OPAN Older Persons Advocacy Network

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# Submission to the Inquiry into the provisions of the Aged Care Amendment (Implementing Care Reform) Bill 2022

## 1. About OPAN

Formed in March 2017, the Older Persons Advocacy Network (OPAN) is a national network comprised of nine state and territory organisations that have been successfully delivering advocacy, information and education services to older people across Australia for over 30 years. Our members are also known as

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| ACT | ACT Disability, Aged and Carer Advocacy Services (ADACAS) | SA | Aged Rights Advocacy Service (ARAS) |
| NSW | Seniors Rights Service (SRS) | TAS | Advocacy Tasmania |
| NT | Darwin Community Legal Service | VIC | Elder Rights Advocacy (ERA) |
| NT | CatholicCareNT (Central Australia) | WA | Advocare |
| QLD | Aged and Disability Advocacy Australia (ADA Australia) | | |

State Delivery Organisations (SDOs). The OPAN SDOs are:
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 NACAP.

OPAN's free services support older people and their representatives to understand and address issues related to Commonwealth funded aged care services. We achieve this through the delivery of education, information and individual advocacy support. In 2021/22, OPAN delivered information and advocacy support to over 27,000 people across the nation.

OPAN is always on the side of the older person we are supporting. It is an independent body with no membership beyond the nine SDOs. This independence is a key strength both for individual advocacy and for our systemic advocacy.

OPAN member organisations by state or territory:

ACT: ADACAS Advocacy
SA: aras aged rights advocacy service inc.
VIC: ERA Elder Rights Advocacy
NSW: Seniors Rights Service
NT – Top End: Darwin Community Legal Service
QLD: ADAAustralia
TAS: Advocacy Tasmania
WA: Advocare Empowering People
NT – Central: CatholicCare NT

Funded by: Australian Government Department of Health

# 2. Schedule 1: Registered Nurses

OPAN strongly supports the requirement that Registered Nurses must be on site and on duty at all times (that is, 24 hours each day, 7 days each week).

While we acknowledge that the Royal Commission into Aged Care Quality and Safety recommended one registered nurse be on staff for both morning and afternoon shifts (16 hours per day), increasing to all day from 2024. OPAN believes a registered nurse should be available 24 hours per day as soon as possible rather than delaying implementation. The increasing health complexity and comorbidities of older people entering residential aged care requires a corresponding need for staff with the right health and medical skills to provide support. We know that health related incidents don't just happen in the day time.

## 2.1 Exemptions

The Explanatory Memorandum states Quality of Care Principles may provide for:

- the process for the making of applications for the grant of an exemption in relation to a residential facility
- the circumstances in which an exemption may be granted; and
- the conditions that may apply to such exemptions

The Royal Commission recommended exemptions could occur in limited circumstances and that exemptions were to be time-limited. The four categories proposed by the Royal Commission are:

a. specific purpose residential aged care facilities, such as specialist homeless facilities, where the profile of the residents is such that it may be appropriate to substitute a registered nurse with another qualified health professional
b. residential aged care facilities that are co-located with a health service, such as Multi-Purpose Services, where registered and enrolled nurses are present at the co-located health service
c. regional, rural and remote residential aged care facilities, where the approved provider can demonstrate it has been unable to recruit sufficient numbers of staff with the requisite skills, and
d. residential aged care facilities where an alternative skills mix is being trialled and it would be appropriate to substitute a registered nurse with another qualified health professional. There should be a requirement for any such trial to be comprehensively evaluated and publicly reported.

OPAN would support exemptions in these limited circumstances if:

- They are time limited, and cannot extend beyond 12 months, unless a thorough independent evaluation demonstrates that the alternate to a registered nurse is working effectively in meeting resident needs. However, there should still be a regular review at each 12 months.
- Where there are issues in recruiting suitably qualified staff the provider can demonstrate the effective use of other supports, such as telehealth, to meet resident needs
- In terms of co-located health services, consideration must be given to demands on the registered and enrolled nurses time in the health service and how they can also meet the time requirements of the aged care service
- Information ion exemptions should be publicly available and easy to access for anyone who is receiving residential care or considering entering residential care.

