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The Executive Director
Australian Law Reform Commission
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**Re: Elder Abuse inquiry**

Dear Ms. Wynn,

Thank you for the opportunity to make a submission to the ALRC Inquiry into Elder Abuse. The Alliance response focuses specifically on the needs and issues of lesbian, gay, bisexual, transgender/gender diverse and intersex elders. In writing our submission we sought feedback from our membership as well as from our LGBTI Ageing and Aged Care Advisory Group and LGBTI Ageing and Aged Care Network, which consist of organisations and individuals committed to making the ageing and aged care system LGBTI inclusive.

**About the Alliance**
The Alliance has almost 300 members and services as the national peak health organisation in Australia for organisations and individuals that provide health-related programs, services and research for and about LGBTI people, families and communities.

Alliance members are asked to agree to a social and human rights framework and to accept the following principles:

- Empower health consumers to control their own health needs
- Support self-determination
- Genuinely engage stake holders
- Affirm genders, bodies and relationships in all of their diversity through respectful inclusive language and bodily autonomy

Our vision is for healthy lesbian, gay, bisexual, trans/transgender, intersex, and other sexuality, gender, and bodily diverse people and communities throughout Australia and the world, free from stigma and discrimination.

LGBTI National LGBTI Health Alliance

Silver Rainbow

**About Silver Rainbow**

The National LGBTI Health Alliance was funded to ensure that LGBTI inclusive ageing and aged care becomes a reality. In 2015 the ageing and aged care project became known as Silver Rainbow. Silver Rainbow educates and informs service providers, policy makers, government, communities and LGBTI peoples on inclusive practice and how this can be delivered in the Australian ageing and aged care sector.

There are two key projects:

- *LGBTI Ageing and Aged Care Strategy*
  This project aims to educate and inform service providers, policy makers, LGBTI people and communities and the general community about changes to inclusive practice in the Australian aged care sector. We also monitor the roll out of the National LGBTI Ageing & Aged Care Strategy.

- *LGBTI Ageing and Aged Care Awareness Training*
  This project is delivering lesbian, gay, bisexual, transgender and intersex (LGBTI) aged care awareness training to a broad range of staff working in ageing and aged care, students studying aged care and aged care assessment teams nationally

We look forward to hearing the outcomes from this initial consultation and the inclusion of the particular concerns and needs of LGBTI elders in future discussion papers and reports.

If you have any questions please do not hesitate to contact me, Samantha Edmonds, on either (02) 8568 1123 or Samantha.edmonds@lgbtihealth.org.au

Yours Sincerely

Samantha Edmonds
Manager – Ageing and Aged Care Project (Silver Rainbow)
National LGBTI Health Alliance

**What is elder abuse?**

The following is taken from the LGBTI Ageing Centre Self-Help Elder Abuse Guide and adapted to the Australian context. It provides a summary of some of the key areas of abuse that LGBTI elders are likely to experience or face. (http://www.lgbtagingcenter.org/resources/pdfs/SELF-HELP_elderAbuse_Guide.pdf)

*Abuser threatens to "out" the older adult*
Despite many social and political advancements, discrimination, prejudice, and violence against LGBTI people still exists. LGBTI elders in particular often feel safer keeping their sexual orientation, intersex characteristics and/or gender identity a secret. If someone does find out a person is LGBTI, that person may threaten to "out" the person if they do not give them money, grant them sexual favors, or otherwise do what they want. They may feel that it is better to give in to the abuser than to risk whatever negative reactions they may face from people who learn they are LGBTI. LGBTI grandparents may be at particular risk if the abuser threatens to 'out' them to their children, who may then cut off access to their grandchildren.

*Abuser says authorities won't believe the older adult*
Abusers often tell their LGBTI elder victims that they won't be believed or something negative will happen to them if they try to report the abuse. If the victim is visible as LGBTI or has to come out in order to report the abuse, fear of facing authorities' prejudice or even violence may keep them silent.

