

# Exposure Draft of the Inspector-General of Aged Care Bill

Submission  
February 2023

## About ACCPA

The Aged and Community Care Providers Association (ACCPA) is a national Industry Association for aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services.

ACCPA exists to unite aged care providers under a shared vision to enhance the wellbeing of older Australians through a high performing, trusted and sustainable aged care sector. We support our members to provide high quality care and services while amplifying their views and opinions through an authoritative and comprehensive voice to the government, community and media.

Our sector serves to make better lives for older Australians, and so do we.

## Background

Recommendation 12 from the Final Report of the *Royal Commission into Aged Care Quality and Safety* (the Royal Commission) recommended the establishment of an Inspector-General of Aged Care to “*investigate, monitor and report on the administration and governance of the aged care system*”.<sup>1</sup>

In the 2022-23 October Budget, the Australian Government committed \$38.7 million over four years to establish this role.

In December 2022, the Department of Health and Aged Care (the Department) subsequently released the Exposure Draft of the Inspector-General of Aged Care Bill 2022 (the Bill) and an accompanying Consultation Paper<sup>2</sup> (the Consultation Paper) for public consultation. The Bill proposes the establishment of an independent Inspector-General of Aged Care (Inspector-General) along with the supporting Office of the Inspector-General of Aged Care.

ACCPA is pleased to submit our response to this consultation.

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<sup>1</sup> Royal Commission Recommendation 12.

<sup>2</sup> Department of Health and Aged Care, Inspector-General of Aged Care Consultation Paper on the Exposure Draft of the Inspector-General of Aged Care Bill, December 2022.

## Introduction

ACCPA welcomes the establishment of an Inspector-General. The proposed approach set out in the Bill accompanying Consultation Paper is a positive step towards improving transparency and accountability across the aged care system and, ultimately, improving care outcomes for older Australians.

However, there are some areas in which the proposed approach could be clarified or strengthened to support the confidence of the sector in the operation of the role.

Matters ACCPA would like to see addressed include:

- ensuring the Inspector-General facilitates positive system change for all key stakeholders in the sector, including providers and key government entities;
- a clearer definition or parameters for what constitutes a 'systemic issue', to reflect that issues generally investigated and reported on by the Inspector-General should be systemic in nature and not singular or isolated incidents, and should be examined from multiple perspectives;
- further opportunities for sector consultation and involvement in shaping the work of the Inspector-General (including in relation to its annual work plans), particularly with respect to prioritisation of systemic issues for review;
- revisitation of the recommendations of the Royal Commission<sup>3</sup>, including on the investigatory, monitoring and reporting functions of the Inspector-General, with consideration of the degree of alignment;
- further clarity around the role of the Inspector-General in relation to complaints;
- enhanced public reporting requirements by Government in response to recommendations made by the Inspector-General; and
- clarification around the Inspector-General's information-gathering powers in relation to stakeholders other than government entities, particularly approved providers.<sup>4</sup>

ACCPA is eager for the Bill to facilitate a balanced, holistic approach, within and across the aged care sector for the role of the Inspector-General.

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<sup>3</sup> Royal Commission Recommendations 12 and 148 in particular.

<sup>4</sup> See: <https://www.agedcarequality.gov.au/providers/becoming-approved-aged-care-provider#what-is-an-approved-provider-of-aged-care>.

## Summary of recommendations

**R1:** ACCPA recommends the following amendment to the overarching object in section 3 of the Bill (additions in bold):

*“drive greater accountability and transparency of the Commonwealth’s administration of the aged care system, and facilitate positive change for older Australians, **aged care providers, and other stakeholders and entities**”.*

**R2:** ACCPA recommends that the term ‘systemic issue’ be defined in the Bill, or parameters otherwise set for how this term should be interpreted by the Inspector-General.

**R3:** ACCPA recommends that the Bill be adjusted to improve clarity to reflect the practical implications of the intended role of the Inspector-General (as it forms part of the overall complaints framework for aged care).

**R4:** ACCPA recommends that the Royal Commission’s recommendation that the Inspector-General “*should have responsibility for dealing with complaints about the System Governor, the Quality Regulator, the Prudential Regulator, and the Pricing Authority*”<sup>5</sup> be revisited, to strengthen the Inspector-General’s capacity to understand and react to systemic issues across the aged care sector, as well as uncover where the system may not be working at its optimum.