## 2.2 Care Minutes

OPAN recognises that care minutes are not part of this piece of legislation. However, OPAN notes that having nurse available 24/7 also links to recommendation 86 by the Royal Commission into Aged care Quality and Safety (Royal Commission) on care minutes. The recommendation stipulates that "at least 200 minutes per resident per day for the average resident, with at least 40 minutes of that staff time provided by a registered nurse" increasing to "at least 215 minutes per resident per day for the average resident, with at least 44 minutes of that staff time provided by a registered nurse". The Royal Commission link the staff time to the AN-ACC model of funding for Residential Aged Care, commenting that "approved providers with a higher-than-average proportion of high needs residents would be required to engage additional staff, and vice versa".

This connection to the AN-ACC and the use of terms like "average resident", which is not clearly defined, has resulted in the interpretation of care minutes as an 'average'. That is "the targets for care minutes (initially 200 minute and 40 minute of registered nurse time) are an 'average' target across the sector".[1] The Royal Commission do not speak of care minutes being an 'average' across the whole of the aged care sector. They clearly state that approved providers are required to engage the relevant staff for 200 minutes and 40 minutes (noting the increase from 2024). The Dept. of Health and Aged Care also note that "Under the AN-ACC each of the 13 classes will have a 'specific care minute target' to reflect the different care needs of residents".[2]

OPAN is highly concerned that care minutes are being averaged out across the sector and that the required "minimum" is not necessarily going to be met by providers. We note that the Department of Health and Aged care released guidance on the number of minutes per AN-ACC level and, for what could be termed 'average' residents, the minutes are well below the required (current) 40 minutes, acknowledging those in Class 1 and 13 will receive higher registered nurse minutes, which we support. For example, Class 2 will receive 32 minutes, Class 3, 34 minutes and Class 4, 30 minutes.[3]

OPAN is also concerned that in general, older people believe that they will each receive the full 200 minutes of care, and 40 minutes of registered nurse care. While we can see the benefits of care minutes being linked to need/AN-ACC Class, the starting point should be a minimum for all residents of 200/40 with time increasing as needs increase.

## 2.3 Reporting of Staff Hours

OPAN also supports Recommendation 122: Reporting of staffing hours. OPAN strongly urges the Australian Government to adopt this recommendation. OPAN SDOs have observed through advocacy case work, the impact low staffing levels can have on the quality of aged care services. We note the commentary in the Final Report flags concerns about the potential for aged care providers to manipulate data on staffing models by transferring non direct duties to staff categorised as direct care workers. OPAN also holds these fears and has already heard of talk of this nature. OPAN encourages the Australian Government to give careful consideration to how the manipulation of this data can be mitigated.

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[1] Australian Government, Department of Health and Aged Care, What are Care Minutes: https://www.health.gov.au/sites/default/files/documents/2022/06/what-are-care-minutes.pdf
[2] Ibid.
[3] Australian Government, Department of Health and Aged Care, How do I calculate my care minute targets? https://www.health.gov.au/sites/default/files/documents/2022/06/how-do-i-calculate-my-care-minutes-targets-how-do-i-calculate-my-care-minutes-target.pdf

## 3. Schedule 2: Capping Home Care Charges

OPAN strongly supports the amendment to cap the prices that approved home care providers may charge care recipients and to remove home care providers' ability to charge exit amounts.

Issues relating to home care package fees, charges and statements continue to be raised within advocacy case work across the nation and continue to be one of the top issues advocates are assisting with. Concerns relating to high case management and package management charges are frequently raised with many older people alarmed at the administration and case management costs associated with their package.

"*A care recipient rang an OPAN member to say that they were going to contact their local MP to complain about the little amount of funds that were made available in a Level 1 home care package once the service provider had taken out their monthly charges. The caller reported the government subsidy for the Level 1 home care package was $9,000, however package management charges were $426 per month, care management charges of $149.00 per month and case management costs of $98.00 per month, making total charges for the month $673.00. This amounted to $8076.00 being taken out of package per annum leaving approximately $900 to pay for direct care services. When the care recipient questioned the home care package provider on the high cost of fees and charges the provider justified it by saying "well, we have to pay staff, pay for cars, and pay rent*".

In implementing a cap on administration and case management fees, a mechanism needs to be developed to prevent cost-shifting to direct care costs. Older people are concerned that providers will find another way to recoup funds by increasing what they are charged for services. Providers are expected to communicate cost changes to consumers, and consumers have to consent to the increased fees. However, if this is a service the consumer needs or there is no other provider that can provide the service the consumer has to consent to the increase or face losing a needed service.

There is also a potential for some providers that currently have low admin/case management fees but high direct care service costs to increase their admin/case management fees to meet minimum the cap requirements. They could then tell consumers that the Government has set/initiated this price increase. Therefore, there must be clear messaging by the Department of Health and Aged Care that the cap is the maximum amount and providers can charge less than this.

