NEW AGED CARE ACT: EXPOSURE DRAFT

Consultation Paper No 2 – Summary

Plain English Version

December 2023

Australian Government - Department of Health and Aged Care (Website)

A new Aged Care Act: exposure draft – Consultation paper no. 2 - summary – Plain English version

- ***The numbering in this feedback relates to page numbers in the above titled document (Plain English version)***

Introduction

About the new Aged Care Act **Page 2**

The new Act is the next step in the Government's plan to fix the aged care crisis, it follows:
• making aged care transparent with ***Star Ratings ?***

(Star Ratings have not been transparent and have many "flaws" and it will not assist consumers in seeking appropriate services.

- *It is my belief, opinion, and from evidence presented by various groups indicates that the Star Ratings needs a lot of work to make it appropriate for use.*

My experience with a certain residential care facility proves my beliefs. It has a "4 Star Rating" even after many reports of "Issues and failures" presented by residents, family, and advocates to the Aged Care Complaints Commission.

Even now I have been receiving issues about staffing, lack of care and neglect coming from this facility. I had previously contacted ARAS (OPAN) in the past, and again recently to resolve issues of abuse and neglect for a resident.

• increased direct care for more than 250,000 older people in residential care

• ***delivering higher standards*** *for the valued workforce*

- *Even now, there are numerous reports in the media about neglect and poor performance in Aged Care Facilities. You would think and "hope" that after all the negative correspondence and news, Aged Care Providers would have "Picked up their Act".*

• putting nurses back into nursing homes and increasing wages for aged care workers.

Page 2

The Government is taking a phased approach to achieve significant reform in aged care and develop the new Aged Care Act.

The Government will introduce the proposed new laws (draft law) for the new Act in 2024. The new Act will aim to strengthen the aged care system. It will make sure that people accessing funded aged care:

• *are safe ,*

• ***are treated with respect ??*** No, they are not presently.

- *There is a Code of Conduct) that is not being followed and I doubt the Complaints Commission has the power or will to assist resident with complaints.*

• *have the quality of life they deserve.*

***** We would like to hear what you think about the exposure draft.*****

What is this summary?

Page 3

- ***Tell us what you think.***

We want to know:

• *Do we describe a rights-based approach well? Is it clear that older people will be at the centre of aged care?* ***To a point; In printed words only***
• *Is it clear how older people's rights will be upheld?* ***NO***
• *Is it clear how older people will be empowered to make decisions?* ***NO***
• *Is it clear what aged care providers and workers must do**? (NO)***

Chapter 1 – Introduction

Page 6

We will base the new Act on:

• *a Statement of Rights – an outline of the rights older people have in the funded aged care system*

• *a Statement of Principles – guidelines that the* ***Government*** *(Specify fully)* ***must consider*** *? when making decisions under the new Act.* ***Replace with – "Must Act"***

This chapter explains the ideas and terms used in the new Act. This makes sure everyone uses the terms in the same way, and that roles and duties are clear. ***(There are not)***

Part 3 – Aged care rights and principles **Page 9**

The new Act will include a Statement of Rights and a Statement of Principles. These will describe:

• what older people using aged care services can expect ?? from providers
If your last comment- "sentence" it refers to "both rights" it should indicate so! But it does not.
Using the term "Providers" only would only relate to the Statement of Rights. Statement of Principles do not pertain to Providers.

The Aged Care Providers have very little "or" nothing to do with the "Statement of Principles" as they have been prepared.

They may be considered ?? by Government groups and officials but do not apply to providers. "Still does not mean anything and has "no consequences".

- ***The Statement of Principle "should" (MUST) be a requirement for Aged Care Providers in their daily care routines, functions, and policies. That means a possible "rewrite" and to make it law. (Legislated)***

Part 3 dot point two.

• what people or organisations "~~must think about~~" when acting or making decisions under the new Act. **This is not clear and means nothing.** Also *replace with – **"Must Act".***

(Make it clear that it refers to the "Principles" which needs work as indicated above.)

This summary has poor wording in relation to these two "Rights". I hope I find the Act more inclusive? As these "have not" been described fully in this exposure summary.

- ***Statement of Rights*** ***Page 9***

The Statement of Rights "means nothing" unless it becomes "law and legislated". as mentioned by OPAN/COTA

*** The "Aged Care Code of Conduct", the subsequent reviews/changes, and "updated codes" meant nothing. They were abused, ignored, and "not" put into practice by Aged Care Providers. Nor were they enforced by the Commission.*

The processes and work done by OPAN to introduce these, and to explain them to the resident's, were a waste of time and money. OPAN staff travelled around Australia to introduce these. I attended an Adelaide event, at a metro hotel/function centre.
"It sounded great" but back in the Aged Care Facility it meant nothing. Nor did it at the "Commission". Who did nothing to ensure the rights of the older person in care.

<u>Aged Care Rights (Part 3)</u> ***<u>Page 9</u>***

The Statement of Rights "will help" ***<u>(Replace with "ensure")</u>*** ~~make sure~~ the needs of older people are at the centre of the new aged care system. The statement includes how to support specific rights. *No! it does not*.

The new Act will make it clear that providers: ***<u>Page 9</u>***

- follow the Statement of Rights

(No wording to suggest this will be adopted by Aged Care Providers.)

- <u>must have ways of working</u> that support upholding these rights.

(Poor wording which is "airy fairy" and again means nothing)

Providers must also:

- show that they understand the rights

HOW ?? and to whom?

- explain these rights to the older people who use their services.

WASN"T DONE with the Charter of Rights which was a requirement at the time.
Its not going to happen (again). how are you going to police this, until its too late and a serious incident has and will occur.

<u>No</u>! it will not make it clear if Rights are broken. There is no indication that the older person (resident) will be supported by the Commission in its enforcement and or the use of the Complaints Mechanism.

1 Complains are not dealt with appropriately or are covered up by Aged Carr Providers

2 **<u>The Commissions</u>** ***<u>Complaints mechanism is also "Brocken.</u>***

<u>Aged Care Principles - "Statement of Principles"</u> **<u>Page 9</u>**

- The Statement of Principles <u>guides</u> how <u>people</u> make decisions and what they do under the new Act. This includes what the department and the Commission do.
  - ***<u>What People</u>****<u>? list all other person and groups</u>*
  - ***<u>GUIDES</u>*** *<u>is open to non-conformance and means nothing</u>*.
- It aims to <u>make sure</u> that <u>people and organisations</u> manage the new Act in a way that is in line with its purpose.
  - *<u>No. It does not; due to poor meanings, no clarity, and no enforcement.</u>*

<u>Page 9</u>

- It reassures people that aged care services will respect and understand their interests, needs and personal situation.

- ***No! It does not; due to poor meanings or no clarity There is "no mention" that Aged Care Providers are included in this Principle (only the Department and the Commission)***

  (Totally confusing and it also means nothing to aged care residents)

- **The "Statement of Principles" needs to be regulated, legislated, and become law.**

- **It needs an "outside body" (regulator) to enforce and *check adherence* by bodies and people pertain to this LAW.**

Part 1 – Objects of the new Act Page 6

The objects of the Act:

• describe the overall purpose of the laws to help courts?? and others ?? understand
I find very little, to No Detail in regard to the above statement.

• make clear that upholding the rights of older people is important.
It might be "important" but until it is enforced it will achieve nothing.
*Again: Thie means nothing unless "all" parts of the Act **are legislated and become law**.*

They explain that a goal of the new Act is an aged care system that:

• is sustainable and able to continue long into the future
• has funded services provided by a workforce that is diverse, ***highly*** trained, and ***skilled***. **There is a major need to upskill the workforce, especially nursing.**

A "major concerns" in aged care that has been reported on numerous times, has and is still neglect and abuse. This also includes "poor clinical care" and continuing "errors in medication" to mention just one.

Nursing staff are *"not up to date"* with clinical standards and the requirement to practice safely. There appears to be a weakness in that staff not being notified or updated about changes in clinical practice/standards. *There should be a reference made to ACQSC* in all clinical requirement, standards, and documentation.

- ***I have heard through "uneducated or uninformed" sources that Aged Care issues are different, when it comes to clinical care: That is completely false and that is why clinical issue, errors occur in Aged Care.***
- ***I would happily debate this with any person .***

The New Act, including, Regulations have little to no mention of correcting the deficiencies in "Care".

Part 2 – Key concepts Page 6

What services will be delivered to older persons?

Services on the list will be organised by **types** of service. For example:

(Page 7 - dot [point 4) ***Apologies for the draw out detail to follow; This It may also need to past on to other areas of health.***

- **transition care** – "short-term" ***specialised care ?*** that helps an older person recover after they've been in hospital. ***It does not occur*** **"efficiently or safely" in the current aged care setting. **** ***It needs to change as a mater or urgency.*****

Transition Care is a ***major issue*** in Society and Aged Care. The lack of Aged Care Provider support and resources, Lack of Government Support, and Oversight (State and Federal) and the Lack of Appropriate Skilled Care have resulted dire consequences.
"Deaths" that were avoidable and harm that was preventable cause to these persons (residents).
I have many years of lived experiences in aged care with family members being in residential care. I am now retired abut I worked as a profession health care worker for 40 years. I worked as an Ambulance Paramedic in South Australia and worked in various fields and roles. *Attendance at Residential Care Facilities* were numerous, varied and for many reasons.

