

EXPOSURE DRAFT

2022

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Inspector-General of Aged Care Bill 2022

No. , 2022

(Health and Aged Care)

**A Bill for an Act to provide for the appointment of
an Inspector-General of Aged Care, and for related
purposes**

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1 **A Bill for an Act to provide for the appointment of**
2 **an Inspector-General of Aged Care, and for related**
3 **purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act is the *Inspector-General of Aged Care Act 2022*.

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Part 1 Preliminary

Section 2

1 **2 Commencement**

- 2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.
6

Commencement information

Column 1

Column 2

Column 3

Provisions

Commencement

Date/Details

1. The whole of
this Act

As follows:

- (a) if this Act receives the Royal Assent before 1 July 2023—1 July 2023;
- (b) if this Act receives the Royal Assent on or after 1 July 2023—a single day to be fixed by Proclamation.

However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.

- 7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

- 10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

13 **3 Objects**

14 The objects of this Act are to drive greater accountability and
15 transparency of the Commonwealth's administration of the aged
16 care system, and facilitate positive change for older Australians,
17 by:

- 18 (a) establishing an independent Inspector-General of Aged Care
19 to monitor, investigate and report on the Commonwealth's
20 administration of the aged care system, including by
-

- 1 identifying systemic issues through independent reviews, and
2 making recommendations for improvement; and
3 (b) providing oversight of the Commonwealth's administration
4 of complaints management processes across the aged care
5 system; and
6 (c) establishing a framework for the Inspector-General of Aged
7 Care to report publicly to the Minister and Parliament on the
8 Commonwealth's administration of the aged care system.

9 **4 Simplified outline of this Act**

10 This Act establishes the office of the Inspector-General of Aged
11 Care, sets out the Inspector-General's functions and powers, and
12 deals with other matters relating to the role of the
13 Inspector-General (including administrative matters and the
14 management of information obtained under this Act).

15 **5 Definitions**

16 In this Act:

17 ***accountable authority*** has the same meaning as in the *Public*
18 *Governance, Performance and Accountability Act 2013*.

19 ***aged care funding agreement*** means:

- 20 (a) an agreement entered into under subsection 73-1(3), 81-1(1),
21 82-1(1) or 83-1(1) of the *Aged Care Act 1997*; or
22 (b) an agreement under which any of the following is payable by
23 the Commonwealth:
24 (i) a payment or grant of financial assistance covered by
25 item 415.016, 415.017, 415.018, 415.019 or 415.020 of
26 the table in Part 4 of Schedule 1AA to the *Financial*
27 *Framework (Supplementary Powers) Regulations 1997*;
28 (ii) a payment or grant of financial assistance covered by
29 item 140, 163, 236, 298, 428 or 481 of the table in
30 Part 4 of Schedule 1AB to those regulations; or
31 (c) an agreement of a kind specified in the regulations.

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Part 1 Preliminary

Section 5

- 1 **aged care law** means any of the following:
- 2 (a) a provision of the *Aged Care Act 1997*;
- 3 (b) a provision of the *Aged Care Quality and Safety Commission*
- 4 *Act 2018*;
- 5 (c) a provision of the *Aged Care (Transitional Provisions) Act*
- 6 *1997*;
- 7 (d) a provision of a legislative instrument made under an Act
- 8 referred to in paragraph (a), (b) or (c);
- 9 (e) section 131A of the *National Health Reform Act 2011*, or
- 10 regulations made for the purposes of that section;
- 11 (f) a provision of any other law of the Commonwealth specified
- 12 in the regulations.

13 **Aged Care Royal Commission** means the Royal Commission into

14 Aged Care Quality and Safety issued by the Governor-General by

15 Letters Patent on 6 December 2018 (and including any later

16 amendments of those Letters Patent).

17 **Australian law** means a law of the Commonwealth, or of a State or

18 Territory.

19 **authorised official**: see subsection 45(6).

20 **civil penalty provision** has the same meaning as in the Regulatory

21 Powers Act.

22 **Commonwealth entity** has the same meaning as in the *Public*

23 *Governance, Performance and Accountability Act 2013*.

24 **draft review report**, in relation to a review under section 15: see

25 subsection 19(1).

26 **enforcement body** has the same meaning as in the *Privacy Act*

27 *1988*.

28 **enforcement related activity** has the same meaning as in the

29 *Privacy Act 1988*.

30 **entrusted person** means any of the following:

- 31 (a) the Inspector-General;

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- 1 (b) a member of the staff of the Inspector-General;
2 (c) a person assisting the Inspector-General under section 37;
3 (d) a consultant engaged by the Inspector-General under section
4 38.

5 **final review report**, in relation to a review under section 15: see
6 subsection 22(1).

7 **government entity** means:

- 8 (a) a Commonwealth entity; or
9 (b) a body (other than a Commonwealth entity) established by or
10 under a law of the Commonwealth; or
11 (c) a body established, otherwise than by or under a law of the
12 Commonwealth, by the Governor-General; or
13 (d) an incorporated company in which the Commonwealth has a
14 controlling interest; or
15 (e) a person (other than an individual) to whom a function, duty
16 or power has been delegated or subdelegated under an aged
17 care law; or
18 (f) a person (other than an individual) who is engaged as a
19 consultant, contractor or subcontractor to perform a function
20 or duty, or exercise a power, under an aged care law; or
21 (g) a person (other than an individual) who is registered or
22 appointed to perform a function or duty, or exercise a power,
23 under an aged care law; or
24 (h) a person (other than an individual) specified in the
25 regulations.

26 **government official** means:

- 27 (a) a Minister of the Commonwealth; or
28 (b) an official of a Commonwealth entity; or
29 (c) an individual who holds an appointment made, otherwise
30 than by or under a law of the Commonwealth, by the
31 Governor-General; or
32 (d) an individual to whom a function, duty or power has been
33 delegated or subdelegated under an aged care law; or

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Part 1 Preliminary

Section 5

- 1 (e) an individual who is engaged as a consultant, contractor or
2 subcontractor to perform a function or duty, or exercise a
3 power, under an aged care law; or
4 (f) an individual who is registered or appointed to perform a
5 function or duty, or exercise a power, under an aged care law;
6 or
7 (g) an individual who is engaged as a consultant or contractor by
8 the Department to provide services to the Department in
9 connection with the Commonwealth's administration of an
10 aged care funding agreement or aged care law; or
11 (h) an individual specified in the regulations.

12 **Inspector-General** means the Inspector-General of Aged Care
13 referred to in section 9.

14 **official** has the same meaning as in the *Public Governance,*
15 *Performance and Accountability Act 2013.*

16 **paid work** means work for financial gain or reward (whether as an
17 employee, a self-employed person or otherwise).

18 **premises** includes any land or place.

19 **protected information** means any of the following:

- 20 (a) personal information within the meaning of the *Privacy Act*
21 *1988*;
22 (b) information that relates to the affairs of:
23 (i) an approved provider (within the meaning of the *Aged*
24 *Care Quality and Safety Commission Act 2018*); or
25 (ii) a party to an aged care funding agreement (other than
26 the Commonwealth);
27 (c) information the disclosure of which would or could
28 reasonably be expected to prejudice the effective working of
29 a Commonwealth entity in the exercise of the entity's powers
30 or performance of the entity's functions or duties under an
31 aged care law.

32 **Regulatory Powers Act** means the *Regulatory Powers (Standard*
33 *Provisions) Act 2014.*

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Preliminary **Part 1**

Section 6

1 *Secretary* means the Secretary of the Department.

2 *staff of the Inspector-General* means the staff of the
3 Inspector-General referred to in section 36.

4 *use*, in relation to information, includes make a record of.

5 **6 Act binds the Crown**

6 This Act binds the Crown in each of its capacities.

7 **7 Application of this Act**

8 This Act extends to the external Territories other than the Territory
9 of Ashmore and Cartier Islands.

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Part 2 Establishment and functions and powers of the Inspector-General of Aged Care

Division 1 Inspector-General of Aged Care

Section 8

1 **Part 2—Establishment and functions and powers of**
2 **the Inspector-General of Aged Care**

3 **Division 1—Inspector-General of Aged Care**

4 **8 Simplified outline of this Part**

5 This Part establishes the office of the Inspector-General of Aged
6 Care and sets out the Inspector-General’s functions and powers.

7 The Inspector-General may conduct reviews for the purposes of
8 performing certain functions. The Inspector-General must publish a
9 work plan for each financial year that sets out the reviews to be
10 conducted during each financial year.

11 The Inspector-General must also conduct 2 reviews of the
12 Commonwealth’s implementation of the recommendations of the
13 Aged Care Royal Commission.

14 The Inspector-General must publish a report on each review. The
15 Inspector-General may also publish reports on any other matter
16 relating to the Inspector-General’s functions.

