitudes towards care giving'. For clarity, this requires an expanded explanation. For example, for many LGBTI people, their family of choice may be more important than biological family with the result that a traditional nuclear family caring arrangement is neither available nor desired. The LGBTI community also has a history of good community support for its members such as occurred during the HIV/AIDS epidemic. The LGBTI community may have a legitimate caring role for this client group.

Accreditation: The importance of accreditation to ensure standards are maintained is acknowledged. It is not unreasonable to include some measure of LGBTI cultural competency accreditation measure. This could be in the form of the need to demonstrate that cultural competency training on LGBTI issues has been undertaken by all staff. Obviously such a system would need careful consideration to ensure that it is both deliverable and measurable. The LGBTI community sector would be able to assist in this.

Research Data: As has been noted by others, there is a lack of both comprehensive and accessible data from the aged care area (Draft Report, page 431-432). There is also a particular lack of research that collects information on sexuality and gender diversity, making it difficult to provide an accurate picture of this group. This is a constant and ongoing struggle for those working in any aspect of LGBTI health. There is also a lack of access to various data that is routinely collected which would provide useful feedback to the aged care sector itself and the community, and which could serve as valuable tools to other researchers. GRAI therefore supports the development of research tools that routinely require the collection of sexuality and gender diversity information. As this is a sensitive area, this should be undertaken in consultation with researchers working in the LGBTI area and the community of interest. Such data should then be made available as appropriate to relevant end users.

Conclusion

As noted in our first submission to the Productivity Report, GRAI feels that most of the shortfalls with regard to services for LGBTI elders within the aged care sector are generally due to ignorance rather than antagonism. However we are also deeply concerned about the lack of legal protections available, which adds even greater weight to the need for education programs reinforced by a mandatory accreditation scheme. The inclusion of an incentives program would encourage and facilitate the cultural shifts so necessary to successfully overcome covert and overt discrimination.

The scale of the problem of LGBTI discrimination is poorly understood and generally overlooked by the aged care sector. The inclusion of LGBTI elders as a special needs group would be invaluable to overcome

this oversight. Additionally, we welcome the Productivity Commission's explicit identification of LGBTI issues as needing specific attention: in itself an important step in addressing the long-standing invisibility of LGBTI elders.

We look forward to meeting with you at the Caring for Older Australians Inquiry Public Hearings on 1st April and to having the opportunity to discuss any issues that require further elaboration.

Yours sincerely

Jude Comfort
Chair, GRAI

References

GRAI (GLBTI Retirement Association Inc) and Curtin Health Innovation Research Institute (2010). *We Don't Have Any of Those People Here: Retirement accommodation and aged care issues for non-heterosexual populations*. Perth, Western Australia, Curtin University.

Harrison, J (2002). What are you really afraid of? Gay, lesbian, bisexual, transgender and intersex ageing, ageism, and activism. *Word is out e-journal*.