



Submission to:

The Review of Aged Care
Complaints Investigation Scheme
Department of Health and Ageing

August 2009

About ACON

ACON (the AIDS Council of NSW) was formed in 1985 as part of the community response to the impact of the HIV/AIDS epidemic in Australia. Today, ACON is Australia's largest community-based gay, lesbian, bisexual and transgender (GLBT) health and HIV/AIDS organisation. ACON works to improve the health and wellbeing of the GLBT community and people with HIV, and reduce HIV transmission.

ACON is home to the Community Support Network (CSN), the Positive Living Centre (PLC), the Luncheon Club, the Lesbian and Gay Anti-Violence Project (AVP) and the Sex Workers Outreach Project (SWOP). ACON has its head office in Sydney as well as branches in the Illawarra, Northern Rivers, the Hunter region and the Mid North Coast.

ACON has a long history of providing services for ageing and older members of the GLBT community and people with HIV. Recognising the increasing importance of this work, ACON developed *Ageing Disgracefully: ACON's Ageing Strategy 2006-9*, which continues to guide our work with ageing and older GLBT people and people with HIV.¹ ACON also made a submission to the recent *Review of Accreditation Processes for Residential Aged Care Homes*, which is attached.

General Comments

With an ageing population and an ever growing number of Australians entering residential aged care homes and community care facilities, it is essential that such facilities and services are of the highest standard and are able to meet the needs of their residents. Consequently, ACON congratulates the Department of Health and Ageing on, and welcomes the opportunity to make a submission to, the review of the aged care Complaints Investigations Scheme (CIS).

Members of the GLBT community have specific needs and experience aged care services differently from the general population. These needs and experiences can be the result of discrimination or perceived discrimination in the aged care sector as well as past experiences of discrimination in social services and from society generally.² The Complaints Investigation Scheme is thus particularly important to members of the GLBT community to protect their rights in residential and community aged care settings due to their specific needs and vulnerability to discrimination.

Key Issues

GLBT Aged Care Clients

GLBT people are a consumer group in the aged care sector that have specific needs and distinct experiences. As a result of homophobia, transphobia, ignorance and/or a lack of understanding and knowledge about sexuality and gender identity issues, discrimination, prejudice and abuse are often experienced by older GLBT people in the aged care sector or in society generally.³ Therefore, it is imperative that when engaging with the aged care sector that services be non-discriminatory and culturally appropriate for GLBT clients, so that their rights are protected and their needs are met.

¹ Available for download at <http://www.acon.org.au/about-acon/Strategies/ageing> .

² C Barrett, *My People: A project exploring the experiences of Gay, Lesbian, Bisexual, Transgender and Intersex seniors in aged-care services*, Matrix Guild Victoria, (2008), pp. 13-14.

³ See note 2 above.

Issues relating to GLBT clients are diverse, and include:

- recognition of same-sex partners rather than assumptions that two persons of the same sex are not partners;
- understanding and opportunity being given for different forms of physical and sexual contact to heterosexual clients;
- a heavier reliance on friendship networks rather than family for some older GLBT clients;
- specific health needs such as HIV treatments for people with HIV and hormone therapy for transgender people;
- the potential earlier onset of ageing for people with HIV; and
- the importance of a non-discriminatory and safe environment for the mental and physical health of GLBT clients.⁴

Supporting Complaints from GLBT clients

To ensure that the CIS functions in a robust manner, it must be accessible to vulnerable stakeholders in the aged care sector and their advocates and provide support for making and sustaining complaints. For the GLBT community, the different experiences, especially the possibility of discrimination, harassment and vilification and their concerns about confidentiality, impacts on their capacity to utilise the CIS.

It is thus necessary for GLBT clients of aged care to receive culturally appropriate advocacy that understands the experiences of GLBT clients as well as the CIS system. However, currently GLBT community organisations that understand the experiences of GLBT clients in the aged care sector are not funded to provide advocacy and support for GLBT clients in utilising the CIS. To improve access to CIS of GLBT clients, adequate funding needs to be provided to GLBT specific community organisations to advocate and support GLBT clients in making complaints to the CIS. The funding could come from the Commonwealth Residential Aged Care Advocacy Service Program which already funds mainstream advocacy and support services.

By resourcing existing or even new advocacy organisations that represent the GLBT community then complaints directly associated with the aged care sector could work in synergy with any new CIS developed as part of the Office of Aged Care Quality and Compliance. This would also ensure that people in the GLBT community have a safe port-of-call for their often complex and unique issues.