I was approached and asked by an Aged Care Facility Services Manager to assist and work (voluntary) with residents. Their needs, extra support, were many and varied.
I also had a 35-year history working in "Sports Medicine" (outside of my normal work hours). I worked with individuals and teams at National (world events), State, and Local working with adults and children. covering many areas of care including rehabilitation and Teaching including Physio Therapists.

Hence my interest in Transition Care specifically.

The Facility went downhill when a change of manager was assigned to this premises and with a cost-cutting agenda.
Later, resulting in many reports to the Aged Care Complaints Commission by residents and family member including myself.

Neglect, abuse and Avoidable Death were numerous and extreme.

This was the basis of my Address and Presentation to a "Commissioner" at a Public Forum in Adelaide, conducted by the Aged Care Royal Commission. *"Raising the same issues".*

Transition Care **Page 7**

Hospital "bed block" is extreme in Australia causing issue in healthcare generally. Resulting in people dying, waiting for Ambulances to arrive and/or very acutely sick people arriving at hospitals too late.

Transition Care has been in place for a long as I can remember, and the concept is great. People don't need or like to stay away from family. They need assistance with enablement and re-enablement. To get supports to get back home safely.
Unfortunately, some are still very sick and need speciality care which should and can be offered elsewhere. In private facilities a great deal of support is given to patients, with qualified staff including Allied Health. Most individuals in Private Rehabilitation Units outside of the general hospital do very well and go home safely. Those with Private Health Cover have the advantage, pensioners do not.

My experiences and observations in Aged Care are completely different. Persons are treated like Aged Care Residents and get very little care or needed attention. If they become unwell, they are not diagnosed, nor managed correctly or appropriately. Unfortunate and avoidable consequences occurring. GPs are reluctant to go to Aged Care Facilities and Locum GP take hours to arrive. The persons own GP does not make out of hours callouts, and do not follow up in aged care due to private or regulatory issues.

I have seen many people transported out by the coroner's department vans.

***In a Transitional Care Unit*: There should be a requirement for a certain type of " High Level - Medical Set-Up" a with "appropriate" *equipment* and appropriately trained staff. *At all times*.** Not just one EN and one carer: With an "on call" RN who may be busy elsewhere.

I even asked the Provider's Operational Director to "fork-out" and purchase a Medical Device - a Defibrillator. The answer was "we don't need one".

A Large multi- storey facility with approx. 170 residents (including transitional care) spread over 6 wings/units.

With staffing numbers to facilitate this practice, 7 days per week, with dozens of family and visitors coming through, 7 day per week. ***She would not commit to spending approx. $2500 for "one" unit****. These are available in almost every public area.*
They had one "defib unit" in their Wellness/ Rehabilitation/Gym Unit which attached to the facility with staff trained to use it. The unit is open to the community members Monday to Friday office hours "at cost". This is locked up when the unit closes.

(A Defib Unit is only useful if applied within about 4 minutes)

There should have been a minimum of 4 Units (if not 5)

Since my request and a few years later, I am aware that the SA. State Government had legislated for more Defib Units to be compulsory placed in more public places.

- Aged Care facilities are a protected environment when they want to be.

There is also too much focus on Advance Care Directive that are miss management and misunderstood in Aged Care. Just let the person die! When I was working, I have been "called out" to aged care facility where family member has been fighting to get assistance for their loved ones.
With staff not calling an Ambulance for various reasons. "No authority" Misunderstanding, Poor Documentation or unable to find Documentation to mention a few.

I have even seen and witnessed "family members" who were emotional upset and demanding help; being harassed and intimidated by management of aged care providers to shut them up.

How will providers delivery services? **Page 7**

Registered providers must deliver ***HIGH*** quality and safe aged care services. (add high)

Page 8

- ~~They must~~ ~~meet~~ their obligations ?? under the new Act and ~~follow~~ ***ADHER*** to the Statement of Rights.
  Only possible when this has been legislated and becomes law.

Providers delivering certain services must also ~~follow~~ ***ADHER TO*** the strengthened Aged Care Quality Standards (Quality Standards).

Embedding high quality care **Page 8**

The new Act outlines what 'high-quality care' means. This is to create a shared understanding across the aged care sector.

High quality aged care is care that puts older people first and upholds their rights.

- ***There is no mention of "Clinical Care" in this statement and it's supporting dot points.***

Clinical Care is and has been, a "major" failing in Aged Care resulting in neglect, harm, and deaths.
Basic Human Right and Rights to Proper/ Safe Medical Care

NSQHS Standards,

The Australian Charter of Health Care Rights.

CONSENT (communication) ***to treatment is missing completely in aged care***. This is the main cause of misadventures, concerns, and the leading area of complaints. As a past health

care professional this is and was main stay in all Health Care being it personal care or clinical care.
Residents in Aged Care are just a number; I refer to the Aged Care Royal Commissions Findings and the Disability Care Royal Commission Findings.
I used to teach/train St John Ambulance Cadets (a youth group aged 10 yrs. to 16 yrs.) The Five Rights in the Administration of Medication. They also trained and prepared balance meals and presented them on Trays. They completed in Competitions on the basis of food, when and why this is prepared and to whom.

Aged Care Nurses (especially Enrolled Nurses are failing the basis skills I taught children.

I had the need to report an EN for medication failings. I reported her to the Nurses Board, and she was put on a "Supervised Learning Program". The Nursing Home where my mother was in care, was also later Heavily Sanctioned by the Commission for many other multiple breaches.

Age Care carers/workers are also failing the basic food hygiene practices. Coughing, sneezing on food being delivered and not considering changing the food when food is compromised. I had a phone call from a resident on Wednesday 7th February which highlights the continued problems. I suggested he contact management about these and other issue he was experiencing.

Infection control is POOR. There had been some improvement since COVID but generally infections were spread by staff. *I reported many observations to management.*

I am aware it is covered in the "Standards" but the Clinical Standards for Aged care does not go far enough to protect the residents or the older person.

Consent "does not" just apply in the "Clinical Care" and or under the "Standards". It applies to everyday care and needs of the older person in care.

Information below copied from a" Law Society" Website.

Summary of rights and responsibilities

Patients' main rights
The consumer of health services has the right to:

- decide whether or not to undergo medical treatment after receiving a reasonable and timely explanation of what the treatment involves, and the risks associated with the treatment.
- be treated with reasonable care and skill by the (ANY) health care provider.
- have medical information and treatment kept confidential.

Other rights
The consumer of health services also has the right to:

- access health services appropriate to their needs.
- withdraw consent at any time.
- refuse experimental or research treatment.
- obtain a second opinion.
- leave a hospital at any time (except in the cases of infectious diseases or certain psychiatric conditions) - if the patient leaves without the hospital's consent the patient may be responsible for any injury or illness caused or aggravated by this action.
- be treated with care, consideration and dignity, and without discrimination.
- ~~access abortions and late term abortions (beyond 22 weeks 6 days pregnant), see Abortions~~
- ~~safety, well being, privacy and dignity whilst accessing abortion services, see Abortions - Safe Access Zones~~
- consent or refuse to consent to the use of restrictive practices in aged care, or have a substitute decision maker provide such consent or refusal (Quality of Care Principles 2014 s 15FA)
- be consulted on the use of restrictive practice by providers under the National Disability Insurance Scheme (see Restrictive practices by registered *NDIS* providers)
- be fully informed of the costs of any medical procedure proposed, including any further costs associated with rehabilitation.
- request medical files from the doctor or hospital (public hospital records can be accessed under the Freedom of Information Act 1991 (SA), and some records held by private doctors or hospitals can be accessed under the Privacy Act 1988 (Cth), see Obtaining medical records
- obtain legal advice about any matter arising from the treatment (at the patient's own cost)
- contact friends, relatives, solicitors, members of the clergy and so on for support and to discuss problems.
- exercise any of these rights on behalf of a ~~child or ward if he or she is the parent~~ or guardian.
- ~~ask to stay with a child at all times except where separation is necessary for medical reasons.~~
- inform nursing staff if he or she does not want to see, or speak to, a visitor or caller.
- complain about their treatment and have their complaint dealt with appropriately.

Responsibilities

Consumers of health services have a responsibility to:

- know and disclose their own medical history including medications taken
- keep appointments or advise those concerned if they are unable to do so.
- inform the doctor if they are receiving treatment from another health professional.
- pay for any services and products received as a private patient (unless private health insurance covers them)
- conduct themselves in a manner which will not interfere with the wellbeing or rights of other patients or staff.

