



Rights of Older People Living in Residential Aged Care

**Position Statement
August 2021**

Rights of Older People Living in Residential Care

Key Messages

- Older people have a right to choose to age at home with the necessary supports and services to enable them to do this.
- Older people that choose to move into residential aged care should have a range of accommodation and service support options available to them.
- Older people living in residential aged care must have the same level of access to services, as older people who live in the community, including but not limited to, the following:
 - social supports (including transport)
 - allied health, oral health, mental health, rehabilitation, palliative care, primary and acute health care and other health and psychological supports
 - leisure, sporting, cultural activities, networks and activities that bring them joy
- Older people have a right to have their connections to the broader community, networks and other activities external to residential care maintained and are actively supported to access these
- Older people living in residential care have a right to receive services that are culturally safe and to have their diversity respected and celebrated
- Older people living in residential care have a right to live free from chemical and physical restraint and other restrictive practices

Introduction

Older Australians are increasingly expressing a preference to remain living in their own home for as long as possible¹. An older person's home and community can provide them with a sense of connection, security and familiarity, and a sense of identity and autonomy. Despite the growing preference, and the many benefits associated with ageing in place, 20% of Australia's population over 80 years old reside in residential aged care, positioning Australia as a nation with one of the highest proportions of older people living in long term institutional care.²

The Royal Commission into Aged Care Quality and Safety (Royal Commission) has described older people in residential aged care as being "left isolated and powerless in a hidden-from-view system". Their descriptions, and those shared by many others who appeared as witnesses before the Royal commission, reflect the characteristics commonly used to describe insitutionalised care. These characteristics include size, separateness from the community, routine and regulation in all spheres of life, and residents who lack identity, choice and autonomy.

¹ Productivity Commission 2011, *Caring for Older Australians*, Report No. 53, Final Inquiry Report, Canberra.

² Dyer, SM., Valeri, M., Arora, N., Tilden, D. and Crotty, M., "Is Australia over-reliant on residential aged care to support our older population?", *Medical Journal of Australia*, 2020, 213(4), pp.156 – 157, <https://www.mja.com.au/journal/2020/213/4/australia-over-reliant-residential-aged-care-support-our-older-population>

The Royal Commission, in their Final Report, recommended combining the existing aged care programs³ into a new single “Aged Care Program”.⁴ The new program is aimed at delivering comprehensive care to older people and to include “an entitlement to all forms of support and care which the individual is assessed as needing” and “genuine choice and flexibility accorded to each individual about how their aged care needs are met”. In other words, older people should have universal access to high quality care and support services based on assessed need, similar to the NDIS.

The Government in their response to the Royal Commission stated that ‘packages’ will be allocated directly to consumers in 2024, enabling them to have more control and flexibility to select a residential aged care provider. The Older Persons Advocacy Network (OPAN) maintains that residential care facilities will require significant training, resourcing and support to successfully introduce a consumer directed care model. OPAN recommends that initiatives aimed at upskilling the residential care workforce, management and governing bodies in this area, as well as learnings from the current trial, are introduced immediately.

There is a need to ensure high quality clinical care but this must not be at the expense of quality of life that comes from personal enjoyment that is unique to each resident’s life experience. Therefore, OPAN argues that there must be an increased focus on therapeutic care, allied health and palliative and end of life care, as well as social supports including support for psychological, cultural and spiritual wellbeing in residential aged care.⁵

In addition, there must be a commitment to support increased access to social activities, transport and assistive technologies within residential care. OPAN argues that there must be an increased focus on these activities however we hold some concerns about the application of care management. We acknowledge that access to care management is important in residential care as many residents will have complex care needs requiring a coordinated response, but we are concerned about the current capacity of the residential care workforce to deliver care management through a rights-based framework. OPAN recommends care managers receive training on human rights, disability rights, the rights of people with dementia and supported decision-making.

Care services must deliver both high quality care as well as support services that deliver quality of life outcomes such as remaining connected to community and participation in activities that bring enjoyment and fulfillment to each resident.

³ Commonwealth Home Support Program, Home Care, Residential Aged Care, Respite Care and Short-Term Restorative Care.

⁴ Royal Commission into Aged Care Quality and Safety, (2021), Final Report – Care, Dignity and Respect, Recommendation 25.

⁵ Ibid, Recommendation 37.

Choice and Control

The right to self-determination, choice and control is regularly overlooked in residential aged care. In 2015, the home care sector made a shift towards consumer directed care and whilst this system is still far from perfect, the reform did encourage providers to shift their thinking and deliver more person-centred care. No similar attempts have been made in residential care and it is evident that older people residing in residential aged care have limited voice, choice and control over even the most basic decisions regarding their care, supports and activities.