**R5:** ACCPA recommends that the Inspector General undertake reviews of regulator performance (including examining regulator decisions) on a systemic basis.

**R6:** ACCPA recommends that to support confidence of the sector as a whole, reviews on the performance of government entities be an explicit requirement of the Inspector-General.

**R7:** ACCPA recommends that the Inspector General be required to consult the sector on the setting of annual work plans.

**R8:** ACCPA recommends that the Bill include a requirement for a 5 year strategic plan to be prepared (in consultation with the sector and consumers), with annual priorities to be confirmed with the sector and consumers in subsequent years.

**R9:** ACCPA recommends there be opportunity for sector involvement in triggering a review by the Inspector-General or an avenue which allows the sector to submit proposals of issues for the Inspector-General to review.

**R10:** ACCPA recommends that the Bill adopt more binding language in relation to invitations to the general public to make submissions (e.g. ‘*must*’).

**R11:** ACCPA recommends strengthening the provisions on protecting the identity of disclosers by requiring that the Inspector-General *must* (instead of *may*) have regard to the factors outlined in section 49(3)(a)–(c).

**R12:** ACCPA recommends retaining the provisions under sections 18(2)(b); 18(6)(e) and (17)(6)(a).

**R13:** ACCPA supports increased reporting of the implementation of Royal Commission recommendations, in alignment with the related Royal Commission recommendation of at

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<sup>5</sup> Royal Commission Recommendation 12(3).

least every 6 months, and recommends an explicit reference in the Bill be added to reflect this.

**R14:** ACCPA recommends that the Inspector-General consult with the sector to inform its reports on the implementation of Royal Commission recommendations.

**R15:** ACCPA emphasises the importance of *all* reports prepared by the Inspector-General being made publicly accessible in the spirit of transparency and accountability, and recommends the provisions requiring the Inspector-General to publish reports be retained.

**R16:** ACCPA recommends that the responsible Minister, as a representative of the Australian Government, be explicitly required to respond publicly (and within a prescribed timeframe) to recommendations made by the Inspector-General.

**R17:** ACCPA recommends ensuring adequate provisions for monitoring be documented in subordinate legislation or guidelines.

**R18:** ACCPA recommends that there be clear and reasonable expectations for providers in relation to any requests to provide information to the Inspector-General.

**R19:** ACCPA recommends that an independent statutory review of the operation, effectiveness, and/or impact of the Inspector-General be held at a time following its establishment (e.g. 3 years) and the outcomes of this review be published.

## 1. Objects and functions

ACCPA supports the overarching object of the legislation to “drive greater accountability and transparency of the Commonwealth’s administration of the aged care system, and facilitate positive change for older Australians”<sup>6</sup>. It is important that creating positive outcomes for older Australians is at the heart of the work of the Inspector-General.

ACCPA recommends other stakeholders (such as aged care providers) are also referenced in the Objects to promote holistic, sector-wide improvement. A comparable approach is evident in the Objects of the *Inspector-General of Taxation Act 2003* (Cth), with one Object being to “improve the administration of taxation laws for the benefit of all taxpayers, tax practitioners and other entities” (our emphasis).<sup>7</sup>

**R1:** ACCPA recommends the following amendment to the overarching object in section 3 of the Bill (additions in bold):

*“drive greater accountability and transparency of the Commonwealth’s administration of the aged care system, and facilitate positive change for older Australians, **aged care providers, and other stakeholders and entities**”.*

ACCPA is broadly supportive of the Objects and Functions set out in sections 3 and 10 of the Bill, but consider there is scope for further strengthening and clarification in relation to the meaning of ‘systemic issue’ and complaints in particular.

### 1.1 Meaning of ‘systemic issue’

The Inspector-General’s proposed role in identifying and reporting on systemic issues is a positive step towards driving system change. ACCPA acknowledges that there is a basis and sector understanding for what a ‘systemic issue’ may look like in the aged care context. Indeed, the Consultation Paper references categories of systemic issues (“...issues which affect the funding, regulation, administration or delivery of aged care”<sup>8</sup>), and the Royal Commission also listed and addressed a number of ‘systemic problems’ in the aged care system.<sup>9</sup> However, the term ‘systemic issue’ is not defined or elaborated on in the Bill.

