

Thursday, 5 December 2019

The PRESIDENT (Senator the Hon. Scott Ryan) took the chair at 09:30, read prayers and made an acknowledgement of country.

DOCUMENTS

Tabling

The Clerk: I table documents pursuant to statute as listed on the Dynamic Red.

Full details of the documents are recorded in the Journals of the Senate.

COMMITTEES

Meeting

The Clerk: Committees have lodged proposals to meet as follows:

Human Rights—Joint Statutory Committee—private meeting otherwise than in accordance with standing order 33(1) on Thursday, 5 December 2019, from 9.40 am.

Rural and Regional Affairs and Transport References Committee—public meeting today, from 5 pm, to take evidence for the committee's inquiry into the performance of Australia's dairy industry and the profitability of Australian dairy farmers since deregulation.

Scrutiny of Bills—Standing Committee—private meeting otherwise than in accordance with standing order 33(1) on Thursday, 5 December 2019, from 9.35 pm.

The PRESIDENT (09:31): I remind senators that the question may be put on any proposal at the request of any senator.

BILLS

Aged Care Legislation Amendment (New Commissioner Functions) Bill 2019

Second Reading

Consideration resumed of the motion:

That this bill be now read a second time.

Senator SIEWERT (Western Australia—Australian Greens Whip) (09:31): As senators will recall, I am speaking in continuance on the Aged Care Legislation Amendment (New Commissioner Functions) Bill 2019, which is phase 2 of transitioning powers and functions to the Aged Care Quality and Safety Commission and the commissioner. I was talking about the issues we need to be looking at, including a continuous quality improvement framework. As mentioned last year, the Australian Greens want to see a quality improvement framework being adopted to ensure that near misses are reported and work is done to continuously improve care for older Australians.

Last year I chaired the Senate Community Affairs References Committee inquiry into the effectiveness of the aged-care quality assessment and accreditation framework for protecting residents from abuse and poor practices and for ensuring proper clinical and medical care standards are maintained and practised. The committee recommended that the government work to expand the role of the commission to drive continuous improvement in quality and safety in aged care. Unfortunately, this bill has not touched the issue of continuous quality improvement, and we still have questions around the status of the framework. I will be asking about the status of the Serious Incident Response Scheme and the quality framework during the committee stage later this morning.

We have other concerns about the scope of the commissioner's complaints function. There is a significant lack of complaints and resolution of complaints about aged-care services being published. This is possibly driven by the reluctance of the secretary and the commissioner to use their respective powers to make information publicly available. It could also be due to the interpretation of the definition of 'protected information', as raised by COTA during the inquiry into the Aged Care Quality and Safety Commission Bill last year.

Today I will put forward an amendment that seeks to remedy this problem, by placing an obligation on the commissioner to publish information relating to complaints that have been made. The amendment requires the commissioner to publish a report at the end of each month on the number of complaints received about each approved provider or service provider, the number of complaints received about approved providers or service providers that were not resolved, and the type and number of actions taken by the commissioner to address the complaints. This amendment will lead to greater transparency and accountability regarding decision-making around aged care. Families want to know that their complaints are being heard, answered and responded to.

Aged-care advocates play an important role in supporting older people to address and exercise their rights and have their voice heard on the issues that are important to them. Under the current User Rights Principles, advocates and community visitors are granted access to enter aged-care facilities to assist older people. However, advocates still face a number of barriers to doing their job. For example, some advocates are still being refused entry and access into aged-care facilities. There are also issues around information being withheld from advocates where aged-care providers are blocking access to information. Advocates are reporting that it often takes time to resolve these issues with providers refusing entry. The commission is now responsible for enforcing provider responsibilities, including sanctions against providers refusing access to advocates. Today I will also be moving amendments that provide advocates with access to information relating to residential care, home care and flexible care.

The establishment of the new commission has made important steps towards a more holistic approach and better oversight of the aged-care sector as a whole. While some progress has been made, there is still significant work that needs to be done to ensure older people have access to safe and high-quality aged care. The royal commission's interim report made alarming observations about our current regulatory system in aged care. They said:

We have heard evidence which suggests that the regulatory regime that is intended to ensure safety and quality of services is unfit for purpose and does not adequately deter poor practices. Indeed, it often fails to detect them. When it does so, remedial action is frequently ineffective.

The regulatory regime appears to do little to encourage better practice beyond a minimum standard.

We believe we should be striving for an effective regulatory system that deters, detects and responds to actions that could cause older people harm. Regulation should be about enhancing health and wellbeing of people receiving care. Sadly, our broken aged-care system is not achieving these goals. While the royal commission has flagged its intent to recommend a fundamental overhaul of the aged-care system, including regulation, there are many changes that can be made to the regulatory system now so that older people do not have to wait for better care. We need action to ensure that we have a robust regulatory system that is fit for purpose and supports the kind of transformational change needed in our aged-care system.

