



NATSIAACC
NATIONAL ABORIGINAL & TORRES STRAIT ISLANDER
AGEING AND AGED CARE COUNCIL

3 February 2023

To: IGTF@health.gov.au

Response to the Exposure Draft of the Inspector-General of Aged Care Bill

The National Aboriginal and Torres Strait Islander Ageing and Aged Care Council (NATSIAACC) welcomes the issuing of the exposure draft as an important step in the development of Australia's new aged care system, as recommended by the Royal Commission.

The exposure draft implements the emphasis in the Royal Commission Report regarding identifying and addressing systemic issues in the aged care system to improve transparency and accountability. We also commend the establishment of the Inspector-General as a statutory office to maximise independence.

The discussion paper notes that the Inspector-General will be just one part of a revamped and culturally safe aged care system, with new complaints and quality assurance processes and the yet-to-be established Aboriginal and Torres Strait Islander Aged Care Commissioner. In NATSIAACC's view it is not possible to give a thorough and considered response to the draft bill without an overall picture of how these other mechanisms will work together. This is especially pertinent when aiming to resolve entrenched inequities and anomalies identified by the Royal Commission regarding Aboriginal and Torres Strait Islander aged care.

It is disappointing that nearly two years have passed since the previous government's response and there is still no public statement on how the various initiatives and changes in response to the Royal Commission will be brought together. **In particular, implementation of the Aboriginal and Torres Strait Islander Aged Care Commissioner has not yet progressed even to the stage of initial consultation. This position should be filled urgently to ensure a strong First Nations voice during this crucial planning and decision-making phase.**

In regard to the exposure draft, there are a number of areas where NATSIAACC believes the model proposed must be re-considered to keep faith with the approach proposed in the Royal Commission report.

1. The role proposed for the Inspector-General (IG) has far less scope and authority in complaints handling in several significant ways from the model proposed by the Royal Commission (in Recommendation 12).

- The IG will not be able to review individual regulator decisions on complaints on a "... systematic basis to ensure regulator integrity and performance". The Royal Commission considered (p.82) that "...If a systemic oversight role is conferred without any responsibilities for complaint-handling, there is a risk that the oversight body will never develop the understanding it needs to identify systemic issues... 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."
- The IG will not have a responsibility for dealing with complaints about the System Governor, the Quality Regulator, the Prudential Regulator or the Pricing Authority. Such a capability is crucial if the IG is to truly hold the system accountable. This is a direct contradiction to Recommendation 12.3.
- The draft bill (in the objects section) limits the oversight role of the IG to only "the administration" of the Commonwealth's *complaints management* processes (our emphasis). The

functions of the IG at section 10 do not mention a complaints oversight function at all. This contrasts with the conclusion of the Royal Commission that the institutional framework should include 'independent systemic oversight', i.e., beyond complaints management processes.

2. The **provisions for annual workplans of the IG seem unduly prescriptive**, requiring the IG to forecast in detail its work for the year. The likely need to respond to unforeseen events or issues is dealt with as 'variation' of a workplan which does give some flexibility, but implies these changes should be the exception. The requirement for some annual forecast or commitment by the IG of its work does have merit, however the processes could be improved by requiring:

- that the IG *must* consult bodies other than the Minister (section 13(3)) when preparing a workplan. This could occur through publication of a draft workplan.
 - That the annual workplan be finalised and published by 30 June of the preceding year rather than "as soon as practicable" (section 13(4))
3. **The scope and conduct of reviews should be broadened and improved** (see point 1 above) to:
- Require that public notice be given of all reviews. Currently the bill only requires a notice to be issued to the Minister and affected government entities. To maximise transparency such notices should also be placed on the IG's website.
 - Similarly, submissions must be sought from the public on all reviews, rather than only when the IG chooses to (section 17).
 - In addition to the items at section 19(2) the draft review report should include:
 - The 'trigger' or event leading to conduct of the review
 - The extent of consultations conducted
 - The requirement at section 19(5) that any comments on the report be in writing should be made more flexible, to allow the use of oral or other feedback, such as in community workshops, to be considered.
 - The exposure draft requires (section 23(3) that final review reports should be published "after the report is given to the Minister". To avoid uncertainty we suggest a timeframe for publication be set, such as within 14 days after the report has been given to the Minister.

4. **The requirements to review implementation of Aged Care Royal Commission recommendations should be expanded.**

- The draft bill proposes that the IG conduct two reviews of the implementation by the Commonwealth of the recommendations of the Aged Care Royal Commission. The first by 1 March 2026 and the second by 1 March 2031.
- By the time the IG is fully established, over two years will have already passed since the government response. An early priority task of the IG must be to review the department's early progress including, for example, its performance monitoring framework to ensure this framework is fit-for-purpose and that necessary data is being collected to inform the first formal review.

If the department has any queries regarding this submission, please contact myself at

Lisa Ogolo

CEO

National Aboriginal and Torres Strait Islander Ageing and Aged Care Council