

# Design changes for Star Ratings consultation

**Department of Health and Aged Care**

Submission by the Commonwealth Ombudsman,  
Iain Anderson

**December 2024**

## Introduction and summary

The Office of the Commonwealth Ombudsman (the Office) has monitored issues relating to Aged Care Star Ratings (star ratings) since January 2024, when media reported public concerns that they may not be providing meaningful information about residential aged care services' quality of care.

In April 2024, my Office sought information from the Department of Health and Aged Care (the department) on star ratings (**Attachment A**). In October 2024, while noting the department's advice about the steps it had taken and intended to take to improve star ratings, I outlined my concerns that the current system is not sufficiently meaningful to help people make informed decisions about their aged care in a submission to the Senate Standing Committee on Community Affairs (**Attachment B**) and public statement (**Attachment C**).

I welcome the opportunity to contribute to the department's current consultation undertaken in collaboration with KPMG and to draw attention to some of the concerns outlined in my submission and public statement.

## Background

The purpose of the Office is to:

- provide assurance that the agencies and entities we oversee act with integrity and treat people fairly; and
- influence systemic improvement in government administration.

We aim to achieve our purpose by:

- independent and impartial consideration of complaints and disclosures about government administrative action
- influencing government agencies to be accountable, lawful, fair, transparent, and responsive, and
- providing a level of assurance that law enforcement, integrity and regulatory agencies are complying with legal requirements when using covert, intrusive and coercive powers.



## **Star ratings do not include all non-compliance information**

In my public statement I noted that the *compliance* star rating only reflects a provider's non-compliance where the Aged Care Quality and Safety Commission (the Commission) has issued a formal compliance regulatory notice.

I stated my concerns that the department's approach to determining the star rating may not be transparent nor wholly reflective of the quality of care being provided by aged care providers.

I note the proposed changes to the compliance rating, to include graded assessments against the strengthened Aged Care Quality Standards (strengthened standards) and introduce half star ratings.

I believe these changes will go some way to ensuring ratings better reflect the quality of care being provided by aged care providers, by making it more difficult for providers to achieve high star ratings where the Commission or System Governor has concerns about their compliance.

While welcoming these changes, I wish to reinforce my statement that publicly available information about the compliance star rating should clearly set out why some instances of non-compliance (i.e. where the Commission addresses matters of non-compliance informally) are not relevant to a provider's star rating and directs the public to other information about the level of care provided by individual providers.

## **Star ratings information is technical and lacks detail**

In my public statement I also noted that currently, understanding a provider's overall star rating is complex and requires a person to navigate across multiple websites to locate and interpret somewhat technical information in order to be able to draw meaningful conclusions about a provider's star rating.

I note the proposed changes that further information be displayed alongside star ratings, including providers' performance against the strengthened standards and information about its use of restrictive practices involving environmental restraint.

While I welcome the inclusion of more information to support people to make decisions about aged care, I am concerned that the way in which some of this information is proposed to be included may be misleading or confusing.



In particular, the proposal to display an 'exceeding grade' against the strengthened standards until the time of provider registration renewal, including in circumstances where the provider has since received a formal regulatory notice.

It is difficult to comprehend how a provider can be exceeding against the strengthened standards while the Commission has also issued a formal notice, noting also that in some instances the notice may have been issued in relation to non-conformance against the strengthened standards.

It is critical that the department ensure information about star ratings is clear, simple, accessible and not misleading. Information about how star ratings are determined should be available and consistent across all relevant webpages and resources.

This is especially important noting the three-year transition to the new compliance rating and the reality that during this period aged care homes will have ratings based on different designs.

## **Consultation**

We welcome the department's commitment to consulting with a wide range of stakeholders including older people, their families and carers, aged care providers and workers.

The Office will continue to monitor the issues relating to star ratings, including the outcomes of the independent evaluation and the department's plans to implement changes to the policy and future design of star ratings following this consultation.





# Inquiry into the Aged Care Bill 2024

## **Senate Standing Committee on Community Affairs**

Submission by the Acting Commonwealth Ombudsman, Penny McKay

**3 October 2024**

## Introduction and summary

I welcome the opportunity to provide a submission to the Senate Standing Committee on Community Affairs' inquiry into the Aged Care Bill 2024 [Provisions] (the **Bill**).

The Bill has been promoted as putting the rights and needs of older people at the centre of Australia's future aged care system. The system will comprise of multiple bodies, including the Department of Health and Aged Care, the Inspector-General of Aged Care (**IGAC**), the Aged Care Quality and Safety Commission (**ACQSC**) and the Aged Care Complaints Commissioner. The system must be implemented in a way that makes it clear to the public who is responsible for what, and how they can raise issues with the appropriate entity. I note that I will continue to be able to take complaints about matters of administration about these entities under the *Ombudsman Act 1976*.<sup>1</sup>

## Background

The purpose of the Office of the Commonwealth Ombudsman (the **Office**) is to:

- provide assurance that the agencies and entities we oversee act with integrity and treat people fairly, and
- influence systemic improvement in government administration.

