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Ms Jeanette Radcliffe
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Senate Community Affairs Legislation Committee
Online submission at: https://www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission

28 September 2018

AAG submission to Senate Community Affairs Legislation Committee on the Aged Care Quality and Safety Commission Bill 2018 and related Bill

Thank you for inviting AAG to provide a submission on the Aged Care Quality and Safety Commission Bill 2018 (the Bill) and the Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Bill 2018 (the related Bill).

About AAG

AAG's purpose is to improve the experience of ageing through **connecting** research, policy and practice. Its principles are to be evidence informed, multi-disciplinary and holistic, independent, collaborative and fair. AAG has a growing membership of over 1,350 professionals working across every State and Territory in Australia representing all sectors and disciplines in ageing including research, policy, education, aged care, health and allied health, and consumer advocates. AAG has 18 Collaborating Research Centres which represent all major research in ageing and aged care and is connected internationally as the executive office of both the International Association of Gerontology and Geriatrics Asia Oceania Region and the International Longevity Centre – Australia.

Executive summary

AAG submits that:

- the Commissioner and the Aged Care Quality and Safety Advisory Council should be required to have regard to relevant evidence in performing their functions.
- the functions of the Commissioner should include improving equity of access and outcomes for older people with diverse characteristics and life experiences.
- the functions of the Commissioner should include developing a clinical governance framework for aged care that aligns with other relevant clinical governance frameworks.
- the functions of the Commissioner should include the substantive sanction powers under the Aged Care Act 1997 and robust enforcement powers like those held by the English Care Quality Commission.

Evidence-informed functions

AAG believes that the functions of the Commissioner and the Aged Care Quality and Safety Advisory Council should be evidence-informed (i.e. based on research, practice knowledge and the experiences of older people).

In August 2018, AAG made a submission to the Medical Research Future Fund (MRFF) consultation on the *Australian Medical Research and Innovation Priorities 2018-2020*. AAG's submission explains the critical connection between research, policy and practice, as follows:

> "Building a robust evidence base is an essential foundation upon which to develop ageing and aged care policies and reforms, and service delivery models, that best meet the challenges and opportunities of an ageing Australian population. Dedicated research funding can generate significant activity and rapidly increase outcomes, as demonstrated by the decade of funding stimulus for dementia research.
>
> Unlike much medical research, ageing research does not apply a single-disease research model, nor fit within a single disciplinary paradigm. Instead it recognises the multi-factorial causality of age-related health issues. Therefore, the Ageing Research Mission [*proposed by AAG*] will require a multidisciplinary and cross-sectoral approach that builds research capacity and collaboration across relevant areas (such as medical, psychosocial, nursing, allied health, disability, technology, design and policy), including international collaboration where relevant.
>
> Research and evaluation are critical for identifying the support and care needs of older people and their Carers, and for informing ways of increasing the appropriateness, effectiveness and efficiency of services and actions on their behalf. Trials and pilot programs with evaluation and follow up to find out what works in terms of sustainability and cost-effectiveness, and why, are important. Evidence-based workforce and service models will deliver enhanced health and engagement of older people and contribute to future productivity in Australia." [i]

AAG notes that one of the three core principles in the Australian Safety and Quality Framework for Health Care is that care is "*driven by information.*" [ii] In relation to policy makers, this includes as an action item "*encourage and apply research that will improve safety and quality.*"

AAG submits that the Commissioner and the Aged Care Quality and Safety Advisory Council should be required to have regard to relevant evidence in performing their functions.

Equity of access and outcomes

AAG is concerned to ensure that the Bill includes adequate protections for older people who have special needs or experience various forms of disadvantage or diverse circumstances.

AAG is a member of the Aged Care Sector Diversity Sub-Group. In 2017, the Sub-Group developed the *Aged Care Diversity Framework* after wide consultation with consumers, providers, peak bodies and the aged care sector, that was launched by Minister Wyatt.[iii]

The Diversity Framework's vision is that:

> "All older people experience a high-quality aged care system that ensures equitable access and outcomes and embraces their diverse characteristics and life experiences."

One of the Diversity Framework's overarching imperative is:

> "Equity of access and outcomes – Older people with diverse characteristics and life experiences have equitable access to information and services that are effective and appropriate to their needs, and that take into account individual circumstances."

The Diversity Frameworks includes the nine special needs groups identified in the *Aged Care Act 1997:*

- people from Aboriginal and/or Torres Strait Islander communities
- people from culturally and linguistically diverse (CALD) backgrounds
- people from lesbian, gay, bisexual, trans/transgender and intersex (LGBTI) communities
- people who live in rural or remote areas
- people who are financially or socially disadvantaged
- people who are veterans of the Australian Defence Force or an allied defence force including the spouse, widow or widower of a veteran
- people who are homeless, or at risk of becoming homeless
- people who are care leavers (which includes Forgotten Australians, Former Child Migrants and Stolen Generations)
- parents separated from their children by forced adoption or removal.

The Diversity Framework also identifies and includes three additional diversity groups, namely:

- people with mental health problems and mental illness
- people living with cognitive impairment including dementia
- people with a disability.[iv]

AAG submits that the functions of the Commissioner should include improving equity of access and outcomes for all older people with diverse characteristics and life experiences.

