SUBMISSION TO THE NATIONAL HUMAN RIGHT ACTION PLAN

Dear Sir/Madam

Thank you for the opportunity to input into the National Human Rights Action Plan Baseline Study.

About GRAI

The GLTBI Retirement Association (Inc) – GRAI – is a Western Australian not-for-profit, community-based organisation. We aim to identify and address the needs of older people of diverse sexualities and gender identities and work to create an inclusive mature age environment to support a good quality of life for GLBTI1 elders. Nationally, GRAI is the only organisation focusing exclusively on the needs of GLBTI elders.

GRAI last year completed a Lotteries West funded study examining retirement accommodation and aged care issues for non-heterosexual populations.2 Data from this study has been invaluable in providing a basis for a number of submissions to government and agency enquiries into aged care, and for providing advocacy for the rights of GLBTI elders. This includes most recently to the Productivity Commission inquiry into Caring for Older Australia. It was pleasing to note that the final report of the Productivity Commission covered the issues of GLBTI elders in some detail including in the diversity recommendations. While GRAI endorses most of the Productivity Report recommendations, more clarification on the mechanisms to ensure GLBTI concerns are addressed at a practitioner and facility level and that GLBTI competency is included for accreditation purposes is required.

1 GLBTI (gay, lesbian, bisexual, transgendered, transsexual and intersex) is used throughout this document. There is much debate on terminology for this group and other terms are also used including gay, GLBTI (gay, lesbian, bisexual, trans, intersex), sexual minority groups, sexual and gender diverse. LGBTI is used here as a general term to include people who are not exclusively heterosexual in identity, attraction and/or behaviour.

2 GRAI and Curtin Health Innovation Research Institute, 2010, We don’t have any of those people here, Curtin University, Bentley, WA.
Improving the Human Rights of GLTBI Elders

Invisibility, a key concern

A key concern confirmed by GRAI’s and other GLBT gerontology research is the invisibility of GLTBI elders. There is a vicious 3-part cycle which perpetuates this invisibility: care providers remain largely unaware of GLTBI elders’ existence; these clients go to great lengths to conceal their sexuality identity; and national and state laws and regulations fail to recognise them or offer legal protection.

GRAI’s 2010 study revealed that 86% of survey respondents were unaware of any GLTBI residents within their facility. Indeed, a typical response was: ‘We don’t have any of those people here’. This is of great concern as it can be estimated that 8 – 10% of seniors will have non-heterosexual identities, making them the largest minority group in aged care. This lack of recognition of their GLTBI clients will necessarily extend to a failure to recognise their partners, leading to a regrettable and sad loss of kinship rights in visiting, decision-making and end-of-life care.

The pervasive heteronormativity of Aged Care services enforces and reinforces GLTBI elders’ reluctance to reveal their identities. This cannot be overstated. Having grown up in an era when homosexuality was criminalised or regarded as a mental illness, GLTBI elders tend to have deeply internalised fears of homophobia, be profoundly concerned about exposure and are often very adept at identity concealment. Unfortunately this (real or perceived) need for pretence comes at enormous cost, increasing the incidence of stress, depression and social isolation. GLTBI elders are also less likely to access health care and other services as a result of their fears regarding institutions.

Nationally, there are a number of studies detailing instances of discrimination suffered by GLTBI elders, both overt and covert. At present, Australian laws are silent on the needs of this vulnerable minority, failing to offer recognition or legal protection. The two main pieces of Federal legislation governing Aged Care services and programs, the Aged Care Act (1997) and the Home and Community Care Act (1985), both fail to recognise GLTBI people as a special needs group. This is an unfortunate omission, as special needs status draws attention to the need to offer substantive equality measures to ensure the safety and well being of the identified group.

Similarly, the Australian Government’s Code of Ethics and Guide to Ethical Conduct for Residential Aged Care excludes discrimination based on sexuality, it being left to the discretion of individual providers to add (or not) a non-discriminatory clause based on sexuality, sexual preference and

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4 Around 900,000 older Australians currently receive government subsidised aged care services (DoHA 2009 in Productivity Commission, 2010, Caring For Older Australians). Therefore the GLBTI cohort receiving these services could be up to 90,000 people (GRAI and Curtin Health Innovation Research Institute, 2010, We don’t have any of those people here, Curtin University, Bentley, WA).
expression. This optional approach to discrimination has serious ramifications, especially given the public condemnation of homosexuality by some of the (faith-based) organisations who provide aged care services.

