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Senate Community Affairs Legislation Committee  
Inquiry into Aged Care and Other Legislation Amendment Bill 2025  
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6 August 2025

To Whom It May Concern,

The Older Persons Advocacy Network (OPAN) welcomes the opportunity to provide this brief submission to the Inquiry into Aged Care and Other Legislation Amendment Bill 2025 (ACOLA).

OPAN welcomes the ACOLA Bill as the next step to implementing the Aged Care Act 2024, which will bring significant changes and deliver on the rights of older people accessing or receiving aged care.

OPAN is the national peak body for individual aged care advocacy support. OPAN contains a network comprised of nine state and territory organisations that have been successfully delivering advocacy services to older people across Australia for over 30 years. Our members are:

- ACT Disability, Aged and Carer Advocacy Service (ACT)
- Advocare (WA)
- Advocacy Tasmania (Tas)
- Aged and Disability Advocacy Australia (Qld)
- Aged Rights Advocacy Service (SA)
- CatholicCare NT (NT)
- Darwin Community Legal Service (NT)
- Elder Rights Australia (Vic)
- Senior Rights Service (SRS)



OPAN receives funding from 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 2024-25 OPAN provided 52,000 instances of advocacy and information support, an increase of 17 percent since 2023-24.

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

OPAN works to amplify the voices of older people seeking and using aged care services and to build human rights into all aspects of aged care service delivery. OPAN acknowledges the knowledge, lived experience, wisdom and guidance provided by older people and advocates in preparing this submission.

### Subsection 11(7) replaces with 11(A): Delivery of funded aged care services

OPAN understands that if there is a late cancellation or no show by an older person, the provider will still have staff (and other) costs that will need to be paid for. However, it is unclear if this clause will still apply in an emergency situation e.g. where the older person is unexpectedly taken to hospital, family emergency etc.

In checking the Support at Home Manual (June 2025) it states that *"If a participant claims there were reasonable grounds for a late cancellation or 'no show', they should provide evidence in writing to substantiate their claim, and this should be considered by the provider"*. Reasonable grounds include the participant was in hospital, the participant had a health 'incident' or a 'participant's informal support arrangements changed unexpectedly'. However, the decision is left up to the provider to consider on a case-by-case basis, potentially resulting in a lack of a consistent and equitable application of this policy across providers.

While OPAN notes that under the NDIS the notification is 48 hours, under the SCHADS award only 12 hours notification is required to be given to staff. OPAN believes that 24 hours in advance is adequate time to notify a provider that services are not required.

OPAN believes that in emergency situations or exceptional circumstances the fee should be able to be waived or not charged, this includes co-contributions. OPAN would argue this should be specified in the Act, rather than leaving it up to individual providers to make a decision, resulting in inequitable application with some providers charging a fee and others not. Arguing that participants could simply swap providers to one that does not charge a fee for cancellations presupposes that the participant has multiple provider options within their area.

We would also argue that at a minimum services and fees are paused until the care manager can determine the wishes and preferences of the participant as to when they will be able to recommence receiving services.

**Recommendation 1: add “except in emergency situations.”**

**Recommendation 2: add to the Rules or primary legislation that a pause in fees occurs following the first cancellation no show, with the person’s care manager to confirm if an emergency has occurred or reasonable change is needed.**

### Subclause (6)

This provision allows for individuals to pay for a service or good and be reimbursed by the registered provider. OPAN welcomes the inclusion of older people being able to make arrangements with their provider to purchase goods and services and be reimbursed. It will be the “in practice” that we will need to be monitored.

### Section 27: Actions of supporters

OPAN is supportive of changes to s27(1) to remove consent from each action and ensure it is in line with will and preference. OPAN would prefer to have the wording changed so that it states it is “with the individual’s agreement” or at the least, in line with the persons ‘known’ will and preference.

OPAN’s Supported Decision Making Working Group (SDMWG), which consists of older people, advocate and experts in the field of supported decision making, raised concerns with the use of the term ‘consent’ in S27, as it may have set the bar too high

and been weaponised in the context of capacity to consent. The SDM WG has recommended that 'with agreement' would be preferable.

As with consent, it will be about how 'the individual's will and preferences' is operationalised with the focus on making sure the registered supporter checks in with the person about what their will and preferences are each time, rather than guessing what they are likely to be.

However, there does remain concern about the use of "in line with" and how it will be interpreted and applied. For example, that is not an explicit will or preference, but something in line with what the older person normally does/wants. The potential risk is that supporters could request access to information since 'Mum is normally okay with me knowing this sort of stuff'. That said, the Act will still say that the supporter can't make a decision on the older persons behalf.

**Recommendation 3: amend the proposed change so that it says, "a supporter of an individual may, with the agreement of the individual". Alternatively, at a minimum add "in line with the persons known will and preference".**

### Subsection 28(2)

OPAN welcomes the addition of S28(2)(d) and believes that with this new clause 28(2)(a) should be removed. The current 28(2)(a) can be taken to be interpreted that NDIS representatives, Medical Treatment Decision Makers etc are covered by this subsection. It is much clearer for older people and potential supporters that the rules prescribe the "class of persons" included within this section.

**Recommendation 4: delete clause 28(2)(a).**

### Compensation

While OPAN welcomes Item 258 – After paragraph 8(8)(zm) and Item 289 – after paragraph 5H(8)(nb) we are disappointed to see that payments made under the Territories Stolen Generations Redress Scheme (NT, ACT or Jervis Bay) continues to remain as an asset for the aged care means assessment. We would also welcome civil payments achieved through court cases for sexual abuse are excluded from income and asset tests.

**Recommendation 5: Exclude other redress and compensation schemes from income assessment and asset assessment where these are recognised**

**state/territory schemes and/or where institutional harm, trauma and abuse has been accepted to have been caused.**

### Item 180 – Subsection 284(2)

OPAN strongly objects to removing the requirement for HELF agreements to be written from the primary legislation. We understand this has been moved to the rules as it was difficult to distinguish between regular/ongoing HELF and point of sale services. This was a main consumer protection agreed (from the initial taskforce work), therefore we do not support amendment 180 and believe it should be withdrawn/rejected.

**Recommendation 6: Requiring a written agreement should remain in the primary legislation.**

### Adjustment in the timing of the Inspector General of Aged Care Reporting timeframe

Given the delay of the commencement of the Act, this change is supported as a logical amendment

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OPAN welcomes the opportunity to discuss our concerns further and if further information is required please do not hesitate to contact Samantha Edmonds,

Yours Sincerely

**Craig Gear OAM**

Chief Executive Officer