

4 June 2021

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

Submitted via email to: community.affairs.sen@aph.gov.au

Dear Secretary

**AGED CARE AND OTHER LEGISLATION AMENDMENT (ROYAL COMMISSION RESPONSE NO. 1) BILL 2021
(provisions)**

Council on the Ageing (COTA) Australia welcomes the opportunity to respond to the introduction of this important legislation that principally aims to provide greater protection and safety for older people in residential aged care and stronger accountability on providers to deliver quality home care services.

COTA Australia is the national consumer peak body for older Australians. Through its own networks and those of the State and Territory Councils on the Ageing (COTAs) around Australia we represent more than 1,000 seniors' organisation members - which jointly represent over 500,000 older Australians - and over 45,000 individual members and supporters.

This legislation is a significant step forward in responding to certain of the key issues highlighted, and recommendations made, by the Royal Commission into Aged Care Quality and Safety.

Restrictive Practices

COTA Australia supports legislative and policy change that reduces the use of chemical and physical restraint in residential aged care.

Establishing a new definition of 'restrictive practice', replacing the wording 'chemical and physical restraint', is a welcome change as it provides for a broader range of harmful actions and circumstances and aligns with the definition applied in the National Disability Insurance Scheme.

We strongly support the proposals in this Bill for improved requirements regarding informed consent and the regular emphasis and focus on restrictive practices being used only as a last resort after other strategies have been employed and informed consent received. Consideration of risk to the older person and others and reference to User Rights principles is also important.

Of some concern is the lack of detail in the Bill regarding what constitutes an 'emergency', in which informed consent and last resort principles need not apply. There is no maximum time that an "emergency" may continue before these principles apply again, leaving open the possibility of an emergency continuing for some time. The Explanatory Memorandum states that a change in behaviour can constitute an emergency but provides no other details of which we are currently aware.

COTA Australia urges the Committee to be satisfied that the 'excuse' of an emergency will not be allowed to become a loophole through which ongoing restrictions could occur over a prolonged period. We would submit that no more than 7 days would be the absolute maximum period that 'emergency' rules should apply, and we would prefer a shorter period.

Further, we note that once substituted decision makers are informed of the emergency actions taken, consent on behalf of the care recipient must be received for ongoing treatment under the non-emergency procedures.

We appreciate that the Bill, through the Quality-of-Care Principles, will allow some flexibility in practices or interventions to respond to challenging behaviour in a residential aged care setting. However, this must be balanced with ensuring that protections for residents are adhered to.

COTA Australia supports the monitoring and compliance of restrictive practices by the Aged Care Quality and Safety Commission including the power to give compliance notices to approved providers when they are not complying with last resort principles, and for civil penalties to apply for failure to comply with such notices.

Home Care Assurance Reviews

COTA Australia supports greater oversight of home care providers through home care assurance reviews. The Bill enables legislative powers for the Department to both monitor the appropriateness and effectiveness of home care service delivery and inform the development of home care policy, service design and professional development of approved providers.

The Bill provides suitable detail on the scope of assurance reviews including the use of subsidies and charges, how providers structure their financial accounting, the nature and type of home care services provided, and the way providers respond to care recipients.

Importantly, the Secretary has provision to add other matters to reviews and the ability to issue notices to providers to release information and documents and notices for officers, employees, or agents to question providers to seek answers required in a review.

It is pleasing that the assurance reviews will provide greater transparency for consumers through the capacity of the Secretary to prepare and publish reports on assurance reviews including any recommendations and conclusions. It is understood that these published reports will include all information excluding information that is personal.

However, COTA Australia once again raises its concern that Section 86 in the current Aged Care Act results in restrictions on disclosure that are too broad, and this can contribute to a lack of transparency and diminished public reporting and accountability about the practices and culture of aged care services.

Under the current Act it is an offence for people working in the aged care system to record or disclose certain vaguely defined information whilst undertaking their duties, including Community Visitors and National Aged Care Advocacy Program services. Increased transparency across the aged care system, including in the future Aged Care Act, will be a key litmus test for whether the aged care reforms, based on the recommendations of the Royal Commission, will be successful.

We acknowledge that we are not lawyers or experts in drafting legislation, but COTA Australia is unable to assess with confidence the interaction of Section 86 and the proposed assurance review reports. We suggest the Committee seeks assurances that the content of 'assurance review' reports will not be hindered by Section 86 and that the Parliament should not feel it necessary to provide the Secretary with specific powers to ensure that the maximum appropriate amount of information from assurance reports is made public.

In another regard, it has been drawn to our attention that some investigations of the Aged Care Quality and Safety Commission are reportedly placing unwarranted and onerous obligations on aged care providers who offer consumers the option to 'self-manage' their home care package.

COTA Australia seeks assurances from the Government that a focus on 'efficient and effective' arrangements in home care assurance reviews will not lead to self-management being cost prohibitive to providers and of heavily reduced benefit to consumers due to unreasonable regulatory burden. We will be raising this concern with the Minister, the Department of Health and the Aged Care Quality and Safety Commission.

Aged Care Financing Authority

The Bill removes the legislated requirement to have an 'Aged Care Financing Authority' and provides that once passed a separate instrument will repeal the functions and governance arrangements of the current Aged Care Financing Authority (ACFA) under the Committees Principles 2014.

Based on statements by Ministers, a new advisory group reporting to the new National Aged Care Advisory Council will replace ACFA and commence operations from July 2021 to advise on financing issues in aged care. COTA Australia has some concern that insufficient information regarding these arrangements makes it difficult to assess the level of independence the Council or its advisory groups would have.

Since 2012, in addition to providing advice to the Minister on many key issues in aged care financing, ACFA has published well respected and widely well received annual reports providing important longitudinal data about the aged care system. It has also been required to consult with consumers, the aged care sector, and the finance sector as part of its role independent advisory role.

In the lead up to the Government's response to the Royal Commission's report, COTA Australia along with eleven other consumer organisations, argued that an independent aged care pricing authority was required that would encompass the functions of ACFA and provide independent price setting.

The Government has alternatively decided, in line with the recommendation of Commissioner Briggs, that the existing Hospital Pricing Authority will be expanded to encompass the Aged Care Pricing Authority role and that the Government will consider advice regarding fair and efficient pricing from this new body which of course has implications for funding increases.

While accepting this decision COTA Australia is concerned that, at the present time, the Government is not publicly committing to commissioning and publishing independent annual reports including information on the impact of funding decisions on the viability and sustainability of the aged care sector and the ability of care recipients to access quality aged care.

COTA Australia proposes that the Committee seek assurances from the Government about how independent reports will be prepared and delivered within the new governance arrangements.

Thank you again for the opportunity to provide a submission in relation to the *Aged Care and other Legislation Amendment (Royal Commission Response No. 1) Bill 2021*. We look forward to an opportunity to put forward our views and further explain our position before the inquiry. Please contact me to follow up any aspect of this submission.

Yours sincerely,

Ian Yates AM
Chief Executive