

Chapter 1

Introduction

Purpose of the bills

1.1 The purpose of the Aged Care Quality and Safety Commission Bill 2018 (Commission bill) is to establish a new Aged Care Quality and Safety Commission (Commission).¹

1.2 The Commission bill establishes the Commission's objects as to 'protect and enhance the safety, health, well-being and quality of life of aged care consumers; promote confidence and trust in the provision of aged care; and promote engagement with aged care consumers about the quality of care and services'.²

1.3 The Commission is intended to replace the existing Australian Aged Care Quality Agency (Quality Agency) and Aged Care Complaints Commissioner (Complaints Commissioner) on 1 January 2019, by bringing these functions together into the Commission.³

1.4 The purpose of the Aged Care Quality and Safety (Consequential Amendments and Transitional Provisions) Bill 2018 (Consequential bill) is to deal with consequential and transitional matters that arise from the enactment of the *Aged Care Quality and Safety Commission Act 2018*.⁴

Background

1.5 In introducing the two bills, the Minister for Senior Australians and Aged Care, the Hon. Ken Wyatt AM, MP (Minister), outlined these two bills form part of a larger Australian Government reform of the aged care sector across Australia:

This bill gives effect to the government's announcement in the 2018-19 budget to establish this new independent commission, as part of providing for better quality of care for consumers of aged-care services in Australia.

The introduction of this commission is also a direct response to the findings and recommendations of the *Review of national aged care regulatory processes* undertaken by Kate Carnell and Ron Paterson.⁵

1.6 The review undertaken by Ms Kate Carnell AO and Professor Ron Paterson ONZM, *Review of National Aged Care Quality Regulatory Processes* (Carnell

1 Aged Care Quality and Safety Commission Bill 2018, [Explanatory memorandum](#) (Commission bill EM), p. 1.

2 Commission bill EM, p. 1.

3 Commission bill EM, p. 1.

4 Aged Care Quality and Safety (Consequential Amendments and Transitional Provisions) Bill 2018, [Explanatory memorandum](#) (Consequential bill EM), p. 1.

5 The Hon. Ken Wyatt AM, MP, Minister for Aged Care, [House of Representatives Hansard](#), 12 September 2018, p. 8.

Paterson review), was commissioned by the Minister in May 2017 in response to incidents that occurred at the Oakden Older Persons Mental Health Service in South Australia.⁶ The review report was published in October 2017 and made ten recommendations, the first of which was to establish 'an independent Aged Care Quality and Safety Commission to centralise accreditation, compliance and complaints handling'.⁷ As part of the Australian Government's reform agenda, it is intended that as of 2020 the Commission will also assume responsibility for certain aged care regulatory functions currently undertaken by the Department of Health (Department).⁸

1.7 In the 2018–19 Budget, the Australian Government announced a range of aged care initiatives under the More Choices for a Longer Life package. The initiatives focused on safeguarding the quality of care include the establishment of the Commission, the introduction of published performance ratings, and a \$50 million Quality Care Fund to assist residential aged care providers to improve the quality of their services.⁹

Overview of bills

Commission bill

1.8 The purpose of the Commission bill is to establish the Commission to replace the existing Quality Agency and Complaints Commissioner from 1 January 2019.¹⁰

1.9 The Commission will be responsible for the accreditation, assessment, monitoring and complaints handling of approved providers of aged care services and service providers of Commonwealth-funded aged care services.

1.10 The Commission bill:

- establishes the Commission as a prescribed agency under the *Public Governance, Performance and Accountability Act 2013*;
- describes the functions of the Commission, Aged Care Quality and Safety Commissioner (Commissioner) and Advisory Council;
- describes the appointment process for the Commissioner and Advisory Council members;

6 The Hon. Ken Wyatt, AM, MP, Minister for Aged Care, [Media release - Federal Aged Care Minister to Commission Review of Aged Care Quality Regulatory Processes](#), 1 May 2017.

7 Ms Kate Carnell AO and Professor Ron Paterson ONZM, [Review of National Aged Care Quality Regulatory Processes Report](#), October 2017, p. xi.

8 Commission bill EM, p. 1. It is intended the Commission will assume the Department of Health responsibilities of approval of providers of aged care, compliance and compulsory reporting of assaults from 1 January 2020. This will require separate legislative amendment.

9 Budget 2018, Fact Sheet 5: [More Choices for a Longer Life Package](#).

10 Commission bill EM, p. 1.

- describes the sharing of information obtained by the Commission for the purposes of its functions including the protection, use and disclosure of such information; and
- describes operational matters relating to the Commission including entry and search powers, reporting requirements and delegations.¹¹

Consequential bill

1.11 The Consequential bill provides for the administrative matters required to transfer the functions and operations of the Quality Agency and Complaints Commissioner into the new Commission.

