



Australian Government

Office of the Aged Care Commissioner

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Submission to the Standing Committee on Community Affairs Legislation Committee

Thank you for the opportunity to make a submission to the Inquiry into the *Aged Care (Living Longer Living Better) Bill 2013*, *Australian Aged Care Quality Agency Bill 2013*, *Australian Aged Care Quality Agency (Transitional Provisions) Bill 2013*, *Aged Care (Bond Security) Amendment Bill 2013* and the *Aged Care (Bond Security) Levy Amendment Bill 2013*.

I have limited my remarks to the sections of the *Aged Care (Living Longer Living Better) Bill 2013*, and the *Australian Aged Care Quality Agency Bill 2013*, relevant to my jurisdiction as Aged Care Commissioner.

As the Committee will know, as Aged Care Commissioner my role under the *Aged Care Act 1997* (the Act) and the *Complaints Principles 2011* (Complaints Principles) is to:

- examine complaints about certain decisions and the processes of the Aged Care Complaints Scheme (the Scheme) and make recommendations to the Secretary of the Department of Health and Ageing which may result in a complaint being further considered by the Scheme and/or improvements to the complaints process; and
- examine complaints about the conduct of the Aged Care Standards and Accreditation Agency Ltd and/or its assessors in carrying out their responsibilities under the *Accreditation Grant Principles 2011*.

As Commissioner, I am also able to conduct own initiative inquiries into the processes of the Scheme and conduct of the Agency.

Aged Care (Living Longer Living Better) Bill 2013

1. Aged Care Commissioner's terms and conditions.

There are a number of changes in this Bill related to the terms and conditions of the Aged Care Commissioner. I have been consulted by the Department of Health and Ageing (the Department) regarding these changes. I understand these are to update some aspects of the legislation to accord with contemporary practice and/or to ensure the terms and conditions of the Aged Care Commissioner and the new Aged Care Pricing Commissioner are consistent. I support these changes.

2. Aged Care Commissioner's role and functions – Complaints Scheme.

In announcing the Living Longer Living Better package the Government indicated it intended to strengthen consumer and industry "*confidence in the independence of the aged care complaints handling mechanism*"¹ by giving the Aged Care Commissioner determinative powers from 1 July 2013. The Commissioner's recommendatory powers are to be replaced with the power to direct the Scheme to conduct a new resolution process and to require it to take into account certain matters. Also under this proposal, the Commissioner will have to be consulted by the Scheme prior to finalisation of the new process and if the Commissioner remains dissatisfied, he or she will be able to report to the Minister for Mental Health and Ageing.

I understand these changes are to be provided for in subordinate legislation, the amended Complaints Principles, rather than in the Act through the current Bill.

I have been consulted by the Department in relation to these changes and I look forward to seeing the amended Complaints Principles. In my view, enhancing the powers of the Aged Care Commissioner, who is independent from the Department-based Scheme, will give the public greater confidence that it is worthwhile exercising their appeal rights.

There is one matter in relation to these powers that the Committee may wish to consider in relation to the Bill. That is whether the current annual reporting requirements of the Commissioner, as specified in section 95A-12 of the Act, should be expanded, to reflect the new powers.

While it is the longstanding practice of the Office of the Aged Care Commissioner to report more widely than required, there is currently just one statutory reporting requirement relating to the Commissioner's examination of decisions by the Scheme. Under the Act, the Commissioner is required to report the number of decisions examined. The other requirements relate to examinations of complaints about the Scheme's processes. Given that under the new powers, the examination of decisions may result in the Commissioner *directing* that there be a new process, the Committee may wish to consider whether section 95A-12 should be amended to require that the Commissioner report annually to the Minister (and the Parliament) the number of times the Commissioner has directed the Scheme to carry out a new process and the number of times the Commissioner has sent a "special report" to the Minister. This is important public information and reporting on it will provide both transparency and greater confidence in the independence of the Office. While I acknowledge there is nothing preventing the Commissioner from reporting this information, it sends a powerful signal if it is explicitly required rather than left to practice.

3. Aged Care Commissioner's role and functions - Aged Care Quality Agency

It is proposed that on 1 January 2014 the Aged Care Standards and Accreditation Agency Ltd becomes the Aged Care Quality Agency and related changes are made to the Aged Care Commissioner's jurisdiction.