17 **9 Inspector-General of Aged Care**

18 There is to be an Inspector-General of Aged Care.

19 **10 Functions of the Inspector-General**

20 (1) The Inspector-General has the following functions:

21 (a) to monitor, investigate and report to the Minister and
22 Parliament on:

23 (i) the exercise of powers, and the performance of
24 functions and duties, under an aged care law; or

25 (ii) the Commonwealth’s administration of an aged care law
26 or aged care funding agreement; or

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- 1 (iii) the operation of an aged care law; or
2 (iv) the performance of obligations and the exercise of rights
3 by the Commonwealth under an aged care funding
4 agreement;
5 (b) to monitor, investigate and report to the Minister and
6 Parliament on systemic issues relating to a matter referred to
7 in subparagraph (a)(i), (ii), (iii) or (iv);
8 (c) to monitor, investigate and report to the Minister and
9 Parliament on any systems established by the
10 Commonwealth to administer an aged care law or aged care
11 funding agreement;
12 (d) to monitor, investigate and report to the Minister and
13 Parliament on the implementation by the Commonwealth of
14 the recommendations of the Aged Care Royal Commission;
15 (e) any other functions conferred on the Inspector-General by
16 this Act or the regulations;
17 (f) to do anything incidental to, or conducive to, the
18 performance of the above functions.
- 19 (2) Paragraphs (1)(a) and (b) do not permit the Inspector-General to
20 monitor and investigate only a single exercise of a power, or a
21 single performance of a function or duty, under an aged care law.
- 22 (3) The Inspector-General has power to do all things necessary or
23 convenient to be done for, or in connection with, the performance
24 of Inspector-General's functions.

25 **11 Independence of Inspector-General**

- 26 (1) Subject to this Act and to other laws of the Commonwealth, the
27 Inspector-General:
28 (a) has complete discretion in the performance of the
29 Inspector-General's functions and the exercise of the
30 Inspector-General's powers; and
31 (b) is not subject to direction by any person in relation to the
32 performance or exercise of those functions or powers.

33 Note: The Minister may direct the Inspector-General to conduct a review
34 into a particular matter: see subsection 15(2).

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Part 2 Establishment and functions and powers of the Inspector-General of Aged Care

Division 1 Inspector-General of Aged Care

Section 12

- 1 (2) In particular, the Inspector-General is not subject to direction in
2 relation to:
- 3 (a) whether or not a particular outcome or priority is to be
4 included in a work plan for a financial year; or
- 5 (b) the conduct of a review, including:
- 6 (i) the terms of reference for a review; and
7 (ii) how a review is to be conducted; and
8 (iii) the timing of a review; and
9 (iv) the priority to be given to a review; or
10 (c) the content of a report.

11 **12 Application of the finance law**

12 For the purposes of the finance law (within the meaning of the
13 *Public Governance, Performance and Accountability Act 2013*):

- 14 (a) the following group of persons is a listed entity:
- 15 (i) the Inspector-General;
16 (ii) the staff of the Inspector-General;
17 (iii) persons assisting the Inspector-General referred to in
18 section 37;
19 (iv) consultants engaged under section 38; and
- 20 (b) the listed entity is to be known as the Office of the
21 Inspector-General of Aged Care; and
- 22 (c) the Inspector-General is the accountable authority of the
23 listed entity; and
- 24 (d) the persons referred to in paragraph (a) are officials of the
25 listed entity; and
- 26 (e) the purposes of the listed entity include the functions of the
27 Inspector-General referred to in section 10.

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1 **Division 2—Reviews by the Inspector-General**

2 **Subdivision A—Annual work plans**

3 **13 Inspector-General must prepare annual work plan**

- 4 (1) The Inspector-General must prepare a work plan, in writing, for
5 each financial year.
- 6 (2) The work plan for a financial year must set out the key outcomes
7 and priorities for the Inspector-General for the financial year,
8 including:
- 9 (a) the reviews that the Inspector-General intends to conduct
10 under section 15 during the financial year; and
11 (b) details of each review, including when each review will be
12 conducted.
- 13 (3) The Inspector-General must consult the Minister in preparing a
14 work plan for a financial year. The Inspector-General may also
15 consult any other person the Inspector-General considers
16 appropriate.
- 17 (4) The Inspector-General must publish the work plan for a financial
18 year on the Inspector-General’s website as soon as practicable after
19 it has been finalised.
- 20 (5) A work plan prepared under subsection (1) is not a legislative
21 instrument.

22 **14 Variation of annual work plan**

- 23 (1) The Inspector-General may vary a work plan for a financial year if
24 the Inspector-General is satisfied that it is reasonable and necessary
25 to do so.
- 26 (2) The Inspector-General must publish the work plan, as varied, on
27 the Inspector-General’s website as soon as practicable after the
28 work plan has been varied.
- 29 (3) A varied work plan is not a legislative instrument.

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Part 2 Establishment and functions and powers of the Inspector-General of Aged Care

Division 2 Reviews by the Inspector-General

Section 15

1 **Subdivision B—Process for conducting reviews**

2 **15 Reviews by the Inspector-General**

3 *Inspector-General may conduct review on own initiative*

4 (1) The Inspector-General may, on the Inspector-General's own
5 initiative, conduct a review for the purpose of performing a
6 function referred to in paragraphs 10(1)(a) to (d).

7 *Minister may direct Inspector-General to conduct review*

8 (2) The Minister may, in writing, direct the Inspector-General to
9 conduct a review (a **directed review**) into a particular matter related
10 to a function referred to in paragraphs 10(1)(a) to (d).

11 (3) In considering whether to give a direction under subsection (2) to
12 conduct a directed review, the Minister must have regard to:

13 (a) the objects of this Act; and

14 (b) the work plan for the financial year in which the directed
15 review is to be conducted; and

16 (c) whether the Inspector-General has sufficient resources to
17 conduct the directed review.

18 (4) The Inspector-General must comply with a direction given under
19 subsection (2).

20 (5) The Inspector-General must consult the Minister in determining:

21 (a) the terms of reference for a directed review; and

22 (b) the priority to be given to a directed review.

23 Note: The Inspector-General is not subject to direction by the Minister in
24 relation to these matters: see section 11.

25 (6) A direction given under subsection (2) is not a legislative
26 instrument.

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1

Inspector-General may conduct review on request

2

(7) The Inspector-General may conduct a review into a particular matter related to a function referred to in paragraphs 10(1)(a) to (d) if requested in writing to do so by:

3

4

5

(a) the Secretary; or

6

(b) a Minister administering an aged care law.

7

(8) The Inspector-General is not required to comply with a request under subsection (7).

8

9

(9) If the Inspector-General receives a request under subsection (7), the Inspector-General must:

10

11

(a) decide whether to comply with the request; and

12

(b) give written notice of the decision to the person who made the request, setting out the reasons for the decision; and

13

14

(c) if the request was made by the Secretary—notify the Minister of the request.

15

16

16 Notice of review

17

(1) The Inspector-General starts a review under section 15 by giving notice in accordance with this section.

18

19

(2) A notice under subsection (1) must:

20

(a) be in writing; and

21

(b) specify the day on which the review starts (which must be the day on which the notice is given); and

22

23

(c) specify the terms of reference for the review; and

24

(d) be given to:

25

(i) the Minister; and

26

(ii) if the review relates to the exercise of powers, or the performance of functions or duties, by a government entity—the head (however described) of the entity.

27

28

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Part 2 Establishment and functions and powers of the Inspector-General of Aged Care

Division 2 Reviews by the Inspector-General

Section 17

1 **17 Inspector-General may invite submissions**

2 *Inviting submissions*

3 (1) The Inspector-General may invite members of the public generally,
4 or a particular person or body, to make submissions on a matter
5 relating to a review under section 15.

6 (2) The Inspector-General has discretion in deciding matters connected
7 with the process for inviting or making submissions, including:

8 (a) how to communicate an invitation; and

9 (b) who may make a submission; and

10 (c) how submissions may be made.

11 Note: For example, the Inspector-General may:

12 (a) advertise in the press or other media seeking written submissions
13 from the public; or

14 (b) contact particular persons or bodies inviting them to attend a
15 meeting at which they may make oral submissions.

16 *Requests for confidentiality*

17 (3) If a person or body makes a submission, the person or body may
18 request the Inspector-General:

19 (a) not to make the submission, or a part of the submission,
20 available under section 18; or

21 (b) not to include the submission, or a part of the submission, in
22 the draft review report or the final review report.

23 (4) The Inspector-General may agree to the request if the
24 Inspector-General is satisfied that:

25 (a) the request is reasonable in the circumstances; and

26 (b) agreeing to the request would not unduly impede the conduct
27 of the review; and

28 (c) the person or body has made the submission in good faith.

29 (5) However, a request under subsection (3) in relation to a submission
30 made in relation to a review does not prevent the Inspector-General
31 from having regard to the submission in conducting the review.

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- 1 (6) If a person or body makes a request under subsection (3) in relation
2 to a submission, or a part of a submission, and the
3 Inspector-General refuses the request:
4 (a) the person or body may withdraw the submission or the part
5 of the submission; and
6 (b) if the submission is a written submission—the person or
7 body may require the submission, or the part of the
8 submission, to be returned to the person or body.

