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Ms Sabina Wynn
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Dear Ms. Wynn

Re: Inquiry for the Australian Law Reform Commission on Protecting the Rights of Older Australians from Abuse: **The experiences of older lesbian, gay, bisexual, transgender and intersex (LGBTI) Australians.**

In developing this submission I drew primarily on my research interviewing hundreds of older LGBTI Australians over the past 9 years (for full list of these research papers please go to: <http://www.opalinstitute.org/lgbti.html>). I also drew on my work as the Director of Alice's Garage – a national project empowering older LGBTI Australians (see alicesgarage.net). This submission focuses specifically on older LGBTI people. I have developed a separate submission addressing the issue of sexual abuse.

I believe that the unique ways in which older LGBTI people experience elder abuse are poorly understood. I think there is an urgent need to understand how the homophobic, lesbophobic, and transphobic responses of some family members and service providers diminish the rights of older LGBTI people as they age and as they lose the capacity for self-determination. While older LGBTI Australians also experience generic forms of abuse (eg: financial abuse) it is the denial of their sexual orientation or gender identity by homophobic or transphobic family members and service providers that is the particular focus of this submission. At times I refer to LGBT people, rather than LGBTI to indicate research that has not included intersex people.

I have limited my responses to questions that sit within my areas of expertise. I circulated an initial draft of this Submission older LGBTI Australians for their feedback and incorporated their suggestions – with their permission.

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:** many older LGBTI Australians have lived most of their lives in contexts where there was little, if any, reprieve from abuse perpetrated against them on the basis of their sexual orientation, gender identity or sex. In this power imbalance the onus of responsibility was placed on older LGBTI people to conform to societal norms. Many had few options other than to 'straighten up' their bodies and relationships, or hide their differences in order to be safe¹. While significant legislative reforms have taken place recognizing the rights of older LGBTI Australians, some of the biological family members continue to hold homophobic or transphobic views and perpetrate abuse as a result. In addition, some older LGBTI Australians continue to hide or modify their diversity in order to avoid upsetting their family - including children from their previous relationships. I have interviewed older LGBT people who report what I would describe as abuse perpetrated on the basis of their sexual orientation or gender identity. But many of the older LGBTI people I have spoken with do not articulate these experiences as abuse. Furthermore, some do not report harm or distress. That is not to say the experience of homophobic or transphobic abuse did not cause harm or distress. Rather, older LGBTI people may not acknowledge the harm or distress and may have very low expectations of their families². It is important that homophobic or transphobic abuse is recognized as elder abuse – whether or not the older LGBTI person reports harm or distress.
- **Intention:** family members who perpetrate homophobic or transphobic abuse may not be aware that their behavior is abusive because they believe their responses are aligned with societal norms. Recent debates about LGBTI people have included homophobic and transphobic comments being made by high profile community leaders. These comments influence broader community values and beliefs. When families emulate these views in their responses to LGBT family members – they may not see their behavior as abusive. The absence of intention to cause harm here should not excuse abuse.
- **Posthumous abuse:** tension between older LGBTI people and biological family members may be long standing. Older LGBTI people may have to work hard to maintain congenial family relations whilst exercising their right to self-determination in relation to their sexual orientation or gender identity. However, as LGBTI people age or develop disabilities their capacity to assert themselves with family is diminished. This was particularly noted research on LGBT people's experiences of dementia³. The battle for self-determination and recognition of sexual orientation and gender identity also plays out following the death of older LGBT people. This was particularly highlighted in research on older trans people's experiences of ageing, with family members refusing to acknowledge trans people's nominated gender at their funeral⁴ (see also responses to Question 3). This has also been reported by older gay men and lesbians who recount how their same sex relationships are not respected⁵⁶.