This final point underscores the gravity of the lack of legal protection in Aged Care services for GLBTI elders. In Western Australia, 36.7% of residential care services are provided by religious organisations. The WA Equal Opportunity Act (1984) was amended in 2001 to provide protection from discrimination on the grounds of sexuality, but grants exemption to religious bodies, leaving such organisations free to discriminate at will against a group poorly placed to seek a remedy.

Much work needs to be done to address the invisibility of GLBTI elders, both through education within the Aged Care sector and through relevant law reform. Meanwhile, as the Human Rights Commission website acknowledges: ‘Elderly LGB people... face difficulty accessing aged care and receiving equal treatment in the provision of aged care services’. We would add that until actions are taken to alleviate the situation, the human rights of GLTBI elders will continue to be severely compromised.

**Action Points for inclusion in the National Human Rights Action Plan**

To achieve a safe and inclusive environment for GLBTI elders, GRAI advocates the following actions be pursued and incorporated into the National Human rights Action Plan:

- **LAW REFORM**
  - The Aged Care Act (1997) and the Home and Community Care Act (1985), be amended to include GLBTI people as a special needs group.
  - The Australian Government’s Code of Ethics and Guide to Ethical Conduct for Residential Aged Care be amended to outlaw discrimination on the grounds of sexuality.
  - Religious exemptions be withdrawn from all anti-discrimination legislations. If institutions receive public subsidies for services, they should be bound by mainstream laws.
  - The Government be called upon to pass these law reform measures.
  - The Human Rights Commission be called upon to examine how current gaps in the law impact on GLTB elders and make recommendations to remedy inequities.

- **EDUCATION OF AGED CARE SERVICE PROVIDERS**
  - Information be provided to the Aged Care Sector to increase awareness of State and Federal legislation with regards to their GLTB clients. The logistics of the best way to deliver this could be driven by consultation with community organisations most notably the National LGBTI Health Alliance and GRAI.
  - GLBTI Cultural Competency be a mandatory training requirement for accreditation of Aged Care services and assessed by an Aged Care Assessment Team.
  - GLBTI sensitive practices (inclusive language, policies and procedures; signage and forms) be encouraged in all Aged Care services by the relevant Aged Care Standards and Accreditation Agency.

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7 Harrison, J. 2002
8 GRAI 2010:18
o An incentives program be developed for Aged Care services (such as Diversity Awards and Targeted Supplements to reward agencies who exceed mandatory requirements) to facilitate the cultural shifts needed to overcome discrimination.

- COMMUNITY CARE GIVING

GLTBI elders suffer greater isolation than their heterosexual peers. However, the GLTBI community has a history of strong support for its members (particularly through the HIV/AIDS epidemic) and could have a legitimate role in caring for their elders.

- DATA COLLECTION

There is a lack of both comprehensive and accessible data from the Aged Care area. There is also a particular paucity of research collecting information on sexuality and gender diversity, making it difficult to provide an accurate picture of this group.

- MONITORING

- A GLTBI Ombudsman be established within the Complaints Investigation Scheme
- Aged Care service providers be encouraged to clearly nominate an LGBTI contact person.

Conclusion

The scale of the problem of GLBTI elders’ discrimination is poorly understood and, because of its peculiar invisibility, generally overlooked by the Aged Care sector, the community and our governments. However, there are many actions that can be taken, and without too great expense, that can immeasurably improve the human rights of this most vulnerable group. We believe that, on the whole, the Aged Care sector is extremely well meaning, and with the right type of incentives and support, the problem of discrimination against GLBTI elders can be readily addressed.

GLBTI elders face unique challenges that many of the wider community are unaware of. GRAI’s mission is to improve the quality of life of this vulnerable group. The National Human Rights Action Plan provides one avenue that can raise this issue in a positive way with real action to combat current heteronormativity to improve the life of GLBTI elders, who are valuable members of the community.

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9 Compared with their heterosexual counterparts, GLTB elders are 2 ½ times more likely to be living alone, 2 times more likely to be single, and 4 times more likely to be childless. Within this community there is a greater reliance on ‘families of choice’ (GRAI 2010).
We trust that this submission may usefully contribute to the National Human Rights Action Plan, and that the Plan, when finalised, will succeed in guiding government policy, Aged Care sector development and community awareness, to address the needs of our GLBTI elders.

We thank you for your attention to this important issue and look forward to seeing the National Human Rights Action Plan Baseline Study in its final form. If we can be of further assistance, please contact me at j.comfort@curtin.edu.au or 0422 654244.

Yours sincerely

Jude Comfort
Chair, GRAI