It is acknowledged that the Bill indicates the Inspector-General is not permitted to “monitor and investigate only a single exercise of a power, or a single performance of a function or duty, under an aged care law”.<sup>10</sup> Nevertheless, it should be recognised that a *systemic issue* is not a singular or isolated issue and usually involves multiple stakeholders.

**R2:** ACCPA recommends that the term ‘systemic issue’ be defined in the Bill, or parameters otherwise set for how this term should be interpreted by the Inspector-General. This should reflect that systemic issues:

- are not singular or isolated incidents;
- involve multiple stakeholders; and
- involve examination of factors from multiple perspectives such as funding, regulation, administration and/or delivery of aged care.

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<sup>6</sup> Bill s 3.

<sup>7</sup> *Inspector-General of Taxation Act 2003* (Cth) s 3(a).

<sup>8</sup> Consultation Paper p. 2.

<sup>9</sup> See Royal Commission Final Report vol 2, ch 4.

<sup>10</sup> Bill s 10(2).

It is important that the Inspector-General adopts a holistic and balanced approach to investigating and reporting on a particular issue.

## 1.2 Complaints

It is noted that section 3(b) of the Bill references “*providing oversight of the Commonwealth’s administration of complaints management processes across the aged care system*” which is different terminology to that used in section 3(a) which refers to the Inspector-General’s ability to “*monitor, investigate and report on the Commonwealth’s administration of the aged care system*” (our emphasis). It is also noted that an explicit reference to providing oversight of complaints management processes is not replicated in the Functions of the Inspector-General in section 10 of the Bill with most of the provisions in this section opening with functions to “*monitor, investigate and report...*”

While it is acknowledged that the Consultation Paper explains the “*Inspector-General will not receive or assess individual complaints, rather, they will consider how complaints are handled and provide recommendations to support a continuous improvement model of the complaints processes*”,<sup>11</sup> ACCPA remains unclear what the difference in terminology (i.e. ‘oversight’ vs ‘monitor, investigate and report’) means in practice.

**R3:** ACCPA recommends that the Bill be adjusted to improve clarity to reflect the practical implications of the intended role of the Inspector-General (as it forms part of the overall complaints framework for aged care).

In principle, the stated intention of the approach to “*support a continuous improvement model of the complaints processes*” and “*ensure ... the aged care complaint management framework is fit-for-purpose and provides an effective, efficient, and accessible complaints mechanisms*”<sup>12</sup> is a positive aspiration.

More information about the Inspector-General’s oversight of the complaints management framework will be welcomed in due course, particularly how the Aged Care Quality and Safety Commission (ACQSC) and Inspector-General will interact on this issue and what specific factors will be considered by the Inspector-General in its work in this area.

**R4:** ACCPA recommends that the Royal Commission’s recommendation that the Inspector-General “*should have responsibility for dealing with complaints about the System Governor, the Quality Regulator, the Prudential Regulator, and the Pricing Authority*”<sup>13</sup> be revisited, to strengthen the Inspector-General’s capacity to understand and react to systemic issues across the aged care sector, as well as uncover where the system may not be working at its optimum.

This sentiment is reflected in the following excerpt from the Royal Commission Final Report:

*Complaints are a key source of information about systemic problems. They provide a practical sense of issues facing people receiving aged care and their families. If a systemic oversight role is conferred without any responsibilities for complaint-handling, there is a risk that the oversight body will never develop the understanding it needs to identify systemic issues. Likewise, if a complaints function is conferred without a systemic oversight function, there is a risk that attention will only ever be given to individual problems, without ever leading to systemic changes. We recognise, however, that the Inspector-General should maintain a*

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<sup>11</sup> Consultation Paper pp. 45.

<sup>12</sup> Ibid p. 5.

<sup>13</sup> Royal Commission Recommendation 12(3).

*focus on systemic issues. That means that it would be inappropriate for the Inspector-General to be given primary responsibility for administering the scheme for handling aged care complaints..*<sup>14</sup>

The focus of any complaint-handling undertaken by the Inspector-General should be on complaints about the *performance* or *conduct* of a government entity.

