



Submission to the Senate Community
Affairs Legislation Committee

Aged Care Quality and Safety Commission Bill 2018

Prepared by
COTA Australia

September 2018

COTA Australia

COTA Australia is the national consumer peak body for older Australians. Its members are the State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia. The State and Territory COTAs have around 30,000 individual members and more than 1,000 seniors' organisation members, which jointly represent over 500,000 older Australians.

COTA Australia's focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

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Introduction

COTA Australia welcomes the opportunity to provide a written response to the Senate Community Affairs Legislation Committee in relation to the Aged Care Quality and Safety Commission Bill 2018.

We are pleased to see this legislation before Parliament because of the importance of establishing the Aged Care Quality and Safety Commission as the single body responsible for the regulatory framework that will better protect and enhance the safety, health, well-being and quality of life of aged care consumers. In addition, we believe it will help promote the confidence and trust of aged care consumers in the provision of aged care services supported by the Commonwealth Government.

We are particularly pleased that the Bill provides for the promotion of engagement with aged care consumers by all providers, including those approved under the Aged Care Act 1997 and those delivering Commonwealth-funded aged care services. COTA Australia argued strongly for this inclusion in the Object and the Functions of the Commission and appreciate the positive response from government.

COTA Australia has been a supporter of the recently enacted Single Quality Framework throughout its development and believes that the Framework and the associated new Aged Care Quality Standards will provide more comprehensive quality for consumers across all Commonwealth-funded aged care services. This consistency across the breadth of aged care will be further enhanced by the current development of a single Charter of Rights which will also apply to consumers and recipients of all Commonwealth-funded aged care services and settings.

COTA Australia's engagement with older Australians is substantial and we hear many stories of consumer anxiety, frustration, and despair relating to aged care services across the country. We believe the Aged Care Quality and Safety Commission Bill provides for the majority of key requirements to provide assurance to all consumers and their families, and the community, that a high level of quality is being provided every day in every service setting.

Summary of recommendations

COTA Australia presents the following recommendations to support our response to the Aged Care Quality and Safety Commission Bill 2018.

Recommendation 1: that recommended amendments be made to s5 (2) to provide clarity as to Parliament's intentions for the future functions of the Commissioner.

Recommendation 2: that s17 of the Bill be amended as recommended to include representatives of aged care consumers.

Recommendation 3A: that the Complaints functions of the Commissioner listed in s18 and s21 be amended as outlined to include complaints about My Aged Care and ACAT/RAS Assessment teams to ensure that complaints about the experiences of older Australians engaging with all parts of the aged care system are covered by ACQSC. To achieve that we propose:

- the items **S18 c – e** drafted below be included into the Complaints functions at s18 and s21 (2) to identify My Aged Care call centre employees, ACAT team members and RAS team members (but excluding the appeals processes associated with their assessment outcome or their place on the home care priority queue which would continue to be addressed through appeals to the Department of Health and eventually the AAT if necessary);
- that consequential references to “My Aged Care agent or provider of aged care assessment services” be noted at s21 (3) (c) and s21 (3) (e) Consider whether additional Regulatory functions need to be OF listed at s21 (4) [including limiting the function to not relate to positions on the home care queue or assessment determinations that can be appealed to the Secretary] and whether associated guidance would need to be inserted similar to those at s21 (5) and s21 (6) specifically pertaining to “My Aged Care agent or provider of aged care assessment services”.

Recommendation 3B: Should Parliament be unable to make amendments to s18 and s21 in this legislation, at this time, it signal its intention that Government should include these measures in future legislation by amending s5(2) to include reference to “oversight of complaints relating to My Aged Care and the assessment for eligibility to access aged care services” to commence no later than 1 January 2020.

Recommendation 4: that the Bill amend s23 to remove the ability to charge fees to aged care consumers and their representatives for any aspect of the consumer engagement and complaints functions of the Commissioner.

Recommendation 5: that representatives and family and friend carers of aged care consumers are included within the range of expertise and knowledge expected or sought for potential Advisory Council members in s41.

Recommendation 6: that s54 be amended so that the Commissioner's operational plans require references to ALL the Commissioner's functions including a requirement for performance indicators and that therefore the ACQSC annual reports must include reporting on each of the specific functions of the Commissioner and in particular its Consumer Engagement, Consumer Education and Complaint Handling functions.

