

Submission to the Inquiry into Older People and the Law  
House of Representatives Standing Committee on Legal and Constitutional Affairs

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Legislative Issues Related to Gay, Lesbian, Bisexual, Transgender and Intersex  
[Hermaphrodite] Older People, including people in Same-Sex Relationships

Matters related to discrimination against gay, lesbian, bisexual, transgender and intersex (GLBTI) older people and older people living or formerly living in same-sex relationships have been seriously neglected to date by the Australian governments.

Discrimination against gay, lesbian, bisexual, transgender and intersex (GLBTI) older people has only just begun to be taken seriously by some Australian State governments. Developments in Victoria and New South Wales have taken place and are evident at the following sites:

[http://www.rainbowvisions.org.au/resources/ADB\\_EqualTime\\_August2004.pdf](http://www.rainbowvisions.org.au/resources/ADB_EqualTime_August2004.pdf)

[http://www.lawlink.nsw.gov.au/lawlink/adb/ll\\_adb.nsf/pages/adb\\_glbt\\_i\\_consultation](http://www.lawlink.nsw.gov.au/lawlink/adb/ll_adb.nsf/pages/adb_glbt_i_consultation)

[http://www.glhv.org.au/files/health\\_action\\_plan.pdf](http://www.glhv.org.au/files/health_action_plan.pdf)

This situation stands in stark contrast to the situation in overseas arenas such as the United State of America (USA), where significant strides have been made to identify and redress discrimination against gay, lesbian, bisexual, transgender and intersex people over 65 years of age. This includes research and legislation aimed towards redressing and prohibiting discrimination related to financial and work / retirement related entitlements where older GLBTI people, including couples, are subjected to unequal treatment or abuse.

I recently completed PhD research in Australia which included fieldwork in the USA, where comprehensive audits of legislation impacting directly on older people in relation to sexual and gender identity. Such older people are particularly vulnerable to discrimination and abuse.

The PhD research is available online at:

<http://www.library.unisa.edu.au/adt-root/public/adt-SUSA-01042005-134827/>

Further research and documentation which identifies the serious lack of attention paid to the situation of older GLBTI people, including those in same-sex relationships, or formerly in same-sex relationships following the death of a partner, is available at the following sites:

<http://www.rainbowvisions.org.au/resources/HarrisonGLIPReview.pdf>

[http://www.rainbowvisions.org.au/resources/RV\\_AgeingForum\\_Mannie&KenPlenarySession.pdf](http://www.rainbowvisions.org.au/resources/RV_AgeingForum_Mannie&KenPlenarySession.pdf)

[http://www.rainbowvisions.org.au/resources/RV\\_AgeingForum\\_SandyMacDonald.pdf](http://www.rainbowvisions.org.au/resources/RV_AgeingForum_SandyMacDonald.pdf)

[http://www.rainbowvisions.org.au/resources/wordIsOut\\_by\\_JoHarrison.pdf](http://www.rainbowvisions.org.au/resources/wordIsOut_by_JoHarrison.pdf)

<http://www.rainbowvisions.org.au/resources/HarrisonAOTJournal48.pdf>

<http://www.rainbowvisions.org.au/resources/AJA1999Article.pdf>

<http://www.rainbowvisions.org.au/resources/TheNeedsOfOlderGLTPEople.pdf>

These documents, dating back to 1999, raise serious issues of concern which have remained almost completely neglected by Australian governments to date. Older GLBTI people are particularly at risk of discrimination, including financial abuse, and are more likely to remain silent and invisible amidst personal histories of persecution and fear.

Legislative protections are seriously inadequate to the point of being non-existent for older GLBTI people and same-sex couples. Current complaints mechanisms do not enable people who are invisible and afraid to make complaints without fear of retribution. Education of service providers around cultural competency in relation to sexual and gender identity, as is conducted in overseas sites, is urgently needed. Legislative reform which gives weight to such education needs to be enacted as a matter of urgency.

