

Royal Commission into Aged Care Quality and Safety

Program design submissions

24 January 2020

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ *Australians Lawyers Alliance* (Website). Accessed on 19 July 2019 <www.lawyersalliance.com.au>.

Introduction

1. The ALA welcomes the opportunity to provide a submission focusing on program design issues to the Royal Commission into Aged Care Quality and Safety (the Royal Commission).
2. The ALA provided a public submission to the Royal Commission on 6 September 2019. This submission will focus on the program design issues that were addressed in our earlier submission.

Aged Care Act 1997: regulation of aged care facilities

3. Aged care services are funded and regulated under the Act and associated Principles.²
4. The ALA submits that regulation is effective when:
 - accreditation standards empower residents;
 - records are audited on site;
 - intermittent inspections occur without notice;
 - sanctions exist to deter negligent care without punishing residents;
 - there is full data transparency and detailed reports are being made publicly available, which can be discussed with committees of residents and their relatives; and
 - innovation and excellence in providing quality care is recognised and honoured.

Effectiveness of the regulatory framework

5. The ALA submits that the current regulatory framework is clearly ineffective. The ALA is concerned, for example, the *Oakden Report*,³ The Australian Law Reform Commission report *Elder Abuse: A National Legal Response* (ALRC Report 131) and the work of the Aged Care

² *Quality Agency Principles 2013* made under s 53 of the *Australian Aged Care Quality Agency Act 2013* (Cth) sets out the obligations that aged care providers must comply with in order to be approved providers.

³ A Groves, D Thomson, D McKellar and N Procter (2017) *The Oakden Report*. Adelaide, South Australia: SA Health, Department for Health and Ageing.

Royal Commission bear this out; an inquiry would not have been needed otherwise.⁴ The Aged Care Royal Commission has heard many revelations of mistreatment occurring in residential aged care facilities (RACFs).

6. The ALA notes that there is a tension between commercial imperatives and public interest imperatives. Aged care providers are generally competitive commercial operations seeking to increase profit margins, which inevitably conflict with the interests of aged care residents.⁵
7. The ALA submits that evidence concerning the standard of aged care in Australia as heard by the Aged Care Royal Commission indicates that the current regulatory system serves the interests of the aged care industry rather than the recipients of care. The ALA submits that the systemic issues plaguing the aged care system require decisive structural reform.
8. The ALA submits that the regulation of aged care services and facilities needs to be overseen by a dedicated Minister rather than the current combined ministerial portfolio of Aged Care and Senior Australians/Youth and Sport. Considering our ageing population, aged care should not be de-prioritised to the extent it was in the 2019 election policies, with the major parties failing to focus on the needs identified by older Australians, including action on elder abuse and access to quality palliative care.⁶ The ALA is concerned that significant failures in the provision of residential aged care involve governance, staffing, models of care, infrastructure and resources, and the collection, evaluation and use of data.

Is the legislation that underpins Australia’s residential aged care system adequate?

9. The Act does not use the terms ‘regulation’ or ‘regulatory system’ in relation to compliance systems.⁷ The ALA submits that the terminology used in the Act to describe the regulations

⁴ See also, Australian Department of Health, *Aged Care Regulation in Quality: Activity and Actions* (Report 2017-2018): 3773 ‘reportable assaults’.

⁵ Ian Ayres and John Braithwaite, *Responsive Regulation* (Oxford University Press, 1995) 28.

⁶ COTA Australia, *COTA 2019 Older Australians Federal Election Survey* (Media Release, 12 May 2019). Accessed on 19 July 2019 <https://www.cota.org.au/wp-content/uploads/2019/05/COTA_1905_MR_COTA_2019_Older_Australians_Federal_Election_Survey.pdf>.

⁷ Approved providers have certain responsibilities: *Aged Care Act 1997*, Chapter 4. These responsibilities relate to: (a) the quality of care they provide; and (b) user rights for the people to whom care is provided; and (c) accountability for the care that is provided, and the basic suitability of their key personnel. Failure to meet

and requirements of providers is not effective in the context of privatised healthcare as it effectively reduces the impact of the regulatory system and implicitly promotes the ideals of self-regulation, which the ALA does not support in light of the systemic issues facing aged care in Australia. The ALA again submits that a revision of the aged care legislation is required to ensure transparency rather than legislation that preserves the status quo of ‘commercial in-confidence’ and the secrecy that surrounds accreditation and self-regulation.

