



Senate Standing Committee on Community Affairs: Inquiry into the provisions of the Inspector-General of Aged Care Bill 2023 and the Inspector- General of Aged Care (Consequential and Transitional Provisions) Bill 2023

Submission

March 2023

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About ACCPA

The Aged and Community Care Providers Association (ACCPA) is a national Industry Association for aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services.

ACCPA exists to unite aged care providers under a shared vision to enhance the wellbeing of older Australians through a high performing, trusted and sustainable aged care sector. We support our members to provide high quality care and services while amplifying their views and opinions through an authoritative and comprehensive voice to the government, community and media.

Our sector serves to make better lives for older Australians, and so do we.

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Background

Recommendation 12 from the Final Report of the *Royal Commission into Aged Care Quality and Safety* (the Royal Commission) recommended the establishment of an Inspector-General of Aged Care to “investigate, monitor and report on the administration and governance of the aged care system”.¹

In the 2022-23 October Budget, the Australian Government committed \$38.7 million over four years to establish this role.

In December 2022, the Department of Health and Aged Care (the Department) subsequently released the Exposure Draft of the Inspector-General of Aged Care Bill 2022 (the Bill) and an accompanying Consultation Paper² (the Consultation Paper) for public consultation. The Bill proposes the establishment of an independent Inspector-General of Aged Care (Inspector-General) along with the supporting Office of the Inspector-General of Aged Care. ACCPA provided a submission to this consultation (refer Appendix 1).

In late March 2023, the *Inspector-General of Aged Care Bill 2023* and the *Inspector-General of Aged Care (Consequential and Transitional Provisions) Bill 2023* were introduced to the Australian Parliament and on 23 March 2023, the Senate referred the provisions of the above bills to the Community Affairs Legislation Committee for inquiry and report by 28 April 2023.³

On 24 March 2023, ACCPA was formally invited by the Senate Standing Committee on Community Affairs to make a submission and is pleased to provide our response.

¹ Royal Commission Recommendation 12.

² Department of Health and Aged Care, *Inspector-General of Aged Care Consultation Paper on the Exposure Draft of the Inspector-General of Aged Care Bill*, December 2022.

³ Australian Parliament Senate Standing Committee on Community Affairs, *Inquiry into the provisions of the Inspector-General of Aged Care Bill 2023 and the Inspector-General of Aged Care (Consequential and Transitional Provisions) Bill 2023*, 23 March 2023 at

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Inspector-GeneralAged

Executive Summary

ACCPA welcomes the establishment of an Inspector-General. ACCPA recognises this reform as a positive step towards improving transparency and accountability across the aged care system and, ultimately, improving care outcomes for older Australians.

However, there are key areas in which the proposed approach could be clarified or strengthened in legislation to support the confidence of the sector in the operation of the role and office of an Inspector-General of Aged Care.

ACCPA's submission to the Department of Health and Aged Care's consultation on the *Exposure Draft of the Inspector-General of Aged Care Bill 2022* is attached at Appendix 1. ACCPA acknowledges some matters of interest in our submission have been adjusted or retained since the consultation version, with respect to the *Inspector-General of Aged Care Bill 2023* and the *Inspector-General of Aged Care (Consequential and Transitional Provisions) Bill 2023* introduced to the Australian Parliament. This includes in relation to:

- clarification about the role with respect to individual complaints and actions, that is as per Clause 4 of the Inspector-General of Aged Care Bill 2023, that reviews of the Inspector-General 'will not relate to individual complaints and actions';
- strengthening the provisions on protecting the identity of disclosers as per Subdivision A—Protecting identity of disclosers in certain circumstances of the Inspector-General of Aged Care Bill 2023; and
- the importance of all reports prepared by the Inspector-General being made publicly accessible in the spirit of transparency and accountability, and that the provisions requiring the Inspector-General to publish reports have been retained in the proposed the Inspector-General of Aged Care Bill 2023.

ACCPA supports these provisions and recommends they be retained.