*Victim fears "spending the rest of my life alone"*
LGBTI elders typically have been told for decades that LGBTI elders "end up alone," and ageism within the LGBTI communities can seem to confirm this prediction. The threat of spending the rest of one's life alone or never being touched again can be another way in which an abusive partner or caregiver keeps their victim close.

*Victim may be easier to isolate*
It is extremely common for abusers to try to isolate their victims both so they become totally dependent on the abuser and so that no one else notices the abuse. Isolating an LGBTI elder may be easier than isolating a non-LGBTI elder because family members may already be estranged and because many LGBTI elders do not feel comfortable in settings that predominately cater for non-LGBTI people. Some LGBTI elders even avoid health care professionals, preferring to cope with injuries and diseases on their own rather than risk encountering discrimination or prejudice in a health care setting.

*Abuser says, "This is what it means to be LGBTI"*
Because there have been so few public models of healthy LGBTI lives, it is still possible for LGBTI people with limited experience in the LGBTI communities to be misled by abusers who claim that whatever they are doing is "what LGBTI people do."

*Society says, "This is the best you can expect"*
"Internalised" homophobia, biphobia, or transphobia is what happens when an LGBTI person believes the social message that being LGBTI is not normal, is lesser, and is somehow not as good as being non-LGBTI. When an LGBTI elder has internalised these beliefs, they are far more likely to put

up with being abused, neglected, or exploited because they feel they don't deserve anything better. People who have been previously abused – especially as children – are also far more likely to believe that being abused is normal and to be expected and accepted.

*Victim has history of self-reliance, fears authorities*
Many LGBTI elders have experienced rejection from family members and disrespect (if not worse) from social institutions, leading them to develop a very strong belief in the virtues of self-reliance as a survival tactic in an often-hostile world. While a belief in self-reliance is common in older adults of every sexual orientation, body and gender identity, it may be heightened for LGBTI elders, since they also have additional reasons to fear involving officials or professionals who may discover their LGBTI status or history.

***Question 1 To what extent should the following elements, or any others, be taken into account in describing or defining elder abuse:***
***· harm or distress;***
***· intention;***
***· payment for services?***

Research shows that LGBTI elders frequently encounter elder abuse from friends and family members, and in long-term care settings, yet are less likely to report this abuse for fear of further discrimination. They also face significant risk factors for elder abuse including:

- Social isolation
- Homophobia, biphobia and transphobia
    - Experienced from external sources (negative stereotypes are perpetuated by others)
    - Experienced internally (Because of their lifetime experiences LGBTI elders can perpetuate negative attitudes and beliefs towards themselves)

As a result, LGBTI elders experiencing abuse may be less likely to seek help and support.

LGBTI elders are also less likely to have children and more likely to be single, their support networks might be smaller and thus, less available when incidents of elder abuse occur, though this is changing.

In addition, hostility from other residents and staff may cause LGBTI elders to withdraw or be excluded from social activities, compounding their social isolation. Hostility can be both real and perceived, but this does not lessen the impact. Issues can be exacerbated for L, G, B, T or I elders from culturally and linguistically diverse backgrounds, especially if they are from a country where they could face up to life imprisonment, or in the most extreme cases the death penalty, for simply being who they are. This can effectively silence their ability to raise concerns of abuse for fear that they will face similar consequences.

Therefore, while definitions including harm or distress, intention or payment for services should be considered we are also supportive of the inclusion of the Tasmanian guidelines definition – "the focus should be on the effects on the older person, rather than the intention of the perpetrator". This is especially important when considering the issues raised above and further issues raised in the responses below.

***Question 2 What are the key elements of best practice legal responses to elder abuse?***

Consistent laws across states and territories and nationally. In particular, there is a need for nationally consistent and inclusive legislation for advanced care planning and other end of life needs covering wills, powers of attorney, advanced care directives, next of kin, guardianship and administration of deceased estates to reduce jurisdictional confusion and provide greater understanding and protection to elders, health professionals and the community.