Clinical governance

AAG notes that the draft new *Aged Care Quality Standards* include a requirement for organisations to demonstrate they have a clinical governance framework where clinical care is provided (standard 8).[v] We understand that this is intended to apply to all aged care services that provide clinical care (including residential care, home care and other types of aged care services).[vi]

While this is a welcome step, we note that the *Review of National Aged Care Quality Regulatory Processes 2017* (also known as the Carnell Paterson Report) described the Australian Commission on Safety and Quality in Health Care (ACSQHC) *National Model Clinical Governance Framework* and said:

> "A parallel *[clinical governance]* framework needs to be developed for residential aged care, as well as other aged care providers that deliver clinical care services. The framework should address the roles, responsibilities and scope of clinical care delivered in these settings. This should be incorporated in the guidance material for the new aged care standards. The ACSQHC is an ideal partner to work with aged care regulators, the sector and consumers to develop a clinical governance framework." [vii]

AAG agrees that an appropriate clinical governance framework should be developed for and apply to all aged care services that provide clinical care. However, it is also important to note that some organisations that provide a range of aged care, health, disability and other community services may also be required to comply with other types of clinical governance frameworks. It is therefore important that the different frameworks should be in line with each other and have similar reporting requirements to avoid unnecessary duplication of efforts and the possibility of contradictions.

AAG submits that the functions of the Commissioner should include developing a clinical governance framework for aged care that aligns with other relevant clinical governance frameworks.

Enforcement powers

AAG is concerned to ensure that the Commissioner has adequate powers to enforce regulatory compliance. The Carnell Paterson Report considered the existing regulatory powers and concluded:

> "The complex segregation of regulatory functions adds to this confusion for consumers and providers. For example, the Quality Agency has the authority to revoke accreditation of a facility; however, where serious incidents of non-compliance are detected, the Department of Health has sole authority to impose sanctions against the service provider managing the facility…
>
> To simplify arrangements for compliance enforcement, it is recommended that the Department of Health's responsibility for imposing sanctions on providers determined to have breached the Standards be transferred to the new Aged Care Quality Commissioner. This makes that agency solely responsible for their enforcement. This approach streamlines the decision-making process and reduces confusion for providers."[viii]

AAG notes that the Bill gives the Commissioner some enforcement powers, including the power to conduct quality reviews, monitor the quality of care and services provided, and the power to enter premises and search. However, it appears that the substantive sanction powers under section 66.1 of the *Aged Care Act 1997* remain with the Secretary and it is unclear whether these will be delegated to the Commissioner under the section 96.2(2) (as amended in the related Bill).

AAG suggests that the Government should consider the English Care Quality Commission (CQC) as an example of international best practice. It has the power to take the following enforcement actions:

- Using requirement notices or warning notices to set out what improvements the care provider must make and by when.
- Making changes to a care provider's registration to limit what they may do, for example by imposing conditions for a given time.
- Placing a provider in special measures, where it closely supervises the quality of care while working with other organisations to help them improve within set timescales.
- Hold the care provider to account for their failings by:
    - issuing simple cautions
    - issuing fines
    - prosecuting cases where people are harmed or placed in danger of harm.[ix]

In 2017-2018, the CQC issued 1,343 warning notices, 781 other civil actions and 159 criminal actions.[x] The civil and criminal actions included 148 fines, imposing special measures on 720 providers, enforced closure of 141 locations and five criminal prosecutions.[xi] The CQC reported that 67% of providers told them in their annual survey that the prospect of enforcement action is a factor that encourages their compliance.[xii]

AAG submits that the functions of the Commissioner should include the substantive sanction powers under the Aged Care Act 1997 and robust enforcement powers like those held by the English Care Quality Commission.

Yours sincerely,

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[i] Further information in AAG's submission to the Medical Research Future Fund (2018) available at https://www.aag.asn.au/news-publications/aag-submissions

[ii] Further information on the Australian Safety and Quality Framework for Health Care, Putting the Framework into action: Getting started - Activities for Policy Makers available at https://www.safetyandquality.gov.au/wp-content/uploads/2011/01/ASQFHC-Guide-Policymakers.pdf

[iii] Further information on the Aged Care Diversity Framework 2017 available at https://agedcare.health.gov.au/support-services/people-from-diverse-backgrounds/aged-care-diversity-framework

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[iv] Aged Care Diversity Framework 2017 op. cit.

[v] Further information on the Exposure draft of the Aged Care Legislation Amendment (Single Quality Framework) Principles 2018 available at https://agedcare.health.gov.au/quality/exposure-draft-of-the-aged-care-legislation-amendment-single-quality-framework-principles-2018

[vi] Department of Health, Application of Aged Care Quality Standards by Service Type available at https://agedcare.health.gov.au/quality/application-of-aged-care-quality-standards-by-service-type

[vii] Further information on the Review of National Aged Care Quality Regulatory Processes 2017 (Carnell Paterson Report) available at https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/10_2017/review_report_final_23_october_2017.pdf

[viii] Review of National Aged Care Quality Regulatory Processes 2017 op. cit.

[ix] Further information on the Care Quality Commission available at https://www.cqc.org.uk/about-us

[x] Care Quality Commission, Annual Report and Accounts 2017/18, available at https://www.cqc.org.uk/publications/major-report/annual-report

[xi] Care Quality Commission, Annual Report and Accounts 2017/18 op. cit.

[xii] Care Quality Commission, Annual Report and Accounts 2017/18 op. cit.