

OPAN submission to Senate Community Affairs Legislation Committee inquiry into the Aged Care Quality and Safety Commission Bill 2018 and related Bill

28 September 2018

About OPAN

The Older Persons Advocacy Network (OPAN) is a national network comprising nine state and territory organisations that have been successfully delivering advocacy, information and education services to older people in metropolitan, regional, rural and remote Australia for over 25 years.

OPAN's free services support older people and their representatives to address issues related to Commonwealth funded aged care services. OPAN is funded by the Australian Government to deliver the National Aged Care Advocacy Program (NACAP). OPAN aims to provide a national voice for aged care advocacy and promote excellence and national consistency in the delivery of advocacy services under the Program.

Last year OPAN's nine Service Delivery Organisations provided:

- Over 11,000 individual advocacy and information supports to aged care recipients
- 1,954 education session to reach around 40,000 people in relation to aged care rights and the aged care system.
- Advocacy support to over 3,500 people from special needs groups

The National Aged Care Advocacy Program & User Rights Principles

The NACAP program, operates as an aged care grant under Part 5.5 Division 81 of the *Aged Care Act 1997*. The objectives of the NACP grant is outlined in the table below.

*(a) encouraging understanding of, and knowledge about, the rights of recipients and potential recipients of *aged care services on the part of people who are, or may become:*

- (i) care recipients; or*
- (ii) people caring for care recipients; or*
- (iii) people who provide aged care services;*
- or on the part of the general community;*

(b) enabling care recipients to exercise those rights;
(c) providing free, independent and confidential advocacy services in relation to those rights to people:
(i) who are, or may become, care recipients; or
(ii) who are representatives of care recipients

Participants Rights are supported by the *User Rights Principles 2014*. The Principles include the *Charter of Care Recipients Rights and Responsibilities - residential care*, *Charter of Care Recipients Rights and Responsibilities - Home Care* and *Charter of Care Recipients Rights and Responsibilities - Short-Term Restorative Care*.

Under Section 8 of the *User Rights Principles 2014*, approved providers of residential care must allow OPAN's service delivery organisations' advocates (along with community visitors and people acting for care recipients) access to the service/facility. If a care recipient to whom the provider provides residential care has asked the person to assist the care recipient this can occur at any time, or during normal business hours under all other circumstances.

Clauses related to Home Care and Flexible Care provide similar access to advocates for recipients of aged care in the home. An approved provider of a home care service must allow a person acting as an advocate for a body that has been paid an advocacy grant access to the provider's home care service.

Approved Providers are required to provide information about the rights and responsibilities of care recipients.

Aged Care Quality and Safety Commission – general comments

Overall, OPAN is supportive of the Bill and the establishment of the Aged Care Quality and Safety Commission (ACQSC). OPAN is hopeful that combining Aged Care Complaints, Aged Care Quality and Aged Care Regulation under the one banner will ensure that the three functions will work together more cohesively.

In developing the role, function and visions for the ACQSC OPAN believes there should be an emphasis on the governance of care rather than the current system which is more about auditing. The focus must be on continuous quality improvement rather than compliance.

The quality review processes under the ACQSC should be about aged care providers demonstrating a consumer focus, choice, respect, dignity, social inclusion and prevention of social isolation, lifestyle and choice. The assessment processes should include governance systems for planning, implementation and evaluation of care (clinical and social) and processes including an emphasis of prevention of adverse and sentinel events, care incident reporting, investigation and resolution.

OPAN is supportive of the focus in the Bills and the intention of the ACQSC on consumers. Promoting and monitoring mechanisms for providing aged care consumers a voice in their care choices and inclusions in their care planning including informal carer and "significant other" involvement should be part of the role of the ACQSC. OPAN has a strong interest in formally participating in consultations associated with the Consumer engagement functions of the Commissioner.

It is important that the role of the NACAP be acknowledged as an important, but independent, element of the overall Aged Care Quality and Complaints system. As the provider of NACAP OPAN recommends that NACAPs ongoing interactions with the Commission be formalised.

Aged Care Quality and Safety Commission Bill 2018

In relation the Aged Care Quality and Safety Commission Bill 2018, OPAN provides the following feedback:

1. Inclusion of ACQSC role in reportable/serious incidents is required

OPAN notes that the Reportable Assault Scheme, hopefully to be replaced with the Serious Incidence Response Scheme (as proposed by Carnell and Paterson, 2017) does not appear to be clearly identified as a regulatory function of the Commission.

There is also no mention of the Commissions role in overseeing the use of Restrictive Practices as per Carnell and Paterson's recommendation 7 (ii) nor the Chief Clinical Advisor's role in approving antipsychotic medications (Carnell and Paterson – recommendation 7 iv).

2. Inclusion of NACAP advocates as representatives of aged care consumers in definitions section of the Aged Care Quality and Safety Bill 2018 is essential

OPAN's view is that "representative of aged care consumer" needs to be added to the definitions section and ensure that NACAP advocates are included in this definition.

3. Consideration of the inclusion of, or the ability for, the Commissioner to determine additional classes of 'authorised officers', and appoint those 'authorised officers, who may enter with consent in the Aged Care Quality and Safety Bill 2018 is required

Section 56-1 of the Aged Care Act 1997 allows people acting for care recipients to have such access to the service as is specified in the User Rights Principles. It also allows people acting on behalf of aged care recipients from organisations such as OPAN or community visitors to have access to recipients receiving other forms of aged care in the community or other settings.

OPAN's view is that this access should remain as OPAN often assists aged care recipients to raise their concerns through self-advocacy, or to assist the person by raising a concern or complaint to the service provider on their behalf. The Principles also state the role includes access to an advocate in assisting in the resolution. However, a process for identifying and certifying authenticity of aged care advocates would be of benefit for both service providers and advocates. This could be developed similar to the identification as occurs for jurisdictional official visitors.

There is a risk that the specification of authorising entry by the Commissioner to only a Complaint Officer and regulatory officers may lead to confusions as to the right of access to support individual advocacy and information to aged care recipients. While strongly supporting the need for OPAN and NACAP to remain independent of the ACQSC, the lack of mention of NACAP and access to advocates risks disconnecting advocacy from the rest of the quality, safety and complaints systems.

The allowing of the Commissioner to create other classes of authorised people with ability to access with consent would enable the reasonable expectations to access by NACAP advocates and community visitors (to support individual advocates, provide information and deliver education) to be reinforced to service providers and the sector under the evolving aged-care quality and safety environment.

Contact OPAN

Thank you for the opportunity to provide input to the inquiry into the *Aged Care Quality and Safety Commission Bill 2018 and related Bill*. Should you have any further queries regarding the content of this submission, please do not hesitate to contact Craig Gear, OPAN CEO, on M: 0410 695 659 or email: craig.gear@open.com.au.