- *You may also wish to pass this on to those who are responsible for updating the Standards.*

Part 4 – Supporters and representatives Page 9

I can understand the need or proposal for both Representatives and supporters. (To a point) I agree there is a need for improvement in ways to support the rights and wishes of people in residential care and people getting home care.
From my various years of involvement in aged care and speaking to many people they all indicate "support" for residents in aged care is missing. Complaints go unresolved and family do not have faith in the Commission's Complaints System with complaints going unresolved, again and again.
Hence abuse, neglect, harassment, intimidation, and mismanagement continue in aged care.
Legal Representatives those with (Power of Guardianship, Advanced Care Directives. (family and others) are not always available to go into the facility for many reasons. That means the are unaware of problems and issues relating to care etc; Or they just can't get in to discuss these with management, during working hours.
I had many people (residents and family) comment on my involvement with my brother who had dementia. Yes, I and my sister had a "hands on" approach to supporting our brother to maintain all his interests and outings. My medical experience obviously meant I dealt with all his medical issues and appointments, with all range of medical staff.
Even then we needed outside support from ARAS/OPAN due to the nature of abuse and neglect he was suffering and the fact they did not fully recognise our wishes for his care. needs.
The Strengthening of the Act, The Standards and The Code of Conduct etc will alleviate some issues. But I can still see issues arising due to some State Regulations being "flawed" especially in SA. There are no uniform legislation/laws around the Australian States and Territories. South Australia still hasn't put out a "new or updated" Advanced Care Directive even after a review years ago.
The SA Advance Care Directive had flaws in its wording which was used by an Aged Care service with detriment to my brother care. When my mother was in care, I had to use the services of a lawyer to write to her facility manager, to explain the meaning and law pertaining to Enduring Powers of Guardianship. This was obviously clear and supported in well Health Care, but not in Aged Care.

To summarise. Page 9

Multiple "Supporters" should be permitted if the older person wishes so. But having to get approval from government etc, is going to cause problems. Having to apply and reapply will cause difficulties for the Older Person especially those without technology to support them. I can see a Supporter be willing to assist and then for some reason having to pull-out from the role short time of indefinitely. I have been. and I am in this supporter position.

Like any carer roll it takes it toll. I can understand the supporter may have access to data/communication to assist in their roles. Having to send them to multiple people is not necessary unless the older person request so.

"Representatives" may also be numerous (multiple) as per documentation already legally completed through State Regulations ie Enduring Powers of Guardianship and/or Advanced Care Directives.

I see a problem if a person "ops" for a "Representative" to support them in Aged Care ? ***And*** they have a legally prepared documents under State Based Legislation.

If a person goes to hospital, for treatment/management; and/or sees a local GP outside of Aged Care, there will be Medical/Legal conflict. There are enough problems with non-uniform rules across Australia. In relation to various legislation.

"Powers of Attorney" are also not fully understood in Aged Care and are inter-changed when they shouldn't be.

I am aware the Commonwealth is working on bring in some national uniform proposal.

Suggestion. **Page 10 & 11**

Leave the "***Representative Position***" (requirement) ***to State Based Legislation***.
Use the ***"Supporter Role" in Aged Care*** to achieve it aims and what has been suggested. To ass Asit and support the Older Person.

Yes, family members who have legally prepare State Legislation may wish to have a supporter to assist in the care of an older person in various situations. The State based Legal Person may not have the time, or there are language issues to mention just two.
A friend and/or any family member may be a supporter and/or advisor presently.

State Laws are present to deal with "abuse of powers" in relation to breaches of State Legislation. (by Representatives)

A "Supporter" may/can be asked to withdraw from a position, if they are not functioning for the will or good of the older person. This should be left up to the older person who may get support from OPAN etc to resolve an issue if needed.

I have real concerns that an Aged Care Provider or its staff try to use their influence and powers to "shut up" a person "Supporter" who speaks up for the older person. This occurs now; We all know the older person is too scared to complain and/or say anything. Family Members/Supporters have been and are being harassed, intimated threatened.

"FACT"

Page 11

I see "Representatives" as "legally bound persons" who understand their roles which are clear in Health and State legislation. If a State based legal document is not in place? A law or similar policy should be in place if Representatives are used in aged care. Again, my suggestion is to leave this to State-Based Laws.

Page 15

Chapter 3 – Registered providers, aged care workers and digital platforms

Point 5 - ***A registered provider must meet their obligations and conditions***. If a registered provider does not do this, civil penalties or offences ***may*** apply.
Is this documented somewhere in the act with detail added? If not, it should.

Part 4 – * Provider obligations **Page 16**

Provider obligations are about making sure providers deliver quality and safe aged care services. If a provider ***does not meet their obligations***, they might receive a penalty or be excluded from the sector. *This highlighted point means nothing without full detail included in the act.*

Conditions on * provider registration
Page 16

It's not clear to me whether the Provider Obligations and the Condition on Providers Registration are the same. Does this need to re written?

- ***The details are not written concisely and are ambiguous***.

Page 17

Obligations on registered providers, responsible persons, and aged care workers.

Registered providers must: etc

Responsible persons must: -
There needs to be some clarity and/or documentation to indicate who "responsible persons" are under the Aged Care Act ***Everyone is responsible for their actions and work performance.***

Responsible persons must: -

 let their registered provider know if anything has changed that might affect if they are suitable. *??* ***This complete statement is not defined correctly or accurate.***

- follow the Aged Care Code of Conduct.
- Aged care workers must follow the Aged Care Code of Conduct.

All persons from the Chairperson of the Board to the volunteer must follow the Aged Care Code of Conduct. This also needs to made clear.

Part 5 – Duties under the law (statutory duties) and compensation **Page 17**

The new Act includes new duties on registered providers and their responsible persons. They must take reasonable steps to avoid harming the health and safety of older people in their care. These steps should take into account that a person has a right to make decisions that affect their life and take personal risks.

Registered providers will face criminal penalties if they fail to meet these duties.

These may apply where a provider's actions:
- cause death, serious illness or injury
- put a person at risk of death, serious injury or illness and involve:
- a significant failure to do what is expected of them, or
- are part of a pattern of poor conduct.

Page 17

Registered providers and their responsible persons can't give their duty to someone else.

- ***That why "responsible persons" need to be defined to stop "buck passing.".***

If a registered provider and their responsible persons causes serious illness or injury and they are guilty of a criminal offence, the person affected (add - and/or legal representatives not limited) There are various and obvious reason why the "person" cannot ask etc) can ask for compensation from the courts, like a payment **??.** ***The Commission ~~can~~ (Will) also do this for them.***

- There are various and obvious reasons why the "person" cannot or may not be able to ask themself)

It still does not mean much when an older person, representative, supporter, or family member etc "cannot afford" to "take on" ***the giants of the aged care system.***
The penalty should be more like a Public Apology in newspapers, in press and in Written Form to those affected.

"Open Disclosures" DOES NOT OCCURE NOW.

Questions to think about for Chapter 3 **Page 18**

17. Do you think the draft statutory duties on registered providers and responsible persons meet the aims of the policy? **NO: This has been answered above.**

Chapter 4 – Fees, payments, and subsidies **Page 19**

No Feedback supplied.

Chapter 5 – Managing the aged care system (governance) **Page 21**

The aged care system is managed by:

• the Secretary for the Department of Health and Aged Care. They will be called the System Governor in the new Act.

• the Aged Care Quality and Safety Commissioner.

The Commissioner leads ?? the Aged Care Quality and Safety Commission. The Aged Care Quality and Safety Advisory Council and the Complaints Commissioner are also part of the Commission.
To be blunt the "Commission" has not been functioning correctly and not achieving its objects, roles, and functions. It is and has been totally ineffective in supporting the rights of people in care. Its Complaints System (if you can call it that) is broken and it needs a "bomb" put under it and started again from new.
There has been many reforms, adjustment and changes done, post reviews of the Complaints System and the Commission workings.
"Nothing has been achieved".
Consumers (Residents) have not been protected from abuse and neglect which is still occurring now.

The Aged Care Royal Commission - Commissioners had various concerns, but no agreement could be reached as to how to fix the problems. I have personal concerns, beliefs and opinion's that Aged Care Providers have too much influence and are protected by the Commission.
Lived experience suggests an improper relationship exists between Aged Care Manages/Directors and Commission Staff. I am happy to speak privately re my reasons and concerns about this.

- ***"The New Aged Care Complaints Commissioner needs to sit apart from the Commission."***

Perhaps in a similar position as the Inspector- General of Aged Care

Inspector-General of Aged Care **Page 21**

- ***I hope the Inspector-General has investigative powers and is no way hampered in any way by the Commission, the Commissioner and/or its staff.***

Part 2 – System Governor

Page 21

The System Governor is the Secretary of the department. They will oversee and manage how the Government runs the aged care system.
This includes: -

I find the ***wording*** in this area very unusual and overly ambiguous.
Obviously prepared by consultants.

You have *"Federal Government"* running Aged Care:
You have a *"System Governor"* a secretary (lead) of the Department of Aged Care who may have oversight? of the Aged Care System??
You have a *Commission?* with a Commissioner (Lead) to also oversee the Aged Care System and Provide Reporting.
(Who in Government receives this ? the Secretary? – "Systems Governor" ?)
You have a *"Complaints Commissioner"* They needs to have absolute powers under the complaints role (complaints system)
THEY NEED TO SIT OUTSIDE OF THE COMMISSION AND THE COMPLEX STRUCTURE DOCUMNETED HEAR.

