



BUILDING OUR COMMUNITY'S  
HEALTH & WELLBEING

**Submission to:**

The Department of Health and  
Ageing on the *Draft Revised  
Standards for Residential Aged Care.*

May 2011

## About ACON

ACON (formerly known as 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 provides information, support and advocacy for the GLBT community and people living with or at risk of acquiring HIV, including sex workers and people who use drugs.

ACON is home to the Community Support Network (CSN), the Positive Living Centre (PLC), 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<sup>1</sup>.

ACON is currently working in partnership with Aged and Community Services NSW and ACT on the development and piloting of GLBT sensitivity and diversity awareness workshops and resources for residential aged care services in NSW.

ACON also made submissions to the *Review of Accreditation Processes for Residential Aged Care Homes*, the *Review of Aged Care Complaints Investigations Scheme* and the Productivity Commission inquiry into *Caring for Older Australians*.

## General Comments

ACON welcomes the opportunity to provide comment on the *Draft Revised Standards for Residential Aged Care* (the Standards). ACON has previously made a submission to the *Review of the Accreditation Process for Residential Aged Care Homes* in 2009 discussing the specific needs of GLBT people in relation to aged care which research to date has identified. It is disappointing that these needs are not explicitly acknowledged or included in the Standards.

Gay, lesbian, bisexual and transgender (GLBT) people experience discrimination in aged care settings. This has been noted by the Productivity Commission's draft report *Caring*

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

for *Older Australians*<sup>2</sup> and the Australian Human Rights Commission's consultation report *Addressing sexual orientation and sex and/or gender identity discrimination*.<sup>3</sup>

The Productivity Commission contextualised this issue in the statement: “[m]any older GLBTI people have experienced considerable discrimination over the course of their lives and this may continue in aged care where their sexuality and/or gender identity are not recognised in the delivery of culturally appropriate services”.<sup>4</sup>

Discrimination often manifests as clients or staff members exhibiting prejudice towards GLBT people directly, for example, through vilification, providing a lower standard of care or the separation of same-sex couples. However, as the Productivity Commission have noted, it can also be the result of the failure to consider the special needs of clients who are GLBT. Just like Aboriginal and Torres Strait Islander clients or clients from culturally and linguistically diverse backgrounds, GLBT clients have special needs that need to be considered in service planning and delivery.

To ensure that GLBT people are not disadvantaged and that their aged care needs are appropriately met, the Standards needs to be unambiguous in its application to clients regardless of their sexual orientation and gender identity, and a requirement for effective diversity management policies and procedures should be incorporated into the standards for management of residential aged care facilities.

ACON also notes the experiences of people with HIV in residential aged care facilities. People with HIV have specific care needs that should be sensitively and competently managed whilst respecting the confidentiality of people with HIV. Discussions of these factors are necessary for residential aged care operators and accreditation standards assessors to ensure people with HIV receive the care they need. ACON also endorse the submission made by Positive Life NSW to this consultation process.

## **Recognition of GLBT people**

ACON welcomes the recognition of diversity through statements such as “[e]ach resident is different” and “[t]he Standards and expected performance statements apply to each resident’s assessed needs and preferences regardless of race, culture, language, gender, social or religious choices” in the “Statement of intent”.

A clear statement that explicitly applies the Standards to diverse populations is essential in ensuring that aged care facilities are socially inclusive and provide equality of care.

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<sup>2</sup> Productivity Commission, *Caring for Older Australians: Productivity Commission Draft Report*, (2011), pp. 280-281.

<sup>3</sup> Australian Human Rights Commission, *Addressing sexual orientation and sex and/or gender identity discrimination*, (2011) p. 11.

<sup>4</sup> Productivity Commission, *op. cit.*, p. 280.

However, ACON is concerned that the current statement does not explicitly mention sexual orientation and gender identity.

Although the GLBT community may be considered a culture, and GLBT people may be considered under “social choice”, neither the concepts of “culture” nor “social choice” adequately captures the broad spectrum of GLBT people in its diversity, nor does it effectively acknowledge the very different basis and manifestations of prejudice and stigma in relation to sexual orientation compared to racism.

In addition, sexual orientation and gender identity is often hidden and made invisible by those seeking aged care services as well as unacknowledged by those providing services. Without clear and explicit mention of sexual orientation, customers, aged care service providers and accreditation standards assessors may not consider the issues relating to GLBT people and how the standards apply to clients who are GLBT.

Given the experiences of discrimination experienced by GLBT people mentioned above, the explicit inclusion of GLBT people in the “Statement of intent” and “Statement of introduction” would highlight the need for aged care service providers to consider the special needs of GLBT people in residential aged care facilities, for example, accommodating clients in same-sex relationships without separating the couple.

ACON notes that issues of rights and choice for individual clients have already been incorporated into the “Principle” and “Expected performance” aspect of the standards. These include:

- 1.2 Promoting residents’ rights and responsibilities
- 1.3 Promoting privacy, dignity and choice,
- 1.6 Promoting social and leisure activities
- 2.1 Assessment and care planning

We commend the inclusion of these important standards; however, the absence of any requirement under Standard 3 to put in place appropriate management systems to achieve these standards is a serious omission. We believe an additional Expected Performance Standard under Standard 3 ‘Management of the home’ specifically around diversity management is critical to ensuring that the stated commitments to non discrimination outlined in the preamble and the achievement of the standards listed above are able to be realised.

Given the rates of staff turnover and significant proportion of staff in carer roles who are on temporary visas, an ongoing program of staff training around cultural sensitivity and awareness and diversity management, along with clear policies and procedures around managing discrimination and conflict are essential to ensuring the principles and sentiments expressed elsewhere in the documents are able to be realised.

