

22 November 2021

Letter to select Senators

Dear Senator,

RE: *Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021 – removal of ninth schedule*

Our attention has been drawn to a recent proposal by the Commonwealth government in the Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021. In particular, we have serious concerns in relation to the ninth schedule to the Bill dealing with restrictive practices, i.e. physical and other restraints.

We have noted the contents of a paper submitted to the Standing Committee on Community Affairs of the Senate [and published by the Committee as no.19], prepared by Mr Rodney Lewis, solicitor of Elder Law Services Sydney, and a long-standing member of the Executive Committee of this organisation.

The provision granting immunity from civil and criminal claims and charges which appears in schedule nine of the Bill we find to be completely unacceptable and contrary to the legal and human rights of the aged care resident. We have endorsed the reasons which Mr Lewis has put forward in his submission to the Committee.

We propose that the appropriate action to be taken in relation to this measure is for the government to withdraw the ninth schedule. It is clear from the submissions to the Community Affairs Committee that there has been little or no debate or assessment upon this particular measure of immunity, outside of the submission by Mr Lewis himself.

We note that the Community Affairs Committee in its Report to the Senate made reference to a number of points of criticism of the immunity proposal which were contained in the submission by Mr Lewis, but they were ultimately dismissed by the Committee.

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It is our firm view that there has been no proper or adequate public debate on the particular measure, concerning as it does, removal by immunity from our vulnerable elders what would otherwise be legal recourse available to all Australians, and we urge the Senate to remove it from the Bill when the legislation comes before it and to provide an opportunity for consultation and debate on this drastic measure.

Yours faithfully,

The Hon John Dowd AO QC
President
ICJ Australia