You have an *"Inspector -General of Aged Care"* who reports to the Minister and Parliament

- finding and looking into issues affecting the aged care system. *Has this "role" got appropriate investigation powers?*
  Are they going to be hampered in its role by the Systems and its many Branches?
- making*recommendations to the Government about ways to improve the system.

If you can not fix the Current Complaints System nor the functions of the Commission. Which "are broken" -

Then to start with; Increase "both" the Powers of the Complaints Commissioner and the Inspector- Generals oversight and functions in Aged Care.

The "Commission" can or may function better with less responsibilities and become an educator, adviser, reporting source, an investigator and auditor.

Part 2 – System Governor

Top of - Page 22

Last Paragraph ***(Urgent change required)***

The System Governor will also keep a record and ***report on the death of people who access the aged care system***. ***They will do this where the department has received a report from a coroner that contains a recommendation to the department*.**

So, the Department will **"only"** take note of deaths that have "**a coroner recommendation**".

The action in above paragraph means very little and too late.
It's a start but more needs to be done.

I find this an interesting addition in aged care , but more needs to be done as I will explain.

There need for a ***review of a serious incident resulting in sudden death*** and /or ***other*** "specific reasons" for the death.
Because of previous professional work experience I am aware of the obvious. This situation is usually referred to other ***State Based*** Legal Departments for investigation and further action.

Aged Care Quality & Safety Commission - Website.

- ***The Serious Incident Response Scheme (SIRS)*** *sets requirements for providers of aged care services to manage and take reasonable action to prevent incidents. It focuses on older people's:*
- *safety*
- *health*
- *wellbeing*
- *quality of life.*

Under the SIRS, providers must have an incident management system in place. An effective system will help to:

- *identify, manage, and **resolve incidents** that happen during the delivery of care and services to older people.*
- *prevent future incidents.*

The Aged Care Quality and Safety Commission (ACQSC) runs the SIRS. Providers must use the My Aged Care provider portal to tell the ACQSC if a reportable incident occurs.

Reportable incidents are:

- *unreasonable use of force*
- *unlawful sexual contact or inappropriate sexual conduct*
- *neglect*
- *psychological or emotional abuse*
- ***unexpected death***
- *stealing or financial coercion by a staff member*
- *inappropriate use of restrictive practices*
- *unexplained absence from care (missing consumers).*

Priority 1 reportable incidents

- ***where there are reasonable grounds to report the incident to the police,~~ OR~~***

Change to the added requirement below.

- ***that is an unexpected death of a consumer*.**

ADD: Police ~~should~~ "are" to be notified immediately of a "death" in an aged care facility.

Priority 1 reportable incidents must be reported to us? within 24 hours of the provider becoming aware of the incident.

***** I am aware that there is an has been a "issue" in the Reporting of Deaths in Aged Care.***

There was newspaper article some time back and it reported on the *number of deaths* in "Health Care" *across Australia as a result of clinical/hospital errors.*
The figure reported was somewhere among *60,000 deaths over a calendar year.*

- ***The article also stated that it could "not report" on deaths in aged care as recording was not done and/or records were not available.***

- *Since COVID the **numbers** of "deaths" due to COVID in Aged Care became available and in the community in general*.
    - ***Then recently this was ceased.***

Does this mean that COVID related Deaths are not classified as Priority 1 notifications or any notifications.

Surely the number of deaths related to medical issue such as COVID, Pneumonia, Sepsis etc could indicate the LACK of quality of care and systemic issue at that facility.

Deaths in Aged Care; " In each facility, in each State and Territory, and across Australia "must be recorded" by the Federal Government (Aged Care);
This should relate towards a "measure of care". (SIRS)

- *Shared information in relation to deaths should be made available to State & Federal Government due to the complexity of Laws and "cross-over issues".*

- ***Information sharing should be "both ways". For instance, a reports may be received by the State Coroner, but the Federal Government may not become aware of it: An Aged Care related "serious event".***

There are "deaths" in aged care facilities that occasionally hit the Newspaper and the Press for various reasons. *There are many more that should hit the Press to inform the public what is happening in Aged Care and the lack of transparency from providers, and that from Government.*

I had the opportunity to present a brief statement to a "Commissioner" from the Aged Care Royal Commission at a Public Forum. This was conducted by the Aged Care Royal Commission in Adelaide. The Commissioner and a public gallery of over 300 people heard my comments and experience about Aged Care and in particular my concern about a high number of ***"Avoidable Deaths"*** in an Aged Care Facility.
I did notice that a portion of mt comments were documented in the Aged Care Royal Commission "Findings", in the *Commissions* Documents.

As I may have mentioned I was a Health Professional working full time as a Paramedic in SA. As you can image, I had come across "numerous" deaths due to various causes. I referred "many" through channels to the Coroners Department. The causes of deaths needed to be examined/investigated for many reasons.
I also had to overrule & question Police Officers who were happy to accept a "cause of death" (A Treating GP willing to sign a Death Certificate) When they called the GP by phone. *A normal practice "we" all used in a non-suspicious incident.*
I needed to push, for and got a senior police officer to attend and overrule the junior officers. This suspicious, unusual, unsuspected death needed go to the coroners.
(Cases that should have gone to "coroners" are sometimes not done).

In Aged Care there are many deaths due to "natural causes". ***But there are "deaths" that should be referred to the "Coroner's that are "not done so".***

- ***The reasons are too many to list. Government needs to do an investigation to fix this "major injustice".***

" The main cause/reason being poor systems or no documented in place, resulting in Cover-Ups and No Investigation into the cause of deaths."

"I am aware that ***SIRS*** is in place, but it still ***has gross weaknesses*** and more needs to be done and this needs to be reviewed".

** ***There are numerous situations where the Coroners Department and/or the Police should be involved but are currently not. –***

*I cannot explain **"every"** instance that I have witnessed, heard about from those involved, family members and my own experience.*

Many resident (older persons) have "misadventures" in aged care facilities.
These are "falls" caused by many and varied reasons.
If the resident is lucky, they may have not been injured. Many suffered major injuries that required hospitalisation for head, neck, spine injuries and fractures.

1 A lot of falls are caused by a lack of staff and lack of assistance. Avoidable

2 Many are caused by" direct, but accidental mistakes" made by staff members during their work routine and interaction with the resident. Avoidable

3 A lot are Avoidable, carelessness and errors resulting in injury.

4 Some (many) are caused by equipment: "walkers" etc that the resident cannot use safely, and a lot of time don't need. Avoidable

5 Fractures that are missed and not managed. Avoidable

6 Aged Care staff are not properly trained That includes Nursing Staff as many injuries are not dealt with correctly.

Importantly, they are "hopeless" when it comes to *secondary assessments* post falls. I have witnessed many incident where the EN had been called to attend a resident and their assessment skills left a lot to be desired. I trained volunteers in St John and persons involved in sports medicine and their skills in secondary assessment were a lot better.

I have also experienced GPs and Locums who have "Tunnel Vision". I had routinely indicated to GPs and Physios about my brother's pain issues, including signs, symptoms, and location/site of injury and/or pain. They obvious appreciate this, as knowing the individual with the medical issues helps. It then obvious gave my brother the assistance he needed.

Whilst assisting residents in my volunteer roles in an aged care facility I had identified injuries and medical problems not apparent to the staff. (including factures).

Quite often Locum GPs are called to attend to a resident; They take their "que" from a EN or RN when asked ***who and why are we attending.*** This approach and their time constraints lead to mistakes.
Again, my professional work experience has shown me to examine and investigate "fully" as a normal part of a complete health work up. This requires time. A Paramedic does find serious underling medical issue regularly that a GP or Locums miss.
Let alone Aged Care Staff who do not have the appropriate skills.

Those lot of the above are" physical" events, and it does not cover the many undiagnosed medical problems. -
1 Numerous Medication mistakes.
2 Wounds that re not managed correctly and become infected.
3 Dehydration
4 Malnutrition
5 Chocking
6 Pressure injuries

All Avoidable

- It is fine to have requirements to document these and/or report these internally or externally using **SIRS.** (Government Reporting) But nothing becomes of the reports and no follow ups are done.

From an outsider pint of view, it just appears to *recording Numbers of Events* and comparing them across the board as a percentage.
If the Commission wants to inform the public? there needs to be openness as to how SIRS is managed, and incidents are followed up by the Commission directly. I am not convinced that they are.

MY MAJOR COCERN:

" ACTION IS NEEDED NOW; TO PREVENT ANY FUTHER "COVERUPS" OF "AVOIDABLE DEATHS" IN AGED CARE"

Recommendations

If the safety of residents and the older person are to be taken seriously.
The reporting of "incidents" is going to be accurate and meaningful, change needs to occur.
I am not convinced that SIRS has any impact on aged care providers and the care of individuals.
I hope follow ups of these incidents occur and they are just recorded as a "number", under a "category", in a government report.