The roles and responsibilities of all within the ageing and aged care system, and inter-relating systems such as health and disability, need to be clearly defined. LGBTI elders need to know where to go for help, there is no 'wrong door' and these services are inclusive and aware of the particular sensitivities and issues faced by LGBTI elders.

***Question 3 The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies, including those concerning:***
***· Aboriginal and Torres Strait Islander people;***
***· people from culturally and linguistically diverse communities;***
***· lesbian, gay, bisexual, transgender or intersex people;***
***· people with disability; or***
***· people from rural, regional and remote communities.***

Please see Dr Catherine Barrett's submission for detailed examples.

1. An elder was evicted from the home they had shared with their same-gendered partner after the partner died. The partner's children did not agree with the relationship and the person did not have any documentation showing co-habitation, the partner had taken care of all of this. The elder was also not in a position to legally fight the children to remain in their home.
2. An elder accessed respite in an aged care facility, their child was their carer. Over the period of time that the elder received respite the service noticed their declining weight (12kg). Then the elder suddenly stopped having respite. The provider called the advocacy service but the advocacy service couldn't act on the provider's behalf they could only act if the resident called them.

***Question 4 The ALRC is interested in identifying evidence about elder abuse in Australia. What further research is needed and where are the gaps in the evidence?***

Caregivers may not be accepting of LGBT elders. In a survey of 3,500 LGBT elders, 55 and older, 8.3% of the elders reported being abused or neglected by a caretaker because of homophobia and 8.9% experienced blackmail or financial exploitation. (Frazer, 2009).

While there are some sources of information on elder abuse within Australia the research is limited. In particular research that cuts across all aspects of ageing and aged care from in-home care to residential care to palliative-care. There will also be a need for more updated research once the aged care system changes over to consumer-directed care.

A good starting point for research on LGBTI elders and the issues they face can be found in the report "We don't have any of those people here" – retirement accommodation and aged-care issues for non-heterosexual populations, GRAI, Curtin University and Curtin Health innovation research

institute, May 2010, pp. 66-72. Also Dr Catherine Barrett research papers available at http://www.opalinstitute.org/lgbti.html.

## Social Security

***Question 8 What role is there for income management in providing protections or safeguards against elder abuse?***

Many people consider income management (IM) paternalistic welfare and any consideration of using IM as a safe guard must carefully consider any unintended consequences. In particular IM impacts on the person who is the income recipient rather than addressing broader systemic or structural issues that could be enabling the abuse of the LGBTI elder to occur. Consideration also needs to be given to the impact on the elder if it's their money that is quarantined – it will restrict their freedoms, especially if there is no assessment of the elder's ability to control their own finances.

In the Final Evaluation Report of IM in the NT (2014) there was no evidence of improved food intake, financial management or general community well-being, though there were some positive outcomes when IM was voluntary or where a range of social services and supports were included. In the Final Report on IM (February 2015) mixed views on IM were expressed and it recommended that IM should be used judiciously and aligned with close support from financial and counselling services.

> *"Additional concerns regarding IM include the high cost of administering programs, the potential for racial discrimination given the disproportionate number of Indigenous Australians subject to IM measures, the absence of consultations with representatives of local communities to discuss how and in what way IM measures might benefit their community, and the lack of reliable evidence as to their effectiveness in meeting the stated policy aims".* (Associate Professor Philip Mendes is Director of the Social Inclusion and Social Policy Research Unit in the Department of Social Work at Monash University, and lead author of the independent evaluation report into the Place-Based Income Management Trial in Shepparton commissioned by Family Care Shepparton and Berry Street Victoria)

## Aged Care

***Question 11 What evidence exists of elder abuse committed in aged care, including in residential, home and flexible care settings?***

There is evidence of serious discrimination of LGBTI people occurring in all levels of aged care, from organisational policies to abuse by staff and other residents (Barrett 2008; Human Rights and Equal Opportunity Commission 2007b). Few consumers 'out' themselves (disclose that they are LGBTI) voluntarily to their aged care provider for fear of experiencing discrimination.

