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Exposure Draft of the Inspector-General of Aged Care Bill

The Aged Rights Advocacy Service (SA) Inc. (ARAS) welcomes the opportunity to provide commentary to the Inspector-General of Aged Care Taskforce in reviewing the draft Bill in establishing the position of the Inspector-General of Aged Care.

ARAS notes the key functions of the Inspector-General of Aged Care is to:

- provide independent oversight of the aged care system
- review systemic issues and propose remedial actions to improve outcomes
- examine the performance of government and statutory agencies
- provide oversight of the complaints management system
- report publicly on systemic issues, including the performance of the aged care system and measure the progress of aged care reforms.

ARAS appreciates the work undertaken to date by the former and current Australian Governments in the continuation of implementing the 148 recommendations made by the Royal Commission into Aged Care Quality and Safety. ARAS also welcomes the Inspector-General's role in providing oversight in the implementation of the recommendations, including the operationalisation and performance of the reforms with respect to their effectiveness in the delivery of safe and high-quality aged care services.

About Aged Rights Advocacy Service (SA) Inc.

ARAS is a statewide, not-for-profit, independent, community-based organisation that has been providing information, education and advocacy support for older adults across South Australia since 1990.¹ Older people who use community or residential aged care services, people who live in retirement villages, and older people who are experiencing, or who are at risk of abuse from family or friends, can use an ARAS advocate, at no cost, to assist them to address their concerns. ARAS also has specialist Aboriginal Advocates that provide culturally safe and appropriate support and hosts an annual intergenerational gathering in regional South Australia.

Additionally, ARAS delivers the Care finder service in the Adelaide Northern suburbs of South Australia. Care finders support older persons to navigate the aged care system and access services.

ARAS hosted the annual South Australian World Elder Abuse Awareness Day (WEAAD) Conference online again in 2022. There were over 600 registrants, including from overseas and interstate as well as South Australians, with feedback received that the online event had allowed greater access for rural and remote

¹ Aged Rights Advocacy Service (SA) Inc.: History: http://www.sa.agedrights.asn.au/about_us/history

registrants. WEAAD is supported by the United Nations and the World Health Organisation and is acknowledged annually on 15th June every year. The conference brings together policy makers and frontline workers, covering the latest research and reviewing the progress that is occurring while also ensuring the key message, that abuse of any older adult is unacceptable, is at the forefront²

An experienced volunteer Board of non-executive Directors and committed staff support ARAS. In addition to supporting older adults with individual advocacy support. ARAS also provides information and education sessions about aged care rights, retirement village rights and broader human rights, contributing to community understanding and empowerment and ensuring the voice of older adults, including younger people with a disability who are residing in residential aged care are heard on issues that matter to them.

ARAS is one of the five founding members of Elder Abuse Action Australia (EAAA)³ which is funded by the Commonwealth Attorney General's Department. ARAS volunteers its expertise and knowledge to support the development of EAAA as a peak body and the ongoing refinement of the national knowledge hub 'Compass'. Additionally, ARAS is a founding member of the South Australian Alliance for the Prevention of Elder Abuse (APEA)⁴

ARAS is the only South Australian member of Older Persons Advocacy Network (OPAN), which delivers the National Aged Care Advocacy Program (NACAP).⁵ ARAS is funded by OPAN, the Australian Government, SA Health, Office for Ageing Well and COTA.⁶

ARAS makes the following specific comments in relation to the Inspector-General of Aged Care Bill (the Bill).

DISCUSSION POINTS:

Principles

ARAS is generally supportive of the draft legislation in establishing the Office of the Inspector-General of Aged Care although the Bill requires amendments and should not be approved in its current form. ARAS is deeply concerned the proposed legislation is silent on the human rights of older Australians, despite recommendations made by the Royal Commission. There is an expectation by the community that the new Aged Care Act will have a strong human rights-based approach embedded into the legislation in accordance with the Royal Commission's recommendations (1), (2) and (3). For example:

Recommendation (1): A new Act

... 'protect and advance the rights of older people receiving aged care to be free from mistreatment and neglect, and harm from poor quality or unsafe care, and to continue to enjoy rights of social participation accessible to members of society generally'.⁷

² Aged Rights Advocacy Service (SA) Inc. See Annual Report 2021/2022: <https://www.sa.agedrights.asn.au/resources/publications>

³ Elder Abuse Action Australia (EAAA): <https://eaaa.org.au/welcome-to-elder-abuse-action-australia/>

⁴ Alliance for the Prevention of Elder Abuse: <https://www.a pea.org.au/>

⁵ Older Persons Advocacy Network: <https://opan.com.au/>

⁶ Aged Rights Advocacy Service (SA) Inc.: Annual Report: Aged Rights Advocacy (SA) Inc. See Annual Report 2021/2022: <https://www.sa.agedrights.asn.au/resources/publications>

⁷ Royal Commission into Aged Care Quality and Safety, Final Report: Care, Dignity and Respect. See p. 205 <https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-1.pdf>

For this reason, ARAS states the Bill should incorporate a rights-based approach and aligned in accordance with the principles and objects in the new Aged Care Act.