- ***ALL SIRS Reports need investigation. SIRS needs to be revamped and reviewed.***

Furthermore, action is required to ensure the safety of the older person. Ensuring, and maintaining the Persons Rights to High Standards of Care they deserve. (Safety and Care).
Investigation of Incidents both internally and *by government*, openness, and Open Disclosure

I have seen "many" residents in aged care facilities that have experienced "mishaps" (to call them). Many others have been reported to me by distressed family members and obviously I have seen numerous during my work career.
This led to "my address/presentation" at an Aged Care Royal Commission Public hearing.

Many residents have had "experienced Incidents" (mishaps) that have required hospitalisation.
Having been hospitalisation due to the injury and/or other nature (medical errors)

Their presentation to hospital may have meant that the medical management/ treatment may not have been possible and at time unsuccessfully.

- ***In a lot of cases, the medical problem has not been able to be corrected.***

The individual (older person) is then ***discharged*** *from hospital back to their Aged Care Facility (home)* ***as palliative. "Sent back to die".***

*** This is generally within "Two Weeks" from Hospital Discharge.***

This individual then "dies", and the "cause of death" is put down as *"natural causes"* such as Pneumonia, Sepsis, Dehydration or Dementia is thrown around or any other item. The GP may come up with one of the above when signing "Causation". Another shortcut in the aged care system, because no one cares, or the person is elderly. (Yes, 65 plus makes you "old" and disposable in aged care. If the person was 40 years old and died there would be a full-scale outcry and investigation)

This happened in Disability Care

Sometimes the "diagnose" or findings from the hospital may be *(It should be)* used by the residents GP to complete the legal death certificate. (Causation)

These *Incidents and Deaths* **should** be investigated "fully and appropriately" by Government - Aged Care and/ or Medical/Legal Individuals appointed by Government, Federal or State.

The death of the Older Person "Would Not" have occurred or resulted if the *medical error or physical mishap had not occurred.*

1 The "System Governor" must be informed, and action taken.
2 The "Commission" must be notified by the Aged Care Provider
3 The coroner's department may be contacted or alerted.
4 If aged care legislation is approved Federally? The Coroner's Office should be advised as per "policy to be prepared".

System Governor **Page 21**

The System Governor is the Secretary of the department. They will oversee and manage how the Government runs the aged care system. This includes:
dot point 6.
protecting and supporting the integrity of the aged care system, including collecting, and providing accurate information about how the system is run.

This is achieved in many ways: My points on "deaths in aged care" relate to the above dot point.

Many older persons and family members have had to put with neglect etc in aged care. They are angry, which is exasperated due to lack of government assistance "Complaints not handled correctly".
They then may experience a death of a loved one and the anger increases and there is no help.
Most would be happy with a coroner's investigation; Others would not, for religious or cultural reasons.
The other issue is the time for coroners reports to be given. Obviously, a coroners report may assist the loved one in getting answers (closure) and then being able to take legal action as the Commission has suggested.

Recommendation*. *(Urgent)

"Deaths in Aged Care Facilities" frequently occur ***after*** the initial mishap Physical or Medical. ***The death usually occurs within 14 days*** of the resident returning to their facility and are *classified as "palliative*".

- ***The "death" of this individual should be reported "legally" (to the Police and the Coroners Department) and not just become a forgotten soul.***

The death of this individual should be reported to the ***Commission*** with the suspected cause of death and events leading up to their death. The details should include the "Lead Up" to their death. **Fall or Medical mishap** etc **Why was the person Hospitalized.**

In Health Care, and the general community " the world outside of Aged Care". **A "Death" that has resulted "*post* an incident/event"; even numerous days, weeks and months *after* the initial incident is still upgraded, investigated, and dealt with through the Courts /Legal System.**
Assaults, Motor Vehicle Incidents, Work Related Mishaps, Missing Persons, Deaths Discovered" at home and the list goes on.
The Coroner, Police and Safety Inspectors will all have "roles" in finding the cause of the incident and death and assist by reporting on the event to assist in mishaps not reoccurring; and holding groups, organisation and individual liable.

Many persons/groups and individual are penalised by the legal system. Others are also penalised through other regulatory processes.

I am aware a Coroners Department were or are still investigation multiple deaths in an aged care facility.
I am also aware of penalties applied to individuals who were in charge of that age care facility.

Part 3 – Aged Care Quality and Safety Commission Page 22

The role of the Aged Care Quality and Safety Commission ***??*** is to assist the Commissioner with their work ***??***
The Commissioner will carry out ***their*** work in a way that:
• focuses on the rights of older people, and
• makes sure that care is safe and of ~~good~~ ***High Quality***. (*That is measurable*.)

That has not occurred since the "Commissioner" (the current person) has been in that position, nor will it until "major changes" are made. I am not convinced the current changes will lead to the improvement of the Commissioner Roles and Functions.
The roles and functions are in conflict of each other.

The Commissioner protects and improves the safety and wellbeing of people who use funded aged care services. This includes:

- encouraging services that are culturally safe, trauma aware and healing informed
- promoting high quality care to build trust and confidence in the system
- making sure care is ongoing and consistent. It does this by checking whether registered providers have stable and sustainable finances.
- making sure aged care providers and workers ~~follow~~ ***adhere to*** the ~~rules~~ ***ACT*** and Standards
- ~~supporting~~ ***Ensuring*** providers ~~to~~ manage incidents, particularly incidents that they must report on.

The Commissioner also engages with and educates people who use funded aged care services. As well as their families and carers, ~~and providers and workers~~. This includes about:

- developing best-practice models
- the Statement of Rights
- what the Commissioner does
- what registered providers are responsible for.

This needs to be separated. "Take out" - and providers and workers.
Thes two groups are completely different, and the wording needs to reflect this.
Currently there is very little information for residents to access. There is no way for residents to access information to the degree it may show up on the website. In a very disorganised way.

The Commissioner's role also includes:

- managing complaints and feedback, including resolving complaints, finding trends and system-wide issues
- reporting
- registering providers and monitoring and auditing how providers deliver funded aged care services
- making Financial and Prudential Standards, including setting requirements for providers to have stable and secure finances.

All of this information is ok but is it really the role of the Commissioner? and should it be documented in this way? **Page 22**

I see all of the above as the role of the "Aged Care Quality and Safety Commission".
(as per the title part 3) (Not necessarily the Commissioner)

Part 4 – Aged Care Quality and Safety Advisory Council **Page 23**

The Advisory Council checks how well the Commission carries out its work. It provides advice to the Commissioner and Minister for Aged Care about the Commission. This includes advice about:

- the Commission's strategies and plans to meet its goals. Are the commissions' goals clearly stated somewhere?
- *finding system-wide issues*. What this mean?

Who makes up the advisory council and how are they selected?

Part 5 – Complaints Commissioner

The Complaints Commissioner is a member of staff at the Commission. The role is responsible for how the Commission manages complaints. This includes resolving and investigating complaints made to the Commission.

The Complaints Commissioner needs to sit separate from the Aged Care Quality and Safety Commission and its Commissioner.

Just one reason the Complaints System is broken. Not functioning as it should is the interference caused by system limitation and conflict of interest by individuals.

Questions to think about for Chapter 5 **Page 23**

25. Do you think the role of the Commissioner should include other activities? NO

She has too many tasks documented in this exposure draft that should by handled by the Commission and documented a such.
The Commissioner may have an "over site" role.
I am glad to see that there have been some moves to separate responsibilities and appoint person to those task/positions.
The Commissioner cannot have function without qualified responsible person in important roles.
I personally believe the Commissioner is not performing their task as required. That's why there are questions about the functionality of the current structure, as reported by The Aged Care Royal Commission.

26. Is it clear how the roles of the System Governor and Commissioner are different? NO
But also, how they fit together, as roles that oversee and manage the aged care system?

I see the Minister or Aged Care as being the responsible person and ensures the function of the Aged Care System is working efficiently.
The minister has individuals under her to maintain the system (System Governor) and delegated government officials to support the "System Governor".

Page 23

I see the Commissioner as just one of many individuals that assist in maintaining a complex system.
The role of the Commissioner should be "downgraded", and the roles functions should be concentrated/minimised/restricted.

One just needs to look at many other bodies such as the Department of Health- State Based, Child Protection & Safety, Policeing. Failures are due to poor structure s and insufficient legislation = major failures.
There are many operational functions that the Commissioner can not or be expected to have a "handle on". *That is why there are too many failures in the system*.

27. Do you think the arrangements for the Complaints Commissioner clearly show what their role is? ***NO***

The system is "Broken" as I have mentioned previously. Ther would be "many hundreds and thousands of complaints" that have not been dealt with appropriately by the Commission.

I know of many instances of continued neglect, abuse and coverups in aged care that have been reported by individual. Most are so despondent with lack of action and resolve to protect the vulnerable person in care. **Most family member give up reporting due to lack of action and the emotional toll it takes to go through a complaint process.**
Residents are still "too scared" to raise a complaint.
FACTS know by many Advocacy Groups.

The Commissioner "reporting" indicate most complaints come from family member or representative./advocates.
A lot less from Residents which is obvious, due to them being too frightened, and many being unable to use complaints system at the facility.
The figures go "up and down". Most lose patience with the "complaints system". New arrivals try out the system and then they also lose patience.

