



27 September 2024

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

Aged Care Bill 2024

LGBTIQ+ Health Australia (LHA) welcomes the opportunity to comment on the Aged Care 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 proposed aims of an Aged Care Act that is human centred, and user focussed.

Addressing needs of diverse older people

We note that the draft Aged Care Act 2024, diversity groups – including lesbian, gay, bisexual, transgender and intersex people (LGBTI) people - remain a legislative note in section 25(4), at the Statement of Principles.

We note that this is in contrast to the existing *Age Care Act 1997*, which explicitly identifies LGBTI people (among others), at s11(3)(h) as a special needs group.

We are not clear if this will may prevent future reference to them in regulations or future amendments to the Act as they are not a legislative clause that can be referenced. If so, this is problematic. There is no reference to the Aged Care Diversity Framework.

Recommendation:

We call for the proposed Aged Care Act 2024 to explicitly identify as legislative provisions – not as Note – diversity groups, including LGBTI people.

Improving complaints

LHA welcomes the appointment of an independent Aged Care Commissioner, as per section 356. We note the lack of direct enforceability of new Aged Care consumer rights; we call for such an enforceable right to be enacted.

In its absence, Complaints procedures are the only form of redress that consumers can initiate for remedying a breach of rights. Thus, we believe that the new Aged Care Act should provide the new Complaints Commissioner with the option to make a determination, and/or following the Complaints Commissioner termination of a complaint, allow individuals to take appeals to the Federal Court,



such as is possible with various Commonwealth discrimination laws, under the jurisdiction of the Australian Human Rights Commission.

Recommendation:

We call for the proposed rights under the new Aged Care Act to be directly actionable.

We call for the Complaints Commissioner to have the power make determinations which can be taken to the Federal Court for appeal/enforcement and/or allow individuals to take appeals to the Federal Court following termination of a complaint.

Early onset ageing must be included

We note the eligibility under the proposed framework only covers individuals who are over 65, unless they are Indigenous, homeless or at risk of homelessness.

We are very concerned at the blanket exclusion of people who are part of other cohorts, who may experience early ageing. For example, people with HIV can experience early ageing due to their serostatus .

Recommendation:

We call for eligibility under the framework to extend to people under the 65 who experience early ageing as a result of a health condition.

Priority Rules

We call for the Aged Care Act rules to address as a matter of priority the need for aged care providers to undertake Specialisation Verification accreditation, as a way to meet their diversity obligations which entitle older people to quality and safe funded services under section 23(3)c and in the function of the System Governor, section 339.

We propose that rules under section 544, *System Governor must publish information about funded aged care services*, that the content of such rules should require information be published about whether aged care providers have completed any Aged Care Specialisation accreditation, and if so, in respect of which diversity group(s).

Background: unique experiences of older LGBTI people

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

“Remove the pervasive idea that our communities are controversial.”¹

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

¹ These are from LHA’s comments to Aged Care Royal Commission, from consultations with older LGBTI people.



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
- 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.

Thank you for your consideration.

Yours sincerely

James Zanotto
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LGBTIQ+ Health Australia