



**BUILDING OUR COMMUNITY'S  
HEALTH & WELLBEING**

**Submission to:**

**Inquiry into the Cost of Living Pressures on  
Older Australians**

**Australian Senate Community Affairs Committee**

**August 2007**

## **1. ACON (AIDS COUNCIL OF NSW INC)**

ACON is a community-based non-government organisation promoting the health and wellbeing of a diverse gay, lesbian, bisexual and transgender community, and a leading agency in HIV/AIDS policy development and program delivery.

ACON provides education, health promotion, care, support, and advocacy services for members of the GLBT community, including drug users and Indigenous people, to sex workers, and all people living with HIV/AIDS (PLWHA).

ACON has offices in Sydney, Illawarra, Northern Rivers, Hunter and Mid North Coast with an extensive range of outreach services. ACON is also home to the Community Support Network (CSN), the Positive Living Centre (PLC), the Lesbian and Gay Anti-Violence Project (AVP) and the Sex Workers Outreach Project (SWOP).

## **2. INTRODUCTION**

Given that the income of most older Australians is limited because most no longer participate in the labour market, a change in the cost of living in Australian society is most likely to impact on their living standards. In addition to the substantial costs associated with aged care, which affects most older Australians, rises in costs of essentials, utilities and health-related expenses place further financial pressure on this section of population.

While Australian governments recognise the importance of responding to the diversity of the aged population in order to successfully implement healthy ageing policies, no government policy acknowledges the existence of older gay, lesbian, bisexual or transgender people or the serious obstacles they face in sustaining a healthy and productive life as they age.

ACON welcomes this Senate Inquiry into the Cost of Living Pressures on Older Australians. As a non-government organisation working with the GLBT community and PLWHA, we are providing input into this inquiry in order to highlight the specific financial and non-financial issues faced by older GLBT Australians, including those who are HIV positive.

This submission sets out ACON's work with older GLBT Australians, discusses the general issues facing older GLBT Australians, including PLWHA, and then addresses specific areas where older GLBT Australians are subject to financial and non-financial hardship as a result of government policies. The specific terms of references that this submission will address are:

- (a) the cost of living pressures on older Australians, both pensioners and self-funded retirees
- (b) the impact of these cost pressures on the living standards of older Australians and their ability to participate in the community;
- (c) the adequacy of current tax, superannuation, pension and concession arrangements for older Australians to meet these costs;

### **3. ACON'S APPROACH TO AGEING AND OLDER GLBT AUSTRALIANS**

The legislative and social change that has occurred over the past three decades has meant that the first generation of GLBT Australians who have lived openly about their sexuality and/or gender identity (been 'out') for most of their lives are now reaching older age. This raises a number of health, social and economic issues for ageing GLBT people, the GLBT community and wider society as a whole.

A lack of government recognition of the GLBT population within policy considerations about Australia's ageing society has meant that community-based organisations such as ACON have taken leadership on this issue. In August 2005, ACON began a process of consultation around GLBT ageing issues by conducting community forums, stakeholder consultations, and think-tank meetings. This process culminated in the development of *Ageing Disgracefully: ACON's Healthy GLBT Ageing Strategy 2006-2009*. The strategy is available from our website at [www.acon.org.au/community](http://www.acon.org.au/community).

The strategy aims to determine the priority needs that exist for ageing GLBT people and the value that ageing GLBT people might add to community life. The particular health promotion and prevention policies and initiatives which will enhance the health and wellbeing of ageing GLBT people are determined, along with the roles that both GLBT community organisations and governments might play, in supporting ageing GLBT people. The role that ageing GLBT people will play in ensuring good internal leadership on this issue is also detailed.

#### **4. GENERAL ISSUES FACING OLDER GLBT AUSTRALIANS**

Older GLBT Australians face considerable legal and social discrimination when accessing aged care and health services in this country. The current lack of recognition of same sex relationships under federal law means that most GLBT Australians who enter an aged care facility will have to pay significantly higher residential fees and bonds than the general population (discussed in more detail below in section 5).

