

Submission
No 78

Outsourcing Community Service Delivery

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Submission to:

**NSW Legislative Assembly Community Services
Committee's Inquiry into Outsourcing Community
Service Delivery**

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About ACON

ACON (formerly known as the AIDS Council of NSW) was formed in 1985 as part of the community response to the impact of the HIV/AIDS epidemic in Australia. Today, ACON is Australia's largest community-based gay, lesbian, bisexual and transgender (GLBT) health and HIV/AIDS organisation. ACON provides information, support and advocacy for the GLBT community and people living with or at risk of acquiring HIV, including sex workers and people who use drugs.

ACON is home to the Lesbian and Gay Anti-Violence Project (AVP), the Community Support Network (CSN), and the Sex Workers Outreach Project (SWOP). The ACON Housing Service provides short-term accommodation for GLBT people and people with HIV who are homeless or at risk of homelessness and provides advice and assistance in relation to rental accommodation and social housing. ACON has its head office in Sydney as well as branches in the Illawarra, Northern Rivers, the Hunter region and the Mid North Coast.

Our response to the Inquiry

ACON welcomes this opportunity to provide comments to the Community Services Committee inquiry into outsourcing community service delivery. ACON is happy to appear before the committee to provide additional information at an inquiry hearing, if requested. ACON is limiting its submission to part 'a' of the terms of reference for this inquiry: 'State Government processes, outcomes and impacts of transferring housing, disability and home care services from Government to non-Government agencies'. This submission is specifically addressing discrimination. Currently GLBT people are afforded protection from discrimination when accessing government services, whereas protection in the non-Government sector will vary due to the current provisions of the Anti-Discrimination Act 1997 (ADA). While ACON believes that the NGO sector is able to offer cost effective, consumer oriented services, we are concerned that under the ADA as currently enacted, the services access for GLBT and people living with HIV could be negatively impacted.

GLBT Discrimination

GLBT people experience high rates of discrimination throughout the community, including in community service settings¹. Discrimination in the aged care sector is well documented,² as

¹ W Leonard, M Pitts, A Mitchell, A Lyons, A Smith, S Patel, M Couch and A Barrett *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 (2012). L Hillier, T Jones, M Monagle et. al., *Writing themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*, Australian Research Centre in Sex, Health and Society, La Trobe University, (2010); NSW Gay and Lesbian Rights Lobby, *The Pink Ceiling is Too Low*, (2003); NSW Attorney General's Department, *You Shouldn't Have to Hide to be Safe*, (2001), Beyondblue, *Feeling Queer and Blue*, (2009).

² C Barrett, *My People: A project exploring the experiences of Gay, Lesbian, Bisexual, Transgender and Intersex seniors in aged-care services*, Matrix Guild Victoria, (2008), pp. 13-14.

is the perception by GLBT people that they are very likely to experience.³ While there is little published research on the experiences of discrimination by GLBT people in the NSW housing, disability and home care sectors, ACON housing and our other client services have received reports of discrimination in these settings over many years. We believe that these experiences are similar in other social service settings.

Government and non-faith based non-government organisations (NGO) are subject to the ADA and therefore GLBT people are afforded protection from discrimination and mechanisms to address discrimination when it does happen. Currently government run services are available to anyone, regardless of sexuality, sexual orientation or gender identity, so long as any other service prerequisites are met.

Moving housing, disability and home care services to the NGO sector will change the protections afforded to GLBT people while the ADA remains in its current form. The ADA provides broad exemptions to any faith based organisation, including in the provision of public services.⁴ Therefore GLBT people whose services are transferred from government to faith based services will no longer be afforded protection from discrimination, even though they may be receiving the same service.

There are proportionally high numbers of GLBT people working for NGOs in the delivery of community services. The current exemptions included in the ADA allow faith based NGOs to discriminate against employees who are, or are perceived to be, members of the GLBT community. The outsourcing of housing, disability and home care services are likely to have a negative impact on the diversity of staff within this sector. Reducing diversity will have a negative impact on clients as it will mean that the diversity of the clients isn't met by the diversity of staff.

ACON supports the freedom of religious belief guaranteed under the *International Covenant on Civil and Political Rights* as well as the Australian Constitution. However this right should not be interpreted to confer an unlimited prerogative to discriminate. Doing so would undermine equality and diversity, as well as separation between church and state. The protection of religious freedom is important in a secular state, however this protection should not equate to people fearing state sanctioned discrimination from housing, disability and home care service providers. It would be inappropriate for the NSW government to use a majority religious tradition as a guide for the rights of minorities.

The access of GLBT people to housing, disability and home care services will be reduced if the delivery of services is moved to NGOs that are exempted from the provisions of the ADA. This would have a negative impact on the health and wellbeing of GLBT people, especially in areas where there is only one provider of community services. Continued

³ Jackson NC, Johnson MJ, Roberts R (2008) *The potential impact of discrimination fears of older gays, lesbians, bisexuals and transgender individuals living in small- to moderate-sized cities on long-term health care* J Homosexuality 54(3):325-39.

⁴ OW & OV v Members of the Board of the Wesley Mission Council [2010] NSWADT 293

equitable access to services needs to be assured for GLBT people when any changes to service delivery are made.

To avoid GLBT people experiencing discrimination there should be protection from discrimination given to all people receiving housing, disability and/or home care services, regardless of the provider. With the receipt of public funding and the authority of the state to perform government functions organisations should be subject to the same obligations as the government, including the obligation to provide services free from discrimination.

Recommendation

That anti-discrimination protection is provided to all GLBT people receiving outsourced housing, disability and/or home care services, regardless of the organisation providing the service.