A lack of data

10. The ALA submits that national, standardised, clinical data needs to be collected from the aged care sector and reported to the government. Other industries and sectors are required to provide this kind of information to the Australian Government. This information is essential to guide government decision-making and policy areas such as health insurance, life insurance and education. The Government could provide a similar portal to ‘OneSchool’ as used by Education Queensland in its administration processes.⁸ The ALA submits that the ‘consumer’ has a right to this information.
11. There is a lack of available data on unreported complaints, pressure injuries, dehydration, malnutrition, medication errors, falls, and adverse events, including physical restraint, elder abuse, resident-to-resident aggression, suicide, choking, and unexplained absences occurring in RACFs. The ALA notes that shared knowledge leads to preventive interventions and well-co-ordinated policies, as well as informed choice for potential residents and their families.
12. The ALA submits that information needs to be available from regulatory authorities about deaths, quality of care, quality indicators, accreditation outcomes, complaints and police reports.
13. The ALA submits that published information needs to be user-friendly and easily accessible to recipients of care and their families, aged care advocacy organisations, policy-makers, legislators and the media.

these responsibilities can lead to the imposition of sanctions that affect the status of approvals and similar decisions under Chapter 2 (and therefore may affect amounts of subsidy payable to an approved provider).

⁸ Queensland Government, Department of Education, OneSchool and QParents. Accessed on 19 July 2019 <<https://education.qld.gov.au/parents-and-carers/school-information/oneschool-qparents>>.

Recommendation 1

That the Australian Government introduce legislation to mandate annual public disclosure of each RACF's performance data and a governmental portal to facilitate the publishing of comparative data.

Aged Care Quality and Safety Commission

14. The stated role of the Commission⁹ is to:

- protect and enhance the safety, health, well-being and quality of life of aged care consumers;
- promote confidence and trust in the provision of aged care; and
- promote engagement with aged care consumers about the quality of care and services.

15. The Explanatory Memorandum to the *Aged Care Quality and Safety Commission Bill 2018* also speaks of 'aged care consumers', who are at the 'heart of the reform' which is marked by the new establishment of the Commission.¹⁰

16. The ALA submits that genuinely seeking to 'promote engagement' with aged care consumers about the quality of care and services is difficult. Many frail and vulnerable older persons have dementia or are unable to speak out. More than half of all people in permanent residential aged care have a diagnosis of dementia and are not easily able to access information online. They almost always rely on friends and family to advocate on their behalf.¹¹ Genuinely

⁹ Australian Government, Aged Care and Quality Safety Commission, *About us*. Accessed on 19 July 2019 <<https://www.agedcarequality.gov.au/about-us>>.

¹⁰ The Parliament of the Commonwealth of Australia, House of Representatives, Aged Care Quality and Safety Commission Bill 2018, Explanatory Memorandum, Minister for Senior Australians and Aged Care, and Minister for Indigenous Health, Ken Wyatt (12 September 2019). Accessed on 19 July 2019 <https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6180_ems_74c70007-05dd-46b8-9979-10dd9a48be3a/upload_pdf/684437.pdf;fileType=application%2Fpdf#search=%22legislation/ems/r6180_ems_74c70007-05dd-46b8-9979-10dd9a48be3a%22>.

¹¹ Health Direct, Dementia Statistics. Accessed on 19 July 2019 <<https://www.healthdirect.gov.au/dementia-statistics>>.

engaging with this group of people is not easy. The ALA submits that all persons regardless of disability deserve recognition of their human rights.

17. The Commission was formed following the amalgamation of two agencies: the Australian Aged Care Quality Agency (ACQA) and the Aged Care Complaints Commissioner (ACCC). The ALA submits that many reports issued by the former ACCC conclude that a facility failed to provide satisfactory care, but the decision did not lead to sanctions, disciplinary action, or any significant impact on a facility's approved accreditation status.
18. The Commission can now receive complaints about aged care abuse. The ALA submits that the abuse of the elderly is more than an issue of failing to meet aged care standards or accreditation requirements. The essential matter of protecting a person's human rights is at stake in extreme cases. The ALA submits that safeguarding the human rights of vulnerable people with dementia should be a priority for the aged care sector. Independent safeguards are sadly lacking and, thus, it submits that improvements to the way aged care is provided in Australia are essential. The ALA submits that the issue of remedies is important. There needs to be power to award compensation for breaches of human rights rather than simply powers to conduct an investigation or revoke accreditation.
19. The ALA submits that the Commission does not significantly expand the powers of the former quality agency: the ACCC. The Commission's functions and powers are largely analogous to that of its predecessor. The evidence of current Commissioner, Janet Anderson, at the Royal Commission into Aged Care Quality and Safety on 18 February 2019, described the Commission's complaints and regulatory function as a particular power to do with accreditation and quality assessment monitoring. The Commissioner stated that when undertaking its quality assessment and monitoring role 'ready access to timely information about active or recent complaints in relation to a provider is another information input to assist us in planning the visit and what we might ask about when they get to the aged care home'.¹² The ALA submits that having the complaints function tied so closely to the regulatory function highlights the fundamental conflict between the Commission's regulatory role in monitoring the accreditation of approved providers while simultaneously investigating

