



Silver Rainbow



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Re: Elder Abuse Inquiry Discussion Paper

Thank you for the opportunity to make a further 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 Network, which consist of organisations and individuals committed to making the ageing and aged care system LGBTI inclusive.

We have focused on four key aspects of the Discussion Paper:

- Enduring Powers of Attorney and Enduring Guardianship
- Guardianship and Financial Administration Orders
- Family Agreement
- Aged Care

About the Alliance

The Alliance has almost 300 members and serves 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.

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.



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About 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. We work at a national level to ensure systems, policies and processes meet the needs of LGBTI elders. In addition, Silver Rainbow through our partners in each state and territory, delivers LGBTI awareness training to staff working in ageing and aged care and related organisations, students, Regional Assessment Services and Aged Care Assessment Teams/Services.

We look forward to seeing the final report and the inclusion of the particular concerns and needs of LGBTI elders.

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

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5. Enduring Powers of Attorney and Enduring Guardianship

- The Alliance supports Proposals 5-1 to 5-3
- Paragraph 5.17: there needs to be clarification as to who determines the principal is no longer able to make decisions. It should be someone with no connection with the attorney or guardian.
- Paragraph 5.19: In terms of advance care planning information, there are different arrangements supporting advance care information handling in each of the jurisdictions and this includes related obligations on healthcare providers. For example, in South Australia a healthcare provider must sight an original or certified copy of an advance care directive to act on the decisions of a substitute decision-maker. Therefore, a copy held on an Electronic Health Record would not be considered.
- 5.23: We agree with proposal that there is a register of guardianship appointments.
- Question 5-1: Who should be permitted to search the national online register without restriction? Medical and legal personal seem the most obvious and likely to need access. But whoever is determined as being able to have access must have a legitimate reason. But how will that be monitored and who will monitor it?
- 5.59: The Alliance supports a single national register rather than separate ones in each state and territory.
- Question 5-2: Should public advocates and public guardians have the power to conduct random checks of enduring attorney's management of principals' financial affairs? Definitely, to ensure that they are acting appropriately. Random means things cannot be hidden as easily as no one will know when arrangements will be checked. This adds a level of safety to the older person and places checks and balances on the system.
- Proposal 5-4: The Alliance can see the benefit of 2 independent witnesses. However there are issues for LGBTI elders in rural and remote areas or who are isolated – who would those two witnesses be and what risk of exposure to their community could this result in. Medical Practitioner – who is included under this term? If the person lives in an area where there is no GP, or no regular GP, would other health practitioners be included? How will independence be checked in small rural and remote areas? How do you ensure the witness knows the person well enough to sign?

6. Guardianship and Financial Administration Orders

- The Alliance would argue that Guardians should not have power to decide who can visit an older person. But the converse of this is what if it is in the interest to protect an LGBTI elder from antagonistic family members? Further consideration needs to be given as to how these issues can be balanced out and the LGBTI elder protected from abuse by either the guardian or their family.



- Proposal 6-1: The Alliance believes that compulsory education of guardians and administrators is important so that they to know their roles, responsibilities, laws, and the consequences of not doing the right thing. This training should be completed before signing any documents and being appointing to their roles. But the training must be accessible and easy to get to. Could it be online?
- Paragraph 6.51: The Alliance believes that is essential that the Tribunal always talks to the person regardless of whether they are at the hearing or not to ensure that they are happy with the appointment of a guardian or administrator – checks and balances that the person is not being “forced”. This is a matter of high importance for LGBTI elders.

Family Agreements

- There are specific issues and concerns in this area for LGBTI elders, especially if the elder “comes out” or transitions later in life after the Agreement and their family is completely opposed to the elder’s choices.
- Proposal 8-1: Family Agreements should be written, not verbal, with a copy for each person involved in the agreement and witnessed by an independent (same independent as per 5-4?). The Agreement should have ‘what if’ clauses in case of changes in circumstances.
- Proposal 8-1: The definition of family to include friend/friends the person lives with and/or identifies as family, long-term relationships and co-habitation. Could it be simply stated that “family are who the person says is their family”? This is important to LGBTI elders where relationships with their family of origin have broken down. This provides a useful starting point for definition of family - <http://www.hrc.org/hei/lgbtq-inclusive-definitions-of-family> (Please note we refer to same-gender relationships rather than same-sex to ensure inclusion of those whose gender is different to the sex they were assigned at birth).

Aged Care

- Paragraph 11.122: Should a home care worker be required to report abuse by carer or care recipient if they become aware of this happening? Often they might be the only other contact or visitor? Note that this would not be mandatory (respect of older person as adult able to make decision) but should there be a requirement that it is noted or recorded somewhere for future reference if needed?
- Employment Screening: this should also include checking if a person has had an AVO taken against them – AVO should be a ‘flag’
- Paragraph 11.201: Sometimes there are instances where the worker having a criminal conviction can be useful e.g. working with elders who have a criminal past or who move to a facility from a gaol. Also, not every state and territory have expunged the “criminal offence of homosexuality” from people’s records – should this person be prevented from working in aged care?
- Paragraph 11.229: Numbers of adequate staff but also gender mix of staff on shift to ensure that elders receive care from someone they are comfortable and feel safe with.



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- Paragraph 11.236: There are other forms of restrictive practice that occur but which do not get flagged as such. For example the Alliance has been informed of a facility that locked the bedroom doors of their facility, once everyone was up and out of their rooms. Their reasoning was to protect resident's belongings from other residents with dementia. However, this becomes a restrictive practice as it meant that residents who wanted to return to their rooms or use their bathroom could not do this. There must be a careful assessment of what is included under restrictive practices to ensure actions like this are flagged and addressed.