I understand that the government is looking into the third phase of reforms relating to the commissioner's powers and functions. This presents a valuable opportunity to further strengthen the commissioner's set of powers and regulatory tools. In the meantime, I hope that the government will consider our proposed amendments that seek to strengthen the commissioner's powers and functions now. Older people deserve better quality care that is respectful and upholds their wellbeing, dignity and human rights, and we must do everything we can to ensure this happens as soon as possible.

There are many issues that still need to be addressed—restraints; the issues around viability of the sector; and rural and regional aged care, particularly rural and regional aged care for First Nations people. We do need to look at a total restructure of aged care. The Greens are aware that this will take time. But, because it will take time, we need to act now on the things that we know are wrong so that we can fix those while we develop a truly transformative approach to the way aged care is provided to older Australians.

As I indicated earlier, we will be supporting this bill, but I will be moving amendments, because I think the government hasn't gone far enough in this second phase of developing the role of the commission and the commissioner.

Senator GRIFF (South Australia) (09:38): People were shocked by the extent of the abuse and poor care exposed in the interim report by the Royal Commission into Aged Care Quality and Safety. It was a scathing report and an indictment on an industry that is meant to deliver respectful, good-quality care during an aged person's final years. The interim report showed that the government has deep systemic work to do to fix the aged-care system. It also needs to increase its investment. But it cannot simply pour money into the system without asking for a more accountable and transparent situation from providers. It cannot continue to tinker around the edges.

Centre Alliance supports the Aged Care Legislation Amendment (New Commissioner Functions) Bill 2019, as I'm sure every senator here does. The bill completes the process of handing responsibilities for aged care from the department to the Aged Care Quality and Safety Commissioner and its independent commissioner. It will put responsibility for approval of aged-care providers, plus complaints handling, accreditation, auditing, compliance and sanctions, under one body. This will certainly help streamline and strengthen oversight, as these roles will no longer be split between the department, the former Aged Care Complaints Commissioner and the Aged Care Quality Agency. But, as we all recognise, that's just one important step on a long road of necessary reform.

There are just so many problems in this sector. For instance, I started asking, over many estimates sessions, about what happened to unspent home-care package funds once a person passed away and was no longer receiving in-home assistance. What I discovered was that the department did not audit unspent funds. The department pretty much ran an honour system, where the onus was on providers to return unspent funds to the Department of Health. The department has since conducted a pilot audit of the program, which found a number of areas for improvement, but even then it did not look at the evidence of undisclosed outstanding unspent funds—incredible! That's just one example of the many problems in the mammoth aged-care sector.

The proper training of aged-care workers is another ongoing failure which the government knows about but seems to be doing nothing to tackle. Aged-care training for personal care workers is an absolute basket case. It needs to be better regulated and nationally consistent. For example, at the moment there are over 80 providers offering Certificate III in Individual Support. Some of them offer a course that runs for just 10 weeks, and others run that very same course for a year, which is actually the recommended minimum. It's patently clear that 10 weeks of study is not enough to learn and cement what a worker needs to know to deliver quality care. How can we improve the aged-care system if we don't massively improve training first?

Without a doubt, the sector also needs substantially more funding to ensure quality of residential care and faster ACAT assessments of care needs. The government needs to get assessment wait times, especially for home-care packages, down to one to three months instead of well over 12 months. Government is taking steps in this direction by making 10,000 more places available. But, as other speakers have noted, this is nowhere near enough to address the unmet needs in our communities. The health minister has also recently responded to the problem of chemical restraints by announcing that doctors will have to apply for permission to prescribe the antipsychotic drug risperidone for more than three months. However, it needs to be said that the overuse and inappropriate use of chemical restraints are a symptom of much larger problems in residential aged care, such as understaffing and poor staff training. These two measures are only small fixes that respond to the primary symptom and not the underlying causes.

The royal commission's interim report sounded a warning note on quick-fix responses. It noted that government policy in this area was beset by short-term solutions, which will:

... at best temporarily stave off the worst problems and, at worst, produce another set of unintended outcomes requiring further inquiries and reviews and further injections of public funds, without addressing the underlying causal factors.

Academic Juanita Breen, a dementia care researcher from the University of Tasmania, pointed out something similar in a piece in *The Conversation* last month. She cautioned that tightening access to risperidone may only serve to shift prescriptions to other sedatives. She also said GPs report feeling pressured by staff to prescribe these medications due to a lack of staff training on other ways to deal with these types of symptoms. Importantly, she made the point that we need to address training and the care environment, among other things, before we can properly address overprescribing of chemical restraints.

It's good the government is trying to act, but it needs to go deeper, to the root cause of the problems, which almost always go back to not having enough adequately skilled staff. Funding is a big part of the equation; we won't fix the system without better investment. But we can't be throwing more money at the problem without asking for more accountability and transparency from aged-care providers in return. That is what my amendments are all about.

