

**Submission
No 101**

INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

Organisation: Anti-Discrimination Board of NSW

Date received: 12/02/2016



The Chairperson,
The Hon. Greg Donnelly,
Legislative Council General Purpose Standing Committee No. 2
Parliament of NSW
Inquiry into Elder Abuse in NSW

CONFIDENTIAL SUBMISSION

Dear Chairperson,

Ref: Parliamentary Inquiry into Elder Abuse in New South Wales

Submission from the Anti-Discrimination Board of NSW

The Anti-Discrimination Board of NSW (the Board) thanks the Legislative Council General Purpose Standing Committee No.2 for the opportunity to contribute to its inquiry into Elder Abuse in NSW.

Summary of the Board's Recommendations

The Board submits that there is greater role for the Board educating Elder service providers in the principles of non-discrimination in the Elder care sector, as well as providing information and workshops to Elders in metropolitan and regional NSW about their options when they experience discrimination. More detail of how the Board can assist the NSW Government in implementing its measures to prevent and respond to Elder abuse will be set out at the end of this submission.

The Anti-Discrimination Act 1977 NSW

The purpose of the Anti-Discrimination Act 1977 NSW (the *Act*) is to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons. The current Legislative Council's Inquiry into Elder Abuse is relevant to the work of the Board as Elders in the community may experience discrimination because of their race, age, disability, sex, homosexuality, and transgender in the areas of accommodation, or in the provision of services.

Elder Abuse in the context of Discrimination

The definition of Elder abuse the Board refers to in this submission is defined by the World Health Organisation as a single or repeated act, or lack of appropriate action,

occurring with any relationship where there is an expectation of trust which causes harm or distress to an older person.¹

The Role of the Board and Relationship with Elder Abuse

The Anti-Discrimination Board performs three main roles.

- Prevents discrimination from occurring by informing people about their rights and responsibilities under anti-discrimination law, and explains how they can prevent and address discrimination. This is done through consultations, education programs, seminars, workshops, talks, participating in community functions, publications, social media such as Facebook and Twitter and the Board's website.
- Handles discrimination enquiries and complaints. The Board provides an enquiry service for people who want information about their rights or responsibilities under anti-discrimination law. Staff investigate discrimination complaints and conciliate complaints when appropriate.
- Advises the Government and agencies on discrimination issues, law reform and policy and make recommendations.

How the Act works

The Act provides the grounds of discrimination and the areas in which the Board has jurisdiction to carry out its functions. In relation to the Elder Abuse, potential discrimination occurs when an Elder is denied access to accommodation or provision of services, or provided those services less favourably, on the grounds of race, age, disability, sex, homosexuality, transgender and carer's responsibilities.

Race

The Board has received a number of enquires related to access to services such as health care and in the home support and accommodation for Elders from Aboriginal and Torres Strait Islander community organisations. The Board operates an Aboriginal and Torres Strait Island outreach programme where members of the outreach team visit communities in regional and metropolitan NSW. It is in this context that members of communities provide accounts given by members of their Indigenous communities who experience discrimination accessing Elder care and in some cases prevented access, or when receiving the service, it is provided in a disrespectful manner that ignores cultural sensitivities.

There is also the issue of a lack of availability of services for Elders in Indigenous communities when compared to services available to other Elder communities and there is a real perception in some Indigenous communities that there is a lack of

¹ *The Toronto Declaration on the Global Prevention of Elder Abuse*, World Health Organisation 2002.

equality of opportunity for Elder Indigenous people to access appropriate accommodation and health care services.

In addition the Board, through its consultation processes with community groups, has been informed about the lack of language resources available to non-English speaking Elders in Elder care settings which makes it very difficult to communicate with vulnerable Elder people expressing their wishes in the provision of health and living care as well as a lack of cultural awareness and sensitivity.

