



Inspector-General of Aged Care

Consultation Paper on the Exposure Draft of the Inspector-General of Aged Care Bill

December 2022



Purpose

As part of the 2022-23 October Budget, the Australian Government has committed \$38.7 million over four years to establish an Inspector-General of Aged Care. Consistent with other Inspectors-General, legislation is required to establish this statutory appointment.

The purpose of this paper is to provide an overview of, and seek feedback on, a draft Inspector-General of Aged Care Bill (the Bill).

The establishment of an Inspector-General of Aged Care was recommended (recommendation 12) by the Royal Commission into Aged Care Quality and Safety (Royal Commission).

The Bill proposes the establishment of an independent Inspector-General of Aged Care to be supported by a statutory agency, “The Office of the Inspector-General of Aged Care” (the Office). The intention of establishing an Inspector-General is to improve transparency and accountability across the aged care system through reviewing and reporting on systemic issues which affect the funding, regulation, administration or delivery of aged care.

Why an Inspector-General of Aged Care?

The Royal Commission identified a broad range of problems with the provision of aged care across Australia and made wide-ranging recommendations.

There are already several established government bodies in the aged care system, each with a vital role in ensuring that the system operates cohesively, efficiently, and effectively. However, the Royal Commission recommended a new body be established to provide independent oversight of the processes and decisions within the system and hold government bodies to account.

The establishment of an independent office of the Inspector-General of Aged Care was seen as a means of driving improvements in persistent, sector-wide ‘systemic issues’ in the aged care system. Issues, according to the Royal Commission, that included inadequate funding, variable provider governance and behaviour, an absence of system leadership and governance, and poor access to health care.

As part of a broader suite of recommendations, the Commissioners envisaged the Inspector-General of Aged Care having the following primary functions:

- identify and investigate systemic issues in the provision or regulation of aged care, make recommendations and publicly report its findings
- review all aspects of the aged care system, including the functions and processes of the Department of Health and Aged Care and the Aged Care Quality and Safety Commission, and
- monitor and report on progress of the implementation of Royal Commission recommendations.

It is worth noting that the Inspector-General is one of several new roles and offices that the Royal Commission recommended establishing. Others include the Aged Care Complaints Commissioner and the Aboriginal and Torres Strait Islander Aged Care Commissioner. It is possible there will be interaction between the Inspector-General and both Commissioners, however this remains subject to further consultation and decisions of Government.

Proposed approach to the legislation establishing the Inspector-General and Office of the Inspector-General of Aged Care

Legislation is needed to establish the Office and to provide the Inspector-General with the authority and tools to undertake their role.

The Bill therefore includes the following key components:

- objects and functions
- legislative framework for the Inspector-General's systemic oversight activities
- information gathering powers required to support the Inspector-General's functions
- protections for the Inspector-General and others who may provide information or assistance to them
- criminal offences and civil penalties in relation to the information gathering powers, protections and unauthorised disclosure of information
- administrative provisions.

We are interested in your feedback on each of these elements, which we outline later in this paper.

The intention of this consultation process is to seek feedback specifically on those matters covered by the Bill. The role of the Inspector-General is broader than the scope of the Bill. Some aspects of the role do not require specific legislation and/or the associated powers and protections it affords. This may include, for example, education and engagement activities about the work of the Office. There will be future opportunities to provide feedback on functions outside the scope of the Bill.

Who would we like to hear from?

We recognise the critical importance stakeholders play in developing a better aged care system. We are keen to consult to ensure the draft Bill will sufficiently enable the Inspector-General to undertake the independent oversight role recommended by the Royal Commission.

We are interested in feedback from peak and advocacy groups representing aged care system stakeholders, government departments and agencies, research organisations and universities, older Australians, their families, carers and those working in aged care, and aged care service providers.

How to provide your feedback

You are invited to provide feedback via the following email: IGTF@health.gov.au.

You may choose to address some or all the questions in the consultation paper. You should not feel constrained to only address the questions – they are included as a guide, to support people to structure their feedback.

To share your views, submit your feedback through the Department's Aged Care Engagement Hub by 5pm (AEDT), 27 January 2023.

Proposed content of the Bill

1. Objects and Functions

The objects and functions establish the scope of the Inspector-General's role.

The 'objects' provision establishes the objectives of the legislation. It delivers on the intent of the recommendations of the Royal Commission that relate to the Inspector-General; driving greater accountability and transparency across the aged care system, and facilitating positive system change for older Australians.

This would be achieved by the Inspector-General undertaking the following functions:

- providing independent oversight of the aged care system
- identifying systemic issues through independent reviews and making recommendations for improvement
- ensuring relevant entities with a governance or administrative role within the aged care system are subject to greater scrutiny and accountability
- providing oversight of the complaints management framework across the aged care system
- reporting publicly on systemic issues, the extent to which the aged care system attains the objectives of the aged care legislation, and progress on the implementation of aged care reforms.