Approved providers will have to provide annual financial statements to the Quality and Safety Commission, which will then make them public. The financial statements will detail the amount spent on the provision of care—things like food and medication—as well as the amount spent on staff and staff training, accommodation, administration and the amounts paid out to parent bodies. At the moment, there is no clear way to know how much a provider is spending on the provision of care. Is it 30 per cent of their income? Is it 50 per cent or 70 per cent? We just do not know how much a provider is pocketing as profit at the expense of the people in their care. At the moment, providers can spend their taxpayer subsidies pretty much as they choose. But, in an environment where our elderly are being subjected to systemic neglect, they very much must be held to account.

My office has heard firsthand accounts from people who work with and for aged-care providers highlighting that dodgy financial decisions and profiteering takes place. For instance, there is a hundred-bed provider that has made \$2.5 million in profit three years running, but this profit is only shown as \$500,000 on its financials, because they pay \$2 million in rent to the parent company which already owns the building. And there is a 50-bed not-for-profit facility where the salaries for three managers exceeded \$500,000 at a time when the home could not meet basic minimum standards and was also, as it turns out, sanctioned. And there are other providers using subsidies to help send senior staff to overseas award ceremonies and lavish conferences.

This amendment has the support of the Australian Nursing and Midwifery Federation, whose members are at the coalface. They and many other stakeholders want financial transparency so that it is finally clear how much facilities actually spend on delivering care and how much is pocketed or wasted.

The same day I circulated my amendment, I saw a story on the ABC about the royal commission's Hobart hearing which emphasised why these amendments are needed. That story detailed how Bupa South Hobart was so understaffed that, according to the daughter of two residents, her 90-year-old mother had been forced to clean up after her incontinent father and at times help a blind elderly resident go to the toilet because the woman's calls for help had gone unanswered. According to the ABC story, a former Bupa regional director said there was pressure on the facility to spend less on staffing. Part of her responsibility was to 'improve the commercial operation in South Hobart'. In other words, her job was to increase profits.

My amendments are all about transparency and accountability—and, boy, do we need more of this! For this reason, we also intend to support the Greens amendments, as they deal with disclosure of information. The Centre Alliance amendments also reflect a private member's bill introduced by my colleague Rebekha Sharkie, which would simply require aged-care providers to disclose their staff ratios.

Knowledge is power, as they say. All of these amendments seek factual information from providers so we will have a clearer picture of how their facilities are resourced. This will be crucial if we are to engage in sustainable reforms to the sector that will improve the experience and treatment of vulnerable elderly people living in residential aged care. I urge all senators to support these important amendments.

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (09:48): I thank all senators for their contribution to the legislation. This is an important piece of legislation which fulfils the recommendations of the Carnell-Paterson review, reinforced in the Earle Haven review, and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator SIEWERT (Western Australia—Australian Greens Whip) (09:49): If the Senate is agreeable I would like to ask a series of questions of the minister, which I hope I can do expediently, to get some issues on the record—issues that I think the minister is pretty aware I have some concerns about and would like a better understanding of—and then I'll move my amendment. I think that will probably be the quickest way. I don't want to hold up the place—I'm aware that there's a lot to get through today—but I do think this is an important matter, and there are a number of points that I'd like to make sure we address.

I want to ask a couple of questions about complaints. Through you, Chair, I ask the minister: what work is the government doing to reduce legislative barriers that prevent the publication of complaints and their resolutions?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (09:51): As part of the process that we're going through with this piece of legislation—it is actually, as you would understand, the full establishment of the Aged Care Quality and Safety Commission—I've written to the advisory committee that supports the Aged Care Quality and Safety Commission, asking them to advise me and the commission what additional powers might be required. That can go to things like reporting. I'm happy to have some conversations with you as that report comes back to me; it's due very soon. I understand your desire to see transparency, particularly around reporting, and I support that process. It's important to the government that people who have issues that they want to report through the Aged Care Quality and Safety Commission can do that, and can do it in a way that provides them satisfaction as to the fact that their complaints have been addressed and resolved in a way that's satisfactory to them.

Senator SIEWERT (Western Australia—Australian Greens Whip) (09:52): I thank the minister for his answer. You said you're expecting the report to come back fairly soon. What time frame are you talking about, and what's your intended process from there? Will that information become public or will you then go through a process of discussing it with various stakeholders?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (09:52): I'll be briefed on that next week, when I meet with the advisory committee; I'll get an initial briefing then. The report will come to me subsequent to that. It will go through some consultation with stakeholders; I think that's an important part of the process. But I am also really cognisant of the fact that we do have a royal commission going on. The commission said to us in their interim report that they didn't want ad hoc changes made to the act. In fact, they may come back to us with a recommendation for a whole new act. They

would prefer that any changes occur in that context. So I'm cognisant of respecting that process. It may be that we share those recommendations that come back from the advisory committee with the royal commission.

Senator SIEWERT (Western Australia—Australian Greens Whip) (09:53): I appreciate what you've said about the amendments to the act, and I suspect, yes, there will need to be a whole new act. But there may be processes that you could put in place that don't require changes to the act that would improve transparency and accountability. Would you be prepared to look at changes that could be made either through delegated instruments or just the process, if changes to the act are not advisable, given the process that's going to happen next year through the royal commission?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (09:54): I suppose that will depend a little bit on what comes back through the report that comes to me from the advisory committee. I will consider all of those things. I think we have demonstrated, as we did with the changes we made to the regulations around restraint, that, if there are things that we see that we can and should act on, we are prepared to consider those things.