Mainstream services that provide advocacy and support to aged care clients also should be culturally appropriate and accessible to GLBT clients in aged care. Training on cultural sensitivity and non-discrimination would be key in improving the accessibility of mainstream services to the GLBT community.

Recommendations:

1. The Department of Health and Ageing to ensure that appropriately supports are provided for older people in the GLBT community who wish to access CIS including resourcing existing GLBT community-based organisations to provide this assistance.
2. The Department of Health and Ageing to ensure GLBT cultural sensitivity training is undertaken by all mainstream advocacy and support services for aged care clients.

Investigation and Communication

Members of the GLBT community in residential aged care settings may or may not be 'out' or open about their sexual orientation/gender identity, and they may have experienced discrimination from regulators, service providers and society. Protecting the confidentiality of GLBT clients during investigations and communications with aged care service providers or other stakeholders is key in respecting their privacy but also in preventing discrimination, harassment and vilification of GLBT clients in aged care.

The issue of confidentiality and the potentiality of discrimination, harassment and vilification should also be factored into any risk analysis in the investigation and communication policies for CIS staff.

Due to the confidentiality issues for GLBT clients in aged care, complaints received by anonymous complainants which involves a GLBT client need to be taken seriously and be investigated even if discrimination and ill-treatment against clients are not apparent at first instance. The nature of discrimination is that it can be systemic or hidden, without staff or other clients necessarily being aware of it. Thus the analysis that CIS staff engage in to determine if a complaint is 'in scope' or if an investigation is warranted needs to factor in the concerns of confidentiality and the insidious nature of some forms of discrimination.

Cultural sensitivity training of CIS staff would assist staff in better understanding these issues when dealing with complaints that include a GLBT dimension.

Recommendation:

3. The Department of Health and Ageing protects the confidentiality of GLBT complainants and clients by including the possibility of discrimination, harassment and vilification in the risk analysis performed by CIS investigators in their investigations and communications.
4. The Department of Health and Ageing ensures that complaints to the CIS with a GLBT dimension are thoroughly considered given that concerns over confidentiality may lead to more anonymous complaints and that discrimination can be hidden and insidious.
5. The Department of Health and Ageing ensures that GLBT cultural sensitivity training is provided to CIS staff.

Needs and expectations of stakeholders of aged care services

Members of the GLBT community who access aged care services have specific concerns such as discrimination and lack of cultural sensitivity by service providers. The GLBT community also has needs and expectations that are broadly similar to the general population as a whole. The provision of a thorough, independent, timely and culturally appropriate service is a reasonable expectation for aged care clients, especially if they are in a vulnerable position such as in residential aged care.

To this end, the actual and appearance of independence is crucial to engender confidence in the CIS. It is also important to ensure that the Aged Care Commissioner is truly independent and can confirm, vary or set aside the decision of CIS staff and for that decision to be binding without the need for further Departmental approval.

⁴ *Ibid.*

Recommendation:

6. The Commonwealth Government ensures the independence of the CIS review system by allowing the Aged Care Commissioner to make binding review determinations independently.

The Need for a GLBT Strategy

Meeting the needs of GLBT clients can be complex in relation to the current generation of consumers as they are not necessarily 'out' or open to service providers about their sexual orientation/gender identity. This is due to past experiences of prejudice and discrimination such as the criminalisation of homosexuality and medical classifications of homosexuals and transgender people as mentally ill and current experiences or perceptions of discrimination by aged care providers.⁵ Thus it is more difficult to measure if their needs are being met and a culturally appropriate high quality service is being delivered.

Ensuring that GLBT clients receive culturally appropriate levels of service and are not subject to discrimination in the aged care sector would be best addressed through a GLBT specific strategy for the aged care sector. This strategy can be modelled on the *Aboriginal and Torres Strait Islander Aged Care Strategy* and the *Ethnic Aged Care Framework* that have previously been developed at the Commonwealth level for specific groups that have different needs.

The strategy should be administered by the Commonwealth Department of Health and Ageing and include the following for members of the GLBT community in the aged care sector:

- GLBT specific policy;
- program guidelines;
- targeted funding;
- consumer safety;
- research; and
- education and training for departmental staff and sector staff.

Recommendation:

7. The Commonwealth government adopts a GLBT specific strategy for the aged care sector to be administered by the Department of Health and Ageing.

For further information regarding this submission, please contact David Scamell, Manager of Policy, Planning and Research on 02 9206 2048 or via email at dscamell@acon.org.au.

⁵ *Ibid.*