This is attributed in part to past experiences of criminalisation, violence and prejudice. It also relates to current discrimination and heteronormative practice in aged care, that is practice that assumes heterosexuality and gender conformity and allows little scope for the perspectives and experiences of those who are L, G, B, T or I. This situation is compounded by aged care providers generally reducing sexuality and even gender identity to sexual activity rather than conceiving of it as a component of identity with many facets (Harrison 2001). The result is a 'cycle of invisibility' under the guise of 'respect for privacy', in which the fears of consumers are reinforced by the failure of

practitioners to understand the significance of sexual orientation, sex and gender identity, and the perpetuation of an exclusion of LGBT ageing concerns (Harrison 2001).

LGBTI people have reported experiences of their partners not being consulted about care decisions, even when they have provided powers of attorney, living wills and other documents that are intended to safeguard the rights of people's designated partners. Some LGBTI people have reported that their relationships were not addressed because their partners were assumed to be their biological siblings. Long-term same gender partners have reported being dismissed by care staff as merely friends. Some LGBTI people have also reported that everyday displays of physical affection in the presence of care staff have been treated as signs of dementia-related symptoms or used to restrict people's contact with their partners.

Prejudice and hostility encountered by LGBT elder persons in institutional care facilities create difficult environments. Staff may deny an LGBT elder's visitors, refuse to allow same-sex couples to share rooms, refuse to place a transgender elder in a ward that matches their gender identity, or keep partners from participation in medical decision making. (MAP, SAGE, & CAP, LGBT Older Adults and Inhospitable Health Care Environments, 2010)
http://www.lgbtagingcenter.org/resources/pdfs/ResearchBrief_LGBT_Elders_508web.pdf

The ensuring of equal treatment, recognition of chosen family, rights of same-gender partners, staff trained in LGBTI sensitivity and the presence of legal protections, is essential. LGBTI older people have lived lives of significant persecution and fear of being discriminated against. This has a profound impact on their experience of ageing and their expectations regarding aged care services.

(Nb. A family of choice or chosen family are those people the LGBTI elder has chosen to be their family. This can be either due to a breakdown or rejection by their family of origin (birth family, siblings and relations) or because the LGBTI elder has a closer and stronger connection to others outside their family. A family of choice can include those that are related in addition to friends and partner/s).

***Question 12 What further role should aged care assessment programs play in identifying and responding to people at risk of elder abuse?***

Aged care assessment programs may the first point to identify that a person is experiencing elder abuse. Part of their role could be to ask some questions that may enable the assessor to identify if there is abuse being committed against the elder. These would have to be asked sensitively and the program needs to have a system of follow up or referral to relevant services to explore the potential abuse further or to respond where the abuse is definite.

LGBTI Elders often express a real or perceived fear of retaliation from family and providers so any role that programs have need to be confidential and respectful of privacy.

***Question 13 What changes should be made to aged care laws and legal frameworks to improve safeguards against elder abuse arising from decisions made on behalf of a care recipient?***

The various forms of social discrimination which take place even when formal legal equality exists. For example, the preferences of the person who is an elder to have a partner or chosen significant

other advocate for them may not be recognised by their biological family. This can be difficult and distressing. This is particularly true where the partner does not live with the aged care recipient as is likely to be the case.

LGBTI elders are estimated to be twice as likely to be single, compared with their non-LGBTI peers. This presents unique challenges for aged care. Specifically, "families of choice" may not be recognised by the aged care industry on an equal footing to a person's "biological family". For some LGBTI individuals they may have been rejected by their biological family and substituted this with peers in a "family of choice" and accordingly would wish to ensure their chosen family is included in the care process.

Therefore, clear legal guidelines on recognising the particular 'families' of LGBTI elders or those the elder has identified as being able to make decisions on their behalf.

