

SENATE COMMUNITY AFFAIRS LEGISLATION
COMMITTEE

AGED CARE QUALITY AND SAFETY COMMISSION BILL 2018 AND RELATED BILL

28 September 2018



ABOUT ACSA

Aged & Community Services Australia (ACSA) is the leading aged care peak body supporting over 700 church, charitable and community-based, not-for-profit organisations. Not-for-profit organisations provide care and accommodation services to about one million older Australians.¹

ACSA represents, leads and supports its members to achieve excellence in providing quality affordable housing and community and residential care services for older Australians.

Aged care providers make a significant \$17.6 billion economic contribution to Australia, representing 1.1% of GDP by producing outputs, employing people and through buying goods and services. The direct economic component is akin to the contribution made by the residential building construction and sheep, grains, beef and dairy cattle industries.²

ACSA members are important to the community and the people they serve and are passionate about the quality and value of the services they provide, irrespective of their size, service mix or location.

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¹ Australian Government, Department of Health, 2016-17 Report on the Operation of the *Aged Care Act 1997*, November 2017.

² Deloitte Access Economics, Australia's aged care sector: economic contribution and future directions, Aged Care Guild, June 2016, page 24.

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INTRODUCTION

ACSA and its membership, are committed to providing quality care and support a firm but fair regulatory system which protects older people while allowing service innovation to flourish.

The aged care industry takes its responsibility to ensure older Australians receive the highest quality of services very seriously. The number one priority for aged care providers is the safety, wellbeing and quality of life of those in their care.

ACSA supports the establishment of the new Aged Care Quality and Safety Commission, which will replace from 1 January 2019 two Commonwealth entities with existing responsibilities to support the delivery of quality aged care services – the Australian Aged Care Quality Agency and the Aged Care Complaints Commissioner.

ACSA notes and supports the Government's intention (as set out in the Aged Care Quality and Safety Commission Bill 2018 and the Explanatory Memorandum) that from 1 January 2020 the Aged Care Quality and Safety Commission will also be responsible for certain functions of the Australian Department of Health such as the approval of providers of aged care and compliance. ACSA suggests that at the time of incorporating these functions into the Act, the Government does a 12-month review of the operations of the Aged Care Quality and Safety Commission and makes any adjustments necessary to support its effective functioning.

Objects of this Act (section 5; pages 2 and 3)

The objects of an Act should be to outline the purpose(s) of the legislation and can be used to resolve uncertainty and ambiguity³.

The object included in the Aged Care Quality and Safety Commission Bill 2018 does not make specific reference to the regulatory role the Aged Care Quality and Safety Commission is being established to perform. ACSA believes this should be made more explicit (similar for example to one of the purposes of establishing the Australian Prudential Regulation Authority⁴).

It is clear there needs to be good engagement with aged care consumers about the quality of care and services and that this needs to be reflected as a specific purpose in the Aged Care Quality and Safety Commission Bill 2018. The current legislation captures this well and ACSA supports its inclusion.

However, the legislation does not reflect the level of engagement required with aged care providers whom the Commission will accredit and investigate when complaints are made. This is equally important.

The Commission needs to be independent and take a balanced approach when regulating providers including ensuring providers' rights to procedural fairness and natural justice are met.

Promoting engagement with aged care consumers and not providers has the potential to distort the regulatory framework.

ACSA recommends that promoting engagement with approved providers and service providers should be added into the objects of the Act.

³ <https://www.alrc.gov.au/publications/5.%20The%20Privacy%20Act%3A%20Name%2C%20Structure%20and%20Objects/objects-act>

⁴ Section 8; *Australian Prudential Regulation Authority Act 1998*

Alternative Object for consideration

- (1) The object of this Act is to establish and operate a regulatory framework for aged care services and Commonwealth-funded aged care services that will:
 - (a) protect and promote the safety, health, well-being and quality of life of aged care consumers; and
 - (b) promote aged care consumers' confidence and trust in the provision of aged care services and Commonwealth-funded aged care services; and
 - (c) promote engagement with approved providers of aged care services and service providers of Commonwealth-funded aged care services and aged care consumers about the quality of care and services provided by:
 - (i) approved providers of aged care services; and
 - (ii) service providers of Commonwealth-funded aged care services.
- (2) It is Parliament's intention to further the object of this Act by conferring, through future legislative change, additional functions on the Commissioner relating to matters such as the approval of providers of aged care and compliance.

Definition of aged care consumer (section 7; page 4 and page 6 of the Explanatory Memorandum)

The Explanatory Memorandum notes that the term 'consumer' is also used in the draft Aged Care Quality Standards and is broader than the definition used in the Aged Care Quality and Safety Commission Bill 2018 as it refers to the representatives of consumers where this is appropriate.

As this is likely to cause confusion, ACSA suggests the terms be changed so they are clearly distinguishable. For example 'consumer' and 'consumer and their representative'.

Consumer engagement functions of the Commissioner (section 17; page 12)

This section requires the Commissioner to consult with aged care consumers in developing best practice models for the engagement of approved providers and service providers with their aged care consumers.

It will also be important for the Commissioner to consult providers in the development of best practice models to ensure such models can be implemented and this should be reflected in the Aged Care Quality and Safety Commission Bill 2018.

Search powers (section 71; page 48)

Proposed paragraph 71(2)(d) will allow authorised complaints officers and regulatory officials 'to make any still or moving image or any recording of the premises or any thing on the premises'.

Before taking a photo or video that includes a person or their property, ACSA considers authorised complaints officers or regulatory officials must obtain that person's consent. The Aged Care Quality and Safety Commission Bill 2018 and Explanatory Memorandum need to address this important privacy and security issue.

Complaints about Government services should also be investigated by the Aged Care Quality and Safety Commission

Government services including those provided through My Aged Care, Aged Care Assessment Teams, Regional Assessment Services and the Department of Human Services are also essential components of Australia's aged care system. People engaged in these functions influence the delivery of care and services and therefore consumer outcomes.

ACSA thinks it is important that complaints about these government services should also be investigated by the Aged Care Quality and Safety Commission where consumers have not been able to have their issue satisfactorily resolved with the relevant Government Agency/Department.