9 **18 Submissions may be made publicly available**

- 10 (1) Subject to subsections (2), (3) and (4), the Inspector-General may
11 make available to the public generally, or to particular persons or
12 bodies, a submission or a part of a submission (including a written
13 record of an oral submission) made in response to an invitation
14 under subsection 17(1).
- 15 (2) The Inspector-General must not make available under
16 subsection (1) a submission, or a part of a submission, to the extent
17 that:
18 (a) it names, or otherwise makes reasonably identifiable, an
19 individual (other than an individual covered by
20 subsection (5)); or
21 (b) it contains information the disclosure of which the
22 Inspector-General is satisfied would be contrary to the public
23 interest on one or more of the grounds set out in
24 subsection (6).
- 25 (3) The Inspector-General must not make available under
26 subsection (1) a submission, or part of a submission, made by a
27 person or body if:
28 (a) the person or body requested the Inspector-General not to
29 make the submission or the part of the submission available,
30 and the Inspector-General agreed to the request; or
31 (b) the submission, or the part of a submission, was withdrawn
32 by, or returned to, the person or body under subsection 17(6).

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Part 2 Establishment and functions and powers of the Inspector-General of Aged Care

Division 2 Reviews by the Inspector-General

Section 18

- 1 (4) The Inspector-General must not make available under
2 subsection (1) a written record of an oral submission made by a
3 person unless the person has verified the content of the record.
- 4 (5) For the purposes of paragraph (2)(a), this subsection covers the
5 following individuals:
6 (a) a Minister of the Commonwealth, a State or a Territory;
7 (b) an individual who holds an office or appointment under a law
8 of the Commonwealth, a State or a Territory;
9 (c) an SES employee or acting SES employee;
10 (d) an individual who made the submission, unless the
11 submission is a disclosure that qualifies for protection under
12 section 49 (about confidentiality of identity).
- 13 (6) For the purposes of paragraph (2)(b), the grounds are that the
14 disclosure would:
15 (a) prejudice the security, defence or international relations of
16 the Commonwealth; or
17 (b) involve disclosing:
18 (i) deliberations or decisions of the Cabinet, or of any
19 committee of the Cabinet, of the Commonwealth or of a
20 State; or
21 (ii) deliberations or advice of the Federal Executive Council
22 or the Executive Council of a State or the Northern
23 Territory; or
24 (iii) deliberations or decisions of the Australian Capital
25 Territory Executive or of a committee of that Executive;
26 or
27 (c) prejudice relations between the Commonwealth and a State
28 or Territory; or
29 (d) involve disclosing any information that was communicated in
30 confidence by the Commonwealth to a State or Territory, or
31 by a State or Territory to the Commonwealth; or
32 (e) reasonably be expected to prejudice the commercial interests
33 of any person or body; or

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- 1 (f) be contrary to the public interest for any other reason that
2 could form the basis for a claim in a judicial proceeding that
3 the information should not be disclosed.

4 **Subdivision C—Review reports**

5 **19 Draft review report**

- 6 (1) The Inspector-General must prepare a draft report (a *draft review*
7 *report*) on a review under section 15.

8 *Contents of report*

- 9 (2) The draft review report must set out:
10 (a) the preliminary findings of the review; and
11 (b) a summary of the evidence and other material on which those
12 preliminary findings are based; and
13 (c) any proposed recommendations resulting from the review.

14 Note: See also section 20, which requires the Inspector-General to give
15 certain persons an opportunity to respond before including certain
16 information in a draft review report, and section 67, which provides
17 that certain material must not be included in a draft review report.

18 *Reasonable opportunity to comment*

- 19 (3) If the review relates to the exercise of powers, or the performance
20 of functions or duties, by a government entity or a government
21 official, the Inspector-General must give the head (however
22 described) of the entity or the official:
23 (a) the draft review report; and
24 (b) a reasonable opportunity to comment on the report.
- 25 (4) The Inspector-General may also give the draft review report, or a
26 part of the draft review report, to any other person or body if the
27 Inspector-General considers it appropriate to give the person or
28 body an opportunity to comment on the report.
- 29 (5) A comment on a draft review report must be made in writing.

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Part 2 Establishment and functions and powers of the Inspector-General of Aged Care
Division 2 Reviews by the Inspector-General

Section 20

20 Opportunity to respond must be given before including certain information in draft review report

- (1) Before including in a draft review report a preliminary finding or proposed recommendation that is critical (either expressly or impliedly) of a government entity, a government official or any other person, the Inspector-General must give the head (however described) of the entity, the official or the other person concerned:
- (a) a statement setting out the finding or recommendation; and
 - (b) a reasonable opportunity to respond to the finding or recommendation.
- (2) The response must be given in the manner and form specified by the Inspector-General.

21 Unauthorised disclosure of draft review reports etc.

- (1) A person commits an offence if:
- (a) the person receives any of the following:
 - (i) a draft review report;
 - (ii) a document relating to a preliminary finding or a proposed recommendation included in a draft review report;
 - (iii) an extract from a report or document referred to in this paragraph; and
 - (b) the person discloses any information in the report, document or extract.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if the information is disclosed:
- (a) in a comment made in accordance with subsection 19(3); or
 - (b) in a response given in accordance with subsection 20(1); or
 - (c) to a lawyer for the purpose of obtaining legal advice in connection with making such a comment or giving such a response; or

EXPOSURE DRAFT

1 (d) to the Commonwealth Ombudsman, or another officer within
2 the meaning of subsection 35(1) of the *Ombudsman Act*
3 *1976*.

4 Note: A defendant bears an evidential burden in relation to a matter in
5 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

6 **22 Final review report**

7 (1) After completing a review under section 15, the Inspector-General
8 must prepare a final report (a ***final review report***) on the review.

9 (2) In preparing the final review report, the Inspector-General must
10 consider any comments made, or responses given, to the
11 Inspector-General on the draft review report.

12 *Responding to recommendations*

13 (3) If the final review report includes a recommendation that a
14 government entity, a government official or any other person take
15 certain action, the Inspector-General may, by written notice,
16 require the entity, official or other person concerned to respond to
17 the recommendation within the period specified in the notice
18 (which must not be less than 28 days after the notice is given).

19 (4) The response:

20 (a) must be given in writing; and

21 (b) must set out:

22 (i) whether the entity, official or person concerned accepts
23 the recommendation (in whole or in part); and

24 (ii) if the entity, official or person accepts the
25 recommendation (in whole or in part)—details of any
26 action that the entity, official or person proposes to take
27 to give effect to the recommendation (in whole or in
28 part); and

29 (iii) if the entity, official or person does not accept the
30 recommendation (in whole or in part)—the reasons for
31 not accepting the recommendation (in whole or in part).

EXPOSURE DRAFT

Part 2 Establishment and functions and powers of the Inspector-General of Aged Care
Division 2 Reviews by the Inspector-General

Section 23

1

Contents of final report

2

(5) The final review report must set out:

3

(a) the findings of the review; and

4

(b) a summary of the evidence and other material on which those findings are based; and

5

6

(c) any recommendations resulting from the review; and

7

(d) if the Inspector-General has given a notice under subsection (3) in relation to a recommendation:

8

9

(i) if a response to the recommendation has been given within the period specified in the notice—a copy of the response; or

10

11

12

(ii) if a response to the recommendation has not been given within the period specified in the notice—a statement to that effect.

13

14

15

Note: See also section 67, which provides that certain material must not be included in a final review report.

16

17

23 Tabling and publication of final review report

18

(1) As soon as practicable after preparing a final review report, the Inspector-General must give the report to:

19

20

(a) the Minister; and

21

(b) if the report includes a recommendation that a government entity, a government official or any other person take certain action—the entity, official or other person concerned; and

22

23

24

(c) any other person to whom the Inspector-General gave a copy of the draft review report.

25

26

Tabling

27

(2) The Minister must table the final review report in each House of the Parliament within 15 sitting days of that House after receiving the report.

28

29

EXPOSURE DRAFT

Establishment and functions and powers of the Inspector-General of Aged Care **Part 2**
Reviews by the Inspector-General **Division 2**

Section 23

1

Publication

2

- (3) The Inspector-General must publish the final review report on the
Inspector-General's website after the report is given to the
Minister.

3

4

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EXPOSURE DRAFT

Part 2 Establishment and functions and powers of the Inspector-General of Aged Care

Division 3 Other functions and powers

Section 24

1 **Division 3—Other functions and powers**

2 **24 Reviews of implementation of Aged Care Royal Commission**
3 **recommendations**

4 (1) The Inspector-General must conduct 2 reviews of the
5 implementation by the Commonwealth of the recommendations of
6 the Aged Care Royal Commission.

7 (2) A review under subsection (1) must consider, in relation to each
8 recommendation of the Aged Care Royal Commission:

9 (a) the measures and actions taken by the Commonwealth in
10 response to the recommendation; and

11 (b) the effectiveness of those measures and actions in
12 implementing the recommendation.