For older GLBTI people, the illness and / or death of one member of the partnership causes particular matters of concern for the carer / surviving partner in relation to inequity around financial and work / retirement entitlements, including superannuation, pensions and access to tax benefits enjoyed by heterosexual spouses.

A significant report from the USA's National Taskforce on Gay and Lesbian Rights outlined legislative inequity impacting on GLBTI older people including those in same-sex relationships. The report 'Outing Age', by Cahill, South and Spade (2000) is available online at:

<http://www.thetaskforce.org/theissues/library.cfm?issueID=24&pubTypeID=2>

Such an audit of all Commonwealth and State legislation in relation to its impact on gay, lesbian, bisexual, transgender and intersex older people is urgently required in Australia. This audit should include an examination of all legislation relating to aged care, including legislation which relates to financial elder abuse. While several States have identified legislative discrimination against GLBTI people and taken steps to rectify this, specific attention has not been paid to the extent to which older GLBTI people are particularly vulnerable and specifically affected by lack of protections and current inequitable situations.

At the Commonwealth level, GLBTI older people have yet to be recognised at all in Federal aged care policy, let alone be the subject of any serious attempt to identify legislative barriers to equity which seriously impact on financial and work related matters impacting on older people because of their sexual or gender identities.

In the USA, legal cases which have involved attempts to redress discrimination in relation to financial and work-related entitlements as it impacts on older GLBTI people and same-sex couples have met with some significant successes:

<http://www.lambdalegal.org/cgi-bin/iowa/issues/record?record=17>

In Australia, we are lagging seriously behind and are urgently in need of research which audits the legislative impact of current laws on GLBTI older people and makes recommendations for legal and policy reform which provides guaranteed protection from elder abuse and discrimination for older GLBTI people, many of whom have lived through a history of persecution and may never publicly reveal their sexual or gender identities.

We lag behind countries such as Canada, the USA and the United Kingdom, where steps have been taken at the level of legislative reforms, amendments to regulations around standards of care, and reform of program guidelines (such as those impacting on aged care advocacy services here), as well as education of providers. Overseas reforms have been adopted to protect GLBTI older people, even if they never come out publicly; even if they never complain; even if they would not describe themselves as 'gay' or 'lesbian' or 'transgender'.

The invisibility of GLBTI older people is compounded by ageism and the fear of physical dependency, economic hardship and abuse, including financial abuse. This is, quite simply, shameful. To date the only governments to acknowledge GLBTI aged care at all are the Victorian and NSW governments, the latter through the Anti-Discrimination Board. Neither of these mentions is in legislation. I am a member of the South Australian Ministerial Advisory Council on Gay and Lesbian Health. We have included aged care in our communications.

Serious discrimination relates to financial hardship and inequity in the application of regulations and guidelines concerning fees for residential and other services and the threat of loss of the 'family' home – or as one older lesbian calls it "the family house – they don't regard it as a home" – the loss of the home at a time of serious distress - the admission of one member of a relationship to a residential facility. There is also the threat impending loss of the home at the two year point of residence.

Members of organisations such as: Intersection, Mature Age Gays, Access Plus Spanning Identities, Rainbow Visions, GRAI, the ALSO Foundation, Matrix and 10/40, amongst others across Australia, provide us with some evidence and a human face in relation to GLBTI ageing and the discrimination which results from inequitable treatment at law.

Most older GLBTI people will never be out. If they are, it will mainly occur after they know it is safe to do so. Experts advise that we not to wait for 'evidence' but be assured that discrimination is occurring people are afraid. The prevention of discriminatory circumstances and the transmission of a message of safety – the onus being on us, not them, to change things, is what overseas experts conveyed as a crucial message in relation to GLBTI older people and the law.

I am aware that many of the 200 members of the Sydney group Mature Age Gays live in residential aged care settings, or are consumers of Community Aged Care Packages or Extended Aged Care in the Home Packages. Not one of them is publicly out to their service provider. Most are not out to anyone other than the men in the group. This is serious fear of discrimination.