Recommendation 7 – That the Committee consider whether it should recommend that the Bill be amended to require the Minister to publish reports within a set period of time (as occurs for the Aged Care Financing Authority), unless there are sound reasons for not doing so which the Minister should indicate, or whether it prefers to leave publication of reports wholly to the Minister’s discretion as outlined in s58.

Recommendation 8: that s59 be amended to fully address the breadth of Commonwealth-funded aged care services as well as services under the Aged Care Act 1997.

Recommendation 9: that s66 is amended to ensure that authorised officers can meet with residents, consumers and representatives at the determination of the consumer concerned and without restriction from providers as occupiers of premises.

Recommendation 10: that s69 is amended so that the safety and wellbeing of consumers is paramount when considering matters of consent to allowing entry by regulatory officers.

Response

COTA Australia's response is by reference to the specific sections and clauses of the Bill, with comments, issues and suggested amendments provided. **Wording amendments for each section of our response are in red text.**

Issue 1 – Clarity of the Object of the Act

Refer to s5 (2) Object of the Act

The inclusion of 5 (2) in the Object clauses of the Act to include approval of providers and compliance is in our view insufficient as worded. The current wording proposes that future legislative change to expand the functions of the Commissioner is intended yet poses only two examples – approval of providers and a generic reference to compliance.

COTA believes that the clause should be reworded to make Parliament's intention clear as to what specific powers should be transferred from the Secretary of the Department to the Commissioner, and the scope of to whom those powers will apply. Accordingly, COTA recommends the clause specifically reference providers of Commonwealth-funded aged care services, and that compliance should specifically include 'sanctions' as defined under Part 4.4 of the Aged Care Act.

COTA Australia suggests the following amendments in red:

S 5 (2) It is Parliament's intention to further the object of this Act by conferring, through future legislative change, additional functions on the Commissioner relating to matters such as:

(a) the approval of providers of aged care and Commonwealth-funded aged care services; and

(b) compliance relating to aged care including sanctions under Part 4.4 of the Aged Care Act 1997.

Recommendation 1: that recommended amendments be made to s5 (2) to provide clarity as to Parliament's intentions for the future functions of the Commissioner.

Issue 2 – Definition of consumers for engagement purposes

Refer to s17 Consumer engagement functions of the Commissioner

COTA Australia is concerned that the definition of aged care consumer at s7 does not make reference to representatives or other roles such as informal family and friend carers. COTA notes that the term 'consumer' can at times mean only 'care recipient' (as it is defined in this Act), while at other times it can mean both 'care recipient' and their 'representative' - for example see the exposure draft of the Aged Care Standards¹. We acknowledge in this broader

¹ Department of Health July 2018 'Exposure draft of the Aged Care Legislation Amendment (Single Quality Framework) Principles 2018', Canberra. <https://agedcare.health.gov.au/quality/exposure-draft-of-the-aged-care->

Bill the need to be specific when references are made to representatives and note s20 about education functions of the Commissioner includes reference to representatives of aged care consumers and the public. We are strongly of the view that s17 consumer engagement functions should also include representatives, as many consumers of aged care services (in particular those care recipients in residential aged care) require support to be involved in these functions of the Commissioner, and indeed family and friend carers are a key and absolutely valid consumer constituency .

COTA Australia suggests the following amendments **in red**.

17 Consumer engagement functions of the Commissioner

The *consumer engagement functions* of the Commissioner are:

- (a) to develop, in consultation with aged care consumers **and representatives of aged care consumers**, best practice models for the engagement of approved providers of aged care services, and service providers of Commonwealth-funded aged care services, with their aged care consumers **and representatives of their consumers**; and
- (b) to promote those best practice models to such approved providers and service providers.

Recommendation 2: that s17 of the Bill be amended as recommended to include representatives of aged care consumers.

Issue 3 – Ensuring the ACQSC is a true ‘one stop shop’ for all of the Aged Care System

Refer to s18 - Complaints functions of the Commissioner and s21 - Rules may make provision for, or in relation to, the performance of a function of the Commissioner

COTA Australia is concerned about the absence of any reference in the Bill to provisions for consumers to lodge complaints about their experiences with My Aged Care and the assessment processes (i.e. currently ACATs and RASs). Feedback received by COTA from consumers of aged care services starts with their interactions with My Aged Care and its subsequent assessment processes Consumers do not always know who employs the workers from Aged Care Assessment Teams and Regional Assessment Services – in consumers’ minds they are part of the aged care ‘system’ and assessment is an essential and determinative component of accessing service delivery. Government communications to consumers and prospective consumers refer to the processes of assessment and determination of eligibility as part of the suite and continuum of aged care services.