***Question 14 What concerns arise in relation to the risk of elder abuse with consumer directed aged care models? How should safeguards against elder abuse be improved?***

- Financial control where there is someone else responsible for making the decision on services on behalf of the elder - especially where the person may not agree with particular social or leisure activities that the LGBTI elder may want to participate in (e.g. mardi gras, or an LGBTI theatre club etc)
- The NDIS safeguards are a good starting point.

***Question 15 What changes to the requirements concerning quality of care in aged care should be made to improve safeguards against elder abuse?***

- Working with vulnerable people checks
- Training and education especially around the different diversity groups and ways that abuse could happen, understanding the lifetime of abuse the person may have experienced and their fears especially around dementia and being particularly vulnerable.
- Monitoring of people in outdoor areas that are out of line-of-sight (falls, abuse) vs private areas

***Question 16 In what ways should the use of restrictive practices in aged care be regulated to improve safeguards against elder abuse?***

The use of restrictive practices in aged care can be highly controversial especially when the practice seems to be about making life easier for the staff rather than the care of the elder. The use of these practices must:

- Follow a clearly legislated process from least restrictive to most restrictive in extreme cases and where everything else has failed and has been independently proven not to work.
- Regular external review to ensure that it is not being used as a way of controlling someone's sexuality, gender or identity expressions rather than threatening or aggressive behaviour.
- Be about the health and wellbeing of the elder not about making it easier for others
- Ensure close monitoring of chemical restraint and consider research, best practice and evidence from other jurisdictions and internationally and include intensive education about side effects

- Ensure that the practice does not have unintended consequences. For example, locking the doors of residents within a dementia facility thereby preventing them from accessing their own rooms, having private time with someone else or time alone and access to their bathroom.

Careful consideration also needs to be given to the use of locked doors, or doors with key pads and codes, which can restrict people's ability to move around. Is this unlawful imprisonment? Where does the protection of the person actually cross over into making it easier for staff? There are other options that have been explored in other jurisdictions.

***Question 17 What changes to the requirements for reporting assaults in aged care settings should be made to improve responses to elder abuse?***

The assault of an elder must be treated as any other assault however there are very different views as to whether or not reporting should be mandatory. On one hand the elder is an adult and able to exercise their own choice and decisions. On the other hand this presumes the elder is actually able to exercise that choice and they may not be in a position to be able to do this.

Many LGBTI elders are vulnerable to manipulation by family and may not want to report abuse for fear of becoming homeless, banned from seeing grandchildren or having contact with family or prevented from seeing their own partners. Within an aged care facility, they may be fearful of retaliation, being 'outed' to people that do not know they are LGBT or I or fearful of the authorities, such as police, who had historically caused them harm.

***Question 18 What changes to aged care complaints mechanisms should be made to improve responses to elder abuse?***

We are aware that Aged Care Complaints Commissioner is currently doing an internal project to improve access to the complaints system by LGBTI elders. Including training, education, resources etc.

However, there is one area that is currently excluded from the aged care complaints process and that is LGBTI elders in retirement living or retirement villages.

***Question 19 What changes to the aged care sanctions regime should be made to improve responses to elder abuse?***

Ability to obtain compensation from provider or individual.

***Question 20 What changes to the role of aged care advocacy services and the community visitors scheme should be made to improve the identification of and responses to elder abuse?***

Similar to Victoria that the function of a community visitor to inquire into any case of suspected abuse or neglect of resident, use of restrictive interventions and compulsory treatment. This is especially important for the specialist LGBTI Community Visitor Schemes that operate in Victoria, NSW, Queensland and WA. These specialist CVS need to be extended across Australia as they have

increased knowledge and understanding of the subtler experiences of abuse that LGBTI elders can experience and are also more likely to have LGBTI elders disclose abuse to them.