¹² Royal Commission into Aged Care Quality and Safety (Transcript, 18 February 2019). Accessed on 19 July 2019 <<https://agedcare.royalcommission.gov.au/hearings/Documents/transcripts-2019/transcript-18-february-2019.pdf>>.

complaints and failures. This reflects an inherent lack of governance over the Commission's functions by an independent auditor.

20. The ALA submits that if the regulator is to remain responsive to community concerns it must take a stricter enforcement approach – this means more legal action, including greater criminal and civil enforcement measures. Commissioner Janet Anderson has acknowledged in evidence to this Commission the need for a 'risk-based regulatory approach'.¹³ Braithewaite's regulatory pyramid provides a model for regulation, with education and softer measures at the base and criminal sanctions in the courts at the apex.
21. The ALA submits that the Commission will be unable to bring necessary reform to aged care complaints processes without significant changes to overarching values relevant to the aged care system and legislative framework. The ALA submits that the Commission needs more powers akin to Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC), which take a stronger regulatory approach in the courts. The Commission is an independent statutory agency.
22. The Commission is a single point of contact for both consumers and RACFs and that it is also responsible for the accreditation, assessment and monitoring of, and complaints handling of, aged care services and Commonwealth-funded aged care services. The new Commission absorbed both the Aged Care Quality Agency and the Aged Care Complaints Commission.¹⁴ The ALA understands that it is intended that the Commission will be responsible for the approval of providers of aged care, compliance and compulsory reporting of assaults from 1 January 2020.¹⁵ The ALA submits that some aspects of these responsibilities require a greater degree of separation between the delivery of these responsibilities and services. The ALA submits that an independent watchdog, such as an independent aged care ombudsman, is

¹³ Ibid.

¹⁴ *Community Affairs Legislation Committee, Aged Care Quality and Safety Commission Bill 2018 [Provisions]; Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Bill 2018*, October 2018, 1.

¹⁵ Australian Government, Federal Register of Legislation, *Aged Care Quality and Safety Commission Act 2018* [and] *Aged Care Quality and Safety Commission Rules 2018*, Explanatory Memorandum, Minister for Senior Australians and Aged Care, and Minister for Indigenous Health, Ken Wyatt (12 September 2019). Accessed on 19 July 2019 from <<https://www.legislation.gov.au/Details/F2018L01837/Explanatory%20Statement/Text>>.

necessary to ensure the transparency, objectivity and independence of all functions of the Commission.

Single Aged Care Quality Framework

23. Since 1 July 2019, the new single set of standards, the Aged Care Quality Standards, apply to aged care services, including residential care. The ALA submits that compliance with the standards must be measured uniformly and objectively. Accreditation standards are open to interpretation by the quality agency. The ALA submits that uniform and objective compliance measurement must be built into aged care standards.
24. Each of the eight standards includes a statement of outcome for the consumer, a statement of expectation for the organisation and a number of organisational requirements to demonstrate that the standard has been met. The Aged Care Quality Standards were developed through significant consultation and co-designed with the aged care sector. The ALA submits that the single quality framework's eight standards are malleable and not objectively measurable standards as the criteria are not based on clinical outcomes.

Aged Care Quality and Safety Commission's Consumer Experience Reports

25. The Commission refers to its 'Consumer Experience Reports'. Note is made of the Commissioner's use of the terms 'consumer voice' and the 'consumer experience'. The ALA further notes that in her evidence to the Royal Commission the Commissioner stated: 'What we are trying to do is empower the consumer.'¹⁶
26. The ALA submits that relying on the 'consumer voice' does not accurately reflect the culture and experience of being a RACF resident. The ALA submits that an independent body is required to monitor the experience of recipients of care through unannounced visits and speaking directly to the residents or people who are directly involved in advocating on their behalf.