There is considerable evidence to suggest that once accepted into aged care, GLBT Australians are at best, not adequately cared for because of a lack of understanding of their particular health needs, and at worst, subject to systemic discrimination because of their sexuality and/or gender identity. This problem is exacerbated by the fact that the first generation of GLBT Australians to have lived openly about their sexuality and/or gender identity

throughout their lives are about to enter an aged care sector that is not sufficiently resourced or trained to meet their needs.

In addition to the various health conditions that face all older Australians, there are number of conditions that pose specific and serious risk to health and wellbeing of GLBT Australians. International research suggests that lesbians are less likely to undertake pap smears or mammograms because of misconceptions about lesbian health by medical service providers and more likely to present late with cancer which impacts on treatment and recovery, while older gay men are more susceptible to anal cancer developing from anal warts (particularly if they are HIV positive). For transgender people the long term use of hormone therapies can have significant impact on their health as they age.

### **Recommendation 1**

**Review all current government policies relating to older Australians to ensure that they recognise the health, social and economic issues and needs of older GLBT Australians.**

### **Issues Facing Older PLWHA**

The advent of anti-retroviral therapies (ART) in 1996 has meant that HIV/AIDS has changed from a life-threatening to a chronic illness. This means that PLWHA are now living longer and consequently have specific health and wellbeing needs that must be addressed by the aged care sector and the health system in general. For example, people with HIV/AIDS are more susceptible to conditions such as cardiovascular disease, hypertension, diabetes and some mental illnesses in advanced HIV disease. People with HIV/AIDS are significantly more likely than the general population to smoke cigarettes and this can result in a number of poor health conditions, particularly as people get older.

One of the most important health issues for PLWHA is access to adequate dental care, given that the vast majority of people with HIV will develop at

least one oral condition associated with HIV disease. These conditions, like candidiasis and hairy leukoplakia, may be the first indication of immune suppression associated with HIV infection and in many people are the first signals that lead doctors to encourage HIV testing. Many of the conditions are eminently treatable but treatment is reliant on the sort of regular dental checkups/professional interventions that are increasingly difficult for HIV positive people to access and sustain due to a lack of Commonwealth funding for public dental health care.

The lengthy waiting times for basic dental services for people with a chronic illness such as HIV can have significant detrimental effect on dental and oral health as well as other systemic health conditions exacerbated by infection or late diagnosis. Delayed treatment also has serious implications for the quality of life of people with HIV/AIDS and for added cost in other areas of the public health system.

Further to these health issues, the nature of HIV/AIDS means that many positive people will experience various opportunistic infections leading to complications which may interrupt their employment and impact on their financial status. Consequently for more than half of PLWHA the main source of income is government pensions or benefits<sup>1</sup>. When you also consider that treatment of these complications and of treatment side effects can have significant costs for PLWHA along with co-payments for HIV treatment itself, it is clear that an ageing PLWHA population is likely to face considerable costs of living pressures associated with their health.

## **5. GOVERNMENT POLICIES THAT IMPACT ON OLDER GLBT AUSTRALIANS**

The current lack of recognition of same-sex relationships under federal law has significant impact on the financial situation of older GLBT Australians,

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<sup>1</sup> J. Grierson, R. Thorpe, M. Sanders, M.Pitts (2005) *HIV Futures 4: State of the Positive Nation*, Australian Research Centre in Sex, Health and Society, Latrobe University, Melbourne Australia, pg 63.

which places greater pressure on their health and general standard of living. The Human Rights and Equal Opportunity Commission recently undertook a national inquiry into discrimination against people in same-sex relationships in relation to financial and work-related benefits, which found that same-sex couples are discriminated against in at least 58 pieces of federal legislation<sup>2</sup>. The report concluded that this had a considerable and unnecessary impact on the lives of thousands of Australians. Of the many areas that the inquiry investigated, there are a few that are particularly relevant to older GLBT Australians and the terms of reference of this inquiry.