Aged Care Advocacy services play an important role in identifying elder abuse and supporting elders that identify as having been abused. It is essential that they can continue in these roles and can refer the abuse on to the relevant authorities as well as, where the person is receiving services or within an aged care facility, to the relevant person within the ageing or aged care organisation.

**Financial Institutions**

**Question 25 What evidence is there of elder abuse in banking or financial systems?**

In a national survey of 3,500 LGBT older adults age 55 and older, 8.3% reported being abused and neglected by a caretaker because of homophobia. In addition, 8.9% reported that they experienced blackmail or financial exploitation. http://www.lgbtmap.org/file/improving-the-lives-of-lgbt-older-adults.pdf

There is often a misconception that LGBTI people have larger disposable incomes, and in the context of LGBTI specific care facilities this seems to play a role. Evidence tells us that, perhaps counter intuitively for many, LGBTI people are at higher risk of poverty and malnutrition related to income. See - https://www.ncoss.org.au/sites/default/files/public/policy/LGBTIPovertyNCOSSLaunch_FINAL.pdf

As noted previously victimisation because of sexual orientation, gender identity and/or intersex status can lead to internalised homophobia, biphobia or transphobia, which manifests as guilt or shame. Victims may come to believe that they are not worthy people and deserve loneliness, poor living conditions, and ill health. They may not want to seek or accept help and are at risk of self-neglect. (D'Augelli & Grossman, 2001, Cook-Daniels, 1998). Therefore not questioning financial control over their lives.

## Appointed Decision-Makers

***Question 29 What evidence is there of elder abuse committed by people acting as appointed decision-makers under instruments such as powers of attorney? How might this type of abuse be prevented and redressed?***

***Question 30 Should powers of attorney and other decision-making instruments be required to be registered to improve safeguards against elder abuse? If so, who should host and manage the register?***

Guardianship

On an initial review of existing Guardianship Acts three Acts stand out as causing potential problems for LGBTI people. These are the Guardianship Act 1987 (NSW), Guardianship and Administration Act 1995 (TAS) and Adult Guardianship Act 1988 (NT). The difficulty is caused by the hierarchy of identification of the 'person responsible' in NSW and Tasmanian legislation and the definition of 'near relative' in the Northern Territory legislation.

Other Guardianship Acts may have similar issues and this needs a closer investigation.

In NSW and Tasmania if there is no guardian appointed then there is a hierarchy of people that can be approached to make decisions on a person's behalf. This commences with the 'spouse' and concludes with a 'person who has care of the person' and 'close friend or relative of the person'.

This is problematic for a number of reasons for LGBTI people, especially so if the person has dementia, is unconscious or is unable to clearly state who they want to make decisions on their behalf. In addition, their partner may also be fearful of identifying themselves if the family is unaware of, or disapproves of, their relationship. For example, in recent interviews conducted by Val's Café a key issue arising for LGBTI people with dementia is that they are having their rights violated by family members – who take the opportunity to reassert control over the person's sexuality or gender.

A health or aged care service will follow the hierarchy and is more likely to listen to someone identifying as a relative – the service will not spend the time identifying if a there is an 'ongoing' relationship or not. A family member can identify as a person 'having care' (as defined in the Act) of the person in care and by default are higher in the hierarchy. Other potential issues are:

- They may not be living with the person who they want to have make decisions on their behalf or they may be fearful of identifying their partner
- They may still legally be identified as being in a relationship with a 'spouse' even though the 'spousal' relationship has ended
- Many older LGBTI people identify their partner as their 'close friend' due to a history of discrimination and fear of exposure as LGBTI
- There is also a reluctance among certain same-gender couples to formally declare their defacto relationship because of the financial disadvantage of a reduction in Centrelink entitlements (i.e., two people living as a couple receive less than two single persons).

In the Northern Territory it is the definition of 'near relative' that is concerning for LGBTI people. Again the requirement that there is either a defacto or domestic relationship can exclude those older LGBTI people who may not live together and, as mentioned above, may not identify their partner due to past treatment and fear of exposure.