

OPAN submission to the Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia

8 February 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.

OPAN response to the Terms of Reference

- 1. The incidence of all mistreatment of residents in residential aged care facilities and associated reporting and response mechanisms, including the treatment of whistle blowers.***

The Incidence of mistreatment

OPAN suggests that the mistreatment of residents in residential aged care is grossly under-reported.

In OPAN's experience, many residents choose not to report mistreatment because they fear retribution. In these circumstances, OPAN advocates refer residents to their rights under the Charter of Care Recipient Rights and Responsibilities – Residential Care. In particular, their right "to be free from reprisal, or well-founded fear of reprisal, in any form for acting to enforce his or her rights". In response to this, residents will often question "who will be there to ensure there isn't reprisal when at the end of the day, the advocates/family members/ complaints officers go home?" This is a very real concern and a question that can be difficult to answer.

OPAN also considers the mistreatment of residents to be under-reported by residents who are not actively engaged with family/friends/representatives. Figures from the Aged Care Complaints Commissioner's (ACCC) Annual Report 2016-17 support this assertion, with 60 % of complaints received by the ACCC coming from family members or representatives of people receiving care, and only 19% from people receiving care and 21% of complaints from anonymous sources, other interested parties and referrals from other agencies.

OPAN explores this matter further in response to the Terms of Reference number three.

Reporting and Response Mechanisms

OPAN considers the current reporting mechanisms under the Reportable Assaults Scheme to be inadequate in capturing the scope and prevalence of mistreatment within residential aged care. The Scheme also fails to foster a culture of continuous quality improvement in instances where assaults have been reported.

OPAN supports the recommendations made by the Australian Law Reform Commission (ALRC) (2017) and Carnell and Paterson (2017) to establish a new Serious Incidents Response Scheme.

OPAN is encouraged by the proposed change of terminology from reportable assault to reportable incident and the expanded scope associated with this. The expanded scope will offer approved providers and consumers a more consistent understanding of what constitutes mistreatment.

OPAN also welcomes the recommended creation of an Aged Care Commission as an oversight body for the new Scheme. The Commission's increased role within the Scheme would ensure all incidents are investigated, monitored, and responded to appropriately regardless of the outcomes of police involvement. It would also allow the Commission to proactively support approved providers in responding to and preventing the reoccurrence of serious incidents.

OPAN is also in strong support of the ALRC and Carnell and Paterson recommendations for the aged care legislation to regulate the use of restrictive practices within residential care.

2. The effectiveness of the Australian Aged Care Quality Agency, the Aged Care Complaints Commissioner, and the Charter of Care Recipients Rights and Responsibilities in ensuring adequate consumer protection in residential aged care.

Australian Aged Care Quality Agency and Aged Care Complaints Commissioner

In July 2017, OPAN submitted a response ([# 721685255](#)) to the Review of the National Aged Care Regulatory Processes. Within this response, OPAN offered several suggestions around improving the effectiveness of the Australian Aged Care Quality Agency (AACQA) and the Aged Care Complaints Commissioner (ACCC). Most importantly, OPAN put forward strategies for increasing consumer involvement in the quality process. OPAN believes that with meaningful

consumer engagement in the quality review process, consumers will have increased opportunities to raise concerns regarding mistreatment and service quality.

In OPAN's experience, service providers, consumers and their carers/representatives are often confused about the varying roles of the AACQA, the ACCC and the National Aged Care Advocacy Program. These three organisations/programs each play an important and complementary role in protecting aged care consumers and it is important that their respective roles and responsibilities are understood.

OPAN suggests that both the ACCQA and the ACCC could benefit from using NACAP as a resource for educating consumers.

Under the new funding model for NACAP, OPAN is working towards the delivery of a nationally consistent rights-based education program for both consumers and aged care service providers and has committed to the delivery of 1,400 education sessions per year on resident rights and responsibilities provided to older people receiving or seeking to receive Residential Aged Care services and/or their representatives.

With the appropriate funding, OPAN's Service Delivery Organisations (SDOs) could build on their current reach to fast-track consumer awareness about their rights and the continuum of safeguards available to consumers. OPAN SDOs could even play a role in educating consumers about the aged care quality review process so that when the time comes, they understand what the process is and how they can participate.

Charter of Care Recipients Rights and Responsibilities

The Charter of Care Recipients Rights and Responsibilities (the Charter) is one of the key tools referred to by advocates when delivering both educations and advocacy supports. There is rarely an advocacy case that does not have relevance to the Charter. Despite this, advocates do experience some challenges when referring to the Charter during advocacy cases.

OPAN SDOs also report that service provider awareness of the Charter is low, particularly amongst services that do not engage their staff in NACAP's rights-based education.

The interpretation of care recipients' rights is often a challenge and it can be difficult to ensure that interpretations remains focused on the consumer perspective rather than that of providers.

A lack of clear supporting guidelines makes the matter of interpretation even more challenging, particularly in cases where the provider is focused on regulatory compliance over care recipients' rights.

3. The adequacy of the consumer protection arrangements for aged care residents who do not have family, friends or other representatives to help them exercise choice and their rights in care.

OPAN SDOs play a key role in supporting aged care residents and their representatives to have their aged care rights understood, recognised and upheld.

At any stage of the aged care journey, OPAN SDOs can support consumers to

- engage with the aged care system including My Aged Care and the Aged Care Complaints Commissioner
- make informed decisions about the care they receive
- exercise their right to choice in accessing and receiving aged care services
- resolve problems or complaints with aged care providers in relation to the aged care services they receive

Access to the NACAP is particularly important for aged care residents who do not have family, friends or representatives to support them in voicing their concerns.

OPAN aims to increase awareness of the supports available through NACAP amongst all aged care consumers, particularly those who do not have the support of family and friends.

In doing so, OPAN delivers consumer education sessions to over 40,000 people each year. These education sessions focus on

- the role of advocacy in supporting consumers to access and interact with the aged care system
- how advocacy can support people who are unhappy with their aged care services
- consumer rights and responsibilities when receiving Commonwealth funded aged care services.

OPAN SDOs receive a large proportion of their referrals from participants of consumer education sessions.

Unfortunately, many aged care residents do not get the opportunity to learn about advocacy and the supports available to them through the NACAP.

Whilst OPAN SDOs individually contact all residential aged care facilities across the nation to offer free consumer education sessions, there are a large number of residential care facilities which refuse to accept this offer.

OPAN has concerns for the residents who do not have support of family and friends to assist in raising and addressing concerns, and who also do not have access to the NACAP.

OPAN suggests there are two key avenues for addressing this concern. The first is mandating that all aged care services provide residents with access to NACAP consumer education on an annual basis.

The second is enhancing collaboration and referral between the NACAP and the Community Visitors Scheme (CVS).

The ALRC (2017) recommended that the Department of Health (Cth) develop national guidelines for the Community Visitors Scheme and proposed that these guidelines include policies and procedures for visitors to follow if they have concerns about abuse or neglect of care recipients. OPAN is in strong support of this recommendation and considers the capacity of CVS to be under-utilised.

OPAN would welcome the opportunity to deliver regular education sessions to CVS program coordinators and volunteers on the role of advocacy services and the rights of Commonwealth funded aged care recipients. Well-informed CVS volunteers can play an important role in discreetly linking isolated aged care recipients to information and support to exercise their aged care rights.