The distinction created by the Government in this Bill such that the ACQSC only covers aged care users once service delivery commences is unsound, in particular in home care where long wait times between first speaking with My Aged Care, getting a positive assessment, and receiving services, commonly occur. COTA Australia believes that consumers deserve to have their complaints about any and every part of the aged care system heard by and through a

single complaints process, and further, that complaints about consumers' experience of these elements of the system should be captured within the complaints functions of the Commissioner.

Importantly, upon announcing the ACQSC would be introduced by the Government the Minister said the ACQSC "will be a responsive, one-stop shop".² COTA fails to see how excluding the 'access' component of the system from complaints processes is delivering upon that commitment. Indeed, the current processes for complaints about My Aged Care are opaque to most users, cumbersome and confusing. Factsheets on complaints state complaints about the My Aged Care call centre are made to the call centre in the first instance and then to an email held by Health Direct who hold the contract to run My Aged Care.³ Putting aside the inappropriateness of an escalation process for older Australians that refers them to a mere email, we also note the process of being able to complain to the Commonwealth Ombudsman is omitted from the factsheet. Similar opaqueness about the complaints processes for ACAT and RAS assessment teams occurs referring consumers back to the organisation who conducted the assessment.⁴

COTA recognises that some complaints about the My Aged Care processes and ACAT/RAS assessments could in fact be an appeal to the determination made by these delegates of the Secretary about their eligibility for aged care services. We do not propose that such a matter be dealt with by the ACQSC, hence our exclusion of part 6.1 or 22-2A in the proposed amendments below, but we do believe that complaints about processes and treatment should legitimately reside with the ACQSC. We are also concerned by the lack of appropriate public reporting about such complaints and the overall opaqueness of these processes.

At the very least, to deliver on the 'one stop shop' commitment, the ACQSC should act as the front door to the complaints processes for My Aged Care and Assessment teams where they could seamlessly redirect such calls to the appropriate team while also reporting on the number of initiated complaints and having the quantum of complaints and their resolution reported in its annual report.

COTA recognises the legislative challenges in achieving what it proposes, given the lack of a clear legislative hook to point to for RAS assessors and the My Aged Care call centre staff. Should Parliament find it impossible to pass these amendments within the allotted timeframe of the passage of this legislation, COTA notes that the Object clause's (at 5(2)) reference to future legislation should be amended to confirm Parliament's intention that the Government should introduce these changes as part of the next tranche of legislation which is intended to commence by 1 January 2020.

COTA Australia suggests that My Aged Care, Regional Assessment Services and Aged Care

² K. Wyatt (April 2018) 'Powerful New Reforms to Ensure Safe, Quality Aged Care' Department of Health, Canberra. <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/health-mediarel-yr2018-wyatt048.htm> (Accessed 29 September 2018)

³ Department of Health September 2017 'Making a complaint about My Aged Care' <https://agedcare.health.gov.au/programs/my-aged-care/making-a-complaint-about-my-aged-care> (accessed 25 September 2018)

⁴ My Aged Care 'Concerns about your home support assessment (with a RAS)', Department of Health, Canberra <https://www.myagedcare.gov.au/quality-and-complaints/how-make-complaint?fragment=Concerns-RAS> (Accessed 25 September 2018)

Assessment Teams and Services, could be seen as operating on the basis of funding agreements that thus may be covered by the definition of *Commonwealth-funded aged care services*. We acknowledge the Bill's current limitations to specifically point to these teams and suggest the Committee ask the Department or Office of Parliamentary Counsel to advise the best way to identify My Aged Care, ACAT and RAS teams to include them within the complaints functions of the Commissioner, while at the same time ensuring that there are no unintended consequences through other parts of the Bill.

