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Since 1919

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Committee Secretary  
Senate Standing Committees on Community Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**By email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)**

Dear Sir/Madam,

Thank you for the opportunity to contribute a submission to the Senate Standing Committee on Community Affairs' review of the *Aged Care Quality and Safety Commission Bill 2018* and related Bill.

As you will know, Maurice Blackburn is a plaintiff law firm with 31 permanent offices and 29 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions.

Our firm also has a strong commitment to social justice, including a dedicated practice to work on those matters.

Critically, Maurice Blackburn has a nation-wide dedicated wills and estates law section that works with older Australians and their families, and all too regularly this work involves assisting in the resolution of allegations of elder abuse. Often our clients have found themselves in circumstances where they require assistance in navigating the various complaints and reviews procedures associated with the aged care sector.

The Australian Law Reform Commission (ALRC) in its landmark 2017 report into elder abuse<sup>1</sup> clearly recognised that the supports available to people in these circumstances come from a range of different sources, and noted that it is difficult for an individual to negotiate them without professional help.

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<sup>1</sup> See <https://www.alrc.gov.au/publications/elder-abuse-report>, recommendations 14.1 to 14.8

The ALRC further recommended that every state and territory should adopt adult safeguarding laws, including the establishment of a 'safeguarding agency' with the power to coordinate services for the person being abused, including reporting to police or applying for a court order if needed.

We see the development of a single national Commission as a positive step. There is an obvious need for an agency that can act as a first port of call, which is well versed on the maze of support services and complaints processes available and can help direct people to those best placed to assist.

We note the Minister's aspirations for the proposed national Commission, as reflected in his second reading speech<sup>2</sup>:

*"This single agency will ensure older Australians and their families have a single point of contact to raise concerns and ask questions about their aged care and to know the new commission is empowered to respond".*

In reviewing the draft legislation enabling the creation of the new Commission, Maurice Blackburn encourages the Committee to satisfy itself that the following criteria have been met:

- 1. The work of the Commission must be founded on the principles of self-determination and the protection of rights for the older person concerned, including preserving their right to autonomy and independence.**

At a minimum, that means speaking to an older person directly as a first step if a concern of elder abuse is raised before taking further action - to determine if they have capacity to manage their affairs, or to provide appropriate supports to maximise that capacity where appropriate. The genuine, informed consent of the older person must be at the foundation of any investigation.

- 2. The Commission must have appropriate regulatory and investigatory powers, and be resourced to investigate.**

Again, it is crucial that this is done in a way that does not breach the rights of the older person concerned.

- 3. The Commission must ensure that those who report suspected abuse, including professionals, are protected from legal liability or other consequences.**

This must include relevant exemptions so professionals can report suspected abuse without fearing a breach of privacy or confidentiality, a view also shared by the ALRC.

- 4. The Commission should be resourced to ensure access to proper social and legal support to those navigating the system.**

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<sup>2</sup> <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2Fe9910ead-7240-49bf-bdec-3741da5331b9%2F0018%22>

Once again, thank you for the opportunity to provide feedback in relation to this important Bill. We look forward to reading the Committee's views, and tracking the progress of the Bill. We also look forward to contributing to the promised Royal Commission into aged care, on behalf of those we represent.

Please do not hesitate to contact me and my colleagues [REDACTED]  
[REDACTED] if we can further assist with the Committee's important work.

Yours faithfully,

Naomi de Costa  
Special Counsel  
**Maurice Blackburn**