



Health and wellbeing for
lesbian, gay, bisexual, trans, intersex [LGBTI]
people and sexuality, gender, and bodily
diverse people and communities
throughout Australia

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Royal Commission into Aged Care Quality and Safety

National LGBTI Health Alliance Workforce Submission

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National LGBTI Health Alliance

The National LGBTI Health Alliance (the Alliance) is the national peak health organisation in Australia for organisations and individuals that provide health-related programs, services and research focused on lesbian, gay, bisexual, transgender, and intersex people (LGBTI) and other sexuality, gender, and bodily diverse people and communities. We recognise that people's genders, bodies, relationships, and sexualities affect their health and wellbeing in every domain of their life.

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Silver Rainbow

Silver Rainbow is the name given to the National LGBTI Health Alliance's Ageing and Aged Care Project. It provides national coordination and support activities promoting the well-being of LGBTI elders. This is achieved through providing policy and program advice to the Department of Health and the ageing and aged care sector, ongoing delivery of LGBTI awareness training to the aged care sector, and working in partnership with LGBTI organisations and individuals across Australia and internationally. Silver Rainbow works towards achieving the best possible health outcomes for LGBTI elders by ensuring aged care services are inclusive and accessible.



SILVER RAINBOW

Recommendations

The Alliance makes the following recommendations, which will be discussed further in the submission.

Staffing levels

Recommendation 1: Develop sustainable and appropriate staff ratios coupled with a mandated staff skill mix that considers the diversity within and between LGBTI populations when meeting the unique care needs of LGBTI elders and older people.

Registration Schemes

Recommendation 2: Implement a national registration scheme, that includes pre-employment screening (similar to the current NDIS Worker Screening function), mandated minimum-entry qualifications, and ongoing education and training.

Recommendations 3: Create a national database to monitor breaches in standards and quality of care within the aged care workforce.

Remuneration and working conditions

Recommendation 4: Remuneration to be benchmarked and matched against other comparable industries, against workers with comparable qualifications.

Recommendation 5: Develop strategies that challenge ageism and improve the value placed on aged care work.

Recommendation 6: In the context of increasing staffing levels, review timeframes and targets for care.

Skilled, knowledge and competency levels of staff

Recommendations 7: Develop strategies to attract, recruit, value and retain LGBTI staff across the aged care workforce.

Recommendation 8: Training in LGBTI inclusivity to be mandated for all staff working in aged care and repeated regularly.

Recommendation 9: Develop and deliver initiatives to support family and friend carers.

Workforce leadership

Recommendation 10: Include reporting against diversity targets and key performance indicators in the performance agreements of aged care workforce leaders.

Recommendation 11: Robust and protective complaints and feedback mechanisms to be in place, protected and taken seriously by workforce leaders.

Recommendation 12: Maintain and invest in national and jurisdictional LGBTI peak bodies and community-controlled organisations.

Recommendation 13: Establish an official visitors' scheme for aged care services that includes specific programs for LGBTI aged care residents, ensuring accessibility of these schemes in regional and rural areas.

Institutional changes

Recommendation 14: Repeal Section 37(2)(b) of the *Sex Discrimination Act 1984 (Cth)*.

Recommendation 15: Aged care providers implement policies and processes that actively include the lived experiences of LGBTI elders and older people.

Recommendation 16: Attach the LGBTI Action Plans to the Aged Care Quality Standards.

Recommendation 17: The Department of Health appropriately collect data on sexual orientation, gender identity and intersex status of the aged care workforce in the National Aged Care Workforce Census and Survey.

Introduction

The Alliance welcomes the opportunity to provide a written submission to the Royal Commission on policy issues relating to the aged care workforce. The capacity and capability of the aged care workforce to deliver high quality and culturally safe care for LGBTI elders and older people has been a focused area of work for the Alliance over many years. The National LGBTI Ageing & Aged-Care Strategy has improved the delivery of aged care services to LGBTI elders and older people and improved the knowledge and capacity of the aged-care workforce to deliver inclusive care. However, there are still barriers to creating an LGBTI-inclusive workforce. These include religious exemptions to the *Sex Discrimination Act 1984 (Cth)* in relation to employment in the aged-care sector and inadequate training focusing on LGBTI diversity.

This submission is informed by a co-design process involving the establishment of a Royal Commission Advisory Group with expert representatives of LGBTI communities across Australia, facilitated by the National LGBTI Health Alliance.

