

25 March 2020

The Hon. Tony Pagone QC and Ms Lynelle Briggs AO  
Royal Commissioners  
Royal Commission into Aged Care Quality and Safety



Submitted via email: [ACRCenquiries@royalcommission.gov.au](mailto:ACRCenquiries@royalcommission.gov.au)

Dear Commissioners

**Re: Ending Discrimination against LGBTQ people in aged care – Response to the Interim Report**

On behalf of ACON, Australia's largest health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders, I welcome the opportunity to provide a response to the Royal Commission's *Interim Report: Neglect*, in addition to our initial submission of 1 October 2019. I am also writing to alert you of the risks of increased discrimination in aged care should the 'Religious Discrimination' Bills become legislation.

As an organisation that provides support for older members of the lesbian, gay, bisexual, trans and queer (LGBTQ) community and seeks to improve inclusive practices in aged care, we were appalled by the extent of the systemic failures of Australia's aged care services revealed throughout the Royal Commission hearings. The issues identified in the *Interim Report*, in particular the lack of home care packages and over-reliance on chemical restraint affect our communities.

It is highly regrettable, however, that the *Interim Report* does not provide any detailed analysis of the specific issues that contribute to the unacceptable discrimination, neglect and failures to address the health needs of LGBTQ people, including people living with HIV (PLHIV), in aged care.

**The importance of addressing the specific needs of LGBTQ people cannot be understated.** ACON wishes to draw the attention of the Royal Commission to the recently revised *Aged Care Clinical Guide* produced by the Royal Australian College of General Practitioners (RACGP)<sup>1</sup>, which highlights the key factors that affect LGBTI people's health:

- 'The historical pathologising of older lesbian, gay, bisexual, transgender and intersex (LGBTI) people's bodies and relationships continues to adversely affect their health and wellbeing.'
- 'Older LGBTI people may hide their sexual orientation, gender identity or intersex status until they know they are safe; open disclosure to GPs improves [...] health and wellbeing.'
- 'Abuse and violence among LGBTI people may be perpetrated by intimate partners, family, community members or aged care service providers.'
- 'Mental health concerns [...] arise from experiences of discrimination and minority stress.'
- 'There are harmful levels of alcohol use among lesbian and bisexual women, and smoking and drug use among LGBT people.'
- 'Social isolation and loneliness may result from being estranged from families of origin, and LGBTI communities and friends may be regarded as family.'

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<sup>1</sup> RACGP, *Aged Care Clinical Guide (Silver Book)*, Part B – Care of Older LGBTI People. Last revised: 05 Sep 2019.

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- 'LGBTI people living with dementia may lose capacity for independent decision making and be vulnerable to LGBTI-phobic family members and service providers.'
- 'Older transgender and gender-diverse people have had limited support and resources to affirm their gender. They often experience higher levels of discrimination and a greater number and severity of health issues.'

Finding aged care services that appropriately address the needs of LGBTQ people is extremely difficult. While hundreds of providers are listed as 'LGBT specialised' services on *myagedcare.gov.au*, the lack of adequate accreditation processes raises serious doubts about the veracity of providers' claims and ability to deliver inclusive services for our communities.

**LGBTQ people's access to aged care services, and their experiences in aged care settings, could be further diminished by new legislation that would allow people to discriminate based on religious beliefs.** As currently drafted, the proposed Religious Discrimination Bill would:

- Exempt 'statements of belief' from all anti-discrimination protections (Religious Discrimination Bill subsection 42(1)). This would enable discriminatory remarks to be made against LGBTQ people and other groups. For instance, a transgender resident in an aged care facility could lose their existing discrimination protections if told by an aged care worker that gender affirmation is 'against the laws of God'.
- Allow religious providers of Commonwealth-funded home care to discriminate against people with different or no beliefs in receipt of that care (subsection 11(5)).
- Allows 'conscientious objections' by health practitioners (Section 8(5)). This means that a health practitioner may refuse to provide or participate in a service to which they object on religious grounds, and their employer may not be in a position to appropriately respond.
- Faith-based aged care providers would be able to hire and fire employees based on their religious beliefs. The legal test for defining religious requirements will mean that people and religious organisations will not need to demonstrate conformity with any established doctrines, tenets, beliefs or teachings of any established faith tradition in order to justify discrimination against others with different or no beliefs.

This is extremely concerning given the sizeable proportion of aged care services managed by religious organisations. According to the Australian Institute of Health and Welfare, Gen Aged Care Data, 2019 Aged care data snapshot, 18% of home care and nearly a quarter of residential aged care places in NSW are managed by religious organisations.

**In addition to the six priorities previously recommended in our October 2019 Submission (attached), ACON recommends:**

- 1) **Ensuring that LGBTQ people are legally protected from discrimination in aged care.** The current 'Religious Freedom' bill is a threat to our communities – it would further restrict LGBTQ people's access to aged care and contribute to nurturing a culture of discrimination; and
- 2) **Creating a range of new accountability mechanisms to ensure that the aged care system becomes safe, inclusive and equipped to address LGBTQ people's needs.** This includes:
  - collecting adequate data to measure aged care outcomes for LGBTQ people and PLHIV;

- improving the enforcement of standards to ensure the provision of quality care for *any* LGBTQ person or PLHIV accessing *any* aged care service;
- requiring appropriate accreditation processes to verify that providers' claims on *My Aged Care* that they are 'LGBT specialised' are correct and reflected in practice; and
- a greater focus on the inclusion of LGBTQ staff.

We thank the Royal Commission into Aged Care Quality and Safety for the opportunity to provide further comment on the *Interim Report: Neglect*. For all matters concerning this submission please contact Nicolas Parkhill, ACON CEO at [nparkhill@acon.org.au](mailto:nparkhill@acon.org.au).

Kind regards



Nicolas Parkhill  
Chief Executive Officer

Attachment: ACON SUBMISSION ROYAL COMMISSION INTO AGED CARE QUALITY AND SAFETY, 1 October 2019