### ***Aged Care***

The main piece of legislation that deals with aged care, the *Aged Care Act* 1997 (Cth), does not recognise same-sex relationships under its definition of 'member of a couple'<sup>3</sup>, which has a significant impact on the level of residential fee and associated costs that an older GLBT person must incur when entering aged care facilities. In determining the level of residential care fees and bond liability, an assets test is applied under the Act. For the purposes of the test the assets of the applicant are taken to be 50% of the sum of the value of both their's and their partner's assets. As same-sex couples are not recognised under the Act, applicants are assessed as individuals, meaning that in many circumstances they will qualify for less assistance as they are not able to spread the value of their assets among two people.

For a person in a marriage or 'marriage-like' relationship, the value of the family home is not considered under the assets test if their partner is still in residence. For a same-sex couple the family home is counted, regardless of whether one partner still lives there, which means that same-sex couples are generally assessed to have much higher assets and thus subject to higher

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<sup>2</sup> Human Rights and Equal Opportunity Commission (2007) *Same-Sex: Same Entitlements - National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits*, Sydney, Australia, p11.

<sup>3</sup> *Aged Care Act* 1997, s44-11.

aged care fees. In addition to the family home there are a large number of other assets which are included in the test.

Importantly the Charter of Resident Rights and Responsibilities, which is contained in the Act as part of the *User Rights Principles 1997*, fails to recognise same-sex couples or the rights of GLBT residents. This reinforces the invisibility of older GLBT Australians in aged care and limits their ability to seek recourse where they have faced discrimination in accessing services.

### **Recommendation 2**

**Amend section 44.11 of the *Aged Care Act 1997 (Cth)* to include same-sex relationships under the definition of ‘member of a couple’.**

### **Recommendation 3**

**Amend the *User Rights Principles 1997* under the *Aged Care Act* to specifically include reference to GLBT issues.**

### ***Superannuation***

For many people superannuation is likely to be their most valuable asset after property, and consequently is an important part of an individual’s financial security. The failure of the federal government to recognise same-sex relationships in a number of areas of superannuation has a significant impact on the financial and non-financial wellbeing of many older GLBT people, particularly those who are living with a chronic illness such as HIV.

Given that PLWHA are living longer lives, with many either having reached or soon to reach the age of retirement, superannuation and other forms of financial planning for the future are vitally important for PLWHA. In certain circumstances, PLWHA are either not eligible for disability or death benefit, or must wait for two years before they are covered. By excluding same-sex couples from a number of superannuation benefits, the federal government is further disadvantaging people for whom financial security is paramount. The

result is that older PLWHA face greater financial pressure to meet the daily costs of living, which in turn impacts on their living standards and wellbeing.

Whilst the federal government has introduced legislation enabling same-sex interdependent partners to receive a death benefit from private super funds if their partner dies, the same possibility does not exist for those covered under public sector, commonwealth and military and defence super funds. People in same-sex relationships covered under these funds cannot nominate their same-sex partner as the beneficiary of their super death benefits, which means that unlike older heterosexual couples, their partner cannot receive a reversionary pension from their super and they can only distribute their benefit to their partner through their estate as a lump sum payment, which attracts a much higher tax rate.

#### **Recommendation 4**

**Amend the statutes governing the following schemes to recognise same-sex relationships under the definition of ‘spouse’:**

- **Commonwealth Superannuation Scheme (CSS)**
- **Public Sector Superannuation Scheme (PSS)**
- **Military Benefits and Superannuation Scheme (MSBS)**
- **Defence Forces Retirement & Death Benefits Scheme (DFRDB)**
- **Parliamentary Contributory Superannuation Scheme (PCSS)**

#### ***Taxation***

There are a number of tax benefits afforded to couples through the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* as either rebates or credits, as well as increases in tax-free thresholds in some circumstances. The exclusion of same-sex couples from the definition of ‘spouse’ and consequently ‘resident’, ‘relative’ and ‘dependent’, means that people in same-sex relationships are denied these entitlements<sup>4</sup>.

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<sup>4</sup> *Income Tax Assessment Act 1936*, s6

While GLBT Australians pay the same tax as all other Australians throughout their working life, they receive less tax and other benefits when they complete their tax return each year. This financial disadvantage, accumulated over a number of years, has an impact on the ability of people in same-sex relationships to save for their financial future.