¹ *Living Longer Living Better Aged Care Reform Package(technical document) and see Australian Government Response to the Productivity Commission's Caring for Older Australians Report (Section 15.2).*

With regard to the new agency, the Bill confines the Commissioner's jurisdiction to complaints against the agency's processes for accrediting residential care and conducting quality review of home care services. It removes the current power to examine complaints about the conduct of accreditation assessors.

I support this change. This Office receives few complaints about the current Aged Care Standards and Accreditation Agency. The complaints about its "conduct" are typically about process. The wording of the Bill more clearly reflects this and removes any ambiguity.

Complaints to this Office about the conduct of assessors are even rarer and tend to be about the behaviour of individual staff. Given that the new agency's staff will be public servants and therefore subject to the requirements of the Public Service Code of Conduct and *Public Service Act 1999*, I agree that it is unnecessary for the Commissioner to retain this power.

There is little detail about what the proposed "quality review of home care services" by the new agency will entail, but I agree it is logical for the Aged Care Commissioner's ability to examine the processes of the agency to extend to home based care as well as residential care.

The Bill is clear the Commissioner cannot review decisions of the agency. This is consistent with the current situation. The Commissioner's own initiative power also remains unchanged other than to reflect that it covers the new agency.

4. Aged Care Pricing Commissioner.

As noted earlier, the Bill provides for a new Aged Care Pricing Commissioner who will approve extra service fees and higher accommodation payments for residential care. The Bill provides that approved providers who are dissatisfied with the Pricing Commissioner's decision can seek internal reconsideration and/or review by the Administrative Appeals Tribunal. However the Bill appears to be silent on the question of who will deal with the public's complaints and disputes about these matters.

Dealing with complaints from care recipients and their families about the level of accommodation payments or extra fees does not appear to be part of the new Commissioner's role. I am assuming the Complaints Scheme will deal with these concerns in so far as they relate to the responsibilities of approved providers, just as it handles complaints about the manner in which fees and bonds and any other charges are levied now. If this is the case, I am also assuming that concerns about Scheme decisions and processes in relation to these matters will continue to come to this Office. Nonetheless, I note that potentially the public's concerns about extra service fees and higher accommodation payments could be a matter for review by the independent Pricing Commissioner. This may be something the Committee wishes to consider.

I also note that the Scheme will not have, and nor would it be appropriate for it to have, any jurisdiction in relation to the decisions and processes of the Pricing Commissioner. It is unclear where people (other than approved providers) will be able to go with such concerns. I assume that the Pricing Commissioner will fall under the jurisdiction of the Commonwealth Ombudsman as is the case with this Office.

Aged Care Quality Agency Bills

I have already discussed matters to do with the Aged Care Commissioner's powers with regards to the new agency. There is a related change in the Aged Care Quality Agency Bill which is also welcome – that is, the specific power given to the CEO of the new agency to disclose protected information to the Aged Care and Aged Care Pricing Commissioners.

The power is discretionary and linked to the CEO believing, "on reasonable grounds", that disclosure of the information is necessary to assist the Commissioner to perform his or her functions under the Act. While this may lead to some discussion regarding the reasonableness of a request, and the nature of the relevant Commissioner's functions, it will give the CEO similar powers to the Secretary to release protected information. In the case of this Office, this information is necessary for the Commissioner to examine complaints in accordance with his or her statutory functions. My experience has been that while the Department routinely releases relevant protected information to this Office, the existing accreditation agency is reluctant to do so. Giving the CEO the explicit power will improve the ability of the Aged Care and Pricing Commissioners to examine issues with all relevant information.

Finally, I note the Explanatory Memorandum for the Bill states the new agency will be the "sole agency that approved providers will deal with in relation to the quality assurance of the aged care services that they deliver, whether those services are delivered in a residential setting or in the form of home care". The extent to which its quality assurance activities for aged care will extend beyond the kind of accreditation and education activities undertaken by the current agency is unclear. However, the establishment of an agency with a clear mandate for quality improvement in aged care, which is reflected in its name, is contemporary and timely. It provides great potential for leading international initiatives in quality and safety, including those being promoted in the health sector by the Australian Commission on Quality and Safety in Healthcare, to be significantly advanced in aged care.

Thank you again for this opportunity to comment on the proposed legislative changes. I would be happy to provide further information.

Rae Lamb
Aged Care Commissioner

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