Recommendation 3A: that the Complaints functions of the Commissioner listed in s18 and s21 be amended as outlined to include complaints about My Aged Care and ACAT/RAS Assessment teams to ensure that complaints about the experiences of older Australians engaging with all parts of the aged care system are covered by ACQSC. To achieve that we propose

- the items **S18 c – e** drafted below be included into the Complaints functions at s18 and s21 (2) to identify My Aged Care call centre employees, ACAT team members and RAS team members (but excluding the appeals processes associated with their assessment outcome or their place on the home care priority queue which would continue to be addressed through appeals to the Department of Health and eventually the AAT if necessary);
- that consequential references to “My Aged Care agent or provider of aged care assessment services” be noted at s21 (3) (c) and s21 (3) (e) Consider whether additional Regulatory functions need to be OF listed at s21 (4) [including limiting the function to not relate to positions on the home care queue or assessment determinations that can be appealed to the Secretary] and whether associated guidance would need to be inserted similar to those at s21 (5) and s21 (6) specifically pertaining to “My Aged Care agent or provider of aged care assessment services”.

Recommendation 3B: Should Parliament be unable to make amendments to s18 and s21 in this legislation, at this time, it signal its intention that Government should include these measures in future legislation by amending s5(2) to include reference to “oversight of complaints relating to My Aged Care and the assessment for eligibility to access aged care services” to commence no later than 1 January 2020.

Our proposed amendments are set out below **in red**:

s18 Complaints functions of the Commissioner

The *complaints functions* of the Commissioner are to, in accordance with rules, deal with complaints made, or information given, to the Commissioner about the following matters:

- (a) an approved provider's responsibilities under the Aged Care Act or the Aged Care Principles;
- (b) the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to the service;

- (c) a person to whom powers or functions under Part 2.3 of the Aged Care Act have been delegated under subsection 96-2 (14) of the Aged Care Act, or a person making assessments under section 22-4 of the Aged Care Act but does not extend to matters pertaining to Part 6.1 of the Aged Care Act (Reviewable Decisions) nor matters pertaining to section 22-2A of the Aged Care Act (Priority of Home Care);
- (d) a person to whom powers or functions have been delegated to make a determination of eligibility to receive Commonwealth-funded aged care services or any other aged care services of a kind specified in the rules; and
- (e) the responsibilities of a person acting on behalf of the Australian Government as an agent of the entity known as My Aged Care.

s21 Rules may make provision for, or in relation to, the performance of a function of the Commissioner

- (1) The rules may make provision for, or in relation to, the performance of a function conferred on the Commissioner by section 16.

Complaints functions

- (2) Without limiting subsection (1), the rules may establish a scheme for dealing with complaints made, or information given, to the Commissioner about the following matters:
 - (a) an approved provider's responsibilities under the Aged Care Act or the Aged Care Principles;
 - (b) the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to the service.
 - (c) a person to whom powers or functions under Part 2.3 of the Aged Care Act have been delegated under subsection 96-2 (14) of the Aged Care Act, or a person making assessments under section 22-4 of the Aged Care Act but does not extend to matters pertaining to Part 6.1 of the Aged Care Act (Reviewable Decisions) nor matters pertaining to section 22-2A of the Aged Care Act (Priority of Home Care);
 - (d) a person to whom powers or functions have been delegated to make a determination of eligibility to receive Commonwealth-funded aged care services or any other aged care services of a kind specified in the rules; and
 - (e) the responsibilities of a person acting on behalf of the Australian Government as an agent of the entity known as My Aged Care.

- S21 (3) Without limiting subsection (2), the rules may make provision in relation to any one or more of the following:
- (c) the roles, rights and responsibilities of complainants, approved providers, service providers of Commonwealth-funded aged care services, **My Aged Care agent or provider of aged care assessment services** and any other relevant persons;
 - (e) the actions that may be taken to address such complaints, or to deal with such information, which may include requiring an approved provider or service provider of a Commonwealth-funded aged care service, **My Aged Care agent or provider of aged care assessment services** to do something;

Issue 4 – Charging consumers for Commissioner functions

Refer to s23 Fees

COTA Australia is concerned about the wording of s23 which implies that fees can be charged to consumers and their representatives for any aspect of delivering or providing services in performing the Commissioner's functions. We strongly urge that any implication that consumers can be charged for making a complaint or for receiving information about the Commissioner's functions, or even for participating in the Commissioner's consumer engagement functions, be removed. We seek resolution of this concern by explicit exclusion of fees charged to consumers for the complaints and consumer engagement functions of the Commissioner.

We understand that there may be circumstances in which consumers and their representatives might be charged fees, for example, when participating in conferences or fee for service industry education sessions. Therefore, we suggest amended wording for s23 by adding subsection (3) that specifically excludes charges for complaints and consumer engagement functions, while leaving capacity for fees relating to other functions within the Bill.