The Alliance also conducted a series of consultations to gather the experiences of LGBTI elders and older people receiving aged care or supporting someone receiving aged care to share with the Commission. Many participants highlighted that LGBTI elders and older people are reluctant to enter the aged care system, and that current workforce issues exacerbate feelings of mistrust and fear when accessing mainstream services. This submission will closely examine policy issues relating to staffing levels, registration schemes, remuneration and working conditions, skill, knowledge and competency levels of staff, workforce leadership, and institutional changes, and present key recommendations for reform.

LGBTI elders and older people

Janelle (67, trans woman): I have heard some horror stories about a number of people, of trans women who want to dress and live as trans women being told, 'No, no, no, you are really a male. You have to wear this. You have to wear that'...I would hate to be in that sort of situation...I couldn't think of anything worse personally.¹

LGBTI elders and 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. These experiences and a perceived fear of prejudice and discrimination in accessing services cause LGBTI older people to hide or modify their identities, experiences and histories, be reluctant to reveal

¹ Waling, A., Lyons, A., Alba, B., Minichiello, Barrett, C., Hughes, M., Fredriksen-Goldsen, K. & Edmonds, S. (2019). "Trans women's perceptions of residential care for older people in Australia". *British Journal of Social Work*. doi: 10.1093/bjsw/bcz122

their LGBTI status to government agencies and service providers, and be reluctant to make complaints when they experience prejudice or discrimination.

Ageism is an issue that affects all older people, which also manifests within LGBTI communities, leading to heightened experiences of isolation and loneliness. In addition, LGBTI elders and older people also experience systemic forms of stigma and discrimination as a result of their sexual orientation, gender identity and intersex status, and consequently are further marginalised. It is important to recognise the compounding health impacts of multiple forms of discrimination, as this in itself is a form of neglect.

Staffing levels

Sadie (60, lesbian): I think it is shocking what is happening with aged-care. I don't think that they get fed well, I don't think that they are staffed well. They are often very low quality in the ones that are affordable.²

Staffing levels are at the core of the issues faced by LGBTI elders and older people receiving aged care services. In an environment of diminishing resources and increasing costs, minimal staffing is a reality. Therefore, there needs to be consideration of different funding models that enable appropriate staff ratios that are fixed, regulated and enforced.

To ensure person-centred care for LGBTI elders and older people, many of whom have complex care needs, it is important to note that increasing staffing levels is only beneficial if there is a mandated minimum level of staff skill mix in order to meet the unique care needs of LGBTI older people. Part of this skill mix needs to include the implementation of person-centred care approach initiatives, which acknowledge and respond to the specific and individual needs of LGBTI people. Fundamentally, different approaches will be required for different individuals and population groups including bisexual people, trans and gender diverse people and intersex people.

Recommendation 1: Develop sustainable and appropriate staff ratios coupled with a mandated staff skill mix that considers the diversity within and between LGBTI populations when meeting the unique care needs of LGBTI elders and older people.

Registration schemes

From our understanding, registered healthcare professionals must meet a range of registration standards to practice. For example, staff must meet a minimum accredited level of training and education and ongoing professional development. In order to raise the status of the aged care workforce and to improve standards and quality of care, it is imperative to

² Waling, A., Lyons, A., Alba, B., Minichiello, V., Barrett, C., Hughes, M., Fredriksen-Goldsen, K. & Edmonds, S. (2019). "Experiences and perceptions of residential and in-home care services among older lesbian women and gay men in Australia". *Health and Social Care in the Community*, 27, pg. 1251-1259.

have a robust and transparent registration scheme for non-clinical staff working in aged care.

This includes pre-employment screening to identify people who have engaged in discriminatory conduct against LGBTI people, which results in their exclusion from employment opportunities in the aged care sector. Comparable to that of other healthcare workers, mandated minimum-entry qualifications are an essential component to such a scheme. Aged care providers then need access to information that highlights breaches in standards of quality of care from potential employees.

Recommendation 2: Implement a national registration scheme, that includes pre-employment screening (similar to the current NDIS Worker Screening function), mandated minimum-entry qualifications, and ongoing education and training.

Recommendations 3: Create a national database to monitor breaches in standards and quality of care within the aged care workforce.