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<sup>14</sup> Royal Commission Final Report vol 3 p. 82 (emphasis added).



## 2. Reviews, reports and monitoring

ACCPA is supportive of an Inspector-General that has review, reporting and monitoring functions. With reference to the approach proposed by the Bill and Consultation Paper, there are areas where these functions could be strengthened, including greater alignment with the recommendations of the Royal Commission in relation to its intent for the Inspector-General's investigatory, monitoring and reporting functions.

### 2.1 Reviews

Reviews conducted by the Inspector-General will be integral to its role in driving improvements across the sector and achieving greater accountability and transparency across the aged care system.

It is ACCPA's understanding, from the approach set out in the Bill,<sup>15</sup> that the Inspector-General will have broad remit to decide what reviews they conduct (noting that the Inspector-General must consult the Minister in preparing a work plan for a financial year,<sup>16</sup> the Minister can direct the Inspector-General to conduct a review,<sup>17</sup> and the Inspector-General may conduct a review on request from the Secretary or a Minister administering an aged care law<sup>18</sup>).

In addition to the nature of the reviews undertaken being informed by a prescribed definition or parameters around what constitutes a 'systemic issue', ACCPA proposes the following in relation to the Inspector-General's conduct of reviews.

As to the types of reviews the Inspector-General will conduct, ACCPA encourages revisiting the following recommended elements of the Inspector-General's role from Recommendation 12 of the Royal Commission:

- *“reviewing regulator decisions on a systemic basis to ensure regulator integrity and performance”* (recommendation 12(1)(b)): The Consultation Paper indicates the Inspector-General is *“likely to examine complaints data to help identify systemic issues that may warrant in-depth review”*<sup>19</sup> and that the *“Inspector-General will focus on the performance of the Department of Health and Aged Care, the Aged Care Safety and Quality Commission and the Independent Health and Aged Care Pricing Authority”*<sup>20</sup>. The review of regulator performance on a systemic basis should be an explicit undertaking of the Inspector-General.  
**R5:** ACCPA recommends that the Inspector General undertake reviews of regulator performance (including examining regulator decisions) on a systemic basis.
- *“reviewing the performance of functions by the System Governor, the Quality Regulator, the Prudential Regulator and the Pricing Authority”* (recommendation 12(1)(c): ACCPA notes the Consultation Paper states that the *“Inspector-General may choose to prepare reports outside of those required by legislation. Topics could include the performance of Australian Government entities with responsibility for aged care ...”*<sup>21</sup> Per section 10 of the Bill, a function of the Inspector-General will also be to *“monitor, investigate and report*

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<sup>15</sup> See Bill s 15.

<sup>16</sup> Bill s 13(3).

<sup>17</sup> Ibid s 15(2).

<sup>18</sup> Ibid s 15(7).

<sup>19</sup> Consultation Paper p. 5.

<sup>20</sup> Ibid p. 4.

<sup>21</sup> Ibid p. 6.

*to the Minister and Parliament on: the exercise of powers, and the performance of functions and duties, under an aged care law*".<sup>22</sup>

**R6:** ACCPA recommends that to support confidence of the sector as a whole, reviews on the performance of government entities be an explicit requirement of the Inspector-General.

ACCPA believes the Bill needs to be strengthened to ensure sector consultation and involvement in shaping the work of the Inspector-General. In particular, there should be opportunities for the sector to be consulted on the Inspector-General's annual work plan to enable the sector to contribute to the prioritisation of systemic issues. While it is acknowledged that s 13(3) of the Bill states that "[t]he Inspector-General may also consult any other person the Inspector-General considers appropriate", ACCPA is eager to see that sector consultation is a fixture in the Inspector-General's process of developing annual work plans.

**R7:** ACCPA recommends that the Inspector General be required to consult the sector on the setting of annual work plans.

Stakeholders, such as aged care providers, are well situated to inform the Inspector-General about where systemic issues lie, such that a forward work program could be developed on establishment of the role.

**R8:** ACCPA recommends that the Bill include a requirement for a 5 year strategic plan to be (in consultation with the sector and consumers), with annual priorities to be confirmed with the sector and consumers in subsequent years.

