



## **Australian Government**

### **Department of Health**

**Secretary**

Committee Secretary  
Senate Standing Committees on Community Affairs  
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Canberra ACT 2600

#### ***Submission to the Community Affairs Legislation Committee: Inquiry into the Aged Care Quality and Safety Commission Bill 2018 and related Bill***

The Department of Health welcomes the opportunity to provide this submission to the Senate Community Affairs Legislation Committee for the inquiry into the Aged Care Quality and Safety Commission Bill 2018 (Commission Bill) and the Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Bill 2018 (Consequential & Transitional Bill).

The Bills were introduced into Parliament on 12 September 2018 by the Minister for Senior Australians and Aged Care, the Hon Ken Wyatt AM, MP.

The purpose of the Commission Bill is to establish a new Aged Care Quality and Safety Commission (the Quality and Safety Commission) to commence on 1 January 2019. The new Quality and Safety Commission begins to address the structural issues identified in the *Review of National Aged Care Quality Regulatory Processes* (Carnell-Paterson Review) through combining the existing complaints and regulatory functions of the Aged Care Complaints Commissioner (Complaints Commissioner) and the Australian Aged Care Quality Agency (Quality Agency).

Better connected information across complaints, monitoring and accreditation will improve the effectiveness of the system and support necessary responses to increased complaints and referrals on matters of sub-standard care. This growth and increased requirements was recently recognised by Government with an additional \$16 million to provide increased resources for aged care quality regulation and complaints.

The Quality and Safety Commission will also be a single point of contact for aged care consumers and providers of aged care in relation to quality of care and regulation across all types of aged care.

On 16 September 2018, the Prime Minister announced the Government's decision to ask the Governor-General to establish a Royal Commission into the aged care sector.

The Royal Commission will primarily consider the quality of care provided in residential and in-home aged care services to senior Australians. It will also include young Australians with disabilities living in residential aged care settings. Terms of Reference are still being finalised at the time of preparing this submission. The finalisation of the terms of reference and the appointment of Commissioners are matters for Government decision.

The Government has made it clear that existing reforms will continue to be pursued including the establishment of the Quality and Safety Commission through these Bills. Stakeholders in the aged care sector have also spoken about the importance of continuing with ongoing reforms while the Royal Commission progresses.

This submission complements the material already presented to Parliament, including the Minister's second reading speech and the explanatory memorandum.

#### Quality under the Aged Care Act 1997

The Australian Government is committed to the delivery of high quality care to older Australians and considers the health, safety and welfare of aged care recipients a high priority. Aged care legislation provides a regulatory framework to support the delivery of quality services and protect aged care recipients, among other policy objectives. The principal Acts which make up this framework include the *Aged Care Act 1997* (Aged Care Act) and the *Australian Aged Care Quality Agency Act 2013* (the Quality Agency Act).

The Aged Care Act sets out the framework for residential care services, home care services and flexible care services. Not all Australian Government funded aged care services are administered under the Act; some services, such as the Commonwealth Home Support Programme, are administered through contractual agreements. The Quality and Safety Commission will have functions that cover both services funded under the Aged Care Act and contractually funded service types.

Within this regulatory framework, there are safeguards for the provision of quality care in aged care services. These safeguards apply generally as a condition of receiving a subsidy or funding. The framework sets out the requirements to become a provider of aged care services, the responsibilities that providers must meet, and the compliance action that may be taken where responsibilities are not met.

The Review of National Aged Care Quality Regulatory Processes – October 2017 – (Carnell-Paterson Review)

The Carnell-Paterson Review found that the current aged care regulatory system is fragmented, and fails to consistently provide the assurance the community expects. Upon release of the Carnell-Paterson Review, Minister Wyatt announced the Government's intention to move to unannounced re-accreditation audits. This change, which applies to applications received after 1 July 2018, will strengthen aged care regulation; helping to ensure safe, quality care is consistently maintained at all homes, at all times.

As part of the Government's response to the Carnell-Paterson Review, in the 2018-19 Budget the Government announced the *More Choices for a Longer Life* package of measures aimed at improving regulation so that older Australians receive the level of care that the community expects. These measures included:

- the establishment of a new independent Aged Care Quality and Safety Commission;
- improved aged care quality protection for older Australians living in aged care homes. As a part of this measure, the Government will establish a robust risk profiling approach to support the new Quality and Safety Commission to better identify risks to consumers and enable regulatory processes to respond quickly to care failures by aged care providers. The Government will also develop, in consultation with the aged care sector, options for a serious incident response scheme; and
- greater transparency of quality in aged care. This will introduce simplified, plain English accreditation reports and a performance rating for residential aged care service providers against the new quality standards published on the My Aged Care website from July 2020, together with a tool to compare providers.

As a key component of these reforms, the Quality and Safety Commission will consolidate the regulation of aged care into a single entity in two stages. From 1 January 2019, the Quality and Safety Commission will bring together the accreditation and review functions of the Quality Agency with the functions of the Complaints Commissioner.

From 1 January 2020, the Quality and Safety Commission will also take on the compliance and enforcement related functions, approval of providers, and compulsory reporting of assault functions currently administered by the Department of Health under the Aged Care Act.

