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Committee Secretary  
Senate Standing Committees on Community Affairs  
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Dear Sir / Madam

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

#### **Role of the Public Advocate**

The Public Advocate is an independent statutory officer appointed by the Governor to fulfil statutory responsibilities assigned under the s21 of the *Guardianship and Administration Act 1993 (GAA)*. The Public Advocate also has responsibilities under the *Advance Care Directives Act 2013* and *Consent to Medical Treatment and Palliative Care Act 1995* as well as the *Mental Health Act 2009* and *Powers of Attorney and Agency Act 1984*.

The Public Advocate is supported by the Office of the Public Advocate, to promote the rights and interests of people who may need assistance with decision making.

OPA promotes rights through delivering our services. Services includes giving advice, finding alternatives to guardianship, advocacy, investigations, resolution of certain disputes and acting as guardian of last resort. These are delivered by a team of professional and administrative staff.

The general functions of the Public Advocate are set out in s21 (1) of the GAA:

- a) to keep under review, within the public and private sector, all programmes designed to meet the needs of mentally incapacitated persons;
- b) to identify any areas of unmet needs, or inappropriately met needs, of mentally incapacitated persons and to recommend to the Minister the development of programmes for meeting those needs or the improvement of existing programmes;
- c) to speak for and promote the rights of any class of mentally incapacitated persons or of mentally incapacitated persons generally;

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- d) to speak for and negotiate on behalf of any mentally incapacitated person in the resolution of any problem faced by that person arising out of his or her mental incapacity;
- e) to give support to and promote the interests of carers of mentally incapacitated persons;
- f) to give advice on the powers that may be exercised under the Act in relation to mentally incapacitated persons, on the operation of the Act generally and on appropriate alternatives to taking action under the Act;
- g) to monitor the administration of the Act and, if he or she thinks fit, make recommendations to the Minister for legislative change;

The Public Advocate may be appointed as the guardian (or joint guardian) of a person with mental incapacity but only if the South Australian Civil and Administrative Tribunal (SACAT) considers that no other order would be appropriate.

#### Object of the Act 5(b) and 5(c)

The Office of the Public Advocate (OPA) supports the full inclusion of consumers in establishing a regulatory framework as described in section 5. A large number of aged care consumers have family members, supporters and carers who are involved in the support and care needs of their older relatives. The definition of a consumer is a care recipient or a person who is a recipient of a Commonwealth-funded aged care service. The OPA is of the view that that family members, supporters and carers should also be involved in and engaged about the quality of care and services provided by aged care services and service providers of Commonwealth funded aged care services. Including family members, supporters and carers in Section 5 would ensure that they would be considered in the engagement process. This is particularly important where consumers are assisted by family members, supporter and carers to have their voice heard.

#### Section 23 Fees (1)

It is noted that there is provision in the Bill for the Commissioner to charge fees for services performed by the Commissioner. It is not entirely clear what these fees are for, however, the OPA is of the view that a charge of fees to consumers and/or family members would be a barrier to complaints being made to the Commissioner from consumers, their family members or carers, if this is the proposition.

#### Section 65 to Section 68 - Power to enter premises and exercise search powers in relation to complaints and regulatory purposes etc

It is noted that in order to enter a premise or to exercise the search powers that the occupier must provide consent, noting that approved providers under the Aged Act must cooperate. If there are providers not approved under the Aged Care Act, who do not consent, it is not entirely clear what the impact on the complaint would be. Whilst seeking consent is ideal, it is not akin to the notion of unannounced visits, an issue highlighted in South Australia as a result of the events at the Oakden Older Persons Mental Health Service. It may be that unannounced visits sits with another part of the Aged Care Quality and Safety Commission, and consent issues only relate to complaint and regulatory officers rather than accreditation. Hence, this issue is raised for consideration and clarification.

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Thank you for considering this submission.

Yours sincerely

**Anne Gale**  
**Public Advocate**