Senator SIEWERT (Western Australia—Australian Greens Whip) (09:54): As the chamber will be aware, I have amendments around enabling complaints about My Aged Care, ACAT and the RAS process. Minister, is the government prepared to support those amendments? If not, why can't community members lodge complaints about that—

The CHAIR: Senator Siewert, it's probably better if you move the amendments first, and then they're live.

Senator SIEWERT (Western Australia—Australian Greens Whip) (09:55): by leave—I move Australian Greens amendments (1) to (3) on sheet 8811 revised together:

(1) Schedule 2, page 31 (after line 19), after item 19, insert:

19A Paragraphs 56-1(k) and (l)

Repeal the paragraphs, substitute:

(k) to do the following:

- (i) allow people acting for care recipients to have such access to the service as is specified in the User Rights Principles;
- (ii) provide such people information relating to the residential care being provided by the service;

(l) to do the following:

(i) allow people acting for bodies that have been paid *advocacy grants under Part 5.5, or *community visitors grants under Part 5.6, to have such access to the service as is specified in the User Rights Principles;

- (ii) provide such people information relating to the residential care being provided by the service;

19B Paragraph 56-2(j)

Repeal the paragraph, substitute:

(j) to do the following:

(i) allow people acting for bodies that have been paid *advocacy grants under Part 5.5 to have such access to the service as is specified in the User Rights Principles;

- (ii) provide such people information relating to the home care being provided by the service;

19C Paragraphs 56-3(j) and (k)

Repeal the paragraphs, substitute:

(j) to do the following:

- (i) allow people acting for care recipients to have such access to the service as is specified in the User Rights Principles;
- (ii) provide such people information relating to the flexible care being provided by the service;

(k) to do the following:

(i) allow people acting for bodies that have been paid *advocacy grants under Part 5.5 to have such access to the service as is specified in the User Rights Principles;

- (ii) provide such people information relating to the flexible care being provided by the service;

(2) Schedule 2, page 49 (after line 14), after item 47, insert:

47A At the end of section 18

Add:

; (c) the performance of any assessment (however described) conducted, in accordance with the rules, for the purposes of accrediting an aged care service referred to in paragraph 19(a);

(d) the performance of any quality review conducted, in accordance with the rules, of a service referred to in paragraph 19(b);

- (e) the performance of any monitoring, in accordance with the rules, of the quality of care and services provided by:
 - (i) approved providers of an aged care service referred to in paragraph 19(c); or
 - (ii) service providers of Commonwealth-funded aged care services;
- (f) the performance of any electronic platform established by the Commonwealth to provide information relating to the provision of aged care services or Commonwealth-funded aged care service.

47B At the end of subsection 21(2)

Add:

; (c) the performance of any assessment (however described) conducted, in accordance with the rules, for the purposes of accrediting an aged care service referred to in paragraph 19(a);

(d) the performance of any quality review conducted, in accordance with the rules, of a service referred to in paragraph 19(b);

(e) the performance of any monitoring, in accordance with the rules, of the quality of care and services provided by:

- (i) approved providers of an aged care service referred to in paragraph 19(c); or
- (ii) service providers of Commonwealth-funded aged care services;

(f) the performance of any electronic platform established by the Commonwealth to provide information relating to the provision of aged care services or Commonwealth-funded aged care service.

(3) Schedule 2, page 49 (after line 19), after item 48, insert:

48A At the end of Division 3 of Part 7

Add:

59B Publicly available report on complaints etc. relating to approved providers and service providers

(1) As soon as reasonably practicable after the end of each calendar month, the Commissioner must:

- (a) prepare a report setting out the matters mentioned in subsections (2) and (3); and
- (b) make the report publicly available.

(2) For approved providers the Commissioner received complaints or information about, the report must set out:

- (a) the number of complaints or information received about each approved provider during the calendar month; and
- (b) the number of complaints or information received about each approved provider during a previous calendar month that were not resolved or dealt with by the end of the calendar month;
- (c) for each aged care responsibility that the complaints or information relates to—the number of complaints or information received relating to the responsibility; and
- (d) both:
 - (i) the type of actions taken by the Commissioner to address the complaints, or to deal with the information, and
 - (ii) the number of those types of actions taken.

(3) For service providers of Commonwealth-funded aged care services the Commissioner received a complaint or information about, the report must set out:

- (a) the number of complaints or information received about each service provider during the calendar month; and
- (b) the number of complaints or information received about each service provider during a previous calendar month that were not resolved or dealt with by the end of the calendar month; and
- (c) for each responsibility under the funding agreement that relates to the service that the complaints or information relates to—the number of complaints or information received relating to the responsibility; and
- (d) both:
 - (i) the type of actions taken by the Commissioner to address the complaints, or to deal with the information, and
 - (ii) the number of those types of actions taken.

