



# Submission on the Inspector-General of Aged Care Bill 2023

## About OPAN

Formed in March 2017, the Older Persons Advocacy Network (OPAN) is a national network comprised of nine state and territory organisations that have been successfully delivering advocacy, information and education services to older people across Australia for over 30 years. Our members are also known as State Delivery Organisations (SDOs). The OPAN SDOs are:

ACT	ACT Disability, Aged and Carer Advocacy Services	SA	Aged Rights Advocacy Service (ARAS)
NSW	Seniors Rights Service (SRS)	TAS	Advocacy Tasmania
NT	Darwin Community Legal Service	VIC	Elder Rights Advocacy (ERA)
NT	CatholicCareNT (Central Australia)	WA	Advocare
QLD	Aged and Disability Advocacy Australia (ADA Australia)		

OPAN is funded by the Australian Government to deliver the National Aged Care Advocacy Program (NACAP). OPAN aims to provide a national voice for aged care advocacy and promote excellence and national consistency in the delivery of advocacy services under the NACAP.

OPAN's free services support older people and their representatives to understand and address issues related to Commonwealth funded aged care services. We achieve this through the delivery of education, information and individual advocacy support. In 2021/22, OPAN delivered information and advocacy support to over 27,000 people across the nation.

OPAN has established our National Older Persons Reference Group (NOPRG), consisting of people aged between 50 – 93 years, from diverse backgrounds and life experiences. NOPRG Members live across and include people living with dementia, people with a disability, Aboriginal and Torres Strait Islander peoples, people who are Culturally, Ethnically and Linguistically Diverse, Forgotten Australians and people from LGBTIQ+ communities. The purpose of the NOPRG is to ensure that OPAN hears directly from and engages with older people across Australia. The NOPRG provides strategic & systemic advice, from a consumer, carer and community perspective, in relation to aged care policy, including systemic reforms and changes.

OPAN is always on the side of the older person we are supporting. It is an independent body with no membership beyond the nine SDOs. This independence is a key strength both for individual advocacy and for our systemic advocacy.

## The Role of the Inspector-General

As noted in our submission to the Draft Bill, OPAN strongly supports the critical role of the Inspector-General in calling out systemic issues and significant problems across the aged care system and making recommendations to Government for improvement. We believe the Bill provides for significantly increased system accountability and transparency through reporting to Parliament and maintaining a strong focus on implementation of Royal Commission recommendations. We strongly support the Inspector-General of Aged Care having powers to deal with complaints about the Department of Health and Aged Care, the Aged Care Quality and Safety Commission, and the Aged Care Financing Authority.

OPAN welcomes the independent status of the Inspector General and the Inspector General's coercive information-gathering powers. In addition, we support the power of the Inspector-General to *“compel a government entity to respond to the recommendations of a review and to publish that response in conjunction with the final report of the review”*.

OPAN notes that in the discussion around Recommendation 12: Inspector-General of Aged Care, made by the Royal Commission, the Commissioners recommend that *“The Quality Regulator should conduct the complaints scheme, and that any person who is dissatisfied with the way their complaint has been handled by that body, or considers the complaint otherwise warrants the attention of the Inspector-General, may refer the matter to the Inspector-General.”* However, the Bill explicitly excludes the Inspector General from considering individual complaints and actions. However, collecting feedback from older people about how their complaints have been handled, for example where they have not been informed of the outcome or where an entity does not follow through on recommended actions, is an important source of data for the Inspector-General in their monitoring role. It would be beneficial to see older people being able to submit their concerns about complaint handling and outcomes to the Inspector-General as part of the process of identifying systemic issues.

OPAN also supports the protections offered to people who provide information or assistance to the Inspector-General. We support the creation of a series of offences and penalties for refusing to assist the Inspector-General, breaching confidentiality or victimising people who provide information or assistance.