Matters for which ACCPA had previously sought consideration in legislation, which we consider can now be reasonably addressed as a matter of policy and process of the Inspector-General's operations, include:

- ensuring the Inspector-General facilitates positive system change for all key stakeholders in the sector, including providers and key government entities;
- a clearer definition or parameters for what constitutes a 'systemic issue', to reflect that issues generally investigated and reported on by the Inspector-General should be systemic in nature and not singular or isolated incidents, and should be examined from multiple perspectives;
- that there be clear and reasonable expectations for providers in relation to any requests to provide information to the Inspector-General; and
- that there be periodic and independent review of the operation, effectiveness, and/or impact of the Inspector-General and the outcomes of this review be published.

ACCPA notes the recent establishment of advisory and engagement processes of the Interim Office of the Inspector-General and welcomes the opportunity to be involved at the present time and into the future to ensure consideration of these interests.

Matters ACCPA would still like to see addressed in the proposed legislation include:

- revisitation of the recommendations of the Royal Commission⁴, including on the investigatory, monitoring, complaint and reporting functions of the Inspector-General,

⁴ Royal Commission Recommendations 12 and 148 in particular.

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with consideration of the degree of alignment as it relates to complaints about the System Governor, the Quality Regulator, the Prudential Regulator, and the Pricing Authority;

- further opportunities for sector consultation and involvement in shaping the work of the Inspector-General (including in relation to its annual work plans), particularly with respect to prioritisation of systemic issues for review;
- strengthening of provisions involving the Minister's response to reports to be tabled in Parliament; and
- increasing the frequency of required reporting of the implementation of Aged Care Royal Commission recommendations.

ACCPA is eager for the legislation in relation to the Inspector-General of Aged Care under consideration by the Australian Parliament, to seek to facilitate a balanced, holistic approach, within and across the aged care sector. The outcome of this should be to inspire the confidence of the sector, and the Australian community, in the future operations of the aged care system.

Summary of recommendations

R1: ACCPA recommends the further amplification of section (10) (2) to strengthen and clarify the difference between the role of the Inspector-General of Aged Care as it relates to systemic issues and the role of the Aged Care Quality and Safety Commission as it relates to the individual compliance of providers.

R2: ACCPA recommends the inclusion of a provision under *Section 17 Reviews by the Inspector General* to incorporate a requirement to analyse existing complaints data about the System Governor, the Quality Regulator, the Prudential Regulator, and the Pricing Authority, collected by those authorities (or from other government sources) for systemic issues arising from their performance, conduct, coordination and interaction.

R3: ACCPA recommends that *Section 17 Reviews by the Inspector General* be strengthened to include a specific provision to undertake reviews of the performance of the Aged Care Quality and Safety Commission (including examining regulator decisions on a systemic basis).

R4: ACCPA recommends that in order to support confidence of the sector as a whole, *Section 17 Reviews by the Inspector General* be strengthened to include a specific provision to undertake reviews of the performance of government entities involved in aged care.

R5: ACCPA recommends that the Inspector General be required to consult the sector on the setting of annual work plans.

R6: ACCPA recommends there be opportunity for sector involvement in triggering a review by the Inspector-General or an avenue which allows the sector to submit proposals of issues for the Inspector-General to review.

R7: ACCPA recommends that the Bill adopt more binding language in relation to invitations to the general public to make submissions (e.g. 'must').

R8: ACCPA recommends that the responsible Minister, as a representative of the Australian Government, be explicitly required to respond publicly (and within a prescribed timeframe) to recommendations made by the Inspector-General in reports being tabled by the Minister in Parliament.

R9: ACCPA supports increased reporting on the implementation of Royal Commission recommendations, to be closer in alignment to the related Royal Commission recommendation of at least every 6 months, and recommends an explicit reference in the Bill be added to reflect this as part of the Annual Report process at Section 71, to ensure an annual review as a minimum.

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1. Objects and functions

ACCPA refers to debate by the House of Representatives on the *Inspector-General of Aged Care Bill 2023 and Inspector-General of Aged Care (Consequential and Transitional Provisions) Bill 2023 Second Reading* of 30 March 2023.