We are proposing that the Inspector-General be given the authority to look at matters connected to the aged care policy of the Australian Government. This will include the Australian Government's administration, regulation and funding of aged care services and services related to aged care, such as advocacy services.

The Inspector-General will focus on the performance of the Department of Health and Aged Care, the Aged Care Safety and Quality Commission and the Independent Health and Aged Care Pricing Authority. This will include examining the effectiveness of the system as a whole. The Inspector-General will complement, not duplicate, the roles of other government agencies currently operating within the aged care system.

The intention is for the Inspector-General to provide independent oversight and drive greater transparency and accountability across the whole system. Through reviewing systemic issues in the sector and reporting to Parliament, the Inspector-General will drive continuous improvement in aged care, with the aim of building confidence in an aged care system that meets the diverse needs of older Australians. It is anticipated that as part of this function the Inspector-General will also acknowledge parts of the system that are working well, acknowledge progress and how successful administration or delivery could be replicated across the system.

The Inspector-General will also oversight the implementation of reforms responding to the recommendations of the Royal Commission and report on the extent to which the aged care system achieves the objectives of aged care legislation.

The Inspector-General will provide oversight of the complaints management framework throughout the aged care system. Importantly, the Inspector-General will not receive or

assess individual complaints, rather, they will consider how complaints are handled and provide recommendations to support a continuous improvement model of the complaints processes. This recognises that there are established complaints mechanisms in place, as well as a proposed Aged Care Complaints Commissioner and the Inspector-General should not duplicate established functions. The Inspector-General's oversight role in complaints will be to critically examine the effectiveness of existing mechanisms to ensure the whole of, or a part of, the aged care complaint management framework is fit-for-purpose and provides an effective, efficient, and accessible complaints mechanisms.

More information on complaint pathways is available in the My Aged Care factsheet: [How to make a complaint](#).

Further explanation of the strategic functions of the Inspector-General is provided in the next section.

2. Systemic oversight

The Inspector-General will provide oversight of the aged care system through:

- **Reviews** which will involve investigating systemic issues in the aged care system in detail (including the complaints management framework and components therein as appropriate).
- **Reports** on the health of the aged care system, the implementation of Royal Commission recommendations, the results of ongoing monitoring and others as required by legislation.
- **Monitoring** the state of the aged care system using data, intelligence and evidence.

Reviews

A review will examine in detail a systemic issue or topic which affects the Australian Government's regulation, administration, or funding of the delivery of aged care services. The Inspector-General will publish a separate report for each completed review and make recommendations informed by robust data, analysis, and intelligence driven insights.

The Inspector-General is likely to examine complaints data to help identify systemic issues that may warrant in-depth review. For example, a significant increase in the number of complaints associated with a particular issue, or particular trends in complaints data would help inform the Inspector-General's review program.

Reviews will engage a range of Commonwealth entities – primarily, the Department of Health and Aged Care, the Aged Care Quality and Safety Commission and the Independent Health and Aged Care Pricing Authority – as well as any other entity participating in the aged care system where appropriate.

We are proposing that the Inspector-General develop and publish a detailed annual work plan of the reviews it intends to conduct each year.

Review Process

We suggest the following process be followed in the conduct of a review.

Phase 1 Planning and scoping. In identifying which issues to review the Inspector-General will rely on sector intelligence and active monitoring of the aged care landscape.

Phase 2 Conducting of a review. Reviews will commence with formal notice given to affected parties. The Inspector-General will then begin information gathering to make an assessment against the review terms of reference.

Access to information will be critical to the Inspector-General's review function. The Inspector-General may review documents, request information, conduct interviews, access premises, and call for submissions as part of its information gathering phase. Parties captured within the scope of the review will be required to provide reasonable assistance and necessary information.

The Inspector-General will generally request information on a voluntary basis. However, where information has not or cannot be provided voluntarily, the Inspector-General will be able to compel any party the Inspector-General reasonably believes to have the information to produce it.

The Inspector-General will analyse and evaluate the information gathered to support any findings or recommendations made in a review report.

Phase 3 The review report. The Inspector-General will prepare a draft report for each review and provide affected parties a reasonable opportunity to respond to the draft report and consider responses prior to finalising their review report. The Inspector-General would have scope to compel a government agency to provide a response to their review recommendations and publish the agency's response with the final report.

The Minister will be required to table the final review report in the Australian Parliament, and the Inspector-General will publish a copy on its website.

While it is not intended that the legislation will detail what will happen to the report and the finding within it once published, we are giving consideration as to how the ongoing monitoring of the implementation of any recommendations made in the final review report should be managed (or occur) to ensure ongoing accountability and transparency.

