



Inspector-General of Aged Care Taskforce
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Canberra ACT 2601
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27th January 2023

Re. Feedback on the *Draft Inspector-General of Aged Care Bill*

We write to the Inspector-General of Aged Care Taskforce, a joint submission from Aged Care Reform Now, Aged Care Justice, Carers' Circle and QACAG. We are independent organisations but have combined resources for this submission, as we represent the rights and interests of Australian aged care recipients. Our submission recommends amendments to the draft Bill to ensure the Inspector-General's objectives, powers, complaints oversight, reporting and consultation, reflect the needs of the members of each organisation, and meet the intentions of the Royal Commission into Aged Care. There is a significant omission in the draft Bill, in promoting the Inspector-General's role as reviewer of 'regulator decisions on a systematic basis to ensure regulator integrity and performance' pursuant to Rec. 12(b). Aged Care Reform Now, Aged Care Justice, Carers' Circle and QACAG suggest the following amendments to ensure the Inspector-General can provide a proper review of the aged care system and deal with issues that daily impact aged care recipients.

1. OBJECTIVES

The following sections of the draft Bill are inconsistent with its object under s 3 to 'drive greater accountability and transparency of the Commonwealth's administration of the aged care system, and facilitate positive change for older Australians, by establishing an *independent* Inspector-General of Aged Care'.

Recommendation 1. One of the objectives of the Bill, is the Inspector-General should be independent, so they can choose to review specific areas of the aged care system and report to the public. Section 11(1)(a) provides for the Inspector-General to act with 'complete discretion' in respect to their functions and exercise of powers. Section 11(1)(b) provides that the Inspector-General is not subject to the direction of any person in relation to the performance or exercise of those functions or powers. However, the Bill states that the Inspector-General must consult the Minister in preparing a work plan for the financial year at s 13(4). Please provide further information on how these two sections interact and how the Inspector-General's independence is preserved if they *must* consult the Minister. For example, in the instance the Inspector-General has devised an independent strategy that may not be supported by the Minister, can the strategy still be implemented? Recommend replacing 'must' with 'may consider'.

Recommendation 2. Under s 15(4) the Inspector-General *must* comply with a direction from the Minister to conduct a review. Further, s 15(5) states the Inspector-General *must* consult the Minister in relation to the review's priority and terms of reference. Both sections significantly impact the Inspector-General's ability to act independently. Section 15(3) stipulates that the Minister, before making a direction to conduct a review, must consider the Inspector-General's work plan and resources. However, if the Inspector-General is an independent office, the autonomy to assess the urgency and required resources to conduct a review should be vested in the Inspector-General. This provision has the capacity to wholly determine the direction, capacity and breadth of the Inspector-General, who is supposed to act independently per the Act's object. Recommend replacing 'must' with 'may consider'.

2. POWERS

Pursuant to s 10, the Inspector-General has the power to monitor, investigate and report on the exercise of powers and the performance of functions and duties under an aged care law, the operation of an aged care law, the Commonwealth's administration of an aged care law or funding instrument, or the Commonwealth's performance of obligations and duties under an aged care instrument.

Recommendation 3. Section 10, while comprehensive in relation to the power of the Inspector-General to oversee the Commonwealth's performance of its legislative duties, does not extend to all matters relating to aged care delivery. There should be scope within s 10 to extend beyond aged care law to enable identifying issues and recommending amendments to the aged care law. The section should provide for the Inspector-General to have the power to investigate and report on systemic issues which are not captured by the law. The object of the Act is not only to 'drive greater accountability and transparency of the Commonwealth's administration of the aged care system' but to also 'facilitate positive change for older Australians'. Recommend s 10 be broadened so that the Inspector-General has wider ability to investigate issues beyond the aged care legislation, and facilitate future change.

3. COMPLAINTS OVERSIGHT

Recommendation 4. In the Final Report by the Royal Commission into Aged Care Quality and Safety, it was recommended that a key role of the Inspector-General is to 'review regulator decisions on a *systematic basis* to ensure regulator integrity and performance' and 'monitor the adequacy of aged care data collection and analysis' (Rec. 12(c)). Currently, the draft Bill does not include a prescribed system or regulatory function in which the Inspector-General consistently reviews the regulator's performance, outside of conducting reviews, which are discretionary. The Inspector General should be involved in the complaints system to identify issues. The Royal Commission recommended that complainants who are not satisfied with how a complaint has been handled by the regulator or believes the complaint warrants the attention of the Inspector-General, can go direct to the Inspector-General. It is vital that the Inspector-General has interaction with aged care complainants as a systemic reform body. An additional role, is for the Inspector-General to have powers to obtain data on complaint issues and handling to identify and act on systemic issues. We recommend a prescribed process for reviewing the performance of the regulator via the regular collection of data and review of complaints made about the regulator, in line with the Royal Commission recommendations.

4. REPORTING

(a) Relaying data to parliament and the public

Recommendation 4. The Bill states that the Inspector-General must provide a notice to the Minister and head of Government entities when undertaking a review, per the Notice of Review requirements under s 16. In the interests of transparency, s 16 should be extended to require the Inspector-General to disclose Notice of Review on the website so the general public is aware of reviews being undertaken.