We aim to achieve our purpose by:

- independently and impartially reviewing complaints and disclosures about government administrative action
- influencing government agencies to be accountable, lawful, fair, transparent, and responsive
- assisting people to resolve complaints about government administrative action, and
- providing a level of assurance that law enforcement, integrity and regulatory agencies are complying with legal requirements when using covert, intrusive and coercive powers.

<sup>1</sup> More detail on the 'ecosystem' of agencies that oversee the aged care sector was provided to the Senate Community Affairs Legislation Committee in [our submission](#) to the Committee's [Inquiry into the Inspector-General of Aged Care Bill 2023](#).

## Restrictive practices

Following Australia's ratification of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, Australian governments are required to establish bodies to perform regular visits to places where people are deprived of their liberty, to prevent torture and other cruel, inhuman or degrading treatment or punishment.<sup>2</sup>

The role of Commonwealth National Preventive Mechanism (**NPM**) lies within my Office and is responsible for visiting places under the control of the Commonwealth where people may be deprived of their liberty. I am currently considering the extent to which my responsibilities under OPCAT, with respect to aged care, intersect with States and Territory responsibilities.

I accept the position that restrictive practice includes *any practice or intervention that has the effect of restricting the rights or freedom of movement* of an individual, noting that this may include *chemical, environmental, mechanical, or physical* forms of restraint, as well as *seclusion* practices.

This is in line with the definition included in the Bill and accepted by the National Disability Insurance Scheme (NDIS)<sup>3</sup> and the ACSQC.<sup>4</sup>

I support the requirements set out in the Bill which will require restrictive practices to be:

- used only as a last resort, and after all other de-escalation techniques have been attempted
- reasonable and proportionate to the situation at hand
- applied only for the minimum time and extent necessary to achieve safe outcomes, and
- used only once appropriate informed consent has been received from the person or substitute decision-maker as prescribed by the rules made under clause 162 of the Bill.

<sup>2</sup> Article 1, *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 2002.

<sup>3</sup> Section 9, NDIS Act 2013.

<sup>4</sup> [Overview of restrictive practices \(agedcarequality.gov.au\)](https://agedcarequality.gov.au)

In addition to these requirements, I suggest that restrictive practices should only be:

- applied by those who have been appropriately trained and accredited to do so
- used only once appropriate authorisation has been received, and
- based on independent expert assessment.

I note clause 18(3) of the Bill states the rules governing the use of restrictive practices do not apply if they are 'necessary in an emergency'. Without an accompanying legal definition, the interpretation of what constitutes an 'emergency' may be subjective. I propose that an 'emergency' should be clearly defined, including a timeframe for cessation (when there is no immediate risk to the person or others).

Furthermore, even during an emergency, providers must still seek to ensure the least restrictive form of a restrictive practice is being applied, it is applied for the shortest period possible, and only after exploring and applying all evidence-based, person-centred, and proactive strategies.

Documentation of the use of restrictive practices in an emergency should be regulated and include:

- the person's behaviours that were relevant to the need for the restrictive practice
- the alternatives to the restrictive practice that were considered or used
- the reasons the restrictive practice was necessary
- the care to be provided to the person in relation to their behaviour
- a record of having informed the restrictive practices substitute decision-maker about the use of the restrictive practice
- all assessments, information and decisions relevant to the use of the restrictive practice, and
- any additional advice or support to be sought.

## Star ratings

Clause 25 of the Bill proposes a Statement of Principles that would underpin the aged care system. I note clause 25(8):

*The Commonwealth aged care system is transparent and provides publicly available information, about funded aged care services, that is understandable, accessible and communicated through a variety of methods and languages.*

Clause 541(2) would require the 'System Governor' (Secretary of the Department) to publish information about the quality of funded aged care services delivered by registered providers in approved residential care homes and the performance of registered providers of such services in relation to obligations and requirements under the Bill.

Clause 541(3) would permit, but not require, the System Governor to publish information under clause 541(2) in the form of one or more star ratings for a residential care home.

Clause 544 would require the System Governor to publish, in accordance with the rules, information about funded aged care services generally.

