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Senate Standing Committee on Legal and Constitutional Affairs  
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Re: Review of Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012

I am grateful to the Committee for the opportunity to provide input regarding the exposure draft of the Human Rights and Anti-Discrimination Bill 2012.

My Doctoral research investigated LGBTI aged care related issues in the USA and Australia. As such, my comments only relate to the matter of aged care.

I attach by way of more extensive background a copy of my submission to the Attorney General's Department regarding the consolidation process and the importance of aged care related issues for lesbian, gay, bisexual, transgender and intersex (LGBTI) people, their carers and representatives.

As I outlined in that submission, it is essential that older LGBTI people be protected from discrimination, particularly in relation to the provision of aged care services. LGBTI older people have predominantly lived lives where they have been forced to hide their sexual orientation, sex (intersex) status or gender identity in order to avoid criminalisation and persecution. Those currently requiring aged care support at a formal level, or approaching this point, must be protected completely from any form of discrimination so that despite the likelihood that they may be 'invisible' by virtue of lifetimes of hiding and fear, their safety and human rights are guaranteed.

I commend the government on the draft legislation and the stance it has taken in relation to aged care provision and LGBTI people, and would emphasise that as well as sexual orientation and gender identity, it is vital that intersex people, including intersex older people, are explicitly and specifically written into the legislation and afforded guaranteed protection from discrimination, including in relation to aged care.

The decision to include prohibitions on Commonwealth funded aged care providers discriminating against consumers on grounds related to sexual orientation and gender identity is to be strongly supported, and it is essential that this prohibition, including in relation to faith-based providers of services, remain in the legislation. The prohibition also needs to explicitly apply to the situation of intersex people. There should be no exemptions allowable in relation to this area of service provision because people are in a particularly vulnerable position as LGBTI consumers after lifetimes of fear and hiding, and serious negative historical relationships with social institutions which have punished, condemned, or attempted to 'cure' them. These issues are outlined in more detail in my submission to the Attorney General's Department in February 2012.

Any calls for the prohibition on discrimination in relation to aged care service provision to be removed from the draft are misguided, and are not supported by the body of knowledge and the weight of evidence around LGBTI ageing and aged care that has developed in Australia over the past two decades. Arguments relating to the matters of 'sensitivity of other residents' in a residential facility or 'protecting religious freedoms by denying same sex couples shared facilities' are not sensible, given evidence that residents of aged care facilities have been shown to have responded positively to sensitive processes of education and communication in relation to fellow LGBTI residents. Further, the denial of shared facilities to same-sex couples would also seriously contradict the intent of reforms that the federal government enacted in 2008 to remove discrimination experienced by same-sex couples, including in aged care.

I strongly support the prohibition on discrimination as outlined in the draft, including its application to faith-based organisations, which constitute a significant proportion of providers in the aged care sector. Removing this important protection would put LGBTI elders at serious risk of harm and exacerbate the extreme difficulties they experience in older age.

It is important to recognise that no faith-based providers from the aged care sector have spoken out against this prohibition from discrimination in the provision of services. Indeed, certain providers including Uniting Care Ageing, which is funded to provide specific aged care packages to LGBTI older consumers, and has a strong commitment to LGBTI aged care, including in NSW and South Australia, have strongly supported the prohibition. Further, peak representative organisations such as the Australian Council on the Ageing have endorsed the need for protections from discrimination and publicly supported the prohibition. This in itself indicates that providers in the aged care sector do not want to be afforded any 'option' to discriminate, but rather want to be emphatically supportive of adopting policies and strategic plans and practices that ensure that discrimination does not occur in the provision of service.

It is also vitally important that LGBTI people who are consumers of aged care services know that those providing services are not able to discriminate in relation to the staff they choose to employ. The prohibition of discrimination in relation to employment would be an essential addition to the legislation, so that LGBTI consumers, particularly in residential facilities, would be able to be supported by staff that are not only sensitive to their needs, but also may be LGBTI themselves, with a shared cultural experience. Overseas experience has shown that the presence of LGBTI staff who are themselves comfortable and supported by their employer organisations provide LGBTI consumers with a significant source of support, often a 'lifeline' in situations of serious isolation and potential negative treatment or abuse. It is therefore strongly recommended that the

prohibition be extended to the realm of employment by aged care organisations that are in receipt of commonwealth funding.

Although the prohibition on discrimination in aged care service provision and employment is the essential and ideal position and strongly recommended, should this not be the case, it is essential that faith-based organisations would be required to publish a statement indicating their discriminatory position in position descriptions, on websites and in any other public information sources, such as brochures, so that consumers and potential consumers, as well as potential employees and the general public are fully aware of this situation.

Yesterday the Federal Minister for Mental Health and Ageing, the Hon. Mark Butler MP launched the Australian government's National LGBTI Ageing and Aged Care Strategy. A copy of the document is available at <http://www.health.gov.au/lgbtistrategy>

I was one of the invited speakers at the public launch. The strategy represents a serious and solid commitment on the part of the federal government to ensure that LGBTI elders are provided with sensitive and culturally appropriate care and services by provider organisations. It was developed in consultation with LGBTI elders, organisations, experts and service providers and represents a strong partnership between the LGBTI community and the government, as well as the aged care sector, which supports the strategy.

The reversal of the prohibitions in the draft legislation in relation to aged care would seriously risk negating and contradicting the commitment outlined in that strategy. It is vital that all LGBTI people are protected to the full extent in relation to aged care. It is also essential that those LGBTI people who seek to be employed to work in the sector are similarly protected from discrimination.

I would urge the government to pass the legislation during the current term, prior to any election, so that all LGBTI Australians, including elders, are afforded protection of the highest standard at a federal level after so many years of serious vulnerability and fear.