Taking such an approach to reduce discriminatory behaviour, whether it is in a client-staff relationship, client-client relationship or staff-staff relationship would also improve the quality of care of residential aged care facilities for everyone. Additionally, costs associated with discrimination complaints and negative perceptions of the service would be reduced or minimised.

**Recommendations:**

1. That the Statement of intent makes explicit references to sexual orientation and gender identity.
2. That the Statement of introduction for Standards 1 and 3 make explicit references to sexual orientation and gender identity, or gay, lesbian, bisexual and transgender clients.
3. That an additional Expected performance be added to Standard 3 requiring facilities to have in place diversity and discrimination management policies , including appropriate sensitivity training for staff in residential aged care facilities.

**Additional information**

In addition to the Standards, ACON understands the Department of Health and Ageing will be developing information resources and policies for Accreditation Standards Assessors and residential aged care facility operators. These associated documents are an important opportunity to provide a more detailed discussion of the experiences of GLBT people in residential aged care facilities and steps that can be taken to ensure appropriate services are delivered.

As ACON is currently developing and delivering GLBT sensitivity training packages with a grant from the Department of Health and Ageing, ACON is happy to offer our assistance in developing documents such as manuals and notes for assessors and residential aged care facility operators.

In ACON’s experience, people with HIV also have specific needs in residential aged care facilities. The health and wellbeing of people with HIV have improved significantly over the past three decades with life saving medications, resulting in many people with HIV now living to old age. However, they are now more likely to experience cardiovascular diseases, hypertension, diabetes, osteoporosis and other degenerative bone diseases.

People with HIV are also at risk of stigma and discrimination in aged care settings, as well as more broadly in society. This experience of stigma and discrimination can affect disclosure to service providers of their HIV status, thus tailored care to the special needs of people with HIV cannot be delivered. It is thus vital for service providers to uphold the confidentiality, privacy and non-discrimination rights of people with HIV so that their care needs can be assessed and met.

**Recommendation:**

4. That the Department of Health and Ageing include discussions of sexual orientation and gender identity in associated documents relating to the *Standards for Residential Aged Care*.
5. That the Department of Health and Ageing include discussions of people with HIV in associated documents relating to the *Standards for Residential Aged Care*.

**Interactions with proposals from the Productivity Commission**

The Productivity Commission has proposed changes to residential aged care with a proposal to uncap aged care places. This is a shift from the current allocation process, which considers the needs of priority populations, and enables specialised services to exist through the allocation of aged care places to specific priority groups.

If the Productivity Commission's proposals are accepted, priority populations who are disadvantaged will need to rely even more on other regulations, such as the Standards to ensure that the market provides adequate and culturally appropriate care, as this can no longer be achieved through the allocation process.

In a more market based system, without adequate regulations to ensure that all providers do not discriminate against GLBT people, and provide culturally appropriate services, GLBT people who are financially disadvantaged will be placed in the most vulnerable position.

Specifically, lesbians and people with HIV (of which around 80% are gay men<sup>5</sup>) are more likely to be financially disadvantaged in superannuation.

Women currently have around half of the superannuation savings that men have,<sup>6</sup> due to lower wages compared to men and time spent outside of the paid labour force due to child caring. Lesbian women experience similar financial disadvantages, however, in addition, they may also experience employment discrimination on the basis of sexual orientation.

A large percentage of people with HIV (31%) live below the poverty line according to an analysis using the quarterly Henderson Poverty Lines from the Melbourne Institute of Applied Economics and Social Research.<sup>7</sup> The experience of poverty appears to be entrenched as many surveys over the past years have consistently returned high levels

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<sup>5</sup> National Centre in HIV Epidemiology and Clinical Research, *HIV, viral hepatitis and sexually transmissible infections in Australia: Annual Surveillance Report*, (2010), p. 35.

<sup>6</sup> Australian Human Rights Commission, *Accumulating Poverty? Women's experiences of inequality over the lifecycle*, (2011), p. 1.

<sup>7</sup> Australian Research Centre in Sex, Health and Society, *HIV futures six: Making positive lives count*, La Trobe University, (2009), p. 53.

of poverty.<sup>8</sup> This necessarily negatively impacts on the superannuation savings available to many people with HIV.

These groups are thus less likely to have market power to ‘demand’ services that are culturally appropriate and non-discriminatory and will be disproportionately affected without robust regulations.

## **Lack of alternative protections**

The importance of including sexual orientation and gender identity in the Standards and associated documents is compounded by the current lack of anti-discrimination protections at the Commonwealth level for GLBT people.

Current commonwealth anti-discrimination laws protect clients against discrimination on the basis of race, sex, disability and age. Clients and advocates have the opportunity to conciliate with aged care service providers through the Australian Human Rights Commission to address any disparity in care or treatment. Additionally, the existence of these protections places a legal obligation on organisations to examine their policies and practices to minimise legal risks.

Without anti-discrimination protections in place offering another layer of protection and regulation, GLBT clients will need to rely on the Standards even more so than other disadvantaged groups.

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<sup>8</sup> *Ibid.*

## List of Recommendations

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2. That the Statement of introduction for Standards 1 and 3 make explicit references to sexual orientation and gender identity, or gay, lesbian, bisexual and transgender clients.
3. That an additional Expected performance be added to Standard 3 regarding managing diversity in residential aged care facilities.
4. That the Department of Health and Ageing include discussions of sexual orientation and gender identity in associated documents relating to the *Standards for Residential Aged Care*.
5. That the Department of Health and Ageing include discussions of people with HIV in associated documents relating to the *Standards for Residential Aged Care*.

For further information regarding this submission, please contact Alan Brotherton, Director, Policy, Strategy and Research on 02 9206 2048 or via email at [abrotherton@acon.org.au](mailto:abrotherton@acon.org.au).