



Australian Government

Department of Health
and Aged Care

***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 from the Office of the Interim Inspector-General of Aged Care
within the Department of Health and Aged Care
to the Senate Community Affairs Legislation Committee
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

3 April 2023



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Introduction

The Office of the Interim Inspector-General of Aged Care (OIIGAC) currently within the Department of Health and Aged Care (department) welcomes the opportunity to make a submission to the Senate Community Affairs Legislation Committee Inquiry into the provisions of the Inspector-General of Aged Care Bill 2023 (IGAC Bill) and the Inspector-General of Aged Care (Consequential and Transitional Provisions) Bill 2023 (IGAC Consequential Bill).

The IGAC Bill establishes the Inspector-General of Aged Care (Inspector-General) and a statutory body to support them to deliver on the vision of the Royal Commission into Aged Care Quality and Safety (Royal Commission).

The IGAC Consequential Bill supports the administrative transition to the statutory Office of Inspector-General of Aged Care and facilitates access to information necessary to the Inspector-General's functions.

The Findings of the Royal Commission

The Royal Commission identified a range of systemic issues pervading the aged care system, spanning its administration, regulation, and funding. The Royal Commission determined that the nature of these systemic issues highlights a need for greater transparency and accountability within the aged care system. To achieve this, the Royal Commission proposed the creation of 'an independent Office of the Inspector-General to investigate, monitor and report on the administration and governance of the aged care system' (Recommendation 12). In addition, the Royal Commission recommended that the newly created Inspector-General be empowered to monitor, report on, and evaluate the implementation of the Royal Commission's recommendations (Recommendation 148).

The Royal Commission determined that the complaints management framework for the aged care system required reform. To this end, the Royal Commission proposed the establishment of a Complaints Commissioner and recommended the Inspector-General serve as an escalation point for these complaints, as well as taking on an interventionist role in the aged care complaints management framework (Recommendations 12 and 98).

The IGAC Bill establishes the Inspector-General's oversight of the complaints management framework across the aged care system. It does not require the Inspector-General to have an active role in individual complaints as was proposed by the Royal Commission. This approach safeguards the Inspector-General's independence and impartiality, and ensures the role and functions complement, rather than duplicate, those of other government agencies.

IGAC Bill

To implement the Royal Commission's recommendations, the IGAC Bill creates a new statutory office of Inspector-General and supporting statutory body, at arms-length and independent from existing aged care entities, to exercise systemic oversight spanning the aged care system administered, regulated, funded and delivered by the Commonwealth. The Inspector-General will shine a light on the effectiveness of the system as a whole, identify areas of concern or parts of the system that are functioning well, and recommend improvements where appropriate.



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The IGAC Bill strikes an appropriate balance between the powers necessary for effective oversight while ensuring their independence and that natural justice is afforded to all parties subject to its oversight. In this way, the Bill is consistent with the enabling legislation of several other Australian Inspectors-General and, where appropriate, with the Commonwealth Ombudsman and the Auditor-General.

The Inspector-General's core function of systemic oversight will see it monitor, investigate and report to the Minister and Parliament on the Commonwealth's administration and regulation of the aged care system, primarily through the conduct of independent reviews and making recommendations for improvement.

The Inspector-General will also monitor and report to the Minister and Parliament on the implementation of the Royal Commission's recommendations, with a full review evaluating their implementation by the Commonwealth at five and ten years following the release of the Royal Commission's Final Report.

The IGAC Bill will provide for the Inspector-General to determine the subject, form and timing of their monitoring, reporting and review activities. Importantly, the IGAC Bill would ensure that the Inspector-General cannot be directed not to apply their oversight to a particular issue within the aged care system.

These functions will be supported by the IGAC Bill providing the Inspector-General with coercive information gathering powers, which include powers to compel a person to produce information or documents or to answer questions, and to access premises where aged care activities are performed or funded by the Commonwealth. These powers will operate against the context of voluntary provision of information to the Inspector-General being preferred other than where this is not possible, such as due to legislative restrictions applying to some information.

The IGAC Bill establishes a criminal offence and civil penalty regime to deter certain conduct or omissions which would prevent, hinder or be contrary to the Inspector-General's exercise of functions or powers.

The IGAC Bill provides strong protections for any person who discloses information or provides assistance to the Inspector-General in support of the performance of its functions. These protections, which will contribute to the establishment of improved whistle-blower protections across the aged care system recommended by the Royal Commission, are reinforced by the offence and penalty regime noted above.

IGAC Consequential Bill

The IGAC Consequential Bill provides for a seamless transition from current administrative arrangements of the OIIGAC to the statutory office to be established under the IGAC Bill.

The IGAC Consequential Bill amends various Commonwealth Acts to allow provision of information to the Inspector-General subject to secrecy provisions. Access to such information is vital to supporting the performance of the Inspector-General's functions and exercise of powers.

The IGAC Consequential Bill also amends the *National Anti-Corruption Commission Act 2022* to prescribe the Inspector-General as a 'Commonwealth integrity agency'.



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Consultation overview

Exposure Draft

An Exposure Draft of the IGAC Bill and a consultation paper, was released for public comment from 13 December 2022 to 27 January 2023. The IGAC Consequential Bill was not released for public comment through this process.

A total of 124 submissions (28 written submissions and 96 survey responses) were received from government and industry stakeholders, the aged care sector, consumer peak bodies, and the general public. Overall, the feedback received was supportive of the establishment of the Inspector-General and its important role of providing independent oversight of the aged care system.

A number of submissions did not address the Bill. Others indicated that there was insufficient clarity between the Inspector-General's role and those of the Aged Care Quality and Safety Commission and proposed Complaints Commissioner.

Following the consultation process, the OIIGAC considered the issues raised by stakeholders. Where appropriate, a number of minor and technical amendments were made based on both this feedback, and discussions with other government agencies, including:

- authority for the Inspector-General to publish notices that commence a review to give greater visibility of their processes;
- protection to employers who take 'reasonable administrative action' to protect staff from victimisation. That is, providing in the legislation that to move a staff member to another area to protect them, is not an offence for the employer where it is reasonable to do this; and
- expansion of the persons to whom a draft report or other reports can be provided to include any person that the Inspector-General reasonably believes appropriate.

Other Consultation

Consultation will remain a key priority for the OIIGAC and the IGAC, once established under the IGAC Bill, as it is essential to garner expert knowledge and lived experience to better understand and draw out the serious and systemic issues which continue to pervade the aged care system.

The Interim Inspector-General continues to engage with stakeholders regarding the role and functions of the future statutory office.

Roundtable workshops have been held with consumer and provider peaks, service providers, government, workforce and unions, researchers and academics. In addition, the Interim Inspector-General has established a consultative committee with membership drawn from across these sectors to inform their ongoing work. Finally, the Minister's advisory bodies, including the National Aged Care Advisory Council and the Council of Elders, will be consulted in the coming months.