13 *Report*

14 (3) The Inspector-General must:

15 (a) give the Minister a written report of the review; and

16 (b) publish the report on the Inspector-General's website.

17 (4) The Minister must table a report under subsection (3) in each
18 House of the Parliament within 15 sitting days of that House after
19 the review is completed.

20 *First review*

21 (5) The first review under subsection (1) must be completed on or
22 before 1 March 2026.

23 *Second review*

24 (6) The second review under subsection (1) must be completed on or
25 before 1 March 2031.

EXPOSURE DRAFT

Establishment and functions and powers of the Inspector-General of Aged Care **Part 2**
Other functions and powers **Division 3**

Section 25

1 *When review is completed*

2 (7) For the purposes of subsections (4), (5) and (6), a review is
3 completed when the report of the review is given to the Minister
4 under subsection (3).

5 **25 Extra reports to Parliament**

6 (1) The Inspector-General may prepare a report on any matter relating
7 to the Inspector-General's functions.

8 (2) The Inspector-General must:

9 (a) give the report to the Minister and to any other person who,
10 in the Inspector-General's opinion, has a special interest in
11 the matter; and

12 (b) publish the report on the Inspector-General's website.

13 (3) The Minister must table the report in each House of the Parliament
14 within 15 sitting days of that House after the receiving the report.

EXPOSURE DRAFT

Part 3 Administrative provisions

Division 1 Introduction

Section 26

1 **Part 3—Administrative provisions**

2 **Division 1—Introduction**

3 **26 Simplified outline of this Part**

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This Part deals with administrative matters relating to the office of the Inspector-General, including the appointment of the Inspector-General, the terms and conditions on which the Inspector-General holds office and the staff of the Inspector-General.

EXPOSURE DRAFT

1 **Division 2—Appointment of the Inspector-General**

2 **27 Appointment**

- 3 (1) The Inspector-General is to be appointed by the Governor-General
4 by written instrument.

5 Note: Subject to subsection 28(2), the Inspector-General may be
6 reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- 7 (2) The Inspector-General may be appointed on a full-time or
8 part-time basis.

9 **28 Term of office**

- 10 (1) The Inspector-General holds office for the period specified in the
11 instrument of appointment. The period must not exceed 5 years.

- 12 (2) The Inspector-General must not hold office for a total of more than
13 10 years.

14 **29 Acting appointments**

15 The Minister may, by written instrument, appoint a person to act as
16 the Inspector-General:

- 17 (a) during a vacancy in the office of Inspector-General (whether
18 or not an appointment has previously been made to the
19 office); or
20 (b) during any period, or during all periods, when the
21 Inspector-General:
22 (i) is absent from duty or from Australia; or
23 (ii) is, for any reason, unable to perform the duties of the
24 office.

25 Note: For rules that apply to acting appointments, see sections 33AB and
26 33A of the *Acts Interpretation Act 1901*.

EXPOSURE DRAFT

Part 3 Administrative provisions

Division 2 Appointment of the Inspector-General

Section 30

1 **30 Remuneration and allowances**

- 2 (1) The Inspector-General is to be paid the remuneration that is
3 determined by the Remuneration Tribunal. If no determination of
4 that remuneration by the Tribunal is in operation, the
5 Inspector-General is to be paid the remuneration that is prescribed
6 by the regulations.
- 7 (2) An Inspector-General is to be paid the allowances that are
8 prescribed by the regulations.
- 9 (3) This section has effect subject to the *Remuneration Tribunal Act*
10 1973.

11 **31 Leave of absence for Inspector-General**

- 12 (1) If the Inspector-General is appointed on a full-time basis, the
13 Inspector-General has the recreation leave entitlements that are
14 determined by the Remuneration Tribunal.
- 15 (2) If the Inspector-General is appointed on a full-time basis, the
16 Minister may grant the Inspector-General leave of absence, other
17 than recreation leave, on the terms and conditions as to
18 remuneration or otherwise that the Minister determines.
- 19 (3) If the Inspector-General is appointed on a part-time basis, the
20 Minister may grant leave of absence to the Inspector-General on
21 the terms and conditions that the Minister determines.

22 **32 Other paid work**

23 The Inspector-General must not engage in paid work outside the
24 duties of the Inspector-General's office without the Minister's
25 approval.

26 **33 Other terms and conditions**

27 The Inspector-General holds office on the terms and conditions (if
28 any) in relation to matters not covered by this Act that are
29 determined by the Governor-General.

EXPOSURE DRAFT

1 **34 Resignation**

- 2 (1) The Inspector-General may resign the Inspector-General's
3 appointment by giving the Governor-General a written resignation.
- 4 (2) The resignation takes effect on the day it is received by
5 Governor-General or, if a later day is specified in the resignation,
6 on that later day.

7 **35 Termination of appointment**

- 8 (1) The Governor-General may terminate the appointment of the
9 Inspector-General:
10 (a) for misbehaviour; or
11 (b) if the Inspector-General is unable to perform the duties of the
12 Inspector-General's office because of physical or mental
13 incapacity.
- 14 (2) The Governor-General may terminate the appointment of the
15 Inspector-General if:
16 (a) the Inspector-General:
17 (i) becomes bankrupt; or
18 (ii) applies to take the benefit of any law for the relief of
19 bankrupt or insolvent debtors; or
20 (iii) compounds with the Inspector-General's creditors; or
21 (iv) makes an assignment of the Inspector-General's
22 remuneration for the benefit of the Inspector-General's
23 creditors; or
24 (b) the Inspector-General is absent, except on leave of absence,
25 for 14 consecutive days or for 28 days in any 12 months; or
26 (c) the Inspector-General engages, except with the Minister's
27 approval, in paid work outside the duties of the
28 Inspector-General's office (see section 32); or
29 (d) the Inspector-General fails, without reasonable excuse, to
30 comply with section 29 of the *Public Governance,*
31 *Performance and Accountability Act 2013* (which deals with
32 the duty to disclose interests) or rules made for the purposes
33 of that section.

EXPOSURE DRAFT

Part 3 Administrative provisions

Division 3 Staff of the Inspector-General etc.

Section 36

1 **Division 3—Staff of the Inspector-General etc.**

2 **36 Staff**

- 3 (1) The staff of the Inspector-General are to be:
- 4 (a) persons engaged under the *Public Service Act 1999*; and
- 5 (b) such other persons (if any) as the Inspector-General considers
- 6 necessary to employ to assist the Inspector-General in the
- 7 performance of the Inspector-General's functions.
- 8 (2) For the purposes of the *Public Service Act 1999*:
- 9 (a) the Inspector-General and the APS employees assisting the
- 10 Inspector-General together constitute a Statutory Agency;
- 11 and
- 12 (b) the Inspector-General is the Head of that Statutory Agency.

13 **37 Persons assisting the Inspector-General**

- 14 (1) The Inspector-General may be assisted by:
- 15 (a) officers and employees of Agencies (within the meaning of
- 16 the *Public Service Act 1999*), and of authorities of the
- 17 Commonwealth, whose services are made available to the
- 18 Inspector-General in connection with the performance of any
- 19 of the Inspector-General's functions; and
- 20 (b) persons whose services are made available under
- 21 arrangements made under subsection (2).
- 22 (2) The Inspector-General may, on behalf of the Commonwealth,
- 23 make an arrangement with the appropriate authority or officer of:
- 24 (a) a State or Territory government; or
- 25 (b) a State or Territory government authority;
- 26 under which the government or authority makes officers or
- 27 employees available to the Inspector-General to perform services
- 28 in connection with the performance of any of the
- 29 Inspector-General's functions.

EXPOSURE DRAFT

Administrative provisions **Part 3**
Staff of the Inspector-General etc. **Division 3**

Section 38

- 1 (3) An arrangement under subsection (2) may provide for the
2 Commonwealth to reimburse a State or Territory with respect to
3 the services of a person to whom the arrangement relates.
- 4 (4) When performing services for the Inspector-General under this
5 section, a person is subject to the directions of the
6 Inspector-General.

38 Consultants

- 7
- 8 (1) The Inspector-General may, on behalf of the Commonwealth,
9 engage consultants to assist in the performance of the
10 Inspector-General's functions.
- 11 (2) The consultants are to be engaged on the terms and conditions that
12 the Inspector-General determines in writing.

EXPOSURE DRAFT

Part 4 Information management

Division 1 Introduction

Section 39

1 **Part 4—Information management**

2 **Division 1—Introduction**

3 **39 Simplified outline of this Part**

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This Part sets out the Inspector-General’s information-gathering powers, the protections that may be available to persons who make disclosures to the Inspector-General, and the circumstances in which information obtained under this Act may be used or disclosed.

