**RESPONSE TO THE AUSTRALIAN LAW REFORM COMMISSION INQUIRY - ELDER ABUSE**

 **Submitted by:** Dr Philomena Horsley,Research Fellow

**On behalf of:** Gay and Lesbian Health Victoria, Australian Research Centre in Sex, Health & Society, La Trobe University

215 Franklin St, Melbourne, 3000

www.glhv.org.au

**Date:** August 17, 2016

**Introduction**

Gay and Lesbian Health Victoria (GLHV) is part of the Australian Research Centre in Sex, Health & Society, based at La Trobe University. It has been funded by the Victorian Department of Human Services since 2003. Its role is to conduct research (state based and national) regarding the health and wellbeing of the LGBTI population; to provide staff training to the health and human services sectors; to develop and manage programs that target particular service sectors and LGBTI groups; and to develop resources that support services and policy makers to become more knowledgeable about, and inclusive of, LGBTI people.

In addition to our consultation meeting with the ALRC on August 10, we wish to make formal note of the following issues:

1. Particular vulnerabilities of older LGBTI people to abuse
2. The need for greater education and promotion of legal protections
3. Systemic responses to the lack of understanding in services with regard to the needs of older LGBTI people
4. ***Vulnerabilities of older LGBTI people to elder abuse***

The vast majority of older LGBTI people have a personal history characterised by medicalisation, criminalisation, social exclusion, family rejection, and state-sanctioned violence and discrimination. As they move into their final decades of life, their increasing vulnerability and frailty leaves them exposed to emotional, financial and physical abuse and sexual violence perpetrated by family members and carers. LGBTI people continue to experience disproportionate levels of violence generally (Leonard et al. 2012) which in turn may exacerbate the impact of any family violence/elder abuse. These cumulative lived experiences have also given many older LGBTI people cause to fear and mistrust services, including health and community services, police and the legal system.

For many older LGBTI people the habitual practice of concealing their identities for reasons of safety means they can be particularly vulnerable to abuse and coercion from family members who threaten to ‘out’ them. Below is an account GLHV recently received which typifies some of the complex vulnerabilities facing older LGBTI people (names and identifying features have been changed in this story).

***Story:*** *‘George’ and ‘Frank’ have been in a relationship for 37 years and are now in their early 80s without visible support networks. Together they own a house that was originally put in Frank’s name only, to protect the confidentiality of their relationship. Both receive the aged care pension as individuals (despite the 2009 Commonwealth changes to Centrelink that recognised same-sex couples and therefore required this disclosure). While George has no existing family, Frank’s estranged family has recently been in contact. A nephew has begun visiting, under the guise of ‘reconnecting’ with family and ‘supporting’ the couple. In fact, the nephew has been demanding money with increasing physical aggression, and threatening to go the Centrelink and expose the fact that they live as a couple if George and Frank do not comply. George is now partially blind and Frank is becoming increasingly unwell. He is extremely fearful of what may happen to George should he become seriously ill and the family attempt to take ownership of the house. He attempted to carefully raise his concerns with the visiting GP but felt that the GP either was resistant to his attempt or had no idea how to respond.*

We believe that older transgender people are particularly vulnerable to elder abuse. The majority of older transgender people have only had the opportunity to transition when they reached their 50s and 60s and many were subsequently estranged from their parents, siblings, children and friends because of their desire to become their true selves. Consequently there are genuine concerns (founded in accounts of what has happened to other trans people), that family members will re-enter their lives as they become frail and dependant, and attempt to reverse their gender change process by controlling their medication, their income, their lives and, ultimatel, their death.

1. ***The need for greater education and promotion of legal protections for older LGBTI people***

Throughout most of their lives, older LGBTI people have experienced a lack of legal protections at both state and federal level, and in many instances state-sanctioned prosecutions (and imprisonment) for consensual adult sex or displays of affection for their partners in public spaces. Over the past decade or so Commonwealth and State/Territory law reforms have implemented significant protections in the form of legal recognition of same sex relationships (equivalent of heterosexual de-facto status) in areas such Taxation, Centrelink, Veterans Affairs, Medicare Safety Net, Family Law, and Superannuation. (However, we note and regret the significant fear and concerns raised among older same sex couples by the changes to Centrelink which did not include a Grandfather clause.) The Federal Sex Discrimination Act was also amended in 2013 to further clarify anti-discrimination provisions in relation to sex, gender and sexual orientation and to include intersex status.