COTA Australia makes the following suggestion, **in red**, to ensure that this section is very clear about the functions for which consumers and their representatives cannot be charged fees.

s23 Fees

- (1) The Commissioner may charge fees for services provided by the Commissioner in performing the Commissioner's functions.
- (2) A fee must not be such as to amount to taxation.
- (3) **A fee must not be charged to an aged care consumer or a representative of a consumer in performing the Commissioner's functions under s16 (1) (c) or s17 (Consumer engagement functions) or s16 (1) (d) or s18 (Complaints functions).**

Recommendation 4: that the Bill amend s23 to remove the ability to charge fees to aged care consumers and their representatives for any aspect of the consumer engagement and complaints functions of the Commissioner.

Issue 5 – Expansion of criteria for appointment to Advisory Council

Refer to s41 Appointment of Advisory Council Members

Similar to the issue discussed at Issue 2, COTA Australia is concerned about the narrow reference to experience of aged care consumer issues at subsection (3) (c) in the eligibility criteria for appointment to the Advisory Council. We believe that this should be expanded to more robustly reference the experience and expertise of aged care consumer representatives including their family, and family and friend carers, even though these might be regarded as inherently involved as experience or knowledge in 'aged care consumer issues'. It is preferable

to make this explicit, and we therefore suggest the following amended wording to s41(3) (c) in red.

- S41 (3) A person is not eligible for appointment to the Advisory Council unless the Minister is satisfied that the person has substantial experience or knowledge in at least one of the following fields:
- (a) evaluation of quality management systems;
 - (b) provision of care and services to aged care consumers, including provision of care and services to people with special needs;
 - (c) issues affecting aged care consumers or representative of aged care consumers;

Recommendation 5: that representatives and family and friend carers of aged care consumers are included within the range of expertise and knowledge expected or sought for potential Advisory Council members in s41.

Issue 6 – Performance reporting links

Refer to s54 Annual operational plans

COTA Australia is concerned that the current legislation does not **require** the Commissioner to include all its functions within its operational plans and thus does not **require** the Commissioner to report annually on all the Commission’s functions. We are particularly concerned that this could mean minimal attention could be paid to Consumer Engagement and Consumer Education functions in any particular annual operational plan, resulting in minimal reporting on those functions within that year. While we acknowledge that s17BE (1) (g) of the *Public Governance, Performance and Accountability Rule 2014* does require reporting on the Commission’s “performance in achieving its purposes” we do not believe the generic reference here would necessarily require always reporting against each of the specific functions of the Commissioner.

As mentioned, COTA is particularly interested in ensuring performance reporting on consumer engagement, complaints and education functions occurs annually as we know that consumers and their representatives look for these references when seeking to assess the annual impact of the system through such measures as the Commission’s annual reports. We advocate strongly that the annual operational plans should clearly link its work to each of the functions contained in s16 and that performance indicators are documented within the operational plan in order that each of these individual functions are included in each annual report as outlined in s52 (c).

COTA Australia proposes the following amendments to the wording of s54 (2) clauses (a) and (e) to ensure that there are direct links between the functions of the Commissioner, and performance of those functions, in the annual reporting process, as set out in red:

S54 (2) The plan must:

- (a) set out particulars of the action that the Commissioner intends to take during the period to give effect to, or further, the objectives set out in the plan, and to address each of the Commissioner’s functions in s16; and

- (b) set out the Commissioner's priorities for work to be undertaken during the period; and
- (c) set out how the Commissioner will apply the resources of the Commission to achieve those objectives; and
- (d) include an assessment of risks faced by the Commission for the period together with a plan to manage those risks; and
- (e) include such performance indicators as the Commissioner considers appropriate for assessing the performance of the Commissioner **and the Commissioner's functions in s16** during the period.

Recommendation 6: that s54 be amended so that the Commissioner's operational plans require references to ALL the Commissioner's functions including a requirement for performance indicators and that therefore the ACQSC annual reports must include reporting on each of the specific functions of the Commissioner and in particular its Consumer Engagement, Consumer Education and Complaint Handling functions.