EXPOSURE DRAFT

1 **Division 2—Information-gathering powers**

2 **40 Power of Inspector-General to obtain information**

- 3 (1) The Inspector-General may give a notice to a person under
4 subsection (2) if the Inspector-General has reason to believe that
5 the person has information or a document or thing that is relevant
6 to the performance of any of the Inspector-General's functions
7 referred to in paragraphs 10(1)(a) to (d).
- 8 (2) The Inspector-General may, by written notice given to the person,
9 require the person:
- 10 (a) to give any such information to an official of the Office of
11 the Inspector-General of Aged Care; or
- 12 (b) to produce any such document or thing an official of the
13 Office of the Inspector-General of Aged Care; or
- 14 (c) to appear before an official of the Office of the
15 Inspector-General of Aged Care to answer questions.
- 16 (3) The notice must:
- 17 (a) if paragraph (2)(a) or (b) applies—specify:
- 18 (i) the period (which must be at least 14 days after the
19 notice is given to the person) within which the person is
20 required to comply with the notice; and
- 21 (ii) the manner in which the person is required to comply
22 with the notice; and
- 23 (b) if paragraph (2)(c) applies—specify:
- 24 (i) a time and place at which the person is to appear; and
- 25 (ii) the nature of the matter to which the questions will
26 relate; and
- 27 (c) in any case—state the effect of subsections (7) and (8) and
28 sections 137.1 and 137.2 of the *Criminal Code* (false or
29 misleading information or documents).
- 30 (4) The Inspector-General may require answers provided under
31 paragraph (2)(c) to be verified by, or given on, oath or affirmation
32 and either orally or in writing.

EXPOSURE DRAFT

Part 4 Information management

Division 2 Information-gathering powers

Section 41

1 (5) The Inspector-General to whom information or answers are
2 verified or given, may administer the oath or affirmation.

3 (6) A person contravenes this subsection if:
4 (a) the person is given a notice under subsection (2); and
5 (b) the person fails to comply with the notice.

6 *Fault-based offence*

7 (7) A person commits an offence if the person contravenes
8 subsection (6).

9 Penalty: 30 penalty units or imprisonment for 6 months, or both.

10 *Civil penalty*

11 (8) A person is liable to a civil penalty if the person contravenes
12 subsection (6).

13 Civil penalty: 100 penalty units.

14 **41 False or misleading information**

15 (1) A person is liable to a civil penalty if:
16 (a) the person gives information in compliance or purported
17 compliance with a notice under subsection 40(2); and
18 (b) the person does so knowing that the information:
19 (i) is false or misleading in a material particular; or
20 (ii) omits any matter or thing without which the information
21 is misleading in a material particular.

22 Civil penalty: 100 penalty units.

23 (2) Subsection (1) does not apply if, before the information was given
24 by a person to another person (the *recipient*) in compliance or
25 purported compliance with this Act, the recipient did not take
26 reasonable steps to inform the person that the person may be liable
27 to a civil penalty for contravening subsection (1).

28 Note: A defendant bears an evidential burden in relation to the matter in this
29 subsection (see section 96 of the Regulatory Powers Act).

EXPOSURE DRAFT

1 (3) For the purposes of subsection (2), it is sufficient if the following
2 form of words is used:

3 “You may be liable to a civil penalty for giving false or misleading
4 information”.

5 **42 False or misleading documents**

- 6 (1) A person is liable to a civil penalty if:
7 (a) the person produces a document to another person; and
8 (b) the person does so knowing that the document:
9 (i) is false or misleading in a material particular; or
10 (ii) omits any matter or thing without which the information
11 or document is misleading in a material particular; and
12 (c) the document is produced in compliance or purported
13 compliance with a notice under subsection 40(2).

14 Civil penalty: 100 penalty units.

- 15 (2) Subsection (1) does not apply to a person who produces a
16 document if the document is accompanied by a written statement
17 signed by the person or, in the case of a body corporate, by a
18 competent officer of the body corporate:
19 (a) stating that the document is, to the knowledge of the
20 first-mentioned person, false or misleading in a material
21 particular; and
22 (b) setting out, or referring to, the material particular in which
23 the document is, to the knowledge of the first-mentioned
24 person, false or misleading.

25 Note: A defendant bears an evidential burden in relation to the matter in this
26 subsection (see section 96 of the Regulatory Powers Act).

27 **43 Inspector-General may retain documents and things**

28 (1) This section applies if a document or thing is produced to the
29 Inspector-General under subsection 40(2).

30 (2) The Inspector-General:

EXPOSURE DRAFT

Part 4 Information management

Division 2 Information-gathering powers

Section 44

- 1 (a) may make copies of the document or thing, or take extracts
2 from the document; and
- 3 (b) may retain possession of the document or thing for such
4 period as is necessary for the purposes of the performance of
5 any of the Inspector-General's functions referred to in
6 paragraphs 10(1)(a) to (d).
- 7 (3) While the Inspector-General retains the document or thing, the
8 Inspector-General must allow a person who would otherwise be
9 entitled to inspect the document or view the thing:
- 10 (a) to do so at all reasonable times; and
11 (b) to copy the document or thing.
- 12 (4) Subsection (3) does not apply if:
- 13 (a) possession of the document or thing by the person could
14 constitute an offence; or
- 15 (b) inspecting or copying the document or thing (as the case
16 requires) would compromise or damage the document or
17 thing; or
- 18 (c) the Inspector-General is satisfied that allowing the person to
19 inspect the document or view the thing would prejudice the
20 performance of any of the Inspector-General's functions
21 referred to in paragraphs 10(1)(a) to (d).

44 When documents and things must be returned

- 22
- 23 (1) This section applies if the Inspector-General is satisfied that a
24 document or thing produced to the Inspector-General under
25 subsection 40(2) is not required (or is no longer required) for the
26 purposes of the performance of any of the Inspector-General's
27 functions referred to in paragraphs 10(1)(a) to (d).
- 28 (2) The Inspector-General must take reasonable steps to return the
29 document or thing to the person from whom it was received, or to
30 the owner if that person is not entitled to possess it.
- 31 (3) However, the Inspector-General does not have to take those steps
32 if:

EXPOSURE DRAFT

- 1 (a) possession of the document or thing by a person could
2 constitute an offence; or
3 (b) the document or thing may otherwise be retained, destroyed
4 or disposed of under a law, or an order of a court or tribunal,
5 of the Commonwealth or of a State or a Territory; or
6 (c) the document or thing is forfeited or forfeitable to the
7 Commonwealth or is the subject of a dispute as to ownership.

8 **45 Access to premises etc.**

- 9 (1) The Inspector-General may certify, in writing, that the
10 Inspector-General is satisfied that it is reasonably necessary for the
11 Inspector-General or an authorised official to have access to
12 premises for the purposes of the performance of any of the
13 Inspector-General's functions referred to in paragraphs 10(1)(a) to
14 (d).
- 15 (2) If a certificate under subsection (1) in relation to premises is in
16 force, the Inspector-General or an authorised official may, at all
17 reasonable times, enter and remain on the premises for the
18 purposes of the performance of any of the Inspector-General's
19 functions referred to in paragraphs 10(1)(a) to (d).
- 20 (3) However, before entering the premises the Inspector-General or
21 authorised official must provide notice to:
22 (a) a member of the group of persons who is responsible for the
23 executive decisions of the person or body occupying the
24 premises; or
25 (b) any other person who has authority or responsibility for, or
26 significant influence over, planning, directing or controlling
27 the activities of the person or body occupying the premises.
- 28 (4) While remaining on the premises, the Inspector-General or
29 authorised official:
30 (a) is entitled to full and free access at all reasonable times to
31 any documents or other property; and
32 (b) may examine, make copies of or take extracts from any
33 document.

EXPOSURE DRAFT

Part 4 Information management

Division 2 Information-gathering powers

Section 45

- 1 (5) The occupier of the premises must provide the Inspector-General
2 or official with all reasonable facilities and assistance for the
3 effective exercise of powers under this section.
- 4 (6) An authorised official is not entitled to enter or remain on premises
5 if:
6 (a) the occupier of the premises asks the authorised official to
7 produce proof of the authorised official's authority to enter
8 and remain on the premises; and
9 (b) the authorised official fails to produce:
10 (i) a certificate issued by the Inspector-General under
11 subsection (1) in relation to the premises; and
12 (ii) a written authority signed by the Inspector-General that
13 states that the official is authorised to exercise powers
14 under this section.
- 15 (7) An individual is an *authorised official* if the individual is an
16 official of the Office of the Inspector-General of Aged Care who is
17 authorised by the Inspector-General, in writing, to exercise powers
18 or perform functions under this section.

Fault-based offence

- 19
20 (8) A person commits an offence if the person contravenes
21 subsection (5).

22 Penalty: 30 penalty units or imprisonment for 6 months, or both.

23 Note: Section 149.1 of the *Criminal Code* deals with obstruction of
24 Commonwealth public officials.

Civil penalty

- 25
26 (9) A person is liable to a civil penalty if the person contravenes
27 subsection (5).