¹ There's no need to straighten up: http://www.opalinstitute.org/uploads/1/5/3/9/15399992/nntsu_-_full_report_-_print_read.pdf

² as per foot note above

³ We are still gay ... <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/dementia-narrative-resource.pdf>

⁴ We are people first: <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/transnarrativeresource.pdf>

⁵ My People: http://www.opalinstitute.org/uploads/1/5/3/9/15399992/mypeople_exploring-experiences-2008.pdf

⁶ There's no need to straighten up: <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/nntsu - full report - print read.pdf>

The lack of dignity and self-determination afforded some LGBT people following their death is elder abuse. This abuse is not only perpetrated against the person who has died but is also an abuse of their same sex or trans partners and friends who are also older people. It contributes to older LGBTI people's fear that they will encounter similar abuse. I believe it is important that strategies to address elder abuse include the posthumous abuse of older LGBTI people.

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

A key element of best practice legal responses to the abuse experienced by older LGBTI people is community education on what constitutes abuse and how it is experienced. It is not sufficient to have a legal framework protecting older LGBTI people from abuse – the framework has to be operationalized. We need to educate, inter alia, family members that the abuse of older LGBTI people on the basis of their sexual orientation, gender identity or sex is not acceptable. We need community leaders to send the message that homophobic and transphobic abuse of LGBTI elders is unlawful and will not be tolerated.

Question 3: The ALRC is interested in hearing examples of elder abuse to provide illustrative case studies, including those concerning lesbian, gay, bisexual, transgender or intersex people.

Some of the following examples from the research clearly illustrate elder abuse, others illustrate the challenges older LGBTI people may encounter related to dignity, self-determination and recognition of their sexual orientation, gender identity or sex as well as their vulnerability to elder abuse:

- Gavin⁷ described caring for his partner Richard who had dementia and how Richard's cousin wrote a letter contesting Gavin's application for guardian in which she noted "I am only grateful my children are of an appropriate sexual orientation". This homophobic comment caused considerable stress and insomnia and reinforced to Gavin that he needed to be discreet about their relationship to avoid abuse
- Dale⁸ described caring for her long-term partner Lilian and how Lilian's children had little contact with their mother but then wanted financial 'control' as Lilian's dementia progressed. The children's successful application for guardianship meant that Dale lost control of Lilian's finances during a difficult period of time caring for Lilian at home until her death
- Collin⁹ described how his partner Maurice's family did not accept or understand their relationship. They viewed him as a financial predator. Collin expressed concern about Maurice's sister who did not recognize their relationship and so wanted to make decisions on Maurice's behalf
- Edna¹⁰ had transitioned to female 40 years earlier and when she developed dementia she was admitted to a residential aged care facility. At this point her son, who did not approve of her transition, told her that she needed to present as male in residential aged care or she would never see her grandchildren again. Edna complied

⁷ Still gay ...Gavin (p.16): <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/dementia-narrative-resource.pdf>

⁸ Still gay ...Dale (12): <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/dementia-narrative-resource.pdf>

⁹ Still Gay ...Collin (p.12): <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/dementia-narrative-resource.pdf>

¹⁰ My People. Nancy (p.77): http://www.opalinstitute.org/uploads/1/5/3/9/15399992/mypeople_exploring-experiences-2008.pdf