Remuneration and working conditions

As mentioned in the Interim Report “Australia has drifted into an ageist mindset that undervalues older people and limits their possibilities.”³ Furthermore, aged care work is devalued because it is seen as “women’s work”. Thus, aged care workers are too lowly paid.

Working conditions, and day to day pressure and stress for care workers is related to staffing levels and unrealistic performance expectations. Restrictive timeframes and targets for intimate care do not allow for high quality care and meaningful relationships, which has a particular negative effect on LGBTI elders and older people.

It is imperative that workplaces foster an inclusive and supportive work environment for LGBTI staff. To drive cultural change, LGBTI staff need to feel that they can be their authentic selves in the workplace. This is made more difficult when religious exemptions in the federal *Sex Discrimination Act* allow faith-based aged care providers to discriminate against their staff on the basis of their sexual orientation, gender identity or intersex status.

Furthermore, Section 41 of the government’s proposed Religious Discrimination Bill (the Bill) provides that certain “statements of beliefs” will contravene existing federal, state, and territory anti-discrimination protections. This will have the undesirable consequence of giving license to a broad range of potentially harmful and offensive statements being made by religious people, contributing to a hostile, unsafe or non-inclusive workplace for LGBTI employees.

Sections 8(3) and (4) of the Bill also makes it unlawful for large businesses with a turnover of \$50 million or more, which would include many aged care providers, to impose a conduct rule on employees that would prevent or restrict them from making “statements of belief” outside of work hours. Compliance with such a rule would only be lawful if the business can

³ Commonwealth of Australia, (2019). Royal Commission into Aged Care Quality and Safety. Interim Report: Neglect. Volume 1. pg.1.

prove that the condition is necessary to avoid unjustifiable financial hardship. This provision goes well beyond the realms of setting standard contractual obligations and employee codes of conduct found in the majority of workplaces. These measures will undermine efforts to foster healthy and inclusive workplaces for LGBTI staff.

Recommendation 4: Remuneration to be benchmarked and matched against other comparable industries, and against workers with comparable qualifications.

Recommendation 5: Develop strategies that challenge ageism and improve the value placed on aged care work.

Recommendation 6: In the context of increasing staffing levels, review timeframes and targets for care.

Skill, knowledge and competency levels of staff

*Charlotte (64, trans woman): I was the first TG person my wife's aged care facility had ever (knowingly) met. I trained them.*⁴

*Leah (60, trans woman): [You have] particular health issues with trans people, different for trans men and trans women...but you've got specific health needs, how many would know that for trans women, you know, they are at risk for prostate cancer, even though being on hormones reduces that risk considerably, but it's still a risk, it's still there. So, there's all these issues and of course, cervical cancer for trans men you know, lack of knowledge and expertise.*⁵

Aged care service providers need to ensure that they attract, recruit, value and retain suitably qualified staff, and make a special effort to recruit and retain staff who are members of LGBTI communities.

Training the aged care workforce in working with people of diverse characteristics and life experiences is fundamental to delivering culturally safe and trauma-informed care. This education must start with their initial qualification (e.g. Certificate, Diploma or Degree) and be provided on an ongoing regular basis by the provider as part of their commitment to staff development and inclusive practice. Cultural safety training is important for all tiers of the aged care workforce, from the governance level, through to management and direct care workers. There is also a need to employ more qualified professional staff, particularly in residential aged care, considering the increase in personal care attendants and concomitant

⁴ Waling, A., Lyons, A., Alba, B., Minichiello, Barrett, C., Hughes, M., Fredriksen-Goldsen, K. & Edmonds, S., (2019). "Trans women's perceptions of residential care for older people in Australia". *British Journal of Social Work*. doi: 10.1093/bjsw/bcz122

⁵ Ibid

decrease in registered nurses and allied health staff.⁶ This would include staff that operate across a broad range of health and wellbeing services.

The Alliance's Ageing and Aged Care Silver Rainbow project delivers a range of training through its partners in every state and territory. While a significant number of aged care providers have accessed training there are still many more that need training and high staff turnover means that previously trained staff may have left, resulting in new staff needing training. Silver Rainbow also supports a network of champions who represent and advocate on behalf of older LGBTI people receiving aged care services.

Family and friend carers in the home constitute the largest proportion of the aged care workforce. Therefore, they need to be adequately supported. The aged care sector needs to be trained so that they are able to support diverse care networks of LGBTI older people, including partners, family of choice and friends, and deliver services in a way that is responsive to and respectful of this diversity.