(4) The report must not include personal information unless the inclusion of the personal information is necessary to identify the approved provider or service provider (as the case may be).

I've got a series of questions, obviously, around these issues, which I will try to get through very quickly. Could I ask the government: what would be the issues with the complaints process addressing My Aged Care, the ACAT process and the RAS process?

The CHAIR: You started off by asking the minister if the government could agree to those amendments, so that's what you're asking? Yes? I call the minister.

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (09:56): The process for the quality and safety commissioner is designed to deal with complaints relating specifically to the provision of care, not to the assessment process. They are separate elements. The commission is intended to operate as a single point of contact for the regulation of quality of care in aged-care services. It's not

intended to regulate the process by which consumers access Commonwealth subsidised or funded aged-care services. There are existing arrangements in place for those. So they're separate.

Senator KITCHING (Victoria) (09:56): We take this opportunity to convey that Labor is sympathetic to those in this place who want to provide solutions to the many issues that exist across the aged-care sector, but, in saying this, Labor isn't in a position to support the Greens amendments. The interim report of the Royal Commission into Aged Care Quality and Safety conveyed a strong message from the commissioners. They said they would 'recommend comprehensive reform and major transformation of the aged-care system in Australia', but they also stated that they would 'chart a new direction for the sector', hopefully 'bringing a clear sense of purpose and of quality'. What mechanisms will be required to address the recommendations in the final report are not known, but I think it would be folly to try to pre-empt too much of the commissioners' directions now. So it is our strong view that any reform should now be done with a clear intention and it should be done in a holistic way.

We have not been consulted in the lead-up to these amendments being drafted. It's therefore difficult for Labor to support these amendments given the absence of any consultation. It's also difficult because we are concerned that the necessary consultation with the aged-care sector and consumers may not have occurred.

Senator SIEWERT (Western Australia—Australian Greens Whip) (09:57): I assure the ALP that consultation with consumers has occurred. In fact, this comes directly out of consumers and the inquiry into the first phase of these changes. While I agree that fundamental changes to the act shouldn't be made in the run-up to the royal commission, let's be honest here. It's not reporting until late next year. It will take some time—let's face it—in the run-up to the next election for any action to be taken. I am not casting aspersions on the government, or anybody else for that matter; that's simply the reality of the way regulation works and making sure we've got an act that meets the recommendations from the royal commission in the future.

We're talking about changes that will help people now. Anybody who is involved in the aged-care system knows that My Aged Care is extremely complicated, very hard to navigate and means there isn't a single point of contact for the aged-care system. It makes sense to enable the commission to address these particular issues; otherwise they simply aren't addressed. It's a fallacy to say there's a single point of entry. So please don't come the one about: 'You haven't consulted with us about it.' As to the sector, consumers have asked for this. They've been complaining about My Aged Care a lot, as I addressed in my second reading contribution. So say you don't support them but don't use the excuse of not being consulted. Since when has the ALP consulted anybody else when they've brought in amendments? The fact is this is what consumers would like to see: a genuine single point of entry.

I ask: does the government intend to do anything about making My Aged Care, ACAT and RAS actually accountable and more usable in the at least 18 months that we will be waiting before we see any changes come through as a result of the royal commission's final report.

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:00): Senator Siewert, I think that you will see this system look very different over the ensuing period. I make the point again that the role of the Aged Care Quality and Safety Commissioner is to oversee aged-care providers. The ACAT process, the assessment process, is completely different. It's currently delivered by a number of providers, including state governments. As part of our response to the royal commission report, we said that we were going to move to a process of a single national provider. That work has now commenced. So that process is going to change—and I think the oversight mechanism around that will probably have to be modified as part of that reform. The whole delivery of aged care is at the point where it's starting to change quite significantly.

The point that I would make is: the Aged Care Quality and Safety Commissioner's role is to oversee the quality of service delivery—not assessment. The assessment process is about to change significantly. So we need to make sure that we identify the differences and, as the reform of the assessment process continues, there will have to be appropriate oversight processes for that.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:01): Can I ask for the minister's undertaking that they will provide a briefing on how the continuing oversight will then be conducted on the new system once that is more in place?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:02): Yes.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:02): Thank you. I have a couple of questions around the serious incident response scheme. I understand that the department has finished the consultation process. Is that correct? Has the government got the paper? If so, will it be publicly available and when? I will ask those questions first and then I have series after that.