¹⁶ Royal Commission into Aged Care Quality and Safety Commission (Transcript, 18 February 2019). Accessed on 19 July 2019 from <<https://agedcare.royalcommission.gov.au/hearings/Documents/transcripts-2019/transcript-18-february-2019.pdf>>.

A lack of independent safeguards

27. The ALA submits that independent safeguards are lacking in the current system. The ALA submits that public information for RACFs include clearly visible sanctions and conditions on registration, if applicable. The ALA is concerned that results are currently inaccessible as detailed accreditation reports and complaints are not published, nor are there outcomes, and the Act exempts facilities from the operation of the *Freedom of Information Act 1982* (Cth) (FOI Act). It is of concern that the *Aged Care Act 1997* (Cth) and the *Aged Care Quality and Safety Commission Act 2018* (Cth) (ACQSC Act) are exempt from the operation of the FOI Act under the secrecy provisions. There is limited, if any, public policy rationale for this.
28. The ALA submits that the Australian Government should establish an independent aged care ombudsman with powers to inspect RACFs.
29. The ALA submits that valuable lessons can be learned from the recent accomplishments of the Care Quality Commission (CQC): the independent regulator of health and social care in England where, for example, where all providers are inspected and graded and the results and detailed inspection and accreditation reports are publicly available.

Recommendation 2

That the Australian Government should establish an independent aged care ombudsman with inspection powers in RACFs.

An unsatisfactory complaints mechanism

30. The ALA submits that the Commission's effectiveness should be under the spotlight. Rule 11 of the *Aged Care Quality and Safety Commission Rules 2018* (Cth) defines a complaint as follows:

A person may make a complaint to the Commissioner raising an issue or issues about (a) the responsibilities of the approved provider of an aged care service under the Aged Care Act or the Aged Care Principles or the responsibilities of a service provider of a Commonwealth-funded aged care service under the funding agreement that relates to that service.

31. In the 2017–18 financial year, there was an exponential increase in complaints to the former Aged Care Complaints Commission, said to be a 400% increase in complaints after Oakden (whether a result of publicity or otherwise is immaterial).¹⁷ There were 5,779 complaints to the Commission, an increase of 23% from 4,711 complaints in 2016–17.¹⁸ Of these, 3,253 complaints (56%) came from family members or representatives of people receiving care, and 1,083 (19%) were from care recipients. The remaining complaints (25%) were from anonymous sources, other interested parties and referrals from other agencies. There were 4,315 complaints about residential care, which accounted for 75% of all complaints, compared with 78% last year. This year, 18% of complaints were about home care packages (1,014) and 7% were about Commonwealth Home Support Programme (406), compared with 15% and 7% respectively last year. There were also 44 complaints about Flexible Care.¹⁹
32. According to the 2017–18 Annual Report, there can be many issues in a complaint that may be resolved in different ways. The most common issues raised in complaints about residential aged care were about medication administration and management (706), personal and oral hygiene (473) and personnel numbers/ratios (452). Medication administration and management was also one of the most common issues in residential care complaints in 2016–17. In 2017–18, 452 issues were raised about staff numbers and ratios, making it one of the top three issues in residential care complaints for the first time. In home care, the most common issues complained about were fees and charges (336), lack of consultation and communication (167) and communication about fees and charges (144). These were also the top three issues in complaints about home care in 2016–17.²⁰
33. The current Commissioner, Janet Anderson, in her evidence at the Royal Commission into Aged Care Quality and Safety on 18 February 2019, stated that the Commission complaints function was ‘largely unchanged’ and it had not made any significant changes in relation to

¹⁷ Aged Care Royal Commission, *Statement of Paul Versteeg to Royal Commission into Aged Care Quality and Safety* (7 February 2019). Accessed on 19 July 2019 from <<https://agedcare.royalcommission.gov.au/hearings/Documents/exhibits-2019/12-february/WIT.0009.0001.0001.pdf>>.

¹⁸ Australian Government, Aged Care Quality and Safety Commission, *Australian Aged Care Quality Agency*, Historical publications. Accessed on 19 July 2019 from <<https://www.agedcarequality.gov.au/about-us/corporate-publications/australian-aged-care-quality-agency>>.

¹⁹ Australian Government, Aged Care Quality and Safety Commission, above n 38.

²⁰ Australian Government, Aged Care Quality and Safety Commission, above n 38.

the operation of the complaints function, compared with what was happening previously.²¹ The ALA submits that the Commission's complaints function is not radically different from its predecessors.