28. Do you think requirements for providers to make sure they maintain stable and secure finances should also apply to the home services sector? For example, to protect ongoing and consistent care and check that finances are sustainable in that sector? YES

Chapter 6 – Regulating the aged care system. **Page 24**

The Commissioner and the System Governor will have a range of powers. These will include some new powers, so that they can carry out their roles in the aged care system.

Parts 2, 3 and 5 – Powers to monitor and investigate.

The Commissioner and the System Governor will have standard ? powers to monitor and investigate under the Regulatory Powers (Standard Provisions) Act 2014. ***Update required.***

This includes the power to enter, search and seize as part of:
• checking that people are following the new Act
• collecting evidence if someone has gone against penalty and offence requirements.

The Commissioner and the System Governor can use these powers with the ***occupier's consent???? or with a warrant****.* **Why! if the above two dot points indicate powers under legislation, then why the need for consent and or warrant ?**

They will also have the power to access electronic equipment, such as computers, and data where relevant.

- **Any "delay and or need for a request to enter a facility" will only give the operators/staff time for cover-ups and destruction of documents and evidence.**

- **There should be powers to enter and request information without notice.**

We all know that prior notice of audits and inspection to Aged Care Facilities change the dynamics; From the normal daily routine to a *"structured staged presentation"* outside of norma daily functions.

This includes extra staffing, extra activities etc; This also keeps outspoken staff and family members away from Inspectors. Notices of the visiting official's presence are not displayed for people to see.

Part 4 – Monitoring and investigating authorised by the Commissioner. Page 24

The Commissioner may permit an officer to enter an approved residential care home so they can monitor and investigate. They can do this without the occupier's consent or a warrant.

This is a special power that the Commissioner can only use: ????- NO
• where they consider it is necessary to do so
• there is a severe risk to the safety, health, and wellbeing of a resident.

- This "special power" should not be needed as it would slow down the investigation of an incident needing urgent attention.

To be honest who is going to "triage" the "urgency" of the needed response.

Page 24

There is a **systemic problem** in the Complaints System and the Commission where responses to complaints are not dealt with appropriately and/or efficiently.

There were numerous cases where an older person has been at risk and the Commission has not responded urgently or not at all.

Sometimes only after the "incident" has "hit the press" and the TV stations.
A reported response by the Commission was poor and delayed in the respect to multiple care issues and multiple deaths in an Aged Care Facility during COVID outbreak.

There is always a "risk and concern" in Aged Care and Disability Care. The safety, health and wellbeing exist daily; that is why there were Two Royal Commissions finding commonality in care issue.

- *where they consider it is necessary to do so*
- *there is a severe risk to the safety, health, and wellbeing of a resident.*

***** There should be no hinderance whatsoever, and no reason for an authorised officer not to be allowed entry into an aged care facility to perform authorised activities.*****

- ***I don't see this as a function of the Commissioner to obtain a warrant for reason I have indicated previously.***

I see the above as being a long-drawn-out process for someone outside of a legal field. Police use "cause" or "suspect illegal activity as such. "Not hear say".

If this is going to work, it needs to go to an authorised person, perhaps a System Governor? Or Minister. Someone that sits above the Commissioner. This individual should have a system to obtain a warrant (if needed), without delay.

- ***If done correctly the process could legally be shortened dramatically.***

I can *"perhaps"* understand the need for a "warrant" in "very serious instances" if Officials want to enter with other support staff, and/or the Police to ensure compliance and stop hindrance from aged care staff in an investigation. The use of police or outside supervision will ensure that the Commission's officials are protected, and that the Provider has no legal recourse to complain and diminish the offence.

Page 24 & 25

Parts 6, 7, 8 and 9 – Powers to enforce under the Regulatory Powers Act

The Commissioner and the System Governor will have standard powers under the Regulatory Powers Act to make sure providers meet their obligations under the new Act.

"What are the standard powers are they legislated and documented"?

They will be able to:

- *apply to a court for a civil penalty, such as a fine*
- *issue an infringement notice – a notice of a fine*
- *apply to court for an injunction – to make a provider do, or stop doing, something*
- *accept ?? and enforce actions a provider agrees to take.*

All of these "dot points" need clarification for reassurance.

Part 10 – Notices requiring action and other notices.

Page 25

The Commissioner and department can use notices to make a provider do, or not do, certain things. There are different types of notices.
Required action notices:

- *The provider must report on the action they have taken.*
- *If they don't, this ~~may~~ WILL result in a penalty.*

Compliance notices:

- *The provider must report on the action they have taken.*
- *If they don't, this ~~may~~ WILL result in a penalty.*
- *These can affect a provider's Star Rating (which can be found on the department's website).*

  - This last "dot point" is incorrect: It has been documented by the Commission and Commissioner that noncompliance had not affected the Star Rating that were first released.

Adverse action warning notices:

- *If the provider doesn't act, the Commissioner may remove, suspend, or change their registration.*

Part 11 – Critical failures powers

Page 25

We are **still considering ?** extra powers for the Commissioner. This would allow them to appoint an external manager for a registered provider.

What extra powers?

Page 25

Administrators are appointed now! when an Aged Care Provider's facility has failed their accreditation or audit.

What is the difference between an Administrator or an External Manager?

This could happen where significant or ongoing failures result in:
• immediate risks to the health and safety of people using residential aged care services, or
• the provider being unable to pay their debts.

The powers would only be used ?? where the Commission does not believe that the provider can address the situation. **"See above"**

I can not see the System, Commission, Commissioner, System Governor. Using these, Powers.
(My "thoughts and reason" will not go down nicely.)
This should definitely "not" be the Commissioner; it should be a "higher source" / "Authorised Individual".

I did indicate previously the Commissioner's roles and jurisdictions should change.

Part 12 – Banning orders.

Page 26

The Commissioner can use a banning order to stop or restrict a registered provider from delivering funded aged care services, in certain situations. This includes where a provider:

- *goes against the new Act*
- *is not fit to deliver those services*
- *presents a severe risk to the health, safety and wellbeing of older people using services.*

A banning order can also restrict someone from being an aged care worker or responsible person.
There is going to be a lot of "buck passing" in a facility and by a Provider. I can see the person at the bottom of the "totem pole" being a "scape goat". where a Director or Manger has not done their obligated duties fully and should be held responsible.
I know of many circumstances where this should apply at the higher-level position and person.

I am finding myself not being clear as to who is a "responsible person" is in the content of this document and aged care.
I have raised this previously.
I am also aware that "banning orders" have been in place for some time and individuals are named on the government website.

Questions to think about for Chapter 6

Page 26

29. *Do you think the Commissioner's added powers will make sure they can regulate the sector in a proactive way that balances risk?* **NO**

I covered this in my feedback.

30. *Do you have any concerns about the new powers for the Commissioner* **(Commission Staff)** *to enter a residential care home without consent or a warrant? Are there any other safety measures you think should be put in place?* ***NO,*** I do not have any concerns because first and upmost the older person requires protection which is not forthcoming presently.

I covered this in my feedback "including" safety measure and more.

31. *Does the new Act explain the System Governor's role in managing the integrity of the aged care program clearly enough?* ***NO*** *Is there anything you would like us to include in the new framework to make sure we make sure aged care funding is used correctly?* ***NO***

32. *What are the pros and cons of the proposed new critical failures powers? Are these powers needed to make sure the Commissioner can protect older people and keep residential care homes if the provider gets into difficulties?*

I covered this in my feedback and more.

33. *Are the reasons listed for using the critical failures powers fair? Or are there others we could consider?* **FAIR?** ***"They do not go far enough".***

I covered this in my feedback.

Chapter 7 – Managing information.

Page 27

Part 3 – Record keeping.

Registered providers must keep required records. It is an offence if they don't, or if the records are false or misleading.

There are many instances of aged care staff falsifying document especially in the clinical area. Other documentation is hard to acquire even if it is legally permitted.
I have caught out staff /mangers fudging the required documentation. Obviously, they did not like being caught out. I did report once instance to a visiting Commission's Staff Member.

Some documentation is so difficult to read or understand due to the nature of publication. (Lived Experience with family members previously in Aged Care).
I even had an ARAS - Aged Right Advocate comment on her need to use a magnifying glass to read my brother's Care Plan when I eventually got it.

Some providers make it very difficult for a general person to understand the detail, let alone comment on their loved one needs. (understanding Care Plans). I have had the need and request from people to interpret the documents and assist them to understand what they can change.

Page 27

Having worked in Health I am customed to reding medical & legal documentation. I can even read doctors handwritten letter/notes. (Joke)

Suggestion

The Commission's staff should not only verify the accuracy of information but the "readability, availability and access of documents" needed by residents and family members.

Part 3 – Record keeping (continued) **Page 27**

Previously, resident felt safe in discussing problems in a group of self-minded people. Complaints were recorded and dealt with. With feedback given at the next meeting. Change of staff and manager stopped this. Minutes of meeting were "sanitised" as to not reflect anything negative.

Minutes stopped being sent out to rooms and also not put in the previous accessible "folder" in the common room. The records were false or misleading.