This two staged approach is necessary to ensure there is the opportunity to work through the complexity of these reforms and successfully manage the delivery of changes. The Commission Bill implements the first stage.

The more than 1.3 million people who receive some form of aged care service will benefit from the implementation of an integrated and responsive regulatory agency. Approximately 900 residential aged care providers and 700 home care providers will also be able to deal with a single body - the Quality and Safety Commission - rather than the existing multiple agencies.

#### Consultation on the establishment of the Quality and Safety Commission

As part of the Carnell-Paterson Review, extensive public consultation took place to inform the recommendations of the review. Consultation was undertaken with a range of stakeholders including aged care regulators, consumers, carers and approved providers. This included targeted sector meetings and other consultation meetings, and 400 written submissions.

The Department also met with key stakeholders, including members of the Aged Care Sector Committee and the Aged Care Quality Advisory Council in developing these Bills. A targeted sector meeting was also held in early August 2018 to discuss the establishment of the Quality and Safety Commission.

The outcome of this consultation has informed the broad vision, governance structure, role and functions of the Quality and Safety Commission set out in the Commission Bill.

There will be further opportunity for consultation during the second stage of consolidating and reforming aged care regulatory functions, including on how the Quality and Safety Commission's functions will be integrated with the Department's compliance functions from 1 January 2020.

Additionally, there will be ongoing consultation with consumers and stakeholders once the Quality and Safety Commission is established, particularly in relation to the Quality and Safety Commission's new functions relating to consumer engagement.

## The Commission Bill

The Commission Bill establishes a new, independent body in the Health Portfolio, the Aged Care Quality and Safety Commission (clause 11), as a statutory agency (clause 33), for the purposes of the *Public Service Act 1999* (PS Act) and a non-corporate Commonwealth entity (clause 11) for the purposes of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

This gives effect to the Quality and Safety Commission becoming a single point of contact for aged care consumers and providers of aged care in relation to quality of care.

The Quality and Safety Commission will be supported by other reforms that include the development of an enhanced risk profiling approach to better identify risks to consumers and enable regulatory processes to respond quickly to care failures by aged care providers.

This will build on the recent implementation of unannounced re-accreditation audits in residential aged care services, which strengthen the oversight of aged care services to provide greater assurance that standards of care are consistently maintained, not just at re-accreditation times.

## *The Object of the Commission Bill*

The objects of the Commission Bill, set out in clause 5, include: protecting and enhancing the safety, health, well-being and quality of life of aged care consumers; promoting confidence and trust in the provision of aged care; and promoting engagement with aged care consumers about the quality of care and services.

The objects identify the health, safety and wellbeing of aged care consumers, as being at the heart of these reforms as aged care consumers will generally have the greatest stake in the provision of quality of care and services as recipients of these services.

The objects also identify promoting aged care consumers' confidence and trust in the provision of aged care services and Commonwealth funded aged care services. The promotion of confidence in aged care services through effective regulation will be of benefit to both providers and aged care consumers.

These objects complement the broader objects and functions under the Aged Care Act, which further deals with the critical role of approved providers in the provision of quality of care and services, and their responsibilities as Commonwealth funded providers of aged care services.

The object clause of the Bill also proposes that Parliament signal its intention to enact further reforms to the functions of the Commissioner. This object is consistent with the Government's policy that the Commissioner will in the future take on the functions of the Secretary of the Department under the Aged Care Act in relation to the approval of providers and compliance.

#### *Aged Care Quality and Safety Commissioner*

The Commission Bill establishes the Commissioner (clause 15), who will be the Agency Head for the purposes of the PS Act and the accountable authority for the purposes of the PGPA Act. As such, the Commissioner will report to the Minister administering the Aged Care Act. The Commissioner is to be a Ministerial appointment (clause 24). The recruitment process for the inaugural Commissioner is currently underway, with the Commissioner to be appointed shortly.

Centralising decision making within a single statutory officeholder is consistent with the governance model proposed for similar bodies, such as the NDIS Quality and Safeguards Commission for the National Disability Insurance Scheme, which also centralises regulatory decision making and complaints handling within a single agency, with a single commissioner.

The Commissioner will have the ability to delegate their functions to a member of the staff of the Quality and Safety Commission (clause 76) which will enable administrative expediency with specialised staff performing functions of the Quality and Safety Commission. Ultimately, under this governance structure, all functions will sit with the Commissioner, to enable them to review and make strategic decisions across the functions of the Quality and Safety Commission.

The Commission Bill confers a number of functions on the Commissioner including complaints, regulation and education functions. These largely reflect the existing functions under the Quality Agency Act, and Quality Agency Principles, and Aged Care Act and Aged Care Principles. However, the Commission Bill also explicitly provides for functions relating to consumer engagement and clinical advice.

### *Consumer engagement functions*

Consistent with the direction of broader reforms to the aged care system, clause 17 of the Commission Bill provides the Commissioner with an additional function dedicated to promoting consumer engagement by approved providers and service providers.