34. The ALA submits that the new Commission's complaint's process is not sufficiently independent and does not provide a transparent outcome-focused mechanism in its approach to the resolution of complaints. The ALA submits that the Commission is essentially a toothless tiger — and even if it has teeth it is not (at least not yet) using them effectively.
35. The ALA submits that aged care residents are among the most vulnerable people in our society and also face significant barriers to accessing justice — which is why the inadequacies of the complaints mechanism must be evaluated.²² The ALA submits that the Commission's complaints system is an ineffective advocate for the vulnerable aged care residents and is unlikely to satisfy the public call for greater accountability and transparency from a privatised aged care sector. The ALA submits that complaints mechanism processes continue to unduly favour the aged care providers, and that a more robust complaints process with increased powers, accountability and transparency is urgently required.
36. The ALA submits that the greatest barrier to making a complaint is the fear of reprisals: punishment of residents and fear of termination of employment for staff members.²³ The ALA submits that there is a lack of protection for vulnerable private sector whistleblower aged care staff.
37. The ALA submits that members of the public are entitled to know the reasons for an administrative decision such as the outcome of a complaint that affects them. The ALA submits that providing reasons promotes fairness, transparency and accountability. This gives the person affected by the decision the opportunity to have the decision explained and to seek review if they wish. The ALA submits that the public expects agencies and ministers to

²¹ Royal Commission into Aged Care Quality and Safety (transcript, 18 February 2019). Accessed on 19 July 2019 from <<https://agedcare.royalcommission.gov.au/hearings/Documents/transcripts-2019/transcript-18-february-2019.pdf>>.

²² Blumer, Noor, 'President's Page: The coming of age', *Precedent* (2018) 148, 3.

²³ Carnell, Kate and Professor Ron Paterson, *Review of the National Aged Care Quality Regulatory Processes, (Carnell Patterson Review)* October 2017.

act fairly, transparently and consistently in their administrative decision-making and to be accountable for the decisions they make.

Recommendation 3

That the Australian Government establish a stronger regulatory model for the Aged Care Quality and Safety Commission, and an effective complaints mechanism that is transparent, consumer-oriented and outcome-based.

Advocating on behalf of residents in RACFs: a frail and vulnerable population

38. The ALA submits that the current system places undue focus on internal complaint mechanisms which have been proven to be ineffective. Internal reviews conducted by providers do not take into account the power discrepancy between aged care consumers and aged care facilities. The Commission and Older Persons Advocacy Network still direct complainants back to their service providers, which fails to properly recognise the implicit threat of reprisal following the making of a complaint.²⁴
39. The ALA submits that an effective complaints mechanism must take into account the practical difficulties facing people in aged care facilities, including limited access to and understanding of computers; the impact of dementia and other cognitive difficulties; vulnerability (including fear of reprisals); and reliance on others to assist with the process.
40. The ALA submits that the aged care regime would do very well to substantially fortify its regulatory and complaints process through an aged care ombudsman program like the 'California State Long-Term Care Ombudsman Program' in California, in the United States, which involves California's State Certified Ombudsman representatives, nearly 80% of whom

²⁴ Australian Government, *Aged Care Quality and Safety Commission, Making a complaint*. Accessed on 19 July 2019 from <<https://www.agedcarequality.gov.au/making-complaint>>.

are volunteers.²⁵ The stated goal of the State Long-Term Care Ombudsman Program is to advocate for the rights of all residents of long-term care facilities.²⁶

Recommendation 4

That the Australian Government provide strong and accessible advocacy services to aged care residents with a volunteer program of independent certified representatives.

Openness, transparency and accountability: linking complaints to regulatory action and compensation

41. The ALA submits that openness, transparency and accountability are key attributes of an effective aged care complaints mechanism. The complaints function needs to be more closely connected to the regulatory function. As Commissioner Janet Anderson said in evidence, the Commission needs information from both sources (accreditation data and complaints) to ‘sharpen its regulatory gaze’.
42. The ALA submits that there is a lack of public scrutiny and effective sanctions for demonstrably poor care in the current system. Serious incidents should lead to escalation of complaints. There is little action taken in relation to the administration of inappropriate medications; the use of restraints; or neglect — even where incidents involving negligence lead to death.
43. The ALA submits that disciplinary hearings should be implemented, especially where a complaint shows a pattern or a practice of poor care. The ALA submits that hearings in relation to RACFs should be conducted in a similar framework to hearings and decisions of the Health Care Complaints Commission (HCCC).

²⁵ State of California, Department of Aging website, Programs and Services, Long-Term Care Ombudsman. Accessed on 19 July 2019 from <https://www.aging.ca.gov/Programs_and_Services/Long-Term_Care_Ombudsman/>.