- and the aged care service providers were unaware Edna was female until they were assisting her to shower. The service providers felt unable to advocate on her behalf
- Anthony's¹¹ wife discovered he was accessing male escorts and she responded by refusing to continue caring for him at home and so he was admitted to a residential aged care facility. Anthony's wife misled the service providers by saying to them that her husband's 'hobby was making pornographic videos of young boys'. As a consequence Anthony received lesser standard of care
 - Pat¹² described how service providers assumed she was transgender and that she was having a sexual relationship with an older female friend she was advocating for. As an older intersex person Pat found the accusations particularly offensive and needed to spend considerable time and effort challenging the service provider's homophobic remarks and their efforts to prevent her from having contact with her friend
 - Alison¹³ described attending the funeral of a trans friend. Her friend's gender identity was not recognized by her family and at the funeral she was referred to as male, by her birth name and had not been dressed in the clothing of her preferred gender. Alison, an older trans woman, described this as one of the most distressing things she has witnessed in her life. She reflected this was not an uncommon occurrence
 - Laura¹⁴ an older trans woman described advocating for a female friend who had died. Her friend's family wanted her buried as a male. The family made some compromises but insisted the headstone include an early photo of her friend as a boy
 - Karen¹⁵ described being "bashed" by her teenage son as a response to her gender identity and transition as an older person
 - Nancy's¹⁶ carer described how Nancy was not allowed to visit her husband as he lay dying in an acute hospital because her husband's family did not recognize her gender identity (Nancy identified as Trans) or their relationship. Nancy's family also refused to tell Nancy when her husband died, when the funeral service was and where his grave was. Following his death, the family visited Nancy's aged care service to collect his possessions and tried to remove the wedding ring from Nancy's finger.
 - Cliff¹⁷ described how a week after the death of his long-term partner he was put in a position where he had to sell the home they shared. The pressure came from his partner's family who didn't recognize their relationship. Cliff reported he was aware of his legal entitlements as a same sex partner but did not have the money or emotional energy to assert his rights so soon after the death of his partner

¹¹ My People. Anthony (p.49): http://www.opalinstitute.org/uploads/1/5/3/9/15399992/mypeople_exploring-experiences-2008.pdf

¹² As we age. Pat: <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/intersexguide.pdf>

¹³ We are people first. Alison (p.9): <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/transnarrativeresource.pdf>

¹⁴ We are people first. Laura (p. 23): <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/transnarrativeresource.pdf>

¹⁵ Caren (p.12): http://www.opalinstitute.org/uploads/1/5/3/9/15399992/mypeople_exploring-experiences-2008.pdf

¹⁶ My People. Nancy (p.77): http://www.opalinstitute.org/uploads/1/5/3/9/15399992/mypeople_exploring-experiences-2008.pdf

¹⁷ There's no need to straighten up. Cliff (p.56): http://www.opalinstitute.org/uploads/1/5/3/9/15399992/nntsu_full_report_-_print_read.pdf

- Samantha's¹⁸ service providers described how she made a decision to transition to female after she entered the residential aged care facility. Staff were required to mediate with family after a nephew demanded that the staff not support Samantha's transition.

After reading an earlier draft of this Submission an LGBTI elder sent me the following story in an email and asked me to include it in the submission:

- "A lesbian couple had been together for over 20 years. In the breakup of her marriage, one of the partners who had children, was subjected to lesbophobia by her ex-husband and he threatened her with denying access rights to the children because of her "lifestyle". In the woman's legal documents, she chose to put her children down as executors of her will and as her powers of attorney. Subsequently, she experienced a terminal illness. During that illness, her partner cared for her. Those young adults chose to disregard their mother's partner with regard to her wishes for her dying partner. Subsequently, there was great distress, financial deprivation, and the removal of items from the home that were jointly owned - at the hands of the children. That distress, at such a time of loss, had major implications for the surviving partner. Because of her distress she was unable to challenge their actions by a legal process – knowing that it would become public knowledge. Also, she was prevented from accessing benefits that would have been available to her should their relationship have been more publicly known and understood by those in her workplace, her union, and the children of her late partner."

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?

We need to improve our understanding of the types of abuse older LGBTI people experience and their responses to it. A recent report on LGBT people's experiences of discrimination¹⁹ recorded cases of abuse that these LGBT people did not 'name' as abuse or discrimination. This was a significant barrier to reporting the abuse. Another barrier was that older LGBTI people did not have a 'sense of entitlement'. While some older LGBTI people are very assertive many others have not established patterns of assertiveness.