28 Civil penalty: 100 penalty units.

EXPOSURE DRAFT

46 Privilege against self-incrimination and penalty privilege

- 1
- 2 (1) An individual is not excused from giving information, producing a
3 document or thing or answering a question under subsection 40(2)
4 on the ground that giving the information, producing the document
5 or thing or answering the question might tend to incriminate the
6 individual in relation to an offence.

7 Note: A body corporate is not entitled to claim the privilege against
8 self-incrimination.

- 9 (2) However:

- 10 (a) the information given, document or thing produced or answer
11 given; and
12 (b) the giving of the information, the production of the document
13 or thing or the answering of the question; and
14 (c) any information, document or thing obtained as a direct or
15 indirect consequence of the giving of the information, the
16 production of the document or thing or the answering of the
17 question;

18 are not admissible in evidence against the individual in criminal
19 proceedings other than proceedings for an offence against
20 section 137.1 or 137.2 of the *Criminal Code* (false or misleading
21 information or documents) that relates to section 40.

- 22 (3) If, at general law, an individual would otherwise be able to claim
23 the privilege against self-exposure to a penalty (other than a
24 penalty for an offence) in relation to giving information, producing
25 a document or thing or answering a question under subsection
26 40(2), the individual is not excused from giving the information,
27 producing the document or thing or answering the question under
28 that provision on that ground.

29 Note: A body corporate is not entitled to claim the privilege against
30 self-exposure to a penalty.

47 Legal professional privilege

- 31
- 32 (1) A person is not excused from giving information, producing a
33 document or thing or answering a question under subsection 40(2)
-

EXPOSURE DRAFT

Part 4 Information management

Division 2 Information-gathering powers

Section 48

- 1 on the ground that doing so would disclose a communication
2 protected against disclosure by legal professional privilege, if the
3 communication is:
- 4 (a) legal advice given to a Minister or a Commonwealth entity;
5 or
 - 6 (b) a communication between an official of a Commonwealth
7 entity and another person or body.
- 8 (2) However:
- 9 (a) the information given, document or thing produced or answer
10 given; and
 - 11 (b) the giving of the information, the production of the document
12 or thing or the answering of the question; and
 - 13 (c) any information, document or thing obtained as a direct or
14 indirect consequence of the giving of the information, the
15 production of the document or thing or the answering of the
16 question;
- 17 are not admissible in evidence against the person in any civil or
18 criminal proceedings.
- 19 (3) The fact that a person is not excused from giving information,
20 producing a document or thing or answering a question under
21 subsection 40(2) on the ground mentioned in subsection (1) does
22 not otherwise affect a claim of legal professional privilege that
23 anyone may make in relation to that information, document, thing
24 or answer.

25 **48 Secrecy provisions**

- 26 (1) A person is not excused from giving information, producing a
27 document or thing or answering a question under subsection 40(2)
28 on the ground that doing so would breach a provision mentioned in
29 subsection (2).
- 30 (2) Subject to subsection (3), the provisions for the purposes of
31 subsection (1) are:
- 32 (a) a provision of a law of the Commonwealth that purports to
33 prohibit; or

EXPOSURE DRAFT

- 1 (b) anything done, under a provision of a law of the
2 Commonwealth, to prohibit;
3 any of the following:
4 (c) the use of information, or a document or thing;
5 (d) dealing with information, or a document or thing;
6 (e) making a record of information, or a copy of a document or
7 thing;
8 (f) the disclosure or publication of information;
9 (g) the production of, or the publication of the contents of, a
10 document;
11 (h) the production of a thing;
12 (i) access to information, a document or a thing;
13 regardless of whether the provision of the law of the
14 Commonwealth:
15 (j) commenced before the commencement of this section; or
16 (k) is expressed to apply despite any other law.
- 17 (3) Subsection (2) does not apply to any of the following:
18 (a) a secrecy provision under the *My Health Records Act 2012*;
19 (b) a secrecy provision that is a provision of a taxation law
20 within the meaning of the *Taxation Administration Act 1953*;
21 (c) a secrecy provision in the *Ombudsman Act 1976*;
22 (d) a secrecy provision that is expressed by another law of the
23 Commonwealth to have effect despite this Act;
24 (e) anything done under a provision referred to in paragraphs (a)
25 to (d).

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Part 4 Information management

Division 3 Protections relating to disclosing information

Section 49

1 **Division 3—Protections relating to disclosing information**

2 **Subdivision A—Protecting identity of disclosers in certain**
3 **circumstances**

4 **49 Disclosures qualifying for protection**

- 5 (1) A disclosure of information by an individual (the *discloser*)
6 qualifies for protection under this section if:
7 (a) the disclosure is made to:
8 (i) the Inspector-General; or
9 (ii) a member of the staff of the Inspector-General; and
10 (b) the discloser requests that the identity of the discloser be
11 protected as confidential; and
12 (c) the Inspector-General agrees, in writing, to the request.
- 13 (2) A request under subsection (1) must:
14 (a) be made in writing; and
15 (b) be given to the Inspector-General before the disclosure is
16 made; and
17 (c) specify the nature of the information to be disclosed; and
18 (d) be accompanied by any other documents or information
19 specified in the regulations.
- 20 (3) In deciding whether to agree to a request under subsection (1), the
21 Inspector-General may have regard to:
22 (a) the nature of the information to be disclosed; and
23 (b) whether disclosing, or enabling a person to ascertain, the
24 identity of the discloser is likely to result in significant and
25 direct detriment to the discloser; and
26 (c) any other matter the Inspector-General considers relevant.

27 **50 Confidentiality of identity of disclosers**

- 28 (1) A person (the *first person*) contravenes this subsection if:

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- 1 (a) another person (the *discloser*) makes a disclosure of
2 information (the *qualifying disclosure*) that qualifies for
3 protection under section 49; and
4 (b) the first person discloses any of the following (the
5 *confidential information*):
6 (i) identification information (within the meaning of the
7 *Privacy Act 1988*) about the discloser;
8 (ii) any other information that is likely to lead to the
9 identification of the discloser; and
10 (c) the confidential information is information that the first
11 person obtained directly or indirectly because of the
12 qualifying disclosure; and
13 (d) the disclosure referred to in paragraph (b) is not authorised
14 under subsection (2).
- 15 (2) A disclosure referred to in paragraph (1)(b) is authorised under this
16 subsection if:
17 (a) the disclosure is made to a member of the Australian Federal
18 Police (within the meaning of the *Australian Federal Police*
19 *Act 1979*); or
20 (b) the disclosure is made to a legal practitioner for the purpose
21 of obtaining legal advice or legal representation in relation to
22 the operation of this Subdivision; or
23 (c) the disclosure is made with the consent of the discloser; or
24 (d) both of the following apply:
25 (i) the confidential information is in the public domain
26 before the disclosure is made;
27 (ii) the original disclosure of the confidential information
28 into the public domain (before the disclosure is made)
29 was not in contravention of subsection (1).

30 *Fault-based offence*

- 31 (3) A person commits an offence if the person contravenes
32 subsection (1).

33 Penalty: Imprisonment for 6 months or 30 penalty units, or both.

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Division 3 Protections relating to disclosing information

Section 51

1 *Civil penalty*

2 (4) A person is liable to a civil penalty if the person contravenes
3 subsection (1).

4 Civil penalty: 100 penalty units.

5 **Subdivision B—Protection from victimisation**

6 **51 Victimisation prohibited**

7 *Actually causing detriment to another person*

8 (1) A person (the *first person*) is liable to a civil penalty if:

9 (a) the first person engages in conduct; and

10 (b) the first person's conduct causes any detriment to another
11 person (the *second person*); and

12 (c) the first person engages in the conduct because the first
13 person believes or suspects that the second person or a third
14 person has done, may have done or intends to do any of the
15 following things:

16 (i) give information to a person exercising or performing
17 any power or function under this Act;

18 (ii) produce a document to a person exercising or
19 performing any power or function under this Act;

20 (iii) any other thing for the purpose of assisting in the
21 performance of the functions, or the exercise of the
22 powers, of the Inspector-General.

23 Civil penalty: 500 penalty units.

24 (2) In proceedings for a civil penalty order against a person for a
25 contravention of subsection (1), it is not necessary to prove that the
26 second person or a third person has done, may have done or
27 intends to do a thing mentioned in paragraph (1)(c).

28 *Threatening to cause detriment to another person*

29 (3) A person (the *first person*) is liable to a civil penalty if:

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- 1 (a) the first person makes to another person (the *second person*)
2 a threat to cause any detriment to the second person or to a
3 third person; and
4 (b) the first person:
5 (i) intends the second person to fear that the threat will be
6 carried out; or
7 (ii) is reckless as to causing the second person to fear that
8 the threat will be carried out; and
9 (c) the first person makes the threat because the first person
10 believes or suspects that a person has done, may have done or
11 intends to do any of the following things:
12 (i) give information to a person exercising or performing
13 any power or function under this Act;
14 (ii) produce a document to a person exercising or
15 performing any power or function under this Act;
16 (iii) any other thing for the purpose of assisting in the
17 performance of the functions, or the exercise of the
18 powers, of the Inspector-General.