It is noted that the work plan for a financial year must "*set out the key outcomes and priorities for the Inspector-General for the financial year*".<sup>23</sup> It is important that annual work plans have targets and measurable outcomes to ensure that the work of the Inspector-General is clear and transparent to the sector. Work plans should also set out the key steps and processes that will be involved in each review (including consultation).

Noting that the Inspector-General has scope to vary a work plan,<sup>24</sup> ACCPA also queries whether there is additional scope for sector involvement in triggering a review by the Inspector-General or an avenue which allows the sector to submit proposals of issues for the Inspector-General to review. With the continued rollout of post-Royal Commission reform, the aged care landscape is continuously changing and evolving, so it will be important for the Inspector-General to be flexible and respond accordingly.

**R9:** ACCPA recommends there be opportunity for sector involvement in triggering a review by the Inspector-General or an avenue which allows the sector to submit proposals of issues for the Inspector-General to review.

It is also noted that the Inspector-General "*may invite members of the public generally, or a particular person or body, to make submissions on a matter relating to a review*".<sup>25</sup> Members of the public, including the aged care sector, should have the opportunity to make submissions on *all* reviews undertaken by the Inspector-General.

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<sup>22</sup> Bill s 10(1)(a)(i).

<sup>23</sup> Ibid s 13(2).

<sup>24</sup> Ibid s 14(1).

<sup>25</sup> Ibid s 17(1).

**R10:** ACCPA recommends that the Bill adopt more binding language in relation to invitations to the general public to make submissions (e.g. ‘*must*’).

ACCPA understands that in deciding whether to agree to a request for a disclosure of information by an individual to be protected under section 49 of the Bill, the Inspector-General may have regard to the factors outlined in section 49(3)(a)–(c), including (and importantly) “*whether disclosing, or enabling a person to ascertain, the identity of the discloser is likely to result in significant and direct detriment to the discloser*”.<sup>26</sup> As it relates to submissions per section 18(2)(a) and 18(5)(d), and more broadly, this is a consideration for providers who are directly affected by the actions and decisions made by the government entities that the Inspector-General will be tasked with oversighting.

**R11:** ACCPA recommends strengthening the provisions on protecting the identity of disclosers by requiring that the Inspector-General *must* (instead of *may*) have regard to the factors outlined in section 49(3)(a)–(c).

ACCPA also welcomes the provisions prescribing that the Inspector-General must not make available a submission under section 18(1) to the extent it “*contains information the disclosure of which the Inspector-General is satisfied would be contrary to the public interest*”,<sup>27</sup> including on the ground that it would “*reasonably be expected to prejudice the commercial interests of any person or body*”.<sup>28</sup> It is also appropriate that a submission can be withdrawn if the Inspector-General refuses a request for confidentiality under section 17(3).<sup>29</sup>

**R12:** ACCPA recommends retaining the provisions under sections 18(2)(b); 18(6)(e) and (17)(6)(a).

## 2.2 Reports

ACCPA acknowledges that the Inspector-General will have an explicit function to conduct two reviews of (and report on) the implementation of the recommendations of the Royal Commission by the Commonwealth.<sup>30</sup> This is a positive step in evaluating the Royal Commission reform rollout and holding government to account in this regard.

ACCPA recommends the Inspector-General’s role in reporting on the implementation of the recommendations on the Royal Commission be strengthened through:

- Increased reporting on the implementation of recommendations – the Bill currently prescribes two reviews, to be completed on or before 1 March 2026 and 1 March 2031. The Consultation Paper also indicates that it is envisaged the Inspector-General will produce annual reports on the implementation of recommendations of the Royal Commission (although this does not appear to be explicitly replicated in the Bill).<sup>31</sup> It is noted that the Royal Commission recommended the Inspector-General report on the implementation of the recommendations at least every six months (in addition to the recommendations that the Inspector-General undertake and report on independent

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<sup>26</sup> Ibid s 49(3)(b).

<sup>27</sup> Ibid s 18(2)(b).

<sup>28</sup> Ibid s 18(6)(e).

<sup>29</sup> Ibid s 17(6)(a).

<sup>30</sup> Ibid s 24.

