



3 April 2023

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

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary

Inspector-General of Aged Care Bill 2023

Thank you for the opportunity to provide feedback on the Inspector-General of Aged Care Bill 2023 (the **Bill**) and the Inspector-General of Aged Care (Consequential and Transitional Provisions) Bill (the **Transitional Provisions Bill**). Aged and Disability Advocacy Australia (**ADA**) appreciates being consulted on these proposed reforms to the aged care legislative framework.

About ADA Australia

ADA is a not for profit, independent, community-based advocacy and education service with more than 30 years' experience in informing, supporting, representing and advocating in the interests of older people, and persons with disability in Queensland.

ADA also provides legal advocacy through ADA Law, a community legal centre and a division of ADA. ADA Law provides specialized legal advice to older people and people with disability, including those living with cognitive impairments or questioned capacity, on issues associated with human rights, elder abuse, and health and disability legal issues related to decision-making.

ADA advocates and legal practitioners work with identified First Peoples advocates through the Aboriginal and Torres Strait Islander Disability Network Queensland (**ATSIDNQ**), a network established to support mob with disability and provide individual advocacy services for Aboriginal and Torres Strait Islander people with disability.

ADA provides the following for the Committee's consideration.

Inspector-General of Aged Care Bill 2023

Objectives and functions of the role

ADA supports the stated objectives of the legislation, particularly, to implement the identified recommendations of the Royal Commission into Aged Care Quality and Safety (the **Royal Commission**) which relate to the establishment and operation of the office of the Inspector-General,

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ADA Australia acknowledges the Traditional Custodians of this land and pays respect to Elders, past and present.

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and the role of this office in ensuring accountability and transparency into the aged care system as well as bringing about positive systemic change.

The described role of Inspector-General and stated responsibilities are supported by ADA, to facilitate these objectives. In particular, the need for independent oversight and monitoring is urgently required.

Additionally, and as set out in the Bill, the office must be equipped with necessary powers of review, monitoring and reporting. Appropriate information gathering authority will be necessary to obtain information relevant and necessary to the role being able to fulfil its mandate in accordance with the objective of the proposed legislation.

Oversight and monitoring

We note that the Bill identifies that the Inspector will monitor and review the performance of entities associated with the Commonwealth's administration, governance and regulation of aged care. ADA supports the explicit references to key entities, including the Aged Care Quality and Safety Commission (the **Commission**), and its Commissioner, and with services associated with systemic issues that have been referred to the office.

ADA supports the focus on these entities, in particular, the operation and complaints management framework of the Commission, which is in urgent need of review to ensure that its policies and protocols with respect to addressing a complaint are underpinned by a human rights framework that recognises the significant power imbalance between complainant and an aged care provider.

Reviews and reports

ADA supports the stated objective to improve transparency in the aged care system, including through the publication of the Inspector-General's report. It is also important, as set out under clause 25(2) of the Aged Care Bill, that the Minister is required to table the final review report in Parliament.

However, publication alone is insufficient to instil public confidence that recommended improvements in the sector, and in the operation of key entities and systems, will be actioned. Government must also provide a timely response to a review report that includes appropriate detail about how the review report's recommendations will be implemented, with timeframes.

ADA supports the proposed authority of the Inspector-General to compel a government entity to respond to the recommendations of a review and to publish that response in conjunction with the final report of the review.

Information gathering powers

ADA supports the proposed powers granted to the Inspector-General to gather information necessary to undertake a thorough review.

It is important that the office is provided with the authority to speak directly with a care recipient, whether that recipient receives care through an aged care facility or in their own home. It is critical that this occurs to ensure that the Inspector-General is provided with all required information, and that access cannot be limited or obstructed by a service provider, family or other informal supporters, or by an attorney.

Proposed protections for those considering speaking with the Inspector-General

The proposed protections in relation to the requirements upon the Inspector-General to protect information and documents are reasonable and proportionate.

The protections intended to be afforded to a legal practitioner under clause 52 have been appropriately extended by clause 58(1)(a) to clarify that in addition to the disclosure not being admissible in evidence against the person in civil or criminal proceedings, there should be no other disciplinary action in relation to a legal practitioner who makes a lawful disclosure to the Inspector-General in compliance with the legislation.

We note the provisions of the Bill which are intended to provide protections for persons who engage with the office of the Inspector-General to provide information, production of documentation or other giving of evidence so that in doing so the evidence provided is inadmissible in evidence against the person in criminal proceedings (clause 51 (2)), and that it is also a claim for protection against any related civil or criminal proceedings against that person. Presumably the intention of these provisions is to encourage an individual's engagement with the Inspector-General, and this is useful and important. However, as currently drafted these provisions may also provide coverage against prosecution even where the evidence indicates that an individual/s or entities actions intentionally caused serious injury.

This would not be in keeping with the intention of the legislation, and ADA considers that these protections be amended to carve out protections associated with evidence or information relating to intentional harm.

Penalties

Notwithstanding the concerns we have raised above, the proposed penalties for failure to provide information to the Inspector-General are generally appropriate.

Thank you again for the opportunity to comment. ADA would be pleased to further assist the Committee with its inquiry. Should you wish to discuss this submission, please do not hesitate to contact on or via

Yours faithfully

Geoff Rowe
Chief Executive Officer