OPAN also seeks greater transparency from providers about what is included in the case management/admin fee charged to individual. Older people generally want to know what this fee covers. OPAN is aware of providers who stipulate that the admin fee only covers x amount of phone calls or y amount of case management hours. They then charge the consumer a fee for additional admin/case management when they go over this threshold. Often the client has no idea about the thresholds set. This information should be clearly documented in the service agreement.

In addition, consideration should be given to ensuring that where an older person is on holiday or not receiving care services (for example as they are in hospital), they should not be charged administration fees.

### 3.1 Brokerage

Linked to issues of administration fees and case management fees is the charging of brokerage fees. A brokerage fee is charged where a provider does provide a service and the service is outsourced to an external body. Some providers charge a flat rate or a percentage, such as 10%. In one example an older person informed OPAN that "*I knew someone that had to buy a chair for $8000 and they charged them $800 just to process the invoice. That's someone's wage for a week. You can't tell me it takes a whole person a whole week just to process one invoice*." While capping administration and case management fees will ease some of the financial drain on a package consideration should be given to other fees and charges that also result in decreased funding for care and services.

### 3.2 Exit Fees

Since the introduction of the National Disability Insurance Act 2013, a number of inquiries have flagged concerns relating to the disparities between the NDIS and aged care systems. More recently, the final report from the Royal Commission into Aged Care Quality and Safety highlighted inconsistencies between the two systems and suggested that older people with disability should not have to accept something less than that which others in similar circumstances can access under the National Disability Insurance Scheme. Participants in the NDIS are generally not required to pay exit fees, even when changing provider's part way through a plan. A core principle of the NDIS is choice and control for participants, allowing them to change providers without expense.

OPAN supports the removal of exit fees for home care package recipients in order to ensure equity across the NDIS and home care packages.

## 4. Schedule 3: Transparency of Information

OPAN considers transparency to be critical to the success of a new aged care system. In particular we draw attention to the Royal Commission reference transparency in the proposed new Act with Recommendation 3: Key Principles specifying

- b. xiv. the aged care system should be transparent and provide public access to meaningful and readily understandable information about aged care.
- b. xv. government entities, providers, health care professionals and aged care workers operating in the aged care system should be open, honest and answerable to older people and the wider community for their decisions and actions.

Transparent information about the funding and operations of aged care providers can support older people to make informed decisions when accessing aged care. It can also promote a level of accountability amongst providers by enabling public scrutiny of performance and exposing the proportion of public and consumer funds invested into the provision care.

OPAN strongly supports the Royal Commission's calls for approved providers to provide the System Governor with annual reports for publication on the My Aged Care website, as suggested in Recommendation 88: Legislative amendments to improve provider governance.

OPAN agrees that the following items should be reported on:
The information to be published is expected to include:

- financial information, including expenditure on care, nursing, food, maintenance, cleaning, administration, and profits;

- levels of care time provided;
- details of key personnel; and/or
- information about staffing of an aged care service.

OPAN also supports Commissioner Brigg's suggestion for annual reports to include:

- details of the provider's related party transactions such as, for example, transactions between an approved provider and a member of its key personnel or the provider and another entity which is part of the same corporate group
- information on staffing levels, qualifications, hours worked, employment status, and turnover
- information on service provision and use, which could include, for example:
    - in the case of approved providers of residential aged care, the number of residents who entered and left the service, the reason for leaving and the average number of residents.
    - in the case of an approved provider of home care services, the number of people who started with and left the provider, the reason for leaving and the total number of hours of different kinds of services delivered.
- information on the number, type, and outcome of complaints.

In addition to this, OPAN suggests consideration should also be given to the inclusion of information on the outcomes of quality reviews, the issuing of any enforceable undertakings, the number and nature of incidences reported to SIRS and reporting on the provision of services to people with diverse needs and marginalised groups (For example, reporting on diversity action plans).

Commissioner Brigg's made comment that some of this information is already available publicly but noted that it is not easily accessible in one location. OPAN agrees with this point and notes that it is also extremely difficult for people who are not online to access this type of information.

OPAN notes the effectiveness of this strategy will be influenced by the type of information aged care providers are required to include in the annual reports. OPAN encourages the Australian Government to engage older people in the co-design of requirements for the publicly available annual reports. Older people with lived experience of aged care will be able to provide valuable insight into the type of information that can influence aged care decisions.