Part 5 – Protection for whistleblowers. **Page 27**

The new Act will do more to protect whistleblowers – people who call out issues. This is to make sure older people, people who are close to them, and aged care workers can report information without fear that they will be punished or treated unfairly.

They can make a report to:

- *the Commissioner or a staff member of the Commission.*
- *the department, or an official of the department.*
- *a registered provider.*

** a responsible person of a registered provider*

- *an aged care worker of a registered provider*
- *a Police Officer.*

People can make the report in person, over the phone or in writing. The report can also be anonymous.
*The report can be made about someone who has not followed ~~the~~ **an** aged care law.*

If someone makes a report, they will:

- *be protected from any negative results that come from making the report*
- *have their identities or identifying information protected.*

Page 27

There are some limited exceptions, such as where it is necessary to share with the Commission, a lawyer or to prevent a serious threat to a person or people.

ADD: If a notification has been made Viciously/Spitefully/Maliciously: Not in Good Faith.
Then whistle blowers' protection will not apply.
If it was a staff member, they may have breached "The Code of Conduct".

Registered providers also must make sure people who report are protected.
"But not supported for false notification or allegations".

Questions to think about for Chapter 7

34. Do you agree with the scope of protected information under the new Act? What information do you think should be protected under the new Act? **YES**

35. What challenges could there be with the whistleblower framework? How do you think we could solve these challenges? **There are many *this document* does not lay out the detail in the act.**

36. What else might stop people reporting about what they experience in the aged care system? How can we make this easier for people? There are numerous reason people do not report. (Some I have already documented)
My lived experience re aged care involves having family members in 'care" and also my health/medical background.

1 Residents "are too scared" to complain.
2 The "Commission" does not support people's complaints.
3 It is too hard and emotional draining to complain. Residents, family & Advocates.
4 Residents can not use the internal complaints system for many reasons.
5. Family and advocates are harassed and intimidated when they complain.

- *I can supply a long history & list of ways that have caused adverse events to complainants. Caused by Aged Care Providers and their staff at all levels.*
- *Numerous Family members have been "banned" from visiting loved ones, as punishment for complaining.*
- *The Commission and the complaints system has not supported persons who complained and had been banned. "No follow up as to why".*
- *Aged Care Providers are too powerful and to seek legal assistance is too costly for most people.*
- *I know of one situation where a "support organization" (which I will not name) Called in the Press and Reporters to assist a family to see their loved one. It was shown on TV /News and the result was positive.*
- *The Commission's Complaints System is "broken".*
- *Even through COVID a Provider disregarded the "agreed to" visiting rules/policies.*
- *As mentioned, previous Residents were not permitted to complain at meetings.*

- *One outspoken resident used to complain openly at meetings. After "**visits"** to his room the gentleman become very scared and guarded abou complain. He kept saying he was going to kicked out. (Visits by intimidating managers)*
- *He became "very scared" when family members raised complaints on his behalf.*

At one facility where my mother resided (about 15 year ago) there were many issues. I was still working as a Paramedic at the time. I had the fortune of having many High-Flying Medical Personnel to run past issues and get medical/legal answers and support.

I was harassed and intimidated and the CEO/Provider had even contacted my employer to complain about me with mad- up issue.
Obvious I had the support of my management as everything was "above board" and legal. I was accused of complaing without cause? To the Complaints Commission.

I also had the support of residents, family members and some staff who were also being harassed.
This Aged Care Facility was "Sanctioned" for failing "numerous standards" and an Administrator was appointed to oversee its functions.
Due to nature of events this was heavily covered by TV and News Media who camped outside.

My other "lived experience" involved ***another*** facility where e my brother resided for 7 years (this was after my mother had passed away).

My brother "passed away" in September 2022 after being hospitalized, due to Malnutrition and Dehydration. ***This was recorded as his cause of death.***

I used to visit him very regularly, he ate and drank well with prompts and assistance. We would go for short walks.

But I was out of action for a few weeks after having orthopaedic surgery and was unable to drive. In the meantime, my absence led to his demise.

- ***This should not occur in an aged care facility: They are still having care issues at present.***

This is why I have been an aged care advocate and very interested in seeing change in the aged care system. I still support a resident from the same facility who has no family assistant to help with his issues.

My feedback comes from years of direct lived experience. And those from working as a paramedic, who has been to numerous residential facilities to assists residents in need.

Chapter 8 – Miscellaneous **Page 29**

This chapter outlines other practical arrangements that will support the operation of the new aged care system.

Part 2 – Review of decisions

The System Governor and the Commissioner will be able to review certain decisions made under the Act where requested. "***Very limited detail in this document***"

If the person affected is still not happy with the result, they can ask an independent body to review the decision. "***Very limited detail in this document***"

Part 3 – Delegate provisions **Page 29**

This part outlines how and when the System Governor ***delete*** ~~or Commissioner~~ can delegate their powers. This is when they ask another person to act or make decisions on their behalf. Where relevant and necessary, the System Governor can give powers and functions to another Government organisation or position. Yes

For example:

- Chief Executive Officer Independent Health and Aged Care Pricing Authority
- Chief Executive Centrelink
- Chief Executive Medicare
- Veterans' Affairs Secretary
- Repatriation Commission
- Social Services Secretary.

My previous feedback indicated the need for reduced powers and roles of the "Commissioner" (one person/one individual) to ensure better function of the Commission.

Part 4 – Appointing of supporters and representatives **Page 29**

The new Act will explain the process for:

- appointing supporters and representatives
- suspending and cancelling these appointments.

I have given Feedback about this very "topical subject" in another arena/feedback. This needs a lot of investigation and thought. This is due to State Regulations and the fact that each jurisdiction has different rules.

- ***Leave "Representatives" for State Regulation to handle/manage.***

Questions to think about for Chapter 8 Page 31

Some sections in chapter 8 have very little detail resulting in the ability to give comment on

37. Do you have any concerns about the process of asking for an independent review body to review a decision under the current aged care laws? **NO**
Would you like any concerns addressed in the new Act? **YES - Many**

38. Are there any decisions that the System Governor and ~~the Commissioner~~ should only assign to *staff of senior levels*? **YES**
I have previously provided feedback on this subject.

Chapter 9 – The timeline for the new Act Page 32

The new Act will make several changes to Australia's aged care system.
*To make sure that older people "**continue"** to get safe, quality care, **the aged care sector** ~~**must prepare**~~ **"Should Have" prepared for the changes**. This includes having arrangements in place to manage the changes.*

"Continue":** **There are many unresolved issues of neglect, abuse, and problems that "have not" been resolved in Residential Care Facilities.

A phased approach to delivering the new Act *Page 32*

We will deliver the new Act in stages. This will make sure that we can roll out key parts without delay, such as the Statement of Rights and a new regulatory model.

This approach will also allow for time to keep consulting on the coming home care reforms.

The department is trying to balance:
- *delivering the changes to benefit older people as soon as possible*
- *training and supporting providers and workers to put the changes in place.* *More delays*

We want to do this in a way that won't disrupt services.

What will be different in 2024? *Page 32/33*

Changes that will affect older people using funded aged care services.

These include:
- *aged care rights put into law, together with ways to uphold these rights* ***No Delay***

<u>***Page 32/33***</u>

• *<u>appointing supporters or representatives</u> who must follow supported decision-making principles.* ***1st July*** **<u>2025</u>** It will take a long time to change arrangement and then get them through parliament due to complicities.

• *a single-entry point with one assessment for all aged care programs I doubt the 1st July 2024*

• *new rules about who can get an aged care needs assessment I doubt the 1st July 2024*

• *First Nations or homeless people aged 50 to 64 with aged care needs will be able to get an assessment* **No Delay**

• *older people approved for residential care will be given a place directly rather than through a provider* ***I see this as an issue!***

Does this mean that older people <u>don't get to choose an</u> <u>aged care facility</u> ? or an appropriate provider ?

Why have a "Star Rating System" ? giving the older person some idea of who is performing or is not.

• *the Statement of Rights, streamlined obligations and strengthened quality standards outline what older people can expect from providers and aged care workers* **No Delay**

National Aboriginal and Torres Strait Islander Flexible Aged Care (NATSIFAC) and CHSP will be regulated in the same way as other aged care programs. **No Delay**

• *people making a complaint or reporting that someone hasn't followed aged care law will be protected from being punished or treated unfairly* **No delay**

• *compensation will be available if a registered provider or responsible person causes a serious injury or illness.* **No Delay**

Changes that will affect <u>aged care providers</u>. **<u>Page 33</u>**

These include:

• *actions ~~guided~~ by the Statement of Rights* ***Not guided****!*

<u>These are rights that need to be met, regulated, and enforced</u>*, as I have previous endorsed, suggested, and gave feedback on.* ***NO DELAY***

• *needing to be registered with the Commission and have aged care homes approved*

- *NATSIFAC and CHSP providers will be registered and regulated by the Commission*

Page 33

- *revised provider obligations, including registration conditions* ***NO DELAY***

- *strengthened Quality Standards will apply to specific provider categories* ***No Delay***

- *new financial and prudential standards*

- screening process for aged care workers ***No Delay***

- new duties under the law. ***No Delay***

Changes that will affect aged care workers*.*

These include:

- *the important role of workers recognised in **the Statement of Rights** ~~and the Statement of Principles~~*

The Statement of Principle does not apply to a Workers and/or Aged Care Providers.
The way it has been documented/written means that "The Principles" only apply to the System Governor, the Commissioner, and the Commission's Staff in the way their perform the work in upholding and endorsing The Aged Care Act. ***It is very limiting****.*

The Statement of Principles *should be "legislated" as should* ***The Statement of Rights***

- *workers making a complaint or reporting that someone hasn't followed the aged care law will be protected from being punished or treated unfairly*

- *screening process for aged care workers.* ***No Delay***

Readiness support for older people and the sector

Page 33

We are developing a plan to help you prepare for changes to the aged care system.

