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Parliament has opportunity to do more to protect older Australians

When the Senate considers the Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill today, it has an opportunity to strengthen the proposed reforms and protect older Australians.

“We welcome the Senate’s second reading debate on this Bill,” Law Council of Australia President, Mr Tass Liveris said. “The Aged Care Royal Commission undertook intensive investigation to determine how to improve aged care in this country and we support efforts to implement its recommendations.”

“However, as we emphasised in our submission on this Bill, we believe there are improvements that can be made, particularly in regard to the new measures to provide for the screening of aged care workers and to impose a Code of Conduct on aged care workers and providers.”

While the Explanatory Memorandum for the Bill states the intention is to establish nationally consistent pre-employment screening for aged care workers, it leaves it up to the Minister to determine whether a State or Territory screening law is sufficient to be able to form part of the national scheme.

“The Bill does not require a State or Territory screening law to include any particular features which would promote national consistency and we could actually end up with very different schemes in each jurisdiction,” Mr Liveris explained.

“It is the Law Council’s view that Parliament should set out the key features which should be included in such a screening law – including procedural fairness obligations.”

“The Law Council supports the measure in the Bill to establish a Code of Conduct prescribing conduct standards for aged care workers and providers and provide for sanction powers in the event of non-compliance.”

“However, given the significance of this measure and the repercussions of non-compliance, the Law Council considers that Parliament should determine the features of the Code in primary legislation or, as a minimum, provide high-level guidance regarding such matters.”

The Law Council suggests that greater attention be given to the applicable safeguards and thresholds with respect to the Bill’s banning order powers, which have significant consequences. More transparency is also needed around a proposed Ministerial power to authorise persons or bodies to give informed consent to the use of a restrictive practice in relation to a care recipient who lacks capacity. The Bill should provide guidance and clarity regarding the kinds of persons or bodies who may be authorised give such consent.

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