I note the star ratings system was developed in response to the Royal Commission into Aged Care Quality and Safety (**Royal Commission**) which recommended a system of ratings, to support older people and their families make meaningful comparisons of the quality and safety performance of aged care services and providers.<sup>5</sup>

While I understand the view that the current system of star ratings is an advance on not having any information publicly available at all, I am concerned the current star ratings system is not sufficiently meaningful to help people make decisions about their aged care – and may in fact mislead or misinform people.

I understand that non-compliance by a provider only impacts the provider's star rating if the ACQSC issues a formal compliance regulatory notice. This means that the ACQSC may find a provider is not meeting the required standards, but its star ratings do not change. The non-compliance may also be extensive and over an extended period, but again unless a formal regulatory notice is issued the general public will not be informed through the ratings system that the provider is in fact non-compliant.

My Office has looked at publicly available information on star ratings including the [Find a Provider Tool](#)<sup>6</sup> and considers that understanding a provider's overall star rating is complex and requires a person to navigate multiple websites to locate and interpret somewhat technical information.

<sup>5</sup> Recommendation 24, [Aged Care Royal Commission Final Report: Recommendations](#)

<sup>6</sup> <https://www.myagedcare.gov.au/find-a-provider/>

The data used to calculate star ratings is sourced from third parties, including self-reported data from aged care providers themselves, as well as the ACQSC and external survey providers.

The department advised my Office that it conducts a range of checks on the data reported by aged care providers before it is used to calculate star ratings. However, it is unclear what checks are currently undertaken on the data provided by the ACQSC and external survey providers. Transparency about how the data is validated or verified would provide further assurance to the community about the reliability of the star ratings.

The department has advised my Office that the proposed legislative changes, particularly the establishment of the Secretary of the Department as 'System Governor' (clauses 7 and 339) will strengthen its ability to undertake assurance checks on data used for star ratings.

Given the importance of transparency and clear information about the aged care system, as reflected in clause 25 of the Bill and the intent of the Royal Commission's recommendation regarding star ratings, I suggest the Committee consider the current efficacy of star ratings and the proposed role of the 'System Governor'.

## Whistleblower scheme

Part 5 of Chapter 7 of the Bill would improve the whistleblower protections currently provided by the *Aged Care Act 1997*. Unlike the current Act, the Bill clearly sets out the whistleblower protections in a separate part which makes the mechanics of the scheme easier to identify. However, the arrangements in the Bill would still appear to overlap with existing Commonwealth, State and Territory whistleblower protection schemes, for the public and private sector (such as the *Public Interest Disclosure Act 2013* (Cth) and the *Corporations Act 2001* (Cth)).

Whistleblowers and prospective whistleblowers already experience challenges in navigating multiple whistleblower regimes. This can deter people from making disclosures. Ensuring there is sufficient and accessible guidance for whistleblowers and prospective whistleblowers would assist people to navigate the scheme. Guidance should help potential whistleblowers understand which system they can report under and the implications of choosing one regime over another.

# Aged Care Star Ratings

Public statement – 31 October 2024

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High quality aged care is a critical part of ensuring people in our community are afforded the opportunity to live a dignified, safe and meaningful life in old age. It is therefore vitally important older Australians and their families have reliable, accessible and meaningful information readily available to make informed choices about aged care.

Since January 2024, the media has reported public concerns that aged care star ratings (star ratings) may not be providing meaningful information about residential aged care services' quality of care.

Administered by the Department of Health and Aged Care (the department), star ratings were developed in response to the Royal Commission into Aged Care Quality and Safety which recommended a system of ratings, to support older people and their families make meaningful comparisons of the quality and safety performance of aged care services and providers.<sup>1</sup> Since December 2022, all residential aged care service providers are assigned an overall star rating (1 to 5), comprised of 4 weighted individual ratings – resident experience (33%), compliance (30%), staffing (22%) and quality measures (15%).

Noting public concerns, my Office took a closer look at star ratings and sought information from the department. The symbol of a 5-star rating is a powerful one, usually associated with high quality products and services. In my view, while noting the department's advice about steps it has taken and is intending to take to improve the star ratings system, currently star ratings are not sufficiently meaningful to help people make informed decisions about their aged care.

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<sup>1</sup> [Aged Care Royal Commission Final Report: Recommendations](#) - recommendation 24

Given an independent evaluation into star ratings is currently underway,<sup>2</sup> along with proposed legislative changes, I have not commenced a formal investigation under the *Ombudsman Act 1976*. I instead encouraged the department to consider and act on my concerns. I make this statement to provide assurance to the public that my Office is monitoring this issue.

## **Star ratings do not include all non-compliance information**

As the regulator of Commonwealth funded aged care services, the Aged Care Quality and Safety Commission (the Commission) monitors aged care providers' compliance with the requirements of the *Aged Care Act 1997*.