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

The My People²⁰ report documented older LGBT people's experiences of abuse and discrimination in aged care. The research was conducted in Victoria in 2008 – at a time when there was little awareness of the experiences and needs of older LGBTI people. Since then there have been significant reforms led by the Commonwealth Department of Social Services. These include:

¹⁸ We are people first. Samantha (p48): <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/transnarrativeresource.pdf>

¹⁹ There's no need to straighten up: <http://www.opalinstitute.org/uploads/1/5/3/9/15399992/nntsu - full report - print read.pdf>

²⁰ My People: http://www.opalinstitute.org/uploads/1/5/3/9/15399992/mypeople_exploring-experiences-2008.pdf

- Development of a National LGBTI Ageing and Aged Care Strategy
- The roll out of LGBTI inclusivity training across the country
- Allocation of Aged Care Service Improvement and Healthy Ageing Grants to support the development of LGBTI inclusive aged care services.

There has also been considerable momentum for change in Victoria. The Department of Health, Victoria developed a Diversity Planning Framework for Home and Community Care (HACC) Services and identified LGBTI people as a subgroup to be included in the mandatory diversity planning. This led to a significant interest in the development of LGBTI inclusive HACC services. The Department of Health, Victoria also funded the development of training and resources for Aged Care Assessment Teams.

These initiatives at State and Federal level have provided guidance, resources and information for 'early adopters' or innovators who recognize the importance of LGBTI inclusive services. However, there are some service providers who will not develop LGBTI inclusive services unless this is explicitly referred to in the Standards for Aged Care and monitored by the Quality Agency. I therefore think it is important that the Standards be updated to include this change.

In feedback on an earlier draft of this Submission an LGBTI elder asked me to insert the following clause: "There has been little done in some Australian jurisdictions at all." This comment reflects that progress in some states and territories has been significantly slower to occur.

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 are powerfully placed to respond to older LGBTI people at risk of elder abuse. To recognise this potential they need to understand the unique ways older LGBTI people experience elder abuse. An essential component of this work is understanding power imbalances and the principles of cultural safety as they relate to LGBTI people²¹. Older LGBTI people may need support to ensure they are empowered.

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?

There is a need to educate substitute decision makers about the importance of respecting older LGBTI people's same sex partners, sexual orientation and gender identity. The shame, embarrassment or hatred some adult children have relating to their parents' sexual orientation or gender identity adversely affects LGBT people's dignity and the capacity of substitute decision makers to make appropriate decisions on behalf of the care recipient.

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?

There is an opportunity to empower LGBTI people with information about consumer directed aged care models to assist them to understand how they can utilize their power as

²¹ Its more than sex and clothes: <http://onlinelibrary.wiley.com/doi/10.1111/ajag.12270/abstract>

a consumer to take a stand if they experience homophobic or transphobic abuse. As with all people, completion of important documentation like Wills, Enduring Powers of Attorney, and Advanced health Directives is vital for LGBTI people.

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

The focus on LGBTI clients by the Quality Agency in their recent Conferences has encouraged some aged care service providers to begin the journey towards the development of LGBTI inclusive services. This change has been heart-warming. However, there are some aged care services that will not develop LGBTI inclusive services unless it becomes an **explicit requirement** in the Standards for Aged Care and is monitored.

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

There is a need to engage older LGBTI people and their advocates to ensure they understand what these mechanisms have to offer. There is also a need to build trust by communicating to older LGBTI people that these mechanisms, and the service providers that operate them, are LGBTI inclusive.

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?

These services need to build relationships with LGBTI communities to send the message to older LGBTI people and their advocates that the service is LGBTI inclusive and ready to hear from LGBTI people about the abuse they experience – particularly abuse on the basis of their sexual orientation, gender identity or sex. These services need to talk with older LGBTI people about what they think constitutes institutional/systemic abuse.

Question 27: What evidence is there that older people face difficulty in protecting their interests when family agreements break down?

The responses to Question 3 highlight the vulnerability of older LGBTI people to abuse by family members when the older LGBTI person's capacity for self-determination is diminished.

Question 28: What changes should be made to laws or legal frameworks to better safeguard the interests of older people when family agreements break down?