²⁶ Ibid.

The need for an independent tribunal

44. The ALA submits that the mistreatment of people in RACFs is a breach of human rights and should be treated as such. There needs to be a power to award compensation for breaches of human rights. The ALA submits that an independent tribunal is required to hear complaints with powers to issue fines; cancel accreditation; publicly reprimand providers; and order monetary compensation. Currently consumers are not provided compensation unless they undertake litigation privately.
45. The power to refer complaints to the Department of Health for compliance action is insufficient and does not adequately protect the rights of aggrieved persons. Even if the Commission assumed the Department's roles, there are problems with having the same agency exercise all the functions — as judge, jury and executioner. This conflict of interest was not adequately considered when the ACQSC Act was passed.²⁷
46. Further, the ALA submits that the cost of litigation is prohibitive for many complainants. Aged care litigation, such as common law action in negligence (often the only form of monetary redress available to victims and complainants), can be a lengthy process.
47. The ALA submits that an independent tribunal with the power to hear aged care complaints and fine/sanction providers in breach and award compensation to victims should be established. The ALA submits that such a tribunal should have the power to investigate alleged breaches without reliance on the consent of the victim or the need to obtain direct evidence from a victim. The NSW Health Care Complaints Commission (HCCC) provides a model upon which to base such a Tribunal.²⁸ The HCCC has full powers to receive and investigate complaints, conciliate complaints, resolve complaints, and refer complaints for further action. Judicial and/or quasi-judicial hearings can be conducted before the NSW Civil and Administrative Tribunal.
48. The ALA submits that the fundamental principle is that offenders should pay. Aged care providers are making significant profit from their commercial operations and receiving

²⁷ Parliament of Australia, *Aged Care Quality and Safety Commission Bill 2018*, Second Reading Speech, Minister for Aged Care, Ken Wyatt (12 September 2018). Accessed on 19 July 2019 from https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/e9910ead-7240-49bf-bdec-3741da5331b9/0018/hansard_frag.pdf;fileType=application%2Fpdf.

²⁸ *Health Care Complaints Act 1993* (NSW).

government funding. The ALA submits that it is not enough to rely on the accreditation mechanisms to revoke accreditation on breach. The closure of aged care facilities has an adverse effect on all persons involved, but particularly innocent aged care residents who may be forced to relocate.

49. The ALA submits that managers and boards of RACFs should be held personally accountable when standards are not met.²⁹ It is not sufficient to revoke accreditation only to have it re-conferred in a subsequent accreditation inspection (as this Commission has heard in evidence). The ALA submits that persons who suffer wrongs and losses should be entitled to claim compensation.

Recommendation 5

That an equitable and accessible independent tribunal be established with an outcome-based complaints system with power to:

- **hear aged care complaints; fine/sanction providers in breach;**
- **hold RACF management personally liable for breaches; and**
- **award compensation to victims for serious breaches — offenders in breach should pay.**

Conclusion

50. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into this stage of the Royal Commission into Aged Care Quality and Safety which focuses on program design issues.

51. The ALA makes the following recommendations:

²⁹ Coroner's Court of South Australia, *Inquest into the death of Dorothy Mavis Baum on 31 May 2012, Inquest by Mark Frederick Johns, State Coroner* (59/2016 (0853/2012) 28. Accessed on 19 July 2019 from <<http://www.courts.sa.gov.au/CoronersFindings/Lists/Coroners%20Findings/Attachments/763/BAUM%20Dorothy%20Mavis.pdf>>.

- (1) That the Australian Government introduce legislation to mandate annual public disclosure of each RACF's performance data and a governmental portal to facilitate the publishing of comparative data.**
- (2) That the Australian Government should establish an independent aged care ombudsman with inspection powers in RACFs.**
- (3) That the Australian Government establish a stronger regulatory model for the Aged Care Quality and Safety Commission, and an effective complaints mechanism that is transparent, consumer-oriented and outcome-based.**
- (4) That the Australian Government provide strong and accessible advocacy services to aged care residents with a volunteer program of independent certified representatives.**
- (5) That an equitable and accessible independent tribunal be established with an outcome-based complaints system with power to:**
 - hear aged care complaints; fine/sanction providers in breach;**
 - hold RACF management personally liable for breaches; and**
 - award compensation to victims for serious breaches — offenders in breach should pay.**

Andrew Christopoulos



President

Australian Lawyers Alliance