ACCPA notes that some of the debate indicates that there is potential confusion about the nature and intended operation of the legislation as it relates to aged care providers with some commentary seeming to confuse the roles of the Inspector-General of Aged Care as it relates to 'systemic issues' and the Aged Care Quality and Safety Commission as it relates to individual (single) issues and provider compliance.

To ensure clarity, ACCPA therefore recommends further strengthening of Section 10 - Functions of the Inspector General being:

(2) *Paragraphs (1)(a) and (b) do not permit the Inspector General to monitor and investigate only a single exercise of a power, or a single performance of a function or duty, under an aged care law.*⁵

R1: ACCPA recommends the further amplification of section (10) (2) to strengthen and clarify the difference between the role of the Inspector-General of Aged Care as it relates to systemic issues and the role of the Aged Care Quality and Safety Commission as it relates to the individual compliance of providers.

ACCPA considers that the intent of the Royal Commission's recommendations for the role of the Inspector-General of Aged Care in relation to system oversight and governance be revisited by the Senate Committee with appropriate provisions to be considered for legislation.

ACCPA recommends that the Royal Commission's recommendation that the Inspector-General "should have responsibility for dealing with complaints about the System Governor, the Quality Regulator, the Prudential Regulator, and the Pricing Authority"⁶ be revisited, to strengthen the Inspector-General's capacity to understand and respond to systemic issues across the aged care sector, as well as uncover where the system may not be working at its optimum.

This sentiment is reflected in the following excerpt from the Royal Commission Final Report:

*Complaints are a key source of information about systemic problems. They provide a practical sense of issues facing people receiving aged care and their families. If a systemic oversight role is conferred without any responsibilities for complaint-handling, there is a risk that the oversight body will never develop the understanding it needs to identify systemic issues. Likewise, if a complaints function is conferred without a systemic oversight function, there is a risk that attention will only ever be given to individual problems, without ever leading to systemic changes. We recognise, however, that the Inspector-General should maintain a focus on systemic issues. That means that it would be inappropriate for the Inspector-General to be given primary responsibility for administering the scheme for handling aged care complaints.*⁷

⁵ See Inspector General of Aged Care Bill s 10, particularly s (10)(2).

⁶ Royal Commission Recommendation 12(3).

⁷ Royal Commission Final Report vol 3 p. 82 (emphasis added).

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ACCPA notes the reference in the Explanatory Memorandum to the Bill that:

'The objects envisage a complaints management role different to that proposed by the Royal Commission, which recommended that the Inspector-General receive complaints about other government agencies with roles in the aged care system as well as serve as an escalation point for complaints considered by the proposed Complaints Commissioner role. Instead, the model this Bill puts into place maintains the independence of the Inspector-General by keeping them at arm's length from the bodies and activities which they oversee.'

'In practice, this will see the Inspector-General maintain oversight of the complaints management processes across the aged care system to ensure that they provide a fair and transparent means of resolving concerns, rather than having an active role in considering individual complaints.'

While ACCPA concurs with the distinction between complaint management role and a complaint handling role for such an Office, we believe there remains scope to strengthen the legislation to ensure that this oversight will specifically consider analysis of complaints data about, or held by the System Governor, the Quality Regulator, the Prudential Regulator, and the Pricing Authority, for the purposes of undertaking its functions.

We believe that the focus of any complaint analysis undertaken by the Inspector-General should be about both the *performance* or *conduct* of a government entity and the extent to which complaints reflect systemic issues with the *coordination* and *interaction* of government bodies with responsibilities for aged care.

R2: ACCPA recommends the inclusion of a provision under *Section 17 Reviews by the Inspector General* to incorporate a requirement to analyse existing complaints data about the System Governor, the Quality Regulator, the Prudential Regulator, and the Pricing Authority, collected by those authorities (or from other government sources) for systemic issues arising from their performance, conduct, coordination and interaction.