The Commissioner would be responsible for developing, in consultation with aged care consumers and other relevant stakeholders, including representatives of aged care consumers, best practice models for the engagement of approved providers of aged care services, and service providers of Commonwealth-funded aged care services, with their aged care consumers; and to promote those best practice models to such approved providers and service providers.

Consumer engagement refers to the way approved providers and service providers engage with aged care consumers on the services they provide, to ensure the needs and expectations of consumers are met. This may include engaging consumers in the design, delivery, governance and continuous improvement of a service.

Consumer engagement is intended to facilitate increased choice and control by aged care consumers over the services they receive, and central to the outcomes and requirements that underpin the new Aged Care Quality Standards, which increase the focus on quality outcomes for consumers. This function will be further supported by other reforms that promote greater transparency in aged care services, including differentiated performance ratings against the new Standards.

The focus on consumer engagement is consistent with the recommendations and findings of the Review, and the views expressed in consultations on the Commission Bill.

### *Chief Clinical Advisor*

The Commission Bill also accommodates the work of a chief clinical advisor and expert clinical panel within the functions of the Commissioner. This includes seeking and considering clinical advice that is relevant to the performance of any of the Commissioner's functions (clause 16). This recognises the relevance of clinical advice across the whole of the Commissioner's functions.

The Commission Bill does not establish a separate statutory position for the role of a chief clinical advisor given the advisor will not have any decision making responsibilities or powers. Under this approach, the Commissioner will be able to directly appoint the Chief Clinical Advisor which is appropriate to ensure the functions of the Commissioner are adequately supported and there are no unnecessary delays in appointment. This approach was broadly supported in the consultations undertaken with stakeholders in the development of the Bills.

The Chief Clinical Advisor will support the work of the Quality and Safety Commission and strengthen access by staff of the Quality and Safety Commission to clinical advice for complex clinical matters. This will support the Quality and Safety Commission to make better decisions about the level or risk to people in aged care and the best regulatory response. The Chief Clinical Advisor will have a role in educating the aged care sector about clinical matters. The Chief Clinical Advisor will be supported by an expert clinical panel.

An interim Chief Clinical Advisor has been engaged by the Department to assist in the establishment of the new Quality and Safety Commission.

#### *Aged Care Quality and Safety Advisory Council*

The Commission Bill establishes an Aged Care Quality and Safety Advisory Council (clause 37), with responsibility for advising the Commissioner on matters related to the performance of the Commissioner's functions. The Advisory Council's functions also include providing advice to the Minister at the Minister's request (clause 38).

These arrangements in the Commission Bill, largely adopts the existing functions of the Aged Care Quality Advisory Council (as set up under Part 4 of the Quality Agency Act) which have operated well to date. However, additional areas have been added to the list of relevant skills and expertise of Advisory Council members, such as 'human resources management' and 'information and data management' (clause 41).

The Consequential & Transitional Bill continues the current appointments of members of the Aged Care Quality Advisory Council to the new Advisory Council (Schedule 2, Item 3). This provides for continuity in support for the Commissioner and transfer of experience to the new Advisory Council. A list of the current members of the Aged Care Quality Advisory Council is at Attachment A.



## Rules

The Commission Bill provides for rules to be made to support the administration of the Act (clause 77). From 1 January 2019 immediately following commencement of the new Act, there will be a set of rules dealing with the operation and administration of the functions set up under the Commission Bill. The Department is currently working with the Office of Parliamentary Counsel to develop the Rules that will operate from 1 January 2019.

In broad terms, the rules will retain the relevant provisions of the existing principles under the Quality Agency Act and Aged Care Act. Several matters that were previously dealt with either administratively or in the relevant principles are now dealt with in the primary legislation, such as:

- the function to regulate and deal with complaints services funded outside the Aged Care Act, such as the Commonwealth Home Support Program or National Indigenous and Torres Strait Islander Flexible Aged Care Program; and
- powers for regulatory officials to search and enter premises

It is expected that the rules will consolidate and replace various aged care principles governing the Quality Agency and the Complaints Commissioner. These principles include the *Complaints Principles 2015*, *Quality Agency Principles 2013* and *Australian Aged Care Quality Agency (Other Functions) Instrument 2015*.

In addition, it is expected that the rules will incorporate matters currently dealt with in other principles established under the Aged Care Act, including the *Information Principles 2014* and the *Quality Agency Reporting Principles 2013* which deal with information sharing and reporting. These will be amended and remade under the rules.

I trust that this submission is of assistance to the Committee.

Yours sincerely

Glenys Beauchamp  
28 September 2018

**Attachment A - Aged Care Quality Advisory Council members**

<u>NAME</u>	<u>POSITION</u>	<u>EXPIRY DATE</u>
Ms Andrea COOTE	Chair	23 Jan 2021
Dr Matthew CULLEN	Member	23 Jan 2021
Professor Dorothy JONES	Member	4 May 2019
Dr Stephen JUDD	Member	19 May 2020
Mr Paul SADLER	Member	19 May 2020
Mr Ian YATES AM	Member	19 May 2020
Ms Maree McCABE	Member	19 August 2019