19 Civil penalty: 500 penalty units.

20 *Threats*

- 21 (4) For the purpose of subsection (3), a threat may be:
22 (a) express or implied; or
23 (b) conditional or unconditional.
24 (5) In proceedings for a civil penalty order against a person for a
25 contravention of subsection (3), it is not necessary to prove that the
26 person threatened actually feared that the threat would be carried
27 out.

28 **Subdivision C—Immunity from liability for certain disclosures**

29 **52 Disclosures qualifying for protection**

30 A disclosure of information by an individual qualifies for
31 protection under this section if:

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Part 4 Information management

Division 3 Protections relating to disclosing information

Section 53

- 1 (a) the disclosure is made to:
2 (i) the Inspector-General; or
3 (ii) a member of the staff of the Inspector-General; and
4 (b) the disclosure is made in compliance with:
5 (i) a request made by the Inspector-General; or
6 (ii) a notice given under subsection 40(2).

7 **53 Disclosure that qualifies for protection not actionable etc.**

- 8 (1) If a person makes a disclosure that qualifies for protection under
9 section 52:
10 (a) the person is not subject to any civil, criminal or
11 administrative liability (including disciplinary action) for
12 making the disclosure; and
13 (b) no contractual or other remedy may be enforced, and no
14 contractual or other right may be exercised, against the
15 person on the basis of the disclosure.
- 16 (2) Without limiting subsection (1):
17 (a) if the disclosure is made in compliance with a request made
18 by the Inspector-General—the person:
19 (i) has qualified privilege in proceedings for defamation in
20 respect of the disclosure; and
21 (ii) is not, in the absence of malice on the person's part,
22 liable to an action for defamation at the suit of a person
23 in respect of the disclosure; and
24 (b) if the disclosure is made in compliance with a notice given
25 under subsection 40(2)—the person has absolute privilege in
26 proceedings for defamation in respect of the disclosure; and
27 (c) a contract to which the person is a party must not be
28 terminated on the basis that the disclosure constitutes a
29 breach of the contract.
- 30 (3) For the purpose of subparagraph (2)(a)(ii), *malice* includes ill will
31 to the person concerned or any other improper motive.

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- 1 (4) This section does not limit or affect any right, privilege or
2 immunity that a person has, apart from this section, as a defendant
3 in proceedings, or an action, for defamation.

4 **54 Liability for false or misleading disclosures unaffected**

- 5 (1) Section 53 does not apply to civil, criminal or administrative
6 liability (including disciplinary action) for knowingly making a
7 disclosure that is false or misleading.
- 8 (2) Without limiting subsection (1), section 53 does not apply to
9 liability for an offence against section 137.1 or 137.2 of the
10 *Criminal Code* (false or misleading information or documents) that
11 relates to the disclosure.

12 **55 Person's liability for own conduct not affected**

13 To avoid doubt, whether a person's disclosure of their own conduct
14 is a disclosure that qualifies for protection under section 52 does
15 not affect the person's liability for the conduct.

16 **56 Claims for protection**

- 17 (1) If, in civil or criminal proceedings (the *primary proceedings*)
18 instituted against a person in a court, the person makes a claim
19 (relevant to the proceedings) that, because of section 53, the person
20 is not subject to any civil, criminal or administrative liability for
21 making a particular disclosure:
- 22 (a) the person bears the onus of adducing or pointing to evidence
23 that suggests a reasonable possibility that the claim is made
24 out; and
 - 25 (b) if the person discharges that onus—the party instituting the
26 primary proceedings against the person bears the onus of
27 proving that the claim is not made out; and
 - 28 (c) the court must deal with the claim in separate proceedings;
29 and
 - 30 (d) the court must adjourn the primary proceedings until the
31 claim has been dealt with; and

EXPOSURE DRAFT

Part 4 Information management

Division 3 Protections relating to disclosing information

Section 57

- 1 (e) none of the following:
- 2 (i) any admission made by the person in the separate
- 3 proceedings;
- 4 (ii) any information given by the person in the separate
- 5 proceedings;
- 6 (iii) any other evidence adduced by the person in the
- 7 separate proceedings;
- 8 is admissible in evidence against the person except in
- 9 proceedings in respect of the falsity of the admission,
- 10 information or evidence; and
- 11 (f) if the person or another person gives evidence in the separate
- 12 proceedings in support of the claim—giving that evidence
- 13 does not amount to a waiver of privilege for the purposes of
- 14 the primary proceedings or any other proceedings.
- 15 (2) To avoid doubt, a right under section 126K of the *Evidence Act*
- 16 *1995* not to be compelled to give evidence is a privilege for the
- 17 purposes of paragraph (1)(f) of this section.

18 **57 Protection has effect despite other Commonwealth laws**

- 19 Section 53 has effect despite any other provision of a law of the
- 20 Commonwealth, unless:
- 21 (a) the provision is enacted after the commencement of this
- 22 section; and
- 23 (b) the provision is expressed to have effect despite this
- 24 Subdivision or that section.

1 **Division 4—Secrecy of information**

2 **58 Unauthorised use or disclosure of protected information**

- 3 (1) A person commits an offence if:
4 (a) the person is, or has been, an entrusted person; and
5 (b) the person has obtained information in the person's capacity
6 as an entrusted person; and
7 (c) the information is protected information; and
8 (d) the person uses or discloses the information.

9 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- 10 (2) Subsection (1) does not apply if the use or disclosure is authorised
11 by a provision of section 59.

12 Note: A defendant bears an evidential burden in relation to a matter in this
13 subsection (see subsection 13.3(3) of the *Criminal Code*).

14 **59 Authorisations to use or disclose protected information**

15 *Use or disclosure in performing functions or exercising powers*
16 *under this Act*

- 17 (1) An entrusted person may use or disclose protected information in
18 performing functions or duties or exercising powers under this Act.

19 Note 1: A provision of this section constitutes an authorisation for the
20 purposes of the *Privacy Act 1988* and other laws (including the
21 common law).

22 Note 2: Use, in relation to information, includes make a record of (see the
23 definition of *use* in section 5).

24 *Use or disclosure for purposes of proceedings*

- 25 (2) An entrusted person may disclose protected information:
26 (a) to a court or tribunal, or in accordance with an order of a
27 court or tribunal, for the purposes of proceedings; or
28 (b) to a coronial inquiry, or in accordance with an order of a
29 coroner, for the purposes of a coronial inquiry.

EXPOSURE DRAFT

Part 4 Information management

Division 4 Secrecy of information

Section 59

1 *Use or disclosure for purposes of enforcement related activity*

2 (3) An entrusted person may use protected information, or disclose
3 protected information to an enforcement body, if the person
4 reasonably believes that the use or disclosure is reasonably
5 necessary for, or directly related to, one or more enforcement
6 related activities being conducted by, or on behalf of, that
7 enforcement body.

8 (4) An enforcement body to which protected information is disclosed
9 under subsection (1) may use or disclose the information for the
10 purposes of one or more enforcement related activities being
11 conducted by, or on behalf of, that enforcement body.

12 *Use or disclosure required or authorised by another Australian*
13 *law*

14 (5) An entrusted person may use or disclose protected information if
15 the use or disclosure is required or authorised under an Australian
16 law other than this Act.

17 *Disclosure to person to whom information relates*

18 (6) An entrusted person may disclose protected information to the
19 person to whom the information relates.

20 *Disclosure to person who provided information*

21 (7) An entrusted person may disclose protected information to the
22 person who provided the information.

23 *Use or disclosure of information that is already public*

24 (8) An entrusted person may use protected information, or disclose
25 protected information to another person, if the information has
26 already been lawfully made available to the public.

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1 *Disclosure to integrity agency*

2 (9) An entrusted person may disclose protected information to any of
3 the following persons for the purposes of that person exercising the
4 person's powers, or performing the person's functions or duties:

5 (a) the Commonwealth Ombudsman, or another officer within
6 the meaning of subsection 35(1) of the *Ombudsman Act*
7 1976;

8 (b) the Australian Information Commissioner, a member of the
9 staff of the Office of the Australian Information
10 Commissioner, or a consultant engaged under the *Australian*
11 *Information Commissioner Act 2010*.

12 *Disclosure for purposes of preventing serious threat to safety,*
13 *health or well-being*

14 (10) An entrusted person may disclose protected information if the
15 disclosure is necessary to lessen or prevent a serious threat to the
16 safety, health or well-being of an aged care consumer (within the
17 meaning of the *Aged Care Quality and Safety Commission Act*
18 2018).

EXPOSURE DRAFT

Part 5 Compliance and enforcement

Section 60

1 **Part 5—Compliance and enforcement**
2

3 **60 Simplified outline of this Part**

4 Civil penalty orders may be sought under Part 4 of the Regulatory
5 Powers Act from a relevant court in relation to contraventions of
6 civil penalty provisions of this Act.