(b) Reviews of implementation of Aged Care Royal Commission recommendations

Recommendation 5. Section 24 states that the Inspector General is to report on the progress of the implementation of the Aged Care Royal Commission recommendations, with the the first review scheduled for 2026 and second in 2031. We say, that the Inspector-General should report annually commencing in 2024, as it's in the public interest and will improve public confidence in the Government's implementation of the recommendations. We recommend annual progress reporting to ensure a coordinated and effective approach for implementing the Royal Commission recommendations, and to allow for changes in approach or strategy to be actioned as required.

5. GENERAL COMMENTS

(a) Credentials of the Inspector-General

The qualifications required of the Inspector-General are not provided for in the draft Bill and we recommend a person with clinical and/or legal experience in the guidelines.

(b) Consumer and Stakeholder Involvement

Direct engagement with the consumers of aged care services is vital to ensure the Inspector-General is being adequately informed of the issues experienced in aged care facilities and in home care settings. Consulting stakeholders such as community, advocacy and legal groups which actively represent consumers is also crucial in ensuring external consultation is not predominantly comprised of government-funded interest groups. The central focus needs to be on those for whom we are advocating – older Australians receiving aged care services. Further, the stakeholder engagement process should be conducted in a way which allows community groups, that are largely comprised of volunteers, to meaningfully participate given the rapid pace that aged care reforms are being rolled out and the commitment limitations of volunteers.

The organisations behind this joint submission:

Aged Care Justice

Aged Care Justice Inc (formerly ALARM) is a registered charity supporting Australians living in residential aged care or receiving home care, by providing access to legal services, educational material on aged care rights and lobbying for sector reform. Aged Care Justice was formed in 2020 by senior legal and clinical professionals to ensure all Australians receive quality aged care services and are treated with dignity and respect. When a person contacts Aged Care Justice, we listen to their issue and connect them with a lawyer with experience in aged care issues who will provide a free legal consultation anywhere in Australia. Our panel of firms have agreed to identify the most efficient and economical way to proceed after the initial consultation, including pro bono for those who qualify. The Chair of Aged Care Justice is Dr Bryan Keon-Cohen AM KC and our Patron is the Honourable Tony Pagone AM KC, a former Federal Court Judge and Chair of the Royal Commission into Aged Care Quality and Safety. **Website:** <https://www.agedcarejustice.org.au/> **Contact:** info@agedcarejustice.org.au

Aged Care Reform Now

Formed in 2021, Aged Care Reform Now's (ACRN) grassroots advocacy has been informed by its membership's lived experience of the aged care system, and the associated grief and trauma. Having made submissions to the Royal Commission and formal complaints to aged care facilities, the Aged Care Quality and Safety Commission (ACQSC), the ACQSC Health and Disability Services Complaints Office, HaDSCO, and Advocare, to no avail, ACRN members are channelling their energy and desire for closure into advocacy for comprehensive, systemic reform. ACRN Committee Members located in NSW, QLD, Victoria and WA proactively engage with politicians, participate on Department of Health webinars, participate in consultations with the ACQSC Consumers and Families Panel, and have been invited by Ian Yates to join a working group within the Council. WA and NSW Members will be travelling to Parliament House, Canberra in March for further meetings with Politicians and attend a Roundtable with other advocacy groups. **Website:** www.agedcarereformnow.com.au **Contact:** info@agedcarereformnow.com.au

Carers' Circle – caring for ageing parents

Carers' Circle is Australia's only general website dedicated to helping the children (or nieces or nephews) of ageing parents. The website covers a wide range of issues that will help both the children and their older loved ones – written from the perspective of a carer. Navigating the complex aged care system, changing family dynamics, and just understanding the road ahead, is daunting and difficult. Carers' Circle aims to make it a little easier by having the information readers need all in the one place, and in language that makes it easier to understand. Founded by Michelle Chaperon while navigating her own father's care needs, the website draws on contributions from experts as well as everyday people navigating their own care journeys. **Website:** www.carerscircle.com.au **Contact:** info@carerscircle.com.au

QACAG

Quality Aged Care Action Group Incorporated (**QACAG**) is a community action group in NSW that aims to improve the quality of life for people in residential and community aged care settings. QACAG is made up of people from many interests and backgrounds brought together by common concerns about the quality of care for people receiving aged care services. QACAG Inc. was established in 2005 and became incorporated in 2007. Membership includes older people, some of whom are receiving aged care in NSW nursing homes or the community; relatives and friends of care recipients; carers; people with aged care experience including current and retired nurses; aged care workers and community members concerned with improving aged care. Membership also includes representatives from: Older Women's Network; Combined Pensioners & Superannuants Association of NSW Inc.; Kings Cross Community Centre; Senior Rights Service; NSW Nurses and Midwives' Association; Carers Circle; Aged Care Reform Now and the Retired Teachers' Association. **Website:** <https://qacag.org.au/>

**For full disclosure and transparency, the Founder of Carers' Circle is also a member of ACRN and QACAG is an ACRN representative.*