The Commission may issue a formal compliance notice requiring a provider to take action to remediate identified issues. Based on publicly available information, only when the Commission issues a formal compliance regulatory notice will the non-compliance impact a provider's compliance and overall star ratings. This means that in some instances the Commission may find a provider is not meeting the required standards, potentially for an extended period, but its star rating does not change.

Regulators have discretion in how they approach instances of non-compliance and I acknowledge the Commission can properly choose to address some matters of non-compliance informally. However, noting the standards reflect the level of care the community expects from aged care providers,<sup>3</sup> it is important that publicly available information about the compliance rating clearly sets out why some instances of non-compliance are not relevant to a provider's star ratings and directs the public to other information about the level of care provided by individual providers.

The department advised my Office that it expects the compliance rating will transition to a graded assessment (as recommended by the Royal Commission into Aged Care Quality and Safety) with the commencement of a new Aged Care Act. In my view, the department's current approach to determining the star ratings may not be transparent nor wholly reflective of the quality of care being provided by aged care providers and could be improved in this regard, with commensurate benefit to the public.

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<sup>2</sup> [Evaluation of Star Ratings | Australian Government Department of Health and Aged Care](#)

<sup>3</sup> [Aged Care Quality Standards | My Aged Care](#)

## Star ratings information is technical and lacks detail

Star ratings can be found through the *Find a Provider Tool* on the [My Aged Care](#) website.<sup>4</sup> My Office looked at the *Find a Provider Tool* and considers that understanding a provider's overall star rating is complex and requires a person to navigate across multiple websites to locate and interpret somewhat technical information in order to be able to draw meaningful conclusions about a provider's star rating.

For example, the compliance star rating shows current and historical formal compliance notices and specifies the various aspects of the Quality Standards that a provider is or is not meeting. My Office noted one provider with a 3-star compliance rating, where the information shows the provider is not meeting the requirement to ensure its workforce is competent and members of its workforce have the qualifications and knowledge to effectively perform their role.

Without accessing multiple webpages and resources such as the [Star Rating Provider Manual](#) (approximately 50 pages) alongside the *Find a Provider Tool* to understand how the compliance rating is determined, people may struggle to comprehend how a provider can have a 3 star compliance rating when the Commission is not satisfied that the provider is ensuring its workforce is competent.

Information about star ratings should be clear, simple, accessible and not misleading. Additional information about how a provider failed to meet the required standards and the action it is taking to address the concerns, may also help people understand a provider's performance against the quality standards.

I note that when it recommended establishing star ratings, the Royal Commission stated that the overall star rating should be accompanied by appropriate additional information relevant to an aged care service's performance, even if it is not reflected in the overall star rating outcome, including complaint information.<sup>[1]</sup>

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<sup>4</sup> Information about star ratings is also available on the [department](#) and the [Aged Care Quality and Safety Commission](#) (the Commission) websites

<sup>[1]</sup> Recommendation 24 ([page 225](#))

As outlined in my Office's [Better Practice Complaint Handling Guide](#), analysing complaint data and trends can identify opportunities to improve policy settings and administrative practices.<sup>[2]</sup> In my view, complaints about aged care services are an important information source providing valuable insights into resident, their families and advocates' experience with an aged care provider. While some information about individual providers' approach to complaint handling is available under the resident experience star rating, I encourage the department to consider how actual complaints data can be further used to inform star ratings and support people to make decisions about aged care.

## Providing assurance to the public

The data used to calculate star ratings is sourced from third parties, including self-reported data from aged care providers, the Commission, and external survey providers. It is important the department makes it clear to the public how it makes sure the individual datasets and the overall star rating are accurate. The department advised my Office that it conducts a range of checks on the data reported by aged care providers and external survey providers before it is used to calculate star ratings.

Additionally, it is essential that agencies responsible for administering programs implement appropriate frameworks to gain assurance they are achieving their objectives, identify risk, and improvement opportunities. This is particularly important where the program involves input by other entities.

I note that if passed, the *Aged Care Bill 2024*<sup>5</sup> introduced into the Parliament on 12 September 2024 will modify the current regulatory framework, establishing the Secretary of the Department of Health and Aged Care as the System Governor. The department advised my Office the proposed changes will strengthen its ability to undertake assurance checks on data used for star ratings.

My Office will monitor whether the outcomes of the independent evaluation or legislative changes address my concerns.

**Iain Anderson**  
**Commonwealth Ombudsman**

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<sup>[2]</sup> [Better-Practice-Complaint-Handling-Guide-February-2023.pdf \(ombudsman.gov.au\)](#) (page 5)

<sup>5</sup> [Aged Care Bill 2024 – Parliament of Australia \(aph.gov.au\)](#).