2. Reviews

ACCPA is supportive of an Inspector-General that has review, reporting and monitoring functions. With reference to the approach proposed by the Bill and Consultation Paper, there are areas where these functions could be strengthened, including greater alignment with the recommendations of the Royal Commission in relation to its intent for the Inspector-General's investigatory, monitoring and reporting functions.

Reviews conducted by the Inspector-General will be integral to its role in driving improvements across the sector and achieving greater accountability and transparency across the aged care system.

It is ACCPA's understanding, from the approach set out in the Bill,⁸ that the Inspector-General will have broad remit to decide what reviews they conduct (noting that the Inspector-General must consult the Minister in preparing a work plan for a financial year,⁹ the Minister can direct the Inspector-General to conduct a review,¹⁰ and the Inspector-General may conduct a review on request from the Secretary or a Minister administering an aged care law¹¹). As to the types of reviews the Inspector-General will conduct, ACCPA recommends revisiting the following elements of the Inspector-General's role from Recommendation 12 of the Royal Commission:

- *“reviewing regulator decisions on a systemic basis to ensure regulator integrity and performance”* (recommendation 12(1)(b)): The Exposure Draft Inspector General of Aged Care Bill Consultation Paper indicated the Inspector-General is *“likely to examine complaints data to help identify systemic issues that may warrant in-depth review”*¹² and that the *“Inspector-General will focus on the performance of the Department of Health and Aged Care, the Aged Care Safety and Quality Commission and the Independent Health and Aged Care Pricing Authority”*¹³. The review of regulator performance on a systemic basis should be an explicit undertaking of the Inspector-General.

R3: ACCPA recommends that *Section 17 Reviews by the Inspector General* be strengthened to include a specific provision to undertake reviews of the performance of the Aged Care Quality and Safety Commission (including examining regulator decisions on a systemic basis).

- *“reviewing the performance of functions by the System Governor, the Quality Regulator, the Prudential Regulator and the Pricing Authority”* (recommendation 12(1)(c)): ACCPA notes the Consultation Paper states that the *“Inspector-General may choose to prepare reports outside of those required by legislation. Topics could include the performance of Australian Government entities with responsibility for aged care ...”*.¹⁴ Per section 10 (1)(c) of the Bill, a function of the Inspector-General will also be “to monitor, investigate and report to the Minister and Parliament on any systems established by the Commonwealth to administer an aged care law or aged care funding agreement.”¹⁵

⁸ See Inspector General of Aged Care Bill s 17.

⁹ Bill s 15(3).

¹⁰ Ibid s 17(2).

¹¹ Ibid s 17(7).

¹² Consultation Paper p. 5.

¹³ Ibid p. 4.

¹⁴ Ibid p. 6.

¹⁵ Inspector General of Aged Care Bill 2023, s 10(1)(c)

R4: ACCPA recommends that in order to support confidence of the sector as a whole, *Section 17 Reviews by the Inspector General* be strengthened to include a specific provision to undertake reviews of the performance of government entities involved in aged care.

ACCPA also believes the Bill should be strengthened to support sector consultation and involvement in shaping the work of the Inspector-General. In particular, there should be opportunities for the sector to be consulted on the Inspector-General's annual work plan to enable the sector to contribute to the prioritisation of systemic issues.

While it is acknowledged that s 15(3) of the Bill states that "*The Inspector General may also consult any other person the Inspector General considers appropriate*",¹⁶ ACCPA strongly recommends that sector consultation is a fixture in the Inspector-General's process of developing annual work plans.

Stakeholders, such as aged care providers, are well situated to inform the Inspector-General about where systemic issues lie, such that a forward work program could be developed on establishment of the role. ACCPA notes that bodies such as the Independent Health and Aged Care Pricing Authority (IHACPA) conduct annual consultations on their Draft Workplans.¹⁷

R5: ACCPA recommends the Inspector General be required to consult the sector on the setting of annual work plans through the introduction of a additional provision in *Section 15 Inspector General must prepare annual work plan* that allows for a period of consultation on a draft annual work plan.