Many LGBTI elders and older people rely on family members to advocate for them within the aged care environment. However, some family members can take advantage of this dependency and opportunity to control the gender, body, sexuality or relationships of these elders. Aged care workers need support in being able to recognize and respond to family members not making decisions that are in the best interests of LGBTI elders and older people receiving aged care services.

An aged care workforce that approaches the needs of LGBTI older people by having policy or practices of 'treating everyone the same' is deficient in their ability to meet their overall care needs. Therefore, the implementation of person-centred approach initiatives must acknowledge and respond to the specific and individual needs of older people within LGBTI populations.

High staff turnover and a lack of continuity makes it difficult for LGBTI elders and older people as they must continually disclose their identities, experiences or histories to new people.

Recommendations 7: Develop strategies to attract, recruit, value and retain LGBTI aged care workers.

Recommendation 8: Training in LGBTI inclusivity to be mandated for all staff working in aged care and repeated regularly.

Recommendation 9: Develop and deliver initiatives to support family and friend carers.

Workforce leadership

⁶ Commonwealth of Australia, (2019). Royal Commission into Aged Care Quality and Safety. "How Australian Residential Aged Care Staffing Levels compare with International and National Benchmarks: Research Paper 1." Available from: <https://agedcare.royalcommission.gov.au/publications/Documents/research-paper-1.pdf>

Mabel (60, lesbian): I audited nursing homes... And I would read things in notes like [KATIE] is always very comforted when her special friend [SASHA] comes to visit, and I would say to them do you think that maybe [SASHA] has been more than a special friend?... When I met [SASHA] it was fairly clear to me, and they'd go oh no, no, she wouldn't be any, no she wouldn't be one of them.⁷

Workforce leadership is a critical element of ensuring that older LGBTI are safe and celebrated when receiving aged care services. Workforce leaders, particularly those who provide faith-based care, need to be visible, accountable and authentic champions of LGBTI inclusive practice and champion a human rights approach to care. This includes aged care providers, executives, trade union leaders, and leaders of peak bodies. A style of leadership that affirms a safe cultural space for LGBTI people is vital and should be reinforced in performance agreements and key performance reports for all aged care leaders.

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 elders and 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.

National and jurisdictional LGBTI peak bodies and community-controlled organisations play an essential role in providing advocacy services for LGBTI elders and older people. Thus, it is crucial that they are adequately resourced and supported.

A nationwide official visitors' scheme with the ability to assess cultural safety for LGBTI older people could independently raise issues and report on concerns.

Recommendation 10: Include reporting against diversity targets and key performance indicators in the performance agreements of aged care workforce leaders.

Recommendation 11: Robust and protective complaints and feedback mechanisms to be in place, protected and taken seriously by workforce leaders.

Recommendation 12: Maintain and invest in national and jurisdictional LGBTI peak bodies and community-controlled organisations.

⁷ Waling, A., Lyons, A., Alba, B., Minichiello, V., Barrett, C., Hughes, M., Fredriksen-Goldsen, K. & Edmonds, S., (2019). "Experiences and perceptions of residential and in-home care services among older lesbian women and gay men in Australia". *Health and Social Care in the Community*, 27, pg. 1251-1259.

Recommendation 13: Establish an official visitors' scheme for aged care services that includes specific programs for LGBTI aged care residents, ensuring accessibility of these schemes in regional and rural areas.

Institutional changes

All aged-care service providers must comply with the federal *Sex Discrimination Act 1984* (the Act). However, there is an exemption for religious bodies in Section 37 of the Act. Section 37(2)(b) enables faith-based providers to adopt discriminatory employment practices against LGBTI people in Commonwealth-funded aged care facilities, that would otherwise be considered unlawful.

The employment practices of faith-based providers are important as they represent a significant proportion of the sector. From 2017-18 faith-based organisations provided 23.9% of residential care places and 27.9 % of operational home care places in Australia.⁸ On a national level, if every faith-based provider adopted discriminatory employment practices, LGBTI people would be excluded from employment in a quarter of the sector.