This will explain what is changing and what support you can get to prepare for the changes.

We aim to release the plan in early 2024 for your feedback. *??*

This is fine; but it is now March 2023 with the start date is proposed for the 1st July 2024
This is not going to be completed or get through Parliament.

It will please the Aged Care Providers, not the Person in Care or those planning to go in Residential Care.

There also appears to be "no interest" in Providers or Manages improving their performances and adhering to their obligations.

If the aged care system was going to change (improve) it would have been after the findings of the Royal Commission and the knowledge of the Pending Reforms.

I think the larger Not for Profit Providers are not going to change. They will continue as they are and have always been. Previous minor policy changes and laws have not succeeded.

I think "they" are hoping for a delayed start and then months of "leeway" to regulated enforcement (reprieves as previous granted)
"Most of the changes are "Simple Commons Sense Issues" and these should not be hard for groups, manages or individual wiling to conform".

Questions to think about for Chapter 9 Page 34

39. *Do you agree with the new Act being developed in phases?* ***Yes***
The timing suggests no choice.

40. *Do you think this approach will allow for more time to consult on key changes?* ***YES***
Or do you think this will be more challenging for the aged care sector? ***Unfortunately: It will be welcomed by the sector. It should be less challenging for the sector.***

41. *What do you think will be the benefits delivered through each phase of the changes?*
Depends on "one's" opinion of beneficial.

42. *Do you have any ideas about the best way to schedule putting these important changes in place? For example, to help support a smooth transition and help people comply with the new laws?*
Urgent changes need without delay - and
Whatever improves the Safety and Wellbeing of the older person and stops the current Neglect, Abuse and Harassment.

43. *Are there any particular reform initiatives that you consider must be prioritised for commencement? Alternatively, are there any initiatives that you think would benefit from delayed commencement?*
There are major issues with SIRS and Incident Management that needs "urgent attention" to support and protect the older person.

44. *What will you need to do to get ready for the new aged care system?* ***PRAY***

45. *Is there anything that will affect you getting ready for the new aged care system?*
TOO PRAY "More and Harder"

46. *Do you have any concerns about the sector being ready to move to the new aged care system from 1 July 2024?* ***YES*** ***Continued*** – next page

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I have indicated my thoughts about the sector's readiness.

They are not and they are not willing.

"Otherwise" some positive changes would be apparent within the aged care system now. They are Not!

Completed and e-mailed - Thursday 7th March 2024
(7.30pm Adelaide Time)

Aged Care Bill 2023

No. *2023*

A residential care home means a place that:

Is the place of residence of individuals who, by reason of **sickness**, have a continuing need for aged care services, including nursing services.

WHY ONLY SICKNESS ? "This requires change".

Definition in the Bill: "sickness" means an infirmity, illness, disease, incapacity ?? or ADD: Physical or mental impairment.

Meaning of *responsible person*

Each of the following is a ***responsible person*** of a registered provider: any person who is responsible for the executive decisions of the registered provider.

(a) any other person who has authority or responsibility for significant influence over planning,
(b) directing or controlling the activities of the registered provider.

(a) if the registered provider delivers, or proposes to deliver, a funded aged care service:

(i) any person who has responsibility for overall management of the nursing services delivered by the registered provider, or overall management of the nursing services delivered at an approved residential care home of the registered provider, and who is a registered nurse; and

(ii) any person who is responsible for the day-to-day operations of the registered provider.

Without limiting paragraph (1)(a), a person who is responsible for the executive decisions of a registered provider includes a member of the governing body of the provider.

***responsible person*: This needs to further definition and clarified.**

Without this clarification a lot of "parts" of the "Act" can not be monitored, enforced or be dealt with, when things go "haywire" which they will.

There will a large amount of "loopholes"

Meaning of *reportable incident*

(1) A ***reportable incident*** is any of the following incidents that **have occurred**, are **alleged to have occurred**, or are **suspected of having occurred**, in connection with the delivery of funded aged care services to an individual by a registered provider:

unreasonable use of force against the individual.

unlawful sexual contact, or inappropriate sexual conduct, inflicted on the individual.

psychological or emotional abuse of the individual.

unexpected death of the individual.

Please refer to my feedback re deaths in aged care facilities

stealing from, or financial coercion of, the individual by an aged care worker of the provider.

neglect of the individual.

This occurs on numerous occasion in a day, in Aged Care Facilities and is not reported by the Staff and Providers.

This is also a breach of Rights and Standards.

This is reported to manager and providers routinely by family member and advocates.

Use of a restrictive practice in relation to the individual (other 8 than in circumstances prescribed by the rules.

There are still many ways staff use restrictive practices to restrict an individual. I reported many to a manager took no action.

unexplained absence of the individual in the course of the delivery of funded aged care services to the individual.

<u>During my time I have seen nay instances of reportable incident that have gone unreported in aged care.</u>

<u>At the same time, I have witnessed many "alleged reports" situations where reportable incidents have been falsely used as "retribution" by aged care staff towards family members.</u>

<u>Another reason why individuals and/or family member do not complain about senior staff as it comes back and bites them in the ???</u>

<u>Statement of Principles</u>

This does not "hold water" and means very little. This is nothing in the bill to indicate whom it relates to.

Previous information "suggests" only the System Governor, The Commission's Staff and the Commissioner when used in consideration to the working and functions of the Aged Care System and the ACT.

The wording and meaning appears to be missing in the "Bill".

Advisory Bodies

I find it unusual to have an "advisory body" (singular) for an Aged Care Provider when it won't work the way the way it is structured.

Individuals may nominate to participate or join because they have Family Members in Care and/or an individual is in care.

How can they know what is happening in the other facilities the same Aged Care Provider has scattered around the state. and interstate. The only way this is going to work is to have authorised committees or advisory groups at "each and every" facility.

The group is going to be controlled by a staff member "manager" who will restrict outcomes and voices.

Part 5—Whistleblower protections

Disclosures qualifying for protection.

*A disclosure of information by an individual (**the discloser**) qualifies for protection under this section if:*

The disclosure is made to one of the following:

The Commissioner or a member of the staff of the Commission.

The System Governor, or an official of the Department.

a registered provider.

a responsible person of the registered provider.

~~*an aged care worker*~~ *of a registered provider*. **NO,** this need to be removed for a lot of reasons.
If the person is a registered professional such as a "nurse" etc There should be "no issues".
If the person is a Cleaner, an Aged Care Carer or Volunteer etc and the list goes on.
There is too much responsibly for this individual and it will cause emotional issues and work-related stress.

The smaller the number of individuals responsible for reporting and getting or needing protections will ensure a safer and more accurate procedure.
Let's liken this to the game of "Chinese Whispers" The more people the worse outcome.
If a person sees or hears some thing that is not urgent or life threatening: They should back off and ask a manage to intervene.

a police officer; and

the disclosure is made orally or in writing (and whether made anonymously or not); and

the discloser has reasonable grounds to suspect that the information indicates that an entity may have contravened a provision of this Act.

Protections
If an individual makes a disclosure that qualifies

(a) the individual is not subject to any civil, criminal, or administrative liability (including disciplinary action) for making the disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the disclosure.

Note: The individual is still subject to any civil or criminal liability for conduct of the individual that may be revealed by the disclosure.

Without limiting subsection (1), a contract to which the individual is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

CIVIL Penalties

With out going into detail, civil penalties need to be supported to protect the older person and advocate etc.

The Code of Practice may be a "deterrent" to Poor Behaviour and Malicious reporting by Aged Care Staff.

"Civil Action" should also apply when a person, a resident or family member has been aggrieved by a staff member.

ie False, vindictive allegation and wrongful reporting.

Legal rights should still exist, and action, or can be taken against the individual and the provider if an accomplice to false indictive reporting when necessary.

There are weaknesses when individual can hide under "Loopholes":

"Alleged to have occurred" / "Suspected of having occurred".

If it has come from a resident or vulnerable person, it may need or should be reported. But it still needs to investigate before someone is accused.

"In aged care and the ACT there appears to premise that a persons is guilty before proven".

*"A **reportable incident** is any of the following incidents that **have occurred**, are **alleged to have occurred**, or are **suspected of having occurred**, in connection with the delivery of funded aged care services to an individual by a registered provider:"*