Noting that the Inspector-General has scope to vary a work plan,¹⁸ ACCPA also queries whether there is additional scope for sector involvement in triggering a review by the Inspector-General or an avenue which allows the sector to submit proposals of issues for the Inspector-General to review. With the continued rollout of post-Royal Commission reform, the aged care landscape is continuously changing and evolving, so it will be important for the Inspector-General to be flexible and respond accordingly.

R6: ACCPA recommends there be opportunity for sector involvement in triggering a review by the Inspector-General or an avenue which allows the sector to submit proposals of issues for the Inspector-General to review.

It is also noted that the Inspector-General "*may invite members of the public generally, or a particular person or body, to make submissions on a matter relating to a review*".¹⁹ Members of the public, including the aged care sector, should have the opportunity to make submissions on *all* reviews undertaken by the Inspector-General. Requiring this through legislation will support the integrity and transparency of the operation of the Role.

R7: ACCPA recommends that the Bill adopt more binding language in relation to invitations to the general public to make submissions (e.g. '*must*').

¹⁶ Inspector General of Aged Care Bill 2023, s 15(3)

¹⁷ IHACPA Work Program and Corporate Plan 2023–24: Draft for public consultation, March 2023 at https://www.ihacpa.gov.au/sites/default/files/2023-03/d23-2921_draft_ihacpa_work_program_and_corporate_plan_2023-24_-_draft_for_public_comment.pdf

¹⁸ Inspector General of Aged Care Bill 2023, s 16

¹⁹ Ibid s 19(1).

3. Reports

ACCPA acknowledges that government entities, government officials or other persons may be required to respond to final review report recommendations per section 24(3) of the Bill.²⁰ The Inspector-General having scope to compel a government agency to provide a response to review recommendations and publish such responses with final reports aligns well with the overarching Object of the Bill to “*drive greater accountability and transparency of the Commonwealth’s administration of the aged care system*”.

ACCPA also notes that as part of Section 25 Tabling and publication of the final review report, that the Minister is required under section 25 (2) to table the final review report in each House of the Parliament within 15 sitting days of that House after receiving the report.

ACCPA recommends that the legislation be strengthened to require a statutory response by the responsible Minister to the recommendations included in reports that are to be tabled by the Minister.

R8: ACCPA recommends that the responsible Minister, as a representative of the Australian Government, be explicitly required to respond publicly (and within a prescribed timeframe) to recommendations made by the Inspector-General in reports being tabled by the Minister in Parliament.

²⁰ Ibid., s 24(3)

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4. Reviews of implementation of Aged Care Royal Commission recommendations

ACCPA acknowledges that the Inspector-General will have an explicit function to conduct two reviews of (and report on) the implementation of the recommendations of the Royal Commission by the Commonwealth.²¹ This is a positive step in evaluating the Royal Commission reform rollout and holding government to account in this regard.

ACCPA recommends the Inspector-General's role in reporting on the implementation of the recommendations on the Royal Commission be strengthened through increased reporting on the implementation of recommendations.

The Bill currently prescribes two reviews, to be completed on or before 1 March 2026 and 1 March 2031. The Consultation Paper on the Exposure Draft of the Inspector General of Aged Care Bill also indicated that it is envisaged the Inspector-General will produce annual reports on the implementation of recommendations of the Royal Commission (although this does not appear to be explicitly replicated in the Bill put to Parliament).²² It is noted that the Royal Commission recommended the Inspector-General report on the implementation of the recommendations at least every six months (in addition to the recommendations that the Inspector-General undertake and report on independent evaluations of the effectiveness of measures taken in response to the Royal Commission recommendations five and 10 years after the tabling of the Final Report²³).²⁴

R9: ACCPA supports increased reporting on the implementation of Royal Commission recommendations, to be in closer alignment to the related Royal Commission recommendation of at least every 6 months, and recommends an explicit reference in the Bill be added to reflect this as part of the Annual Report process at Section 71, to ensure an annual review as a minimum.

²¹ Ibid s 28.

²² Consultation Paper p. 6.

²³ Royal Commission Recommendation 148(2)-(3).

²⁴ Ibid Recommendation 148(1).