



**Australian  
Human Rights  
Commission**

**Age Discrimination Commissioner**  
**The Hon Dr Kay Patterson**

10 November 2021

Committee Secretary  
Senate Standing Committee on Community Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee Secretary,

**Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Bill 2021 (provisions)**

I am writing to you regarding the Senate Standing Committee on Community Affairs inquiry into the Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Bill 2021 (the Inquiry).

The Australian Human Rights Commission (the Commission) welcomes the opportunity to respond to the introduction of this proposed legislation which aims to provide greater safety and protection for older Australians accessing residential and in-home aged care.

As Age Discrimination Commissioner, it is my role to assist individuals and organisations to understand their rights and meet their legal responsibilities under the *Age Discrimination Act 2004* (Cth), legislation which protects individuals from discrimination on the basis of age. I have chosen three priority areas for my term as Age Discrimination Commissioner—age discrimination and the workplace, older women’s risk of homelessness and elder abuse in the community.

While I hold deep concerns about quality and safety issues in aged care, this has not been the central focus of my term. This was in light of the fact that there is an Aged Care Quality and Safety Commission which is responsible for protecting and enhancing the safety, health and wellbeing of people receiving aged care services, and is better placed to respond to such matters directly.

In addition, I work in conjunction with Older Person's Advocacy Network (OPAN), and its Chief Executive Officer Craig Gear, which is funded by the Australian Government to deliver the National Aged Care Advocacy Program (NACAP), to advocate on behalf of those in residential aged care and those receiving aged care in the home.

I have focused on older Australians not receiving aged care and the abuse or potential abuse of their human rights, for example through misuse of financial documents or scams. A number of other human rights themes have also emerged concerning the delivery of person-centred care and the privacy, autonomy and independence of aged care clients.

This proposed legislation represents a significant step towards responding to some of the key issues highlighted by the Royal Commission into Aged Care Quality and Safety and recommendations made to address these.

## **Schedule 2: Amendments relating to screening of aged care workers, and governing persons, of approved providers**

As Age Discrimination Commissioner, I welcome harmonisation of a centralised screening system and mutual recognition of screening checks across the aged care and disability support sectors. I support legislative amendments proposed under Schedule 2, in particular:

- The obligation on providers to screen aged care workers, including employees, volunteers or any others engaged by providers or a contractor or subcontractor of a provider.
- The obligation to screen "governing persons".

The Commission supports the expansion of the role of the Aged Care Quality and Safety Commission to establish, implement and maintain an Aged Care Screening Database and that information on cleared and excluded individuals be shared with approved National Disability Insurance Scheme (NDIS) providers, their contractors or subcontractors, as well as the NDIS Quality and Safeguards Commission and Worker Screening Units.

In addition, the Commission requests that the legislation includes a mechanism with appropriate privacy processes in place whereby older people who self-manage their home care package and directly employ or sub-contract their own workers can check whether the individuals they employ are cleared or excluded individuals.

### **Schedule 3: Amendment relating to code of conduct and banning orders**

For a Code of Conduct to be effective, it must be linked to the Charter of Aged Care Rights and the Aged Care Quality Standards. Such a code should be consistent with and reinforce the expectations and requirements already outlined in these documents, rather than create potentially different expectations. The Code should also embed cultural safety and inclusivity practices and be relevant to the aged care workforce.

The Commission supports the application of the Code to governing persons as well as workers, as they should be held to the same, if not a higher level of accountability.

### **Schedule 4: Amendments relating to the extension of incident management and reporting**

The Commission welcomes the inclusion of home care and flexible care delivered in the home or a community setting in the Serious Incident Response Scheme.

#### **Home Care Assurance Reviews**

As Age Discrimination Commissioner, given my advocacy on elder abuse in the community, I support the role of home care assurance reviews as a mechanism to provide greater oversight of home care providers. I wish to raise a concern that arrangements for home care assurance reviews will not negatively impact aged care providers who offer consumers an option to “self-manage” their home care package by creating an unintended consequence of leading to self-management being cost prohibitive to providers, thereby resulting in a reduction in benefit to consumers due to unreasonable regulatory burden.

I wish to request that consideration also be given to ensuring, particularly in relation to aged care in the home, that individuals, their carers and cleared workers are provided with information regarding elder abuse, including the red flags for elder abuse and the national elder abuse helpline, 1800 ELDERHelp (1800 353 374).

#### **Other Comments**

The Commission also supports the following proposed changes:

- Subsection 63-1D(9): the governing body of an approved provider must ensure staff have the appropriate qualifications, skills or experience to

provide the relevant care, and are given opportunities to develop their capabilities. This should include sufficient training in relation to identifying and responding to elder abuse.

- Section 63-1G: approved providers must provide an annual statement that will be made available publicly on My Aged Care. It will be important that these statements are prepared in a form that is accessible for people with disability and those who are unable to read English or have limited access to technology.

Given my focus on elder abuse I wish to request that consideration be given to a requirement that managers and governing persons in residential aged care services undertake training in relation to the rights of residents with regards to power of attorney and enduring documents and the responsibilities of their principals. In addition, that consideration be given to a mechanism to ensure that managers are aware of appropriate responses and referral pathways in relation to elder abuse perpetrated, for example by aged care workers, relatives or others.

Overall, the same protections for older people accessing aged care in residential aged care services should apply to those accessing aged care services in the home or community, where this is relevant, including provisions for those who self-manage their home aged care package.

I thank you for the opportunity to provide a submission to the Inquiry on behalf of supporting and protecting the human rights of older Australians.

Yours sincerely

The Hon Dr Kay Patterson AO  
**Age Discrimination Commissioner**