Issue 7 – Additional reporting at Minister's discretion

Refer to s58 Minister may require the Commissioner to prepare reports or give information

COTA Australia has some concern regarding s58 (4) dealing with publication of reports and documents. The framing provides that publication of reports will be at the Minister's discretion, by use of the word "may".. COTA notes that while some documents with personal information should not be made public, we believe it is in the interests of aged care consumers and their representatives to maximise transparency by requiring reports that do not pertain to specific regulatory action to be made public within a set period of time, unless there are sound reasons not to publish.

Recommendation 7 – That the Committee consider whether it should recommend that the Bill be amended to require the Minister to publish reports within a set period of time (as occurs for the Aged Care Financing Authority), unless there are sound reasons for not doing so which the Minister should indicate, or whether it prefers to leave publication of reports wholly to the Minister's discretion as outlined in s58.

Issue 8 – Ensuring Commonwealth-funded aged care services (e.g. CHSP) are treated by the ACQSC in the same manner as other aged care services

Refer to Division 3 - Making information publicly available, and Section 59 - Information about an aged care service may be made publicly available

COTA Australia recognises that historically, only aged care services listed in the Aged Care Act (namely Residential Aged Care Services and Home Care Packages Program) have been the purview of the previous Quality Agency. However from 1 July 2019 all Commonwealth-Funded aged care services, including the Commonwealth Home Support Program (CHSP), will be under the purview of the ACQSC. Accordingly such service providers should be subject to the same

rules and the ACQSC should be empowered to make equitable information about those services public. We believe that s59, (1) and clauses (a), (b), (e), (f), (g) and (h) require amendment to ensure that Commonwealth Home Support Services, and any other Commonwealth-funded aged care services, are fully covered.

COTA also notes that the most recent Aged Care Financing Authority Annual Report no longer talks about “places” in terms of home care packages as they are now allocated to the consumer. We are therefore concerned that it is not clear what “number” the ACQSC would publish when speaking about a home care provider. We propose s59 (1) (b) be amended to refer to “residential care places” and “home care packages”.

COTA Australia proposes that the wording of this section is amended as follows in red:

S59 Information about an aged care service or Commonwealth-funded aged care service may be made publicly available

- (1) The Commissioner may make publicly available the following information about an aged care service or Commonwealth-funded aged care service:
 - (a) the name and address of the service;
 - (b) the number of residential care places and home care packages included in the service;
 - (c) the services provided by the service;
 - (d) the facilities and activities available to care recipients receiving care through the service;
 - (e) the name of the approved provider or service provider of the service;
 - (f) information about the variety and type of service provided by the approved provider or service provider;
 - (g) information about the service’s status under this Act or the Aged Care Act (for example, the service’s accreditation record) or its Commonwealth funding agreement;
 - (h) information about the approved provider’s or service provider’s performance in relation to the provider’s responsibilities under this Act or the Aged Care Act or its Commonwealth funding agreement (see 8.1 and 8.2);
 - (i) any action taken, or intended to be taken, under this Act or the rules to protect the welfare of care recipients receiving care through the service, and the reasons for that action;
 - (j) any other information of a kind specified in the rules for the purposes of this paragraph.

COTA Australia is also concerned that Approved Providers or Service Providers should be published with both their legal name and their locally known trading name, along with any former name, so that consumers can clearly understand who they are, and to ensure that following a sanction action the organisation’s known name continues to be known/understood by consumers reviewing information from the ACQSC. We believe that the name by which providers of all kinds are known in their local communities will still be readily available to consumers and their representatives at clause (a), while the providers’ legal entity details will be clearly identified at clause (e). We would urge the committee to seek assurances this legislation will indeed be implemented in this manner.

Recommendation 8: that s59 be amended to fully address the breadth of Commonwealth-funded aged care services as well as services under the Aged Care Act 1997.

Issue 9 – Changes to consent for authorised complaints officers to enter premises

Refer to s66 Consent

COTA Australia is concerned that the current Bill may permit an Approved Provider to refuse entry to an authorised complaints officer when their sole reason for entering the premises is to meet with a consumer about a complaint they have made. There may be certain limited instances, such as infection control measures in the event of an infectious disease outbreak, that would mean a person may only enter premises under strict control measures. However the apparent requirement for complaints officers to be required to seek permission of the approved provider of a residential aged care facility to speak with a complainant goes against the principle of a complainant being non-identified, and could increase pressure on consumers to not seek to complain for fear of being identified.