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:02): I don't have the final documentation on the serious incident response scheme. It is due to me very soon—and by that I mean probably early in the new year. Once that's available to me, I'm happy to have a conversation with various parties about that.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:02): Thank you, Minister. Is it intended that at some stage you will be releasing the actual report, or just your decision following the report?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:03): Given that I haven't seen anything yet, I am not in a position to make a specific decision about that. Once I receive it, I will be in a position to do that and I would be happy to have a conversation in that context.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:03): Given that, I don't know if you are in a position to answer my next question, but I'm going to give it a go. In terms of 'where to here from here' with the scheme, is it your intent that it sits within the remit of the commission or the department?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:03): My expectation is that it will sit with the commission.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:03): That's what I was hoping and expecting, but I thought I'd better check. I'm aware that you are considering another phase of changes for the commission functions. Given your expectation that it will sit with the commission, is it your intent that that will be included in that process?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:04): Until I am briefed by the advisory council to the commission, I really can't answer that question definitively. From my perspective, this process will be quite open. It's not something that I'm looking to contest. I am genuinely looking to ensure that senior Australians receive high-quality and safe aged-care services. That is my motive in this process.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:04): Thank you. Can I ask about the continuous quality improvement framework? Is this being developed alongside the Serious Incident Response Scheme? Is it separate, or is there little work being done on it?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:05): I don't have anything specific on that, but my expectation would be that it's being developed alongside. Quite frankly, my expectation of the way that the quality system operates is that there is always a continuous process engaged in that, because that's how a good-quality system works.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:05): I take your point, but it was not obvious to us, during the Senate inquiry into this process, that that was happening, which is why we recommended that it happen. I realise you haven't got the report yet, but is it your intent—or, should I say, your expectation—that the scheme would include the issue of sexual assault?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:05): The Serious Incident Response Scheme will include issues of sexual assault. There are still some things, as I understand, being considered around the parameters of that, but it will include issues relating to sexual assault.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:06): Thank you. Sorry, I should have asked this: going back very briefly to the continuous quality improvement framework, can I ask the minister to take that on notice and perhaps get back to us on where that's at?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:06): I am happy to do that.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:06): Thank you. As you know, one of the other amendments I've moved as part of our amendments on sheet 8811 revised addresses the issues of advocates and access to premises and information. Can I ask the government to confirm whether the term 'persons assisting' refers only to employees of the commission and does not include advocates or community visitors?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:07): It doesn't only include employees, but it would normally only include people with specialist skills—which I know is going to raise another question.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:07): You could have just gone on to answer it! Who does that include?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:07): Generally, it depends on the specific skills that are required. It could include a financial adviser. It could include someone with specialist nursing or health skills. That's the advice that I have. If you want me to take the specifics of that on notice and get back to you to save us some time, I'm happy to do that.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:08): Yes, if you could. Would it, for example, include people with specialised skills in advocacy?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:08): I'll take that on notice, Senator, and answer that specific question for you.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:08): Thank you. One of the issues that advocates are finding through this process is that they find they can't get access to appropriate information. Is there a process being undertaken, or what is the government doing, to ensure that aged-care providers don't withhold information from advocates? Are you looking at any sanctions where that is in fact happening?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:09): I think that I would suggest that that is a particular matter that's probably best addressed through an approach to the royal commission and seeing what recommendations they may bring back to us. I understand it's an issue that's been raised, but, rather than make a specific point on that at this stage, I think that's probably something best addressed through the royal commission process, which will come back to us with a whole range of recommendations, I expect, on those sorts of issues.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:09): Has this matter been raised with the government previously? I'm aware that access to facilities has been raised repeatedly by advocates, because advocates are still being refused. The issue around information is particularly important because they can't always do their job if they can't get access to information. I understand what you are saying about the royal commission, but is there anything that you have looked at that you can do in the meantime, because, as I have already articulated, it's some time before we are going to see the changes via the royal commission?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:10): I recognise this is a very difficult issue. Access to that sort of information and even premises is a difficult issue because appropriate permissions are obviously required and there are also privacy issues that come into these things. Rather than looking to make specific changes through this process, I go back to the point that even the opposition made a moment ago: we're best to address these sorts of things through a consolidated and considered process, particularly off the back of the royal commission, acknowledging that it is an issue.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:11): To a certain extent, I take your point. My concern is very much about the issues that are happening right now and how we can ensure that in the interim there are actions taken to ensure that advocates can do their job, particularly in light of what we're hearing coming out of the royal commission. It's not fair to make people wait for the next 18 months. I know the royal commission is going to take time; I'm not having a go at that at all. What I'm saying is people need protection now, not in 18 months time.

The Carnell-Paterson review found the commission should have a systemic advocacy function, and this was highlighted previously when the commission was first set up. As this isn't being addressed in this bill, has the government got plans to actually address the systemic advocacy point?

Senator COLBECK (Tasmania—Minister for Aged Care and Senior Australians and Minister for Youth and Sport) (10:12): This bill is about transferring functions between two agencies. That's what it's about. It's to happen on 1 January this year, and that is why it is important, so that's not specifically relevant to that. It may come up in some of the other processes we have already discussed.

Senator SIEWERT (Western Australia—Australian Greens Whip) (10:12): I know it's not part of this bill. The point is there are a lot of things that are not part of this bill that should be part of this bill. I'm asking: is that on the government's agenda, and will it be part of the next lot of changes? This process could go a lot more easily if Senator Cormann hadn't walked over and asked the minister to stop answering my questions. I realise we want to get this bill through, but this is important. It's aged care, and the government knows very well what the findings out of the royal commission have been, which are horrifying. There are people in the sector who want to see changes now, not changes made some time down the track. So I can keep asking questions or the minister can answer the very legitimate questions I'm asking. I'm not trying to roll this out any longer than is necessary. I articulated to the government a while ago that I would have a series of questions to ask here. I would appreciate them being answered. I'm trying to get this done as quickly as possible. So, if the minister could answer my questions, that would be appreciated. Is the government considering a function of systemic advocacy for the commission, or is it off the agenda?