## Role of the Inspector General in overseeing the Human Rights-based Aged Care Act

OPAN is dismayed at the omission from the Bill of any role or function for the Inspector-General in protecting and promoting the human rights of older people accessing aged care services under the proposed new human rights-based Aged Care Act. Royal Commission recommendations 1,2, and 3 established that the foundations of a new aged care system were a new Act, specifying the rights of older people seeking and receiving aged care, with the purpose of securing those rights and specifying key rights-related principles. In the context of the Inspector-General's responsibilities for overseeing the current Aged Care Act, an explicit focus on human rights is needed in this Bill.

The human rights of older people seeking and using aged care services should be at the centre of the Inspector-General's stronger focus on accountability. The Royal Commission final report outlined that the Inspector-General should have a broad scope to review "... systemic issues relating to the performance of providers and treatment of people who need care."<sup>1</sup> A systemic human rights focus on the treatment of people who need care is absent from this draft Bill.

OPAN recommends the Bill makes explicit the Inspector-General's oversight role of human rights across the Australian aged care system, in line with the proposed new human rights-based Aged Care Act. Ideally this should be included within the objects of the role of the Inspector-General now, as it relates to the objects and operation of the new Aged Care Act.

OPAN recognises that the Inspector-General Bill is being considered by parliament at a time prior to the details of the new Aged Care Act and any rights-based provisions and remedies it may or may not contain. In the absence of an Exposure Draft for the new Aged Care Act, OPAN would seek an undertaking by government for the role of the Inspector-General to cover the assessment of the effectiveness of the Aged Care Act in all aspects and objectives and principles, including the effectiveness of any legislated principles and requirements in relation to human rights the new Act may contain. This may include engaging with the Australian Human Rights Commission in relation to alignment with their roles and functions.

OPAN considers that all Inspector-General reports tabled in Parliament; Review reports, Royal Commission reports, Ad hoc reports and corporate reports, should include assessment of the functioning of the Aged Care Act in enshrining the rights of older people who are seeking or receiving aged care. They should also all report on the

functioning of the Aged Care Act in administering the two paramount principles for the administration of the new Act recommended by the Royal Commission:

1. to ensure the safety, health and wellbeing of people receiving aged care
2. to put older people first so that their preferences and needs drive the delivery of care.

## Reporting on the Implementation of the Royal Commission Recommendations

OPAN supports the role of the Inspector-General in monitoring and reporting on the implementation of the recommendations of the Aged Care Royal Commission into Aged Care Quality and Safety (Royal Commission).

OPAN recommends the Inspector-General should be empowered to make additional reports to Parliament where recommendations are not acted upon or progress against Royal Commission recommendations is impeded or stalled through the actions or inactions of Commonwealth agencies. Given the size of the disparity between the current and future aged care systems identified by the Royal Commission, OPAN recommends these reports should be like Closing the Gap reports.<sup>ii</sup> That is, they should identify priority reforms, set targets, report progress, and track implementation, including progress towards older people having a genuine say in their care and the design and delivery of aged care policies, programs and services.

## Appointment of the Inspector-General

OPAN supports the Bill establishing the Inspector-General as a statutory office holder, appointed by the Governor-General of Australia. However, the Bill does not specify the recruitment process for the role. We consider it is crucial for the success of this new office that recruitment occurs via a public, open and transparent process applying due diligence to nomination, consideration, and appointment. We further recommend that the Bill protects the independence of the Inspector-General by precluding any person involved in funding, regulating or delivering aged care services in the previous 3 - 5 years from being appointed to the role.

## Recommendations

OPAN recommends the Bill is amended to state that:

1. The functions of the Inspector-General include monitoring, investigating and reporting to the Minister and Parliament on the protection and promotion of the human rights of older people in aged care under the proposed new Aged Care Act.
2. The Inspector General's reports on the implementation of the Royal Commission recommendations should identify priority reforms, set targets, report progress, and track implementation, including progress towards older people having a

genuine say in their care and the design and delivery of aged care policies, programs and services.

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<sup>i</sup> Commonwealth of Australia, Royal Commission into Aged Care Quality and Safety, [Final Report: Care, Dignity and Respect, Vol. 1, Summary and Recommendations](#), p.16

<sup>ii</sup> Closing the Gap, [Reports](#)