7 This Part also contains machinery provisions dealing with
8 provisions of this Act where both civil and criminal consequences
9 attach to a breach of the provision.

10 **61 Civil penalty provisions**

11 *Enforceable civil penalty provisions*

- 12 (1) Each civil penalty provision of this Act is enforceable under Part 4
13 of the Regulatory Powers Act.

14 Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to
15 be enforced by obtaining an order for a person to pay a pecuniary
16 penalty for the contravention of the provision.

17 *Authorised applicant*

- 18 (2) For the purposes of Part 4 of the Regulatory Powers Act, the
19 Inspector-General is an authorised applicant in relation to the civil
20 penalty provisions of this Act.

21 *Relevant court*

- 22 (3) For the purposes of Part 4 of the Regulatory Powers Act, each of
23 the following courts is a relevant court in relation to the civil
24 penalty provisions of this Act:

- 25 (a) the Federal Court of Australia;
26 (b) the Federal Circuit and Family Court of Australia
27 (Division 2);

- 1 (c) a court of a State or Territory that has jurisdiction in relation
2 to the matter.

3 **62 Physical elements of offences**

4 (1) This section applies if a provision of this Act provides that a person
5 contravening another provision of this Act (the *conduct rule*
6 *provision*) commits an offence.

7 (2) For the purposes of applying Chapter 2 of the *Criminal Code* to the
8 offence, the physical elements of the offence are set out in the
9 conduct rule provision.

10 Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal
11 responsibility.

12 **63 Contravening an offence provision or a civil penalty provision**

13 (1) This section applies if a provision of this Act provides that a person
14 contravening another provision of this Act (the *conduct provision*)
15 commits an offence or is liable to a civil penalty.

16 (2) For the purposes of this Act, and the Regulatory Powers Act to the
17 extent that it relates to this Act, a reference to a contravention of an
18 offence provision or a civil penalty provision includes a reference
19 to a contravention of the conduct provision.

EXPOSURE DRAFT

Part 6 Miscellaneous

Section 64

1 **Part 6—Miscellaneous**
2

3 **64 Simplified outline of this Part**

4 This Part contains miscellaneous provisions, including provisions
5 about protecting certain persons from civil liability, reporting
6 requirements, and delegation of the Inspector-General's powers.

7 This Part also contains the general regulation-making power.

8 **65 Protection from liability**

- 9 (1) This section applies to the following persons (*protected persons*):
10 (a) the Inspector-General;
11 (b) an official of the Office of the Inspector-General of Aged
12 Care;
13 (c) a delegate of the Inspector-General;
14 (d) a person who is authorised to perform a function or exercise
15 a power of, or on behalf of, the Inspector-General;
16 (e) a person assisting the Inspector-General or a person referred
17 to in paragraph (b), (c) or (d) in performing the
18 Inspector-General's functions or exercising the
19 Inspector-General's powers.
- 20 (2) A protected person is not liable to civil proceedings for loss,
21 damage or injury of any kind suffered by another person as a result
22 of anything done, or omitted to be done, by the protected person in
23 good faith in the performance or purported performance of a
24 function or duty conferred by this Act, or the exercise or purported
25 exercise of a power conferred by this Act.

26 **66 Annual report**

27 The annual report prepared by the Inspector-General and given to
28 the Minister under section 46 of the *Public Governance*,

- 1 *Performance and Accountability Act 2013* for a period must
2 include:
- 3 (a) information about the performance of the Inspector-General's
4 functions, including the number of reviews under Division 2
5 of Part 2:
6 (i) started during the period; and
7 (ii) completed during the period; and
8 (b) information and statistics about the exercise of the
9 Inspector-General's powers during the period, including:
10 (i) the number of notices given by the Inspector-General
11 under section 40, and the circumstances in which each
12 notice was given; and
13 (ii) the number of times the Inspector-General or an
14 authorised official has entered premises under section
15 45, and the circumstances in which each entry occurred;
16 and
17 (c) any other matter prescribed by the regulations.

18 **67 Contents of reports**

19 *Annual reports*

- 20 (1) An annual report referred to in section 66 must not include
21 particular information if the Inspector-General is satisfied that
22 disclosure of the information would be contrary to the public
23 interest on one or more of the grounds set out in subsection (4).

24 *Reports prepared under this Act*

- 25 (2) A report under section 25 must not:
26 (a) include information the disclosure of which the
27 Inspector-General is satisfied would be contrary to the public
28 interest on one or more of the grounds set out in
29 subsection (4); or
30 (b) name, or otherwise make reasonably identifiable, an
31 individual (other than an individual covered by
32 subsection (5)).

EXPOSURE DRAFT

Part 6 Miscellaneous

Section 67

- 1 (3) A draft review report or a final review report must not:
- 2 (a) include information the disclosure of which the
- 3 Inspector-General is satisfied would be contrary to the public
- 4 interest on one or more of the grounds set out in
- 5 subsection (4); or
- 6 (b) name, or otherwise make reasonably identifiable, an
- 7 individual (other than an individual covered by
- 8 subsection (5)); or
- 9 (c) include information (including information contained in a
- 10 submission) given to the Inspector-General for the purposes
- 11 of the review if:
- 12 (i) the person or body that gave the information to the
- 13 Inspector-General requested that the information not be
- 14 included in the report, and the Inspector-General agreed
- 15 to the request; or
- 16 (ii) the information was contained in a submission, or a part
- 17 of a submission, made by a person or body that was
- 18 withdrawn by, or returned to, the person or body before
- 19 the report was prepared.

20 *Public interest grounds*

- 21 (4) For the purposes of subsection (1) and paragraphs (2)(a) and (3)(a),
- 22 the grounds are that the disclosure would:
- 23 (a) prejudice the security, defence or international relations of
- 24 the Commonwealth; or
- 25 (b) involve disclosing:
- 26 (i) deliberations or decisions of the Cabinet, or of any
- 27 committee of the Cabinet, of the Commonwealth or of a
- 28 State; or
- 29 (ii) deliberations or advice of the Federal Executive Council
- 30 or the Executive Council of a State or the Northern
- 31 Territory; or
- 32 (iii) deliberations or decisions of the Australian Capital
- 33 Territory Executive or of a committee of that Executive;
- 34 or

- 1 (c) prejudice relations between the Commonwealth and a State
2 or Territory; or
3 (d) involve disclosing any information that was communicated in
4 confidence by the Commonwealth to a State or Territory, or
5 by a State or Territory to the Commonwealth; or
6 (e) reasonably be expected to prejudice the commercial interests
7 of any person or body; or
8 (f) be contrary to the public interest for any other reason that
9 could form the basis for a claim in a judicial proceeding that
10 the information should not be disclosed.

11 *Identifiable individuals*

- 12 (5) For the purposes of paragraphs (2)(b) and (3)(b), this subsection
13 covers the following individuals:
14 (a) a Minister of the Commonwealth, a State or a Territory;
15 (b) an individual who holds an office or appointment under a law
16 of the Commonwealth, a State or a Territory;
17 (c) an SES employee or acting SES employee.

18 **68 Delegation by the Inspector-General**

- 19 (1) The Inspector-General may, in writing and subject to
20 subsections (2) and (3), delegate any of the Inspector-General's
21 functions, powers or duties under this Act or the regulations, or
22 under Part 4 of the Regulatory Powers Act (as that Part applies in
23 relation to this Act), to a member of the staff of the
24 Inspector-General:
25 (a) who is an SES employee or acting SES employee; or
26 (b) who holds, or is acting in, an Executive Level 2, or
27 equivalent, position.

28 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
29 provisions relating to delegations.

- 30 (2) The Inspector-General must not delegate any of the
31 Inspector-General's functions, powers or duties under the
32 following provisions:
33 (a) Subdivision A of Division 2 of Part 2 (annual work plans);

EXPOSURE DRAFT

Part 6 Miscellaneous

Section 69

- 1 (b) subsections 15(7) to (9) (requested or own initiative reviews);
2 (c) subsection 22(1) (prepare a final report);
3 (d) subsection 22(3) (opportunity to respond);
4 (e) section 23 (tabling and publication of final review report);
5 (f) subsections 24(3) and (4) (tabling and publication of a review
6 of implementation of Aged Care Royal Commission
7 recommendations);
8 (g) subsections 25(2) and (3) (tabling and publication of an extra
9 report to Parliament);
10 (h) section 66 (annual report).
- 11 (3) The Inspector-General may delegate any of the Inspector-General's
12 functions, powers or duties under the following provisions only to
13 an SES employee or acting SES employee:
14 (a) section 16 (notice of review);
15 (b) subsection 45(6) (authorised officials).
- 16 (4) In performing a delegated function or exercising a delegated
17 power, the delegate must comply with any written directions of the
18 Inspector-General.

69 Regulations

- 19 The Governor-General may make regulations prescribing matters:
20 (a) required or permitted by this Act to be prescribed by the
21 regulations; or
22 (b) necessary or convenient to be prescribed for carrying out or
23 giving effect to this Act.
24
25