It is important to note that not all faith-based organisations adopt discriminatory workplace practices or wish to be exempt from anti-discrimination laws. These organisations regularly try to counter the public perception that all faith-based providers are discriminatory. Catholic Health Australia, Anglicare WA and UnitingCare Australia are some examples of faith-based aged care providers who have highlighted their commitment to inclusive employment practices:

Catholic Health Australia

*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.*⁹

Anglicare WA

*Anglicare WA's long held values of inclusion and respect mean we welcome and support LGBTI staff and volunteers, and we do not discriminate against anyone in the community in our service delivery.*¹⁰

UnitingCare Australia

*We celebrate our diversity and welcome all people regardless of lifestyle choices, ethnicity, faith, sexual orientation and gender identity.*¹¹

⁸ Productivity Commission, (2019). *Report on Government Services 2018*, Table 14A. 10.

⁹ Brennan, F., (2013). "Clarifying the Anti-Discrimination muddle. Eureka Street." Available from: <http://www.eurekastreet.com.au/article.aspx?aeid=35014>

¹⁰ Out in Perth, (2017). "Anglicare WA dismisses marriage claims from Ian Goodenough." Available from: <https://www.outinperth.com/anglicare-dismisses-marriage-claims-ian-goodenough/>

¹¹ Available from: <https://unitingcareers.nga.net.au/cp/index.cfm>

Providing inclusive and non-discriminatory services requires a whole of organisation commitment. Overall, fostering an inclusive workplace environment that welcomes LGBTI employees will inevitably attract more working people to the aged care industry. It will also add value specifically to the aged care workforce, facilitating its growth into the future. It is essential that all aged care services are equipped with a diverse workforce that is qualified and experienced to provide inclusive, culturally safe, and person-centred care.

Recommendation 14: Repeal Section 37(2)(b) of the *Sex Discrimination Act 1984 (Cth)*.

Institutional care reinforces societal and cultural norms and practices, which are applied and enforced in all situations. From an LGBTI viewpoint, this means heteronormative¹² and cisnormative¹³ culture positions people who are sexuality, gender and bodily diverse as a minority group and renders them invisible, consequently reinforcing and sustaining heteronormativity and cisnormativity as systems of privilege.

Recommendation 15: Aged care providers implement policies and processes that actively include the lived experiences of LGBTI elders and older people.

The Aged Care Diversity Framework and supporting Actions for LGBTI Elders – A Guide for Providers and A Guide for Consumers^{14,15} are not mandatory so there is no compulsion for aged care providers to implement these or follow the actions. They are not attached to the Aged Care Quality Standards, which means there are no consequences if providers are not actively taking steps to deliver inclusive and culturally appropriate services for LGBTI elders and older people.

Recommendation 16: Attach the LGBTI Action Plans to the Aged Care Quality Standards.

Furthermore, The National Aged Care Workforce Census and Survey does not collect information about LGBTI employees. Insufficient data collection makes it difficult to examine the experiences of LGBTI people employed, or seeking employment, in the aged care workforce. This exclusion can leave LGBTI employees relatively invisible in formulating evidence-based policies and in the implementation of strategies and programmes in the aged care sector.

¹² Heteronormativity is the dominant and pervasive belief that heterosexuality is the normal or legitimate form of sexuality.

¹³ Cisnormativity is a term that describes the privileging of cisgender identities (gender identity that aligns with an individual's sex assigned at birth).

¹⁴ Department of Health, (2019). "Actions to support Lesbian, Gay, Bisexual, Trans and Gender Diverse and Intersex elders: A guide for aged care providers". Available from: https://agedcare.health.gov.au/sites/default/files/documents/02_2019/actions-to-support-lgbti-elders-a-guide-for-aged-care-providers.pdf

¹⁵ Department of Health, (2019). "Actions to support Lesbian, Gay, Bisexual, Trans and Gender Diverse and Intersex elders: A guide for consumers". Available from: https://agedcare.health.gov.au/sites/default/files/documents/02_2019/actions-to-support-lgbti-elders-a-guide-for-consumers.pdf

Recommendation 17: The Department of Health appropriately collect data on sexual orientation, gender identity and intersex status of the aged care workforce in the National Aged Care Workforce Census and Survey.

Conclusion

The Alliance believes that LGBTI elders and older people deserve equitable access to high quality and culturally safe aged care services. A skilled and knowledgeable workforce, adequate remuneration and working conditions, appropriate staffing levels and the removal of discriminatory employment barriers for LGBTI staff is essential in achieving this core objective.