In addition, ARAS would also welcome the inclusion of guiding principles in the Bill that directs the work of the Office of the Inspector-General of Aged Care for clarity, for example independence, accountability, integrity, impartiality, and rights. The stated principles in the Bill will reinforce objectivity and enhance transparency and accountability with the intention to build public trust in the regulation, operation of programs and in the delivery of safe high-quality aged care services for older Australians.

Functions of the Inspector-General of Aged Care

ARAS is supportive of the activities of the Inspector-General in providing oversight in the implementation and operationalisation of the Aged Care Royal Commission's recommendations, including the performance of the reforms with respect to their efficacy. However, any recommendations that the Australian government does not intend to give effect, ARAS would appreciate if the Office reported on the reasons why the government has chosen not to implement those reforms.

ARAS also considers the draft legislation should be more explicit on the Office of the Inspector-General activities of engagement in relation to human rights matters. ARAS views the Inspector-General could engage with delegates from the United Nations Human Rights Council and other international human rights agencies to gain an understanding of systemic issues and to raise awareness of Australia's obligations, as well as benchmarks for best practice. ARAS wishes to highlight that dementia and memory support units in residential aged care facilities are environments where older people under guardianship orders can be detained or otherwise have their rights infringed upon, for example passcodes on locked doors, restraints, culturally unsafe practices, exclusion from decision-making processes with respect to care arrangements. Furthermore, imposed banning orders and visitor restrictions by residential aged care facilities are also examples where the rights of older persons are violated.

Provisions under the Act

The Inspector-General of Aged Care will require sufficient resources in staffing arrangements. ARAS suggests public officials should have a multi-disciplinary and multi-agency skill set and collectively possess the knowledge, competencies and expertise required to conduct investigations, evaluations, and report on a broad range of clinical and non-clinical systemic problems and activities. For example, the use of restraints, food quality and nutrition, service fees and charges and including the complaints handling system. It will be imperative for officials from the Office to have knowledge of not only systemic issues in the aged care sector, but also familiarity with the statutory agencies, programs, and their regulatory responsibilities.

Powers of the Inspector-General

ARAS welcomes the oversight and enforcement mechanisms in the Bill that will best ensure a safe and high quality sustainable aged care sector. ARAS is generally supportive and notes s.40 and s.45 of the Bill confers broad powers for the Office to obtain and inspect documents, arrange subpoenas to request the attendance of public officials for interviewing, taking sworn evidence from public officials and granting access to premises. ARAS also welcomes the associated civil penalties for people who provide false or misleading information, non-compliance with requests, victimisation of whistle-blower's in providing

information and including those who obstruct the work of the Office of the Inspector General in carrying out its duties.

Furthermore, ARAS considers the Inspector-General of Aged Care role is crucial in ensuring accountability within the aged care sector by reporting on systemic issues, the effectiveness of implemented reforms and in providing recommendations by written reports to the Minister of Health and Aged Care and Parliament.

Other comments and feedback

ARAS considers s. 13(4) of the draft Bill in publishing the annual 'Work Plan' of the Inspector-General is a strongpoint that will also safeguard the wellbeing and rights of older people. ARAS believes through informing and providing service providers with insight into the Inspector-General's planned enforcement priorities for the fiscal year, will increase focus upon program activities in areas of risk, for compliance. In effect alerting service providers, offers an opportunity for the provider to review their organisational policies and practices to address any gaps and to this end will foster improvements in clinical and personal care practices in the delivery of safe and high-quality services to older persons. For example, the Inspector-General may conduct a review into the national incidences and adverse events of pressure injuries and wound care in residential care settings, including hospital admissions, clinical care management and surgical apparatuses used in the treatment of residents with chronic wounds.

Conclusion

ARAS welcomes the establishment of the Inspector-General of Aged Care as it will provide oversight and will strengthen accountability and transparency and complement the existing statutory agencies in the aged care system. However, the Bill is silent on the rights of older persons, despite recommendations made by the Royal Commission and for this reason should not be approved in its current form. ARAS proposes an amendment to the Bill to include a human rights approach to be embedded and aligned to the principles in the new Aged Care Act. Also, ARAS suggests the activities of the Inspector-General could be made more explicit to include engagement activities with delegates from international human rights agencies in raising awareness of Australia's obligations and standards of best practice, particularly with respect to the human rights of older persons in residential aged care facilities. Furthermore, ARAS would welcome further consultation in progressing the draft Bill in establishing the Office of the Inspector-General of Aged Care.

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*Declaration of Interest: ARAS advises that former ARAS Board Member, Ian Yates, AM, has been appointed as interim Inspector-General, Aged Care. Mr Yates AM has had no input into this submission.