Sex, Homosexuality and Transgender

As noted in the Commonwealth *National LGBTI Ageing and Care Strategy*²:

*'Abuse can also occur in same sex relationships and other settings where sexuality, sex and gender diverse people live. It is considered that this abuse may remain hidden and unreported due to fear of stigma and/or discrimination.'*³

The Board has received a number of inquiries and complaints in relation to the provision of accommodation and care to Elders in same sex relationships or because of an Elder's homosexuality or transgender. In a number of examples the provider of Elder care in an aged care setting did not recognise or ignored or disrespected the relationship of the Elder. This causes enormous shame and anxiety to the person being cared for and the significant partner. While those providers may provide a theoretical alternative for the consumer to choose, in reality the location or conditions of the facility means the Elder has little or no choice.

The Board has also received further information through its Sex and Gender Community Consultation about the lack of services and access to Aged care facilities for Elder transgender people and the lack of respect and discrimination shown by service providers because of Elders' sex, homosexuality or transgender and sexual orientation. In addition, the Board hears from the Intersex community (even though Intersex is not a specific attribute cover by the *Act* now) and the difficulties and discrimination members of the community experience, particularly when accessing health and care services. In a diverse and complex society it is vital that LGBTI people have equal access, equity and quality in the provision of Elder accommodation and provision of services.

Age and disability

Discrimination enquiries and complaints on the grounds of age and disability are increasingly common in the area of the provision of Elder services and relate to misconceptions and fears that everyone loses decision-making capacity, gets

² *The National LGBTI Ageing and Care Strategy*, at https://www.dss.gov.au/sites/default/files/documents/08_2014/national_ageing_and_aged_care_strategy_lgbti_print_version.pdf

³ *Ibid* P7.

dementia, becomes dependent and a burden and ends up in residential care. Central to the principle of non-discrimination on the grounds of age and disability in the Elder context is the right of the person to actively participate in decision-making about their health care and living arrangements. Most people will continue to have capacity to decide how and where they want to live and the health care treatment of home care services they would like to use; some, however, will not have decision-making capacity. This may be due to a cognitive impairment such as dementia, but at times this is due to age stereotyping which assumes that a frail old person has no capacity to decide.

Carer's Responsibilities

Unlike the other types of discrimination mentioned above, discrimination and harassment because of a carer's responsibility are only against the law when the alleged conduct occurs in employment and the law only applies to a person's responsibility for caring for particular people. In the context of the Elder Abuse Inquiry, carer's responsibility discrimination occurs when a carer is taking care of a related Elder and because of that responsibility is discriminated in the workplace either making it more difficult for the carer to carry out their caring responsibilities or alternatively, providing work or conditions in the workplace that make it more difficult to carry out those responsibilities.

Recommendations

The Board submits that it has an important role in providing education, information and a complaint and conciliation services to Elders and carers and professional aged cares workers and employers. In fact the NSW government stated in 2014 that the NSW Government is developing a strategic integrated approach to tackle abuse of Elders. In its submission it states that:

*'Abuse of older people is a complex problem that needs holistic and integrated response. NSW government agencies work together with community partners to raise awareness about elder abuse, help prevent it from happening and to respond effectively when it does occur.'*⁴

The Board believes that an integrated approach of agencies is the most effective approach to tackle Elder abuse and notes that the Department of Justice is a member of the NSW Government Interdepartmental Committee on Ageing. The Board is an agency that falls under the jurisdiction of the Department of Justice. The NSW Government submission refers to its interagency and states that: 'interagency policy ... is a whole-of-government policy that guides the work of frontline services.'

- The Board is a frontline service provider in anti-discrimination education and information and provides an enquiry service and a complaint and conciliation

⁴ NSW Government Submission to Inquiry on Elder Abuse in NSW, November 2015 pp10-12.

service. It has an important role to play in the prevention of Elder abuse and has the expertise to provide workshops, training and education to aged care service providers about discrimination and the ways in which to prevent it.

- The Board can provide workshops that cater for professionals working in the Aged carer sector specifically targeting principles of inclusion.
- The Board can hold community events in collaboration with other agencies to provide information to Elders about discrimination and ways to respond to discrimination.
- Participate in regional and remote community events targeting particular communities to provide information about discrimination, the services the Board provides to respond to complaints.
- Provide community information about the Board's complaint and conciliation services.

Yours sincerely,

Elizabeth Wing
Acting President
Anti-Discrimination Board of NSW

Date: 11 FEB 2016