1.12 The Consequential bill will repeal the *Australian Aged Care Quality Agency Act 2013* and the *Australian Aged Care Quality Agency (Transitional Provisions) Act 2013* and will make consequential amendments to the *Aged Care Act 1997* and Associated Principles to replace references to the Chief Executive Officer of the Quality Agency and the Complaints Commissioner with the new Commissioner.¹²

1.13 Importantly, the Consequential bill provides for the transfer of the members of the existing Aged Care Quality Advisory Council to become members of the new Aged Care Quality and Safety Advisory Council:

This will enable the new Advisory Council to commence operations immediately, and will provide stability and experience in the advice being provided to the Commissioner and to the Government.¹³

1.14 Key provisions of the two bills, including concerns raised by submitters and witnesses, are discussed in greater detail in chapter two of this report.

Consultations

1.15 A range of consultations have been conducted in the development of the bills to establish the Commission.

1.16 The Carnell Paterson review, which made the recommendation to establish the Commission, undertook extensive public consultation with a range of stakeholders, including aged care regulators, consumers, carers and approved providers, to inform its final recommendations. Additionally, targeted sector meetings and consumer forums were held and 423 submissions were received via an online portal established by the Department.¹⁴

1.17 In drafting the provisions of the bills, the Department undertook its own consultations with the Aged Care Quality Advisory Council and the Aged Care Sector Committee Quality Subgroup, as well as a targeted sector meeting held in early

11 Commission bill EM, pp. 1–2.

12 Consequential bill EM, p. 2.

13 Consequential bill EM, p. 2.

14 *Review of National Aged Care Quality Regulatory Processes Report*, October 2017, pp. 163–165.

August 2018. The bills were also developed in partnership with the Quality Agency and Complaints Commissioner.¹⁵

Financial impact

1.18 These bills will have no financial impact. The Commission will be partially funded from existing Government budget allocations for the functions of the Quality Agency and Complaints Commissioner, and partially funded through the Commission charging fees for services. This is consistent with the current funding arrangements for the Quality Agency.¹⁶

Reports of other committees

Parliamentary Joint Committee on Human Rights

1.19 The Parliamentary Joint Committee on Human Rights sought the Minister's advice on the following aspects of the Commission bill:

- Whether provisions relating to disclosure of information have a proportionate limitation on the right to privacy.
- Whether provisions relating to the sharing of information have a proportionate limitation on the right to privacy.
- Whether the provisions relating to reverse burden of proof and protected information are compatible with the right to be presumed innocent.¹⁷

1.20 The Minister's response was not available at the time of tabling this report.

1.21 The Parliamentary Joint Committee on Human Rights reported that the Consequential bill did not raise any human rights concerns.¹⁸

1.22 The statements of compatibility with human rights for the bills discuss the impacts the bills have on the human rights and freedoms recognised or declared in the international Instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. These impacts are discussed further in chapter two.

Senate Standing Committee for the Scrutiny of Bills

1.23 The key concerns of the Senate Standing Committee for the Scrutiny of Bills include:

- Significant aspects of the regulatory functions of the Commission are to be set in rules, and are not included in the primary legislation.
- The Commissioner is granted broad discretion to disclose protected information, which may include sensitive personal information.

15 Commission bill EM, p. 2.

16 Commission bill EM, p. 2; Consequential bill EM, p. 1.

17 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report No. 11 of 2018*, 16 October 2018, pp. 2–8.

18 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report No. 10 of 2018*, 18 September 2018, p. 20 and p. 81.

- Offences in relation to disclosing protected information are drafted in a manner which may reverse the burden of proof, requiring officials to raise evidence to demonstrate they were performing authorised functions lawfully.¹⁹

1.24 Discussion of these concerns are contained in chapter two.

Conduct of inquiry

1.25 The bills were introduced into the House of Representatives on 12 September 2018.²⁰

1.26 Pursuant to a resolution of the Senate, the provisions of the Bill were referred to the committee on 13 September 2018, for inquiry and report by 12 October 2018.²¹ On 19 September 2018, the Senate granted an extension of time for reporting until 15 October 2018.²² On 15 October 2018, the Senate granted a further extension until 19 October 2018.²³

1.27 Information regarding the inquiry was placed on the committee's website.

Submissions

1.28 The committee wrote to relevant organisations and invited them to make a submission to the inquiry by 28 September 2018. Submissions continued to be accepted after this date.

1.29 The committee received 33 public submissions which were published on the committee's website. A list of submissions received is at Appendix 1.

Witnesses

1.30 A public hearing for the inquiry was held on 10 October 2018 in Canberra. The committee heard evidence from 16 organisations and experts. A list of witnesses is at Appendix 2.

Note on references

1.31 References to the *Committee Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and official *Hansard* transcripts.

Acknowledgments

1.32 The committee would like to thank the organisations and experts that made submissions to the inquiry and provided evidence at its public hearings.

19 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 11 of 2018*, 19 September 2018, pp. 1–9.

20 House of Representatives, [Votes and proceedings](#), No. 135, 12 September 2018, pp. 1803–1804.

21 Selection of Bills Committee, [Report No. 10 of 2018](#), p. 1.

22 *Journals of the Senate*, No. 120, 19 September 2018, p. 3823.

23 *Journals of the Senate*, No. 122, 15 October 2018, p. 3892.