COTA believes the Bill must be amended to ensure that only consumers are required to give consent to meeting with authorised complaints officers when they are only onsite to meet with consumers and/or their representatives. Providers must not be able to prevent access to residents or consumers by refusing consent for authorised officers to enter the premises. This is particularly the case in residential care settings, where the resident may not be deemed to be the only “occupier of the premises”.

COTA Australia proposes the following additional clause (c) as an amendment to section 66, **in red:**

s66 Consent

- (1) Before obtaining the consent of an occupier of premises for the purposes of subsection 65(3), an authorised complaints officer must:
 - (a) inform the occupier that the occupier may refuse to give consent or may withdraw consent; ~~and~~
 - (b) if the occupier is an approved provider—inform the occupier that the occupier has a responsibility under paragraph 63-1(1)(ba) of the Aged Care Act to cooperate with a person who is exercising powers under this Part; ~~and~~

Note: Failure to comply with that responsibility may result in a sanction being imposed on the approved provider under Part 4.4 of the Aged Care Act.

- (c) where the authorised complaints officer is seeking entry for the sole purpose of speaking with a consumer and/or a representative of a consumer, only the consumer or their representative shall be required to consent, and the service provider or approved provider is not required to consent to entry.**

Recommendation 9: that s66 is amended to ensure that authorised officers can meet with residents, consumers and representatives at the determination of the consumer concerned and

without restriction from providers as occupiers of premises.

Issue 10 – changes to consent for regulatory officials to enter premises

Refer to s69 Consent

COTA Australia holds similar views in respect of the entry of regulatory officials to premises that are occupied by approved providers or service providers yet are the home(s) of consumers as residents. We are concerned that in some cases providers could withhold consent and wish to ensure that this does not occur where consumers may be at risk.

COTA notes that the Aged Care Quality Agency Act provides that sub-ordinate legislation will outline further information on consent. This provision is not included in this Bill for the ACQSC, rather relevant points have been included in the primary legislation. We are concerned that the existing requirement at s10 (3) of the Accountability Principles (see below) has not been incorporated into the ACQSC legislation, and we urge the Committee to recommend that it do so.

S10 (3) “The approved provider must not unreasonably withhold consent if access to the premises of the service is required in circumstances where the CEO of the Quality Agency or the quality assessor reasonably believes that there is a serious risk to the safety, health or wellbeing of a person who is being provided with care through the service.”

We therefore propose the following amended wording **in red**.

s69 Consent

- (1) Before obtaining the consent of an occupier of premises for the purposes of subsection 68(3), a regulatory official must:
 - (a) inform the occupier that the occupier may refuse to give consent or may withdraw consent; ~~and~~
 - (b) if the occupier is an approved provider—inform the occupier that the occupier has a responsibility under paragraph 63-1(1)(ba) of the Aged Care Act to cooperate with a person who is exercising powers under this Part- **and**

Note: Failure to comply with that responsibility may result in a sanction being imposed on the approved provider under Part 4.4 of the Aged Care Act.

- (c) if the occupier of the premises is an approved provider they must not unreasonably withhold consent if access to the premises of the service is required in circumstances where a regulatory official reasonably believes that there is a serious risk to the safety, health or wellbeing of a person who is being provided with care through the service.**

Recommendation 10: that s69 is amended so that the safety and wellbeing of consumers is paramount when considering matters of consent to allowing entry by regulatory officers.

Conclusion

COTA Australia believes that the Aged Care Quality and Safety Commission Bill 2018 is largely well developed and will largely achieve the desired outcomes to achieve the Objects of the Bill and the Functions of the Commissioner.

We seek recognition and acceptance of the amendments we have suggested as we believe these provide essential enhancements that protect and encompass the rights of consumers to engage with the Commission and to be engaged by the Commission and the Commissioner in all parts of the aged care system.

We are concerned that the ACQSC legislation needs to pass Parliament in a timely manner to ensure the Commission can commence on 1 January 2019, in order to be fully operational for the commencement of the new Aged Care Standards from 1 July 2019. COTA would be concerned if after successive delays to these standards commencing, consumers were to be required to wait longer for the additional protections they afford.

We therefore urge the Parliament to prioritise passing this legislation by the end of 2018. We note further legislation will be required during 2019 to transfer powers from the Department to the Commission and that any unresolvable issues in this Bill, may be able to be deferred to the next tranche of reforms based on an unequivocal commitment of same by the Government.

COTA Australia would be pleased to make itself available to the Committee to discuss our submission, or any other matter.