<sup>31</sup> Consultation Paper p. 6.

evaluations of the effectiveness of measures taken in response to the Royal Commission recommendations five and 10 years after the tabling of the Final Report<sup>32</sup>).<sup>33</sup>

**R13:** ACCPA supports increased reporting on the implementation of Royal Commission recommendations, in alignment with the related Royal Commission recommendation of at least every 6 months, and recommends an explicit reference in the Bill be added to reflect this.

- Opportunities for sector engagement – the Inspector-General's reviews of and reports on the implementation of Royal Commission recommendations would be a valuable opportunity for the sector to contribute commentary and make submissions. This would further enable the Inspector-General to gain on-the-ground and multi-stakeholder perspectives of the impacts of the reform rollout and, in addition, post-implementation effects. This is salient in light of issues experienced by the sector such as short lead times to implement reforms, such as in relation to home care price capping<sup>34</sup> and the release of certain subordinate legislation for the Royal Commission Response Act the afternoon before the commencement date of 1 December 2022.<sup>35</sup>

**R14:** ACCPA recommends that the Inspector-General consult with the sector to inform its reports on the implementation of Royal Commission recommendations.

It is noted that there are provisions requiring the Inspector-General to publish annual work plans,<sup>36</sup> final review reports,<sup>37</sup> review reports on the implementation of Royal Commission recommendations,<sup>38</sup> and extra reports.<sup>39</sup>

**R15:** ACCPA emphasises the importance of *all* reports prepared by the Inspector-General being made publicly accessible in the spirit of transparency and accountability, and recommends the provisions requiring the Inspector-General to publish reports be retained.

ACCPA acknowledges that government entities, government officials or other persons may be required to respond to final review report recommendations per section 22(3) of the Bill. The Inspector-General having scope to compel a government agency to provide a response to review recommendations and publish such responses with final reports aligns well with the overarching Object of the Bill to "*drive greater accountability and transparency of the Commonwealth's administration of the aged care system*".

**R16:** ACCPA recommends that the responsible Minister, as a representative of the Australian Government, be explicitly required to respond publicly (and within a prescribed timeframe) to recommendations made by the Inspector-General.

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<sup>32</sup> Royal Commission Recommendation 148(2)-(3).

<sup>33</sup> Ibid Recommendation 148(1).

<sup>34</sup> Advice was issued to the sector in August on price capping to commence 1 January 2023, but it was insufficiently detailed to commence implementation. Detail on the price capping arrangements was not made available until late November 2022. In order to transition to the new arrangements by 1 January 2023, providers were required to undertake significant pricing analysis, substantial software reconfiguration, and proper notification to consumers.

<sup>35</sup> The Aged Care Legislation Amendment (Incident Management and Reporting) Instrument 2022 and Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022 were both registered on 30 November 2022.

<sup>36</sup> Bill s 13(4).

<sup>37</sup> Ibid s 23(3).

<sup>38</sup> Ibid s 24(3)(b).

<sup>39</sup> Ibid s 25(2)(b).

This could be in similar vein to the [\*Australian Government response to the final report of the Royal Commission into Aged Care Quality and Safety\*](#) published following the release of the Royal Commission Final Report. ACCPA considers the introduction of this requirement will promote sector confidence that Inspector-General recommendations will result in considered, sector-wide responsive action. This would also further align with the overarching Object of the Bill.

### 2.3 Monitoring

ACCPA notes that, per the Consultation Paper, *“the intention is not to prescribe the approach to monitoring in the Bill, the general powers and information gathering provisions in the Bill will apply to the monitoring function”*.<sup>40</sup>

If not in the Bill, the approach to monitoring should be outlined in subordinate legislation or a guideline as it will be important for aged care providers, and the broader sector and community, to understand the potential impact of the Inspector-General’s monitoring activities.

ACCPA also notes that the Royal Commission recommended that the Inspector-General should undertake *“monitoring the adequacy of aged care data collection and analysis”* (recommendation 12(1)(d)). The Consultation Paper states that the *“Inspector-General may choose to prepare reports outside of those required by legislation. Topics could include ... the adequacy of aged care data”*.<sup>41</sup> It is important that this function is undertaken by the Inspector-General and should be documented in subordinate legislation or a guideline, if not in the Bill.