The TEMPORARY CHAIR (Senator Sterle): I take the silence as no answer coming forth.

Senator SIEWERT: Are you saying no, the government isn't considering a systemic advocacy approach for the commission?

The TEMPORARY CHAIR: The question is that the amendments be agreed to.

The committee divided. [10:19]

(The Temporary Chair—Senator Sterle)

Ayes11
Noes47
Majority.....36

AYES

Di Natale, R
Griff, S
McKim, NJ
Rice, J
Steele-John, J
Whish-Wilson, PS

Faruqi, M
Hanson-Young, SC
Patrick, RL
Siewert, R (teller)
Waters, LJ

NOES

Abetz, E
Askew, W
Bernardi, C
Bragg, A J
Cash, MC
Chisholm, A
Colbeck, R
Davey, P
Fawcett, DJ
Gallacher, AM
Green, N
Henderson, SM
Hume, J
McCarthy, M
McKenzie, B
Molan, AJ
O'Sullivan, MA
Polley, H
Rennick, G
Ruston, A
Sheldon, A
Smith, M
Stoker, AJ
Walsh, J

Antic, A
Ayres, T
Bilyk, CL
Brockman, S
Chandler, C
Cicccone, R (teller)
Cormann, M
Duniam, J
Fierravanti-Wells, C
Gallagher, KR
Hanson, P
Hughes, H
Lambie, J
McDonald, S
McMahon, S
O'Neill, D
Paterson, J
Pratt, LC
Roberts, M
Scarr, P
Smith, DA
Sterle, G
Van, D

Question negatived.

Senator GRIFF (South Australia) (10:23): I move amendment (1) on sheet 8804, revised:

(1) Page 82 (after line 21), after Schedule 3, insert:

Schedule 3A—Transparency of approved providers

Aged Care Act 1997

1 After section 9-2

Insert:

9-2A Obligation to provide Commissioner a report

(1) As soon as practicable within 3 months after the end of a financial year, an approved provider must provide the *Quality and Safety Commissioner with a written report for each facility operated by the provider that provided residential care in the financial year.

(2) The report must include the following information:

- (a) the total income received by the provider from the facility;
- (b) the sources of that income;
- (c) the total amount spent in the financial year;

- (d) the total cost of care expenditure which includes the itemised cost of the following:
 - (i) food and food supplements;
 - (ii) medical products;
 - (iii) continence aids;
- (e) the total cost of accommodation;
- (f) the total cost of staff members for each category of staff member referred to in subsection (3);
- (g) the total cost of staff member training;
- (h) the total amount of other operational expenditure itemised by category;
- (i) any amount paid to a related body corporate within the meaning of section 50 of the *Corporations Act 2011*.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7A of the *Quality and Safety Commission Act. The expenditure report provided under this section is made publicly available (see section 96-11).

- (3) For the purposes of paragraph (2) (f), the categories of staff member are the following:
- (a) registered nurses;
 - (b) enrolled nurses;
 - (c) personal care attendants;
 - (d) allied health staff;
 - (e) administrative staff;
 - (f) other staff members.

Note: The category of other staff members should be further broken down into appropriate categories.

(4) In this section:

staff member of an approved provider has the same meaning as in section 63-1AA.

2 After section 96-10

Insert:

96-11 Publication of reports by Commissioner

The *Quality and Safety Commissioner must make publicly available the report provided to the Commissioner under section 9-2A.

(2) Page 82 (after line 21), after Schedule 3, insert:

Schedule 3B—Staff to care recipient ratios

The CHAIR: The question is that amendment (1) on sheet 8804, as moved by Senator Griff, be agreed to.

The committee divided. [10:28]

(The Chair—Senator Lines)

Ayes34
 Noes34
 Majority.....0

AYES

Ayres, T
 Brown, CL
 Chisholm, A
 Di Natale, R
 Gallacher, AM
 Green, N
 Hanson-Young, SC
 Lambie, J
 McAllister, J
 O'Neill, D
 Polley, H
 Rice, J
 Siewert, R
 Steele-John, J
 Urquhart, AE
 Waters, LJ
 Whish-Wilson, PS

Bilyk, CL
 Carr, KJ
 Ciccone, R (teller)
 Faruqi, M
 Gallagher, KR
 Griff, S
 Kitching, K
 Lines, S
 McKim, NJ
 Patrick, RL
 Pratt, LC
 Sheldon, A
 Smith, M
 Sterle, G
 Walsh, J
 Watt, M
 Wong, P