#### **Recommendation 5**

**Amend the definition of spouse under s6 of the *Income Tax Assessment Act 1936 (Cth)* to include same-sex relationships.**

#### **Recommendation 6**

**Amend the definition of spouse under s995-1 of the *Income Tax Assessment Act 1997 (Cth)* to include same-sex relationships.**

#### ***Medical Expenses***

As a person gets older, it is likely that they will be subject to higher medical expenses. The current discrimination against same-sex couples in relation to health entitlements such as the Medicare and PBS Safety Nets<sup>5</sup> means that many older GLBT Australians, in particular those living with HIV/AIDS<sup>6</sup>, will face higher medical costs than other Australians. Such unnecessary additional expenditure puts further financial pressure on older GLBT Australians to manage their cost of daily living.

#### **Recommendation 7**

**Amend the definition of family under section 10AA of the *Health Insurance Act 1973 (Cth)* to include same-sex de facto couples.**

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<sup>5</sup> See n3 above, Chapter 11.

<sup>6</sup> The 2004 HIV Futures IV survey found that the mean weekly medical expenses for PLWHA was \$50.90, and more than 50% of respondents experienced difficulty meeting the costs of medical services and complimentary therapies and just under half had difficulty paying for HIV/AIDS related medication. Source: see n2 above, p66.

## **Recommendation 8**

**Amend the definition of ‘de facto spouse’ under section 84B of the *National Health Act 1953 (Cth)* to include same-sex couples.**

### **6. IMPACT ON COST OF LIVING PRESSURES ON OLDER GLBT AUSTRALIANS**

Older GLBT Australians are subject to the same cost of living pressures as other older Australians that arise from price movements in essentials, household utilities and health care services such as dental care. However, because Commonwealth ageing policies do not acknowledge their issues and federal legislation does not recognise same-sex relationships, older GLBT Australians must deal with unnecessary additional factors in meeting the daily cost of living. Inevitably, such factors impact on the standard of living of many older GLBT people across the country.

The financial impact of current government policy on older GLBT Australians is experienced in three ways. First, throughout their working lives and once they have left the workforce, the income that GLBT Australians receive is affected by current superannuation and taxation laws that discriminate on the basis of sexual orientation. Second, when attempting to access services that are vital to their health and wellbeing as older Australians, GLBT people in most cases are subject to higher costs because the Government does not recognise same-sex relationships in law governing aged care and medical expenses. Third, older GLBT Australians face discrimination in accessing all aged care services from local community centres through aged care facilities and nursing homes. Given the lack of government leadership in addressing such discrimination, if the individual is unable to resolve an issue of discrimination in order to access a particular service, they have no other choice but to go without or potentially pay a higher price to access an alternative service.

## APPENDIX SUMMARY OF RECOMMENDATIONS

- a) **Review all current government policies relating to older Australians to ensure that they recognise the health, social and economic issues and needs of older GLBT Australians.**
- b) **Amend section 44.11 of the *Aged Care Act* 1997 (Cth) to include same-sex relationships under the definition of ‘member of a couple’.**
- c) **Amend the *User Rights Principles 1997* under the *Aged Care Act* to specifically include reference to GLBT issues.**
- d) **Amend the statutes governing the following schemes to recognise same-sex relationships under the definition of ‘spouse’:**
  - **Commonwealth Superannuation Scheme (CSS)**
  - **Public Sector Superannuation Scheme (PSS)**
  - **Military Benefits and Superannuation Scheme (MSBS)**
  - **Defence Forces Retirement & Death Benefits Scheme (DFRDB)**
  - **Parliamentary Contributory Superannuation Scheme**
- e) **Amend the definition of spouse under s6 of the *Income Tax Assessment Act* 1936 (Cth) to include same-sex relationships.**
- f) **Amend the definition of spouse under s995-1 of the *Income Tax Assessment Act* 1997 (Cth) to include same-sex relationships.**
- g) **Amend the definition of family under section 10AA of the *Health Insurance Act* 1973 (Cth) to include same-sex de facto couples.**
- h) **Amend the definition of ‘de facto spouse’ under section 84B of the *National Health Act* 1953 (Cth) to include same-sex couples.**