Reports

We envisage the Inspector-General producing a range of reports, including the following:

- Review reports written at the completion of all reviews undertaken by the Inspector-General in relation to systemic issues in the administration and governance of the aged care system.
- Annual reports on the implementation of the recommendations of the Royal Commission (the frequency of these reports may change over time and cease once all recommendations have been completed).
- A 5 and 10 year report on an evaluation of the effectiveness of Royal Commission reform measures to be undertaken in 2026 and 2031.
- Corporate reports as required under the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* (an Annual Report and Corporate Plan).

Consistent with the overarching function of the Inspector-General to provide oversight of the aged care system, the Inspector-General may choose to prepare reports outside of those required by legislation. Topics could include the performance of Australian Government entities with responsibility for aged care and the adequacy of aged care data. The subject and timing of such reports will be at the discretion of the Inspector-General.

The Inspector-General will publish completed reports on its website and the Minister will table copies in the Australian Parliament.

Monitoring

The Inspector-General will need to maintain a comprehensive understanding of what is happening across the aged care sector. Independent monitoring will help provide this insight.

The monitoring component of the Inspector-General's role will primarily involve gathering intelligence from informed stakeholders and examining information held by government agencies. There will also be an analysis component to monitoring; the Inspector-General will consider the significance of information, determine how to use it, and where appropriate, how to respond to it.

While the intention is not to prescribe the approach to monitoring in the Bill, the general powers and information gathering provisions in the Bill will apply to the monitoring function.

CONSULTATION QUESTIONS

Do you support the proposed approach to: reviews, reports, and monitoring?

Please provide additional comments or suggestions in relation to the approach.

3. Information gathering powers

Access to information will be critical to the Inspector-General's oversight function. We anticipate that the Inspector-General will generally request information on a voluntary basis, however, there may be cases where information has not or cannot be provided voluntarily.

As recommended by the Royal Commission, the Bill confers several powers on the Inspector-General.

The Inspector-General will be able to require a person to provide information, documents and things, or answer questions if they reasonably believe it is relevant to performing oversight of the aged care system.

In addition, the Inspector-General will be granted authority to access buildings of government and non-government organisations who receive funding from the Australian Government for aged care. While they are on site, the organisation would be required to provide the Inspector-General with access to any documents or other property to allow them to undertake their work.

We would expect that the Inspector-General would only use these powers on parties delivering age care directly in exceptional and rare circumstances.

CONSULTATION QUESTIONS

Do you support the proposed information gathering powers?

Are any other powers necessary?

4. Protections for the Inspector-General and others

We are proposing that the Inspector-General have scope to offer a range of protections to people who provide information or assist them.

Protections are needed because the Inspector-General cannot perform its oversight functions effectively without information being provided by people in the aged care system. It is important people can tell the Inspector-General about issues without being afraid of reprisal.

The types of protections include:

- requiring the Inspector-General to protect the information and documents, such that they must not use or disclose them unless authorised by law
- ensuring a person cannot be criminally charged, sued in a civil court, or disciplined for providing information or assisting the Inspector-General
- a person cannot be victimised for providing information or assisting the Inspector-General and can take legal action if they are
- a person can request confidentiality protections from the Inspector-General
- ensuring any information, documents, and evidence a person was compelled to provide cannot be used against them in a future criminal or civil court case.

It is proposed that the protections provided by the Inspector-General will be greater where the Inspector-General has requested or required the information.

CONSULTATION QUESTIONS

Is there anything else we should consider in protecting those who assist the Inspector-General?

5. Criminal offences and civil penalties

To ensure that there is an appropriate deterrent against refusing to provide information or assistance to the Inspector-General, it is appropriate to include associated offences and penalty provisions in the draft Bill. These would be tied to the Inspector-General's information gathering powers and information disclosure provisions.

Offence provisions are warranted to protect against breaches of confidentiality and prevent the victimisation of those who provide assistance.

Wherever possible we have sought to ensure consistency in any offence and penalty provisions with those afforded to other Inspectors-General as well as within other aged care legislation.

CONSULTATION QUESTIONS

Do you support the inclusion of penalties in the Bill?

Are there other deterrents we should consider?

6. Administrative provisions

The draft Bill needs to include a range of administrative provisions to cover the appointment of the Inspector-General, their employment conditions and delegations.

This would include establishing the Inspector-General as a statutory office holder, appointed by the Governor-General of Australia for up to 5 years and eligible for reappointment for a maximum period equivalent to 2 full terms.

We have used standardised provisions covering remuneration, leave, acting arrangements and termination. It is expected that the Inspector-General will be a full-time position, though provision could be made in the legislation for a part-time appointment.

Next steps in the establishment of an Inspector-General of Aged Care

Following consultation on an exposure draft version of the Bill, our goal is to see legislation to establish the Inspector-General introduced into Parliament and enacted into law in mid-2023.