**R17:** ACCPA recommends ensuring adequate provisions for monitoring be documented in subordinate legislation or guidelines.

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<sup>40</sup> Consultation Paper p. 7

<sup>41</sup> Ibid p. 6.

### 3. Information-gathering powers

More information will need to be provided (whether in the Bill, subordinate legislation or other guidance materials) on the scope of the Inspector-General's authority to "*access buildings of government and non-government organisations who receive funding from the Australian Government for aged care*", which will involve the organisation being required to "*provide the Inspector-General with access to any documents or other property to allow them to undertake their work*".<sup>42</sup>

It is noted in the Consultation Paper that it is expected the Inspector-General would "*only use these powers on parties delivering age care directly in exceptional and rare circumstances*".<sup>43</sup> ACCPA would like to understand what constitutes 'exceptional and rare circumstances'. Noting it may be more appropriately dealt with outside of the Bill, it is important that the parameters for this are made explicit, as it will assist providers in understanding how the information-gathering powers of the Inspector-General impact them.

**R18:** ACCPA recommends that there be clear and reasonable expectations for providers in relation to any requests to provide information to the Inspector-General.

It is important that any use of the Inspector-General's information-gathering powers to make direct contact with aged care providers does not duplicate any functions of other government entities, such as the ACQSC's role in handling complaints about providers. ACCPA re-emphasises the importance of the Inspector-General investigating *systemic issues*, rather than singular or isolated incidents.

ACCPA also seeks clarity as to whether privacy provisions apply and protections are in place for providers who are requested to provide sensitive or personal resident/client information to the Inspector-General.

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<sup>42</sup> Ibid p. 7.

<sup>43</sup> Ibid.

## 4. Other matters

ACCPA is interested in learning more about the process for recruiting the Inspector-General, for example whether there will be any pre-requisites or qualifications required for the role. This matter may be better dealt with in material outside of the Bill, although it is noted that there are legislative provisions outlining the appointment of Inspectors / Inspectors-General in other sectors which touch on such matters. For example:

- to be eligible for appointment as the Inspector-General of Water Compliance, an individual must, at the time of appointment, “*have a high level of expertise in one or more fields relevant to the Inspector-General’s functions*”<sup>44</sup> and “*not be a member of the governing body of a relevant interest group*”.<sup>45</sup>
- a person must not be appointed as the Inspector of the National Anti-Corruption Commission unless the person “*is a retired judge of a federal court or a court of a State or Territory*”<sup>46</sup> or “*is enrolled as a legal practitioner (however described) of a federal court or the Supreme Court of a State or Territory and has been so enrolled for at least 5 years*”<sup>47</sup>. A person must also not be appointed as Inspector “*if the person has previously been appointed as the Commissioner*”<sup>48</sup>.

It will be also useful for the sector to understand the extent to which the Inspector-General has achieved the Objects as set out in the Bill and for the establishing legislation to ensure there are checks and balances to the overall aged care system.

**R19:** ACCPA recommends that an independent statutory review of the operation, effectiveness, and/or impact of the Inspector-General be held at a time following its establishment (e.g. 3 years) and the outcomes of this review be published.

ACCPA notes references in the Consultation Paper to the proposed roles of the Aged Care Complaints Commissioner and the Aboriginal and Torres Strait Islander Aged Care Commissioner, and that it is “*possible there will be interaction between the Inspector-General and both Commissioners, however this remains subject to further consultation and decisions of Government*”.<sup>49</sup> ACCPA is interested in learning more about these roles and how they will engage with the Inspector-General given this is unclear at time of writing.

Finally, consideration should be given to ensure harmonisation with the forthcoming new Aged Care Act, particularly in relation to the intended human rights-based approach of the latter and the role the Inspector-General may play in upholding such an approach.

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<sup>44</sup> *Water Act 2007* (Cth) s 215J(3)(a).

<sup>45</sup> *Ibid* s 215J(3)(b).

<sup>46</sup> *National Anti-Corruption Commission Act 2022* (Cth) s 185(3)(a).

<sup>47</sup> *Ibid* s 185(3)(b).

<sup>48</sup> *Ibid* s 185(4).

<sup>49</sup> Consultation Paper p. 2.