NOES

Abetz, E
 Bernardi, C
 Bragg, A J
 Canavan, MJ
 Chandler, C
 Cormann, M (teller)
 Duniam, J
 Fierravanti-Wells, C
 Henderson, SM
 Hume, J
 McGrath, J
 Molan, AJ
 Rennick, G
 Roberts, M
 Ryan, SM
 Seselja, Z
 Stoker, AJ

Antic, A
 Birmingham, SJ
 Brockman, S
 Cash, MC
 Colbeck, R
 Davey, P
 Fawcett, DJ
 Hanson, P
 Hughes, H
 McDonald, S
 McKenzie, B
 Paterson, J
 Reynolds, L
 Ruston, A
 Scarr, P
 Smith, DA
 Van, D

PAIRS

Dodson, P
 Farrell, D
 Keneally, KK
 McCarthy, M

Payne, MA
 McMahan, S
 O'Sullivan, MA
 Askew, W

Question negatived.

Senator GRIFF (South Australia) (10:31): I move amendment (2) on sheet 8804, revised:

Aged Care Act 1997

1 After section 9-2

Insert:

9-2B Obligation to notify Commissioner about staff to care recipient ratios

(1) An approved provider must notify the *Quality and Safety Commissioner in relation to each facility operated by the provider that provided residential care, on each notification day for each rostered shift, ratios of:

- (a) care recipients to whom residential care is being provided through that facility; to
- (b) each category of staff member of the provider that provides a service connected with that facility.

Note: Approved providers have a responsibility under Part 4.3 to comply with this obligation. Failure to comply with a responsibility can result in a sanction being imposed under Part 7A of the *Quality and Safety Commission Act. Information notified under this section is made publicly available (see section 96-12).

(2) In counting staff members for the purposes of this section, part-time staff members are to be taken into account as an appropriate fraction of a full-time equivalent.

(3) For the purposes of subsection (1), a notification day is:

- (a) the 4 days, in each year, specified in the regulations; or
- (b) if no days are specified in the regulations for the purposes of paragraph (a)—each 1 January, 1 April, 1 July and 1 October.

(4) For the purposes of subsection (1), the categories of staff member are the following:

- (a) registered nurses;
- (b) enrolled nurses;
- (c) personal care attendants;
- (d) allied health staff;
- (e) other staff members involved in the delivery of care.

(5) A notification under subsection (1) must be made:

- (a) as soon as practicable after the day to which the notification relates; and
- (b) no later than 21 days after that day.

(6) The notification must be in the form approved by the Commissioner.

(7) The notification may include an explanation by the approved provider in relation to any ratio notified. The explanation must not exceed 250 words in total.

Note: If an explanation is provided, the explanation will be made publicly available: see section 96-12.

(8) The Commissioner must cause a review of the operation of this section to be undertaken as soon as possible after the first anniversary of the commencement of this section.

(9) The review must include a review of:

(a) the operation of subsection (3) and whether the ratios referred to in subsection (1) should include a measure of care recipient acuity levels, and whether the ratios should capture other days or times including Saturdays and Sundays; and

(b) whether there should be a requirement for providers to notify the Commissioner of significant changes between notification days of the ratios referred to in subsection (1) and whether such a requirement would create an unnecessary reporting burden on small providers.

(10) The Commissioner must give the Minister a written report of the review.

(11) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

(12) In this section:

staff member of an approved provider has the same meaning as in section 63-1AA.

2 After section 96-10

Insert:

96-12 Publication of staff to care recipient ratio notifications

The *Quality and Safety Commissioner must make publicly available any information about staff to care recipient ratios of residential care services notified to the Commissioner under section 9-2B.

The TEMPORARY CHAIR (Senator Faruqi): The question is that amendment (2) on sheet 8804 be agreed to.

The committee divided. [10:36]

(The Temporary Chair—Senator Faruqi)

Ayes12
 Noes41
 Majority.....29

AYES

Di Natale, R
 Griff, S
 Lambie, J
 Patrick, RL
 Siewert, R (teller)
 Waters, LJ

Faruqi, M
 Hanson-Young, SC
 McKim, NJ
 Rice, J
 Steele-John, J
 Whish-Wilson, PS

NOES

Abetz, E
 Askew, W
 Brockman, S
 Carr, KJ
 Chandler, C
 Colbeck, R
 Davey, P
 Fierravanti-Wells, C
 Green, N
 Henderson, SM
 Hume, J
 McDonald, S
 McMahan, S
 O'Neill, D
 Paterson, J
 Rennick, G
 Ruston, A
 Seselja, Z
 Smith, DA
 Sterle, G
 Van, D

Antic, A
 Bragg, A J
 Canavan, MJ
 Cash, MC
 Ciccone, R
 Cormann, M
 Fawcett, DJ
 Gallacher, AM
 Hanson, P
 Hughes, H
 McCarthy, M (teller)
 McKenzie, B
 Molan, AJ
 O'Sullivan, MA
 Pratt, LC
 Reynolds, L
 Scarr, P
 Sheldon, A
 Smith, M
 Stoker, AJ

Question negatived.

Bill agreed to.