I have worked in the aged care industry as an advocate, trainer and educator. My background is in social work and social research, and I have almost always worked in the field of gerontology. Until there is a critical masse of out baby boomers who are in the aged care sector, being openly GLBTI as a consumer or provider of service (which would ward off some discrimination) is something only the brave or foolhardy would consider. This is unacceptable.

I have GLBTI friends in their 60s, 70s and 80s. They are determined not to 'subjected' as they put it, to the formal aged care system. One of these people would rather commit suicide than risk abusive treatment within a legislative environment which provides no protection and enables discrimination and abuse to occur.

Currently, Commonwealth legislation, regulations, funding program guidelines and service agreements leave older GLBTI people almost completely invisible and vulnerable to discrimination. This needs to be redressed as a matter of urgency. An audit of legislation, regulatory standards, policies and guidelines which drive programs across levels of government is needed.

This has occurred in the USA and overlaps with other areas that are not aged-care specific, such as death, taxes, superannuation and Medicare – but these are particularly important when we are talking about older GLBTI people whose life histories mean they may not register their relationships and they may not even call themselves 'gay' or 'lesbian'.

The legal and policy framework needs to do the job of protecting those who have been living in fear of discrimination for many decades. The audit will tell us what we need to change, in detail. For example, the Residents Agreement for Nursing Homes used to include sexual orientation in its list of areas of rights and freedoms. This is no longer the case.

GLBTI organisations and agencies across Australia are taking up ageing issues and could assist such an audit. There are several organisations of GLBTI older people themselves who will play a crucial role in any audit or examination of discriminatory procedures. Several of these organisations are presenting in a symposium at the Conference of the Australian Association of Gerontology which this year listed gay and lesbian ageing on its call for papers. The time for an audit is overdue.

Gay and Lesbian Issues in Psychology Review is a peer reviewed academic journal which has recently devoted an issue to GLBTI ageing in Australia (Vol 2 No 2, 2006). [http://www.groups.psychology.org.au/glip/glip\\_review/#latestissue](http://www.groups.psychology.org.au/glip/glip_review/#latestissue)

Slowly we are building an evidence base but we cannot afford to wait until the weight of evidence is substantial, as people are suffering in silence now.

An audit along the lines of the report Outing Age from the National Gay and Lesbian Task Force in Washington DC would assist us to develop a picture of what needs to change to ensure the safety of GLBTI older people and those who are employed to assist them and are also GLBTI. The discrimination which those employed within the aged care industry experience is another related matter. I have been approached by many service providers who remain invisible themselves and are concerned for their clients.

Examples which support this submission (provided to the author on an anecdotal basis):

- A gay older man attending a day centre is threatened with being barred for being 'too flamboyant' and is told to wear latex gloves to 'protect staff from infection' – there were social as well as financial implications for him, including the potential denial of access to a fee-free service with allied health professionals available to him.
- A gay older man is moved without consultation from a residential facility to a psychiatric aged care facility, and the social worker is told he had too many male visitors. This impacted on him financially, including in relation to the loss of his independent unit.
- A lesbian and her life partner are in hospital in the discharge unit with the discharge officer. No recognition of their partnership is made or allowed for on the assessment form which assesses the woman for residential care admission. The best option for her partner would be 'other'. There are financial losses associated with not being a heterosexual couple. Both of these women remain silent about their relationship. There could be financial implications in addition to fees and charges, connected to coming out, and they won't risk that.
- An older gay man commits suicide while living in a residential care setting. The financial and other implications of taking the risk of outing himself (thinking he might be evicted) play a role in this, according to the Executive Officer of the organisation. The EO comes out as gay himself and initiates change of attitudes within the organisation.
- A lesbian in her 60s seeks legal advice from the aged care rights advocacy service around the financial discrimination she faces due to having to place her partner of thirty years into a residential facility. There is a chance she might lose their family home in order to pay the fees, given the home is not excluded from the assets test. She has never heard of the advocacy service.
- A lesbian in her 90s contacts the local AIDS Council, pretending to be HIV positive. When the service worker visits, she admits she can't bear the thought of having to risk a homophobic mainstream aged care worker helping her. She is desperately in need of assistance and begs them to help.