The Productivity Commission’s report *Caring for Older Australians* (2011) also identified some key issues facing older LGBTI people as a ‘special needs’ group in relation to making a will, guardianship, medical power of attorney, enduring power of attorney – financial, and end of life directives.

However, our consultations with older LGBTI people and relevant service providers indicate that both groups remain under-informed of the legal protections now available to, or especially relevant to, older LGBTI Australians, particularly with regard to their vulnerability to financial and other forms of abuse. This pervasive lack of knowledge about LGBTI people’s legal rights (and human rights more broadly) extends to family members and care providers, many of who are hostile to, or uncaring of, older LGBTI people. The following story illustrates the devastating impacts such hostility, prejudice and ignorance can have on the lives of older LGBTI people.

***Nancy’s story****, as told by a residential aged care manager*(from: Barrett & White, 2012)

*‘Nancy [a transgender woman] dressed very inappropriately when I first met her. The staff used to think it was funny when she walked out in a bikini with half her genitals falling out the bottom of her bikini pants. They thought it was funny to watch her get around like that. When I took over the place I fired the lot of them and helped Nancy to feminise herself. We were teaching her how to be feminine and she blossomed.*

*Nancy was with Frank for 18 years. When Frank was dying they took him to hospital. Frank’s family told Nancy that she couldn’t visit him because it was ‘family only’. Well that was the wrong thing to say to me, I said to Nancy: ‘You go upstairs, tidy yourself up, put a bit of lippy on and get your coat; I’m going to take you to the hospital.’ Nancy stayed with Frank for about an hour before he died, she was so happy.*

*I was at home the day after Frank died and the staff rang me to say that Frank’s nephew had just arrived and was taking everything out of Frank and Nancy’s bedroom. They were trying to take the rings off Nancy’s fingers. I reckon I must have broken all the speed rules to get there. I went flying up the stairs and into the bedroom and I said to him: ‘Get out of here, before I ring the police; how dare you! She hasn’t even had time to mourn and you’re trying to wipe out every memory she’s got. Get out of the building before I call the police*.’ [The family subsequently refused to provide details of the funeral or burial to Nancy.]

1. *Systemic responses to the lack of understanding in among services with regard to the needs of older LGBTI people*

The National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Ageing and Aged Care Strategy (Australian Government, 2012) identified the aged care sector’s lack of understanding of LGBTI issues, and the consequent need for training for providers. For the last two years GLHV has provided free one day training about the needs of older LGBTI people ( funded by the Commonwealth Government) to the Victorian aged care sector. However, with the cessation of funding in July 2016, there remains an extensive unmet need for such training.

There is also a need for more intensive training for aged care services in relation to in LGBTI-inclusive practice, including services’ capacity to identify and respond to elder abuse involving older LGBTI people. This lack of knowledge and capacity extends to other sectors that are potentially well placed to advocate for the rights of older LGBTI people experiencing elder abuse – general practice, hospitals, community care, seniors advocacy groups, legal services.

Our national research indicates that LGBTI people remain reluctant to utilise health and community support services, or conceal their identity when they do so for fear of receiving a negative or uninformed response (Leonard et al. 2012). We believe this is particularly true of older LGBTI people, especially when they are in situations of crisis.

In response, GLHV has a strong commitment to improving services’ accessibility by providing advice and training on LGBTI-inclusive practice to mainstream services including aged care, health and community services, local councils as well as the justice system. In 2012, GLHV developed what are now recognised as six national standards for LGBTI Inclusive practice. These standards form the basis of the national accreditation program called the ‘Rainbow Tick’ (delivered by QIP).

The Victorian Royal Commission into Family Violence has recently made a requirement that all funded family violence services achieve the Rainbow Tick accreditation within the next two years (Recommendation 167: State of Victoria, 2016). We believe that all initiatives to improve the understanding of, and response to, elder abuse must incorporate an approach that is fully inclusive of the special needs of older LGBTI people and recognises the vulnerabilities that are due to historical and on-going exposure to homophobia and transphobia.

**References**

Barrett, C and Whyte, C. (2012). My Story – My People. Stories about older gay, lesbian, bisexual and transgender people’s experiences of aged care. Gay and Lesbian Health Victoria, Matrix Guild of Victoria and Vintage Men Inc. Melbourne.

State of Victoria (2016), Royal Commission into Family Violence: Report and Recommendations.

Leonard, W, Pitts, M, Mitchell, A, Lyons, A, Smith, A, Patel, S, Couch, M, Barrett, A (2012) *Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians.* Monograph Series Number 86. Melbourne: The Australian Research Centre in Sex, Health & Society, La Trobe University.