There needs to be community education to ensure that family members understand the law and legal frameworks and to ensure that they respect the dignity of older LGBTI people. There are opportunities to work with relationships counseling services to provide family mediation and to identify strategies for older LGBTI people to assert their needs with family members. Feedback on this Submission also included a request to add that some older LGBTI people may need support to access appropriate legal representation – particularly where they are financially disadvantaged.

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?

The responses to Question 3 highlight evidence of this abuse.

Question 33: What role should public advocates play in investigating and responding to elder abuse?

The public advocates have a significant role to play in advocating for the rights of older LGBTI people – particularly through education of service providers and community members.

Question 34: Should adult protection legislation be introduced to assist in identifying and responding to elder abuse?

A challenge here is that approaches such as compulsory reporting would have the potential to further rob older LGBTI people of their right to self-determination. This is particularly the case where older LGBTI people want to maintain contact with family members – even when a relationship is abusive. This is a very complex issue and consultations with various communities would assist in this regard.

Question 35: How can the role that health professionals play in identifying and responding to elder abuse be improved?

The lack of understanding about the ways in which older LGBTI people experience elder abuse means that many health professionals do not understand warning signs, how to respond or how to support older LGBTI people. Health professionals have such a key role to play – evidenced in the heart-warming story of Samantha, shared in response to Question 3. For the first time in her life Samantha felt safe to transition - because she was in a residential aged care facility. Service providers advocated on her behalf with an abusive family member who wanted her transition stopped. This story highlights the power health professionals (particularly aged care service providers) have to advocate for LGBTI people and prevent abuse.

Question 36: How should professional codes be improved to clarify the role of health professionals in identifying and responding to elder abuse?

Professional codes should outline the responsibilities of health professionals in identifying abuse on the basis of sexual orientation, gender identity and sex and their responsibility to respond to prevent such abuse.

Question 41: What alternative dispute resolution mechanisms are available to respond to elder abuse? How should they be improved? Is there a need for additional services, and where should they be located?

There is a need for family mediation services and to provide older LGBTI people with information on how to protect themselves from abuse. Existing relationships' mediation services could undertake education to develop LGBTI inclusive services and work with LGBTI communities to develop information for older LGBTI people. Advocacy services could also assist by educating community members about their responsibility to respect the dignity and self-determination of older LGBTI people.

In the past decade there have been legislative and social changes that impact on older LGBTI Australians. These changes also directly and indirectly effect older LGBTI people's vulnerability to elder abuse and need to be better understood.

One change several of my colleagues and I have noticed is an increase in the number of older people who are coming out or transitioning as older people. Alongside this trend we have noticed an increase in conflicts between older LGBTI people and their biological family members who do not support the change. This has been reported by older LGBTI people and their family members. We need to educate community members of importance of respecting the dignity and self-determination of older LGBTI people. We need to empower older LGBTI people with information and supports to assert their rights, whilst maintaining convivial relationships with their families – if this is what they want.

Finally, I would like to reflect on the effects of cultural contexts on the elder abuse experienced by older LGBTI people. We know that older people who have internalized ageism are more likely to experience abuse and less likely to report it. In a similar way I believe older people who have internalized homophobia and transphobia are more likely to experience homophobic or transphobic abuse but be far less likely to report it. Just as we acknowledge the importance of challenging ageism in the primary prevention of elder abuse – we need to challenge homophobia and transphobia. We need to recognize the impacts of homophobic and transphobic discourses on older LGBTI people's sense of self. I have spoken to older LGBTI people who see the shooting at a Gay night club in Orlando – or/and the language used in campaigns against same sex marriage as evidence that the world is not yet a safe place for them. It reinforces the message that they are less. And while there is awareness that these events may adversely affect young LGBTI people – there is a lack of understanding of the negatives messages older LGBTI people are receiving. Preventing the abuse of older LGBTI Australians will require tackling ageism, homophobia and transphobia.

In feedback on an earlier draft of this submission Brian Day OAM wrote: *the tough stories need to be told. I think its good that they are given "voice"*.

Yours faithfully,



Catherine Barrett