OPAN maintains that care management must incorporate the preferences of the older person including the time they wake up, when they eat, what they eat, when they bathe and the activities, they are engaged with etc. Older people must stop being forced to comply with inflexible routines and activities embedded by the service.

OPAN considers it essential that people living in residential care have genuine choice and control over how their aged care needs are met across all new categories of care. For example, they should not have their social supports limited to activities available within the facility where they reside. They should be supported to exercise choice and access social supports available external to the residential care facility. This approach will allow people to maintain connection with the social and community networks they established prior to entering residential aged care. It will also support people living in residential care to access social supports that genuinely interest them and meet their needs across all aspects of life (cultural, emotional, spiritual etc.). Quality of, and enjoyment with, life must be a core foundation of residential care.

Access to Health and Oral Health Services

People living in residential aged care must have a comparable level of, and access to, acute and primary care services as would occur for those living in the community. This must include access to mental health services, rehabilitation, oral health services and other allied and general health services.

OPAN supports the Royal Commission's recommendation that residential aged care must include allied health care.⁶ OPAN acknowledge that increased access to allied health care can prevent or slow the progression of chronic conditions and support older people to function well physically, socially and emotionally. Again, OPAN promotes the resident's right to select the allied health professional of their choice. For some people this may mean accessing a known and trusted allied health professional in the community.

In general, OPAN supports improving access to health care and strengthening the interface between the health and aged care systems. In particular OPAN supports increased access to oral health services for people living in residential aged care. Older people living in residential care do not have the same access to dentists as people living in the community. Research has demonstrated a strong link between good dental health and overall health and wellbeing. For example, gum disease (periodontitis) is associated with an increased risk of developing heart

⁶ Ibid, Recommendation 38.

disease.⁷ OPAN notes that the Government has not made a commitment to the Royal Commission recommendation on establishing a Seniors Dental Benefits Scheme instead saying this recommendation is subject to further consideration by 2023. The poor attention given to oral health is a matter of urgency and should not be delayed any further. Oral health has been overlooked in residential care for too long.

OPAN maintains that older people residing in residential aged care have the right to access the same suite of medical and allied health services and programs available to the broader community under the Medical Benefits Schedule (MBS) and other state-based health initiatives. OPAN urges the State, Territory and Australian governments to amend the National Health Reform Agreement to include explicit commitments to health services reported on, in terms of improved access, as per Recommendation 70 of the Aged Care Royal Commission Final Report – “Improved access to State and Territory health services by people receiving aged care”.

OPAN notes the importance of ensuring remuneration for health professionals working in aged is competitive with other sectors including the NDIS. If remuneration is not competitive it will be difficult to attract the health workforce that is needed to improve the quality of care.

OPAN also notes the Government has committed to “increasing virtual access to primary care and allied health professionals in residential care facilities”.⁸ OPAN argues that telehealth must be retained as a choice. It is an option that can reduce the need to travel long distances. However, it can be difficult to navigate and we must ensure that expanded telehealth services are not used as an excuse to reduce or remove face to face services. Telehealth must not be seen as an alternative to providing services to people living in residential aged care – addressing service gaps and access to specialists has to be addressed alongside increased telehealth services.

Funding of Residential Care

OPAN is supportive of the Australian National Aged Care Classification model (AN-ACC) and its attempts to enable greater consumer choice by not being prescriptive in the specific care activities that are funded. The Royal Commission support the implementation of the AN-ACC.⁹ However, OPAN notes the Aged Care Royal Commission Counsel Assisting identified that the AN-ACC required further refinement in areas relating to enablement, allied health, the improvement in psychosocial, cultural and spiritual aspects of quality of life, the cost of enteral feeding, oxygen, and veterans’ supplements. OPAN encourages the Australian Government to address these important oversights.

The Aged Care Funding Instrument (ACFI) rewarded practices that fostered functional decline and increased disability. OPAN suggests that with an increased focus on enablement

⁷ Harvard Medical School, Gum disease and heart disease: The common thread, February 2021, <https://www.health.harvard.edu/heart-health/gum-disease-and-heart-disease-the-common-thread>

⁸ Australian Government Response to the Final Report of the Royal Commission into Aged Care Quality and Safety, May 2021, p42.

⁹ Royal Commission, Op.Cit, Recommendation 120.

and the strengthening of functional capacity, older Australians may be better positioned to increase their mobility, independence and overall quality of life.¹⁰

In its recent 2021 budget announcement the Government committed to providing an additional \$10 per resident per day as a Government Basic Daily Care Fee, which will be amalgamated into the AN-ACC in 2022. OPAN supports the Royal Commission recommendation that this fee is linked to reporting on expenditure on food and nutrition and the number of residents who have experienced weight loss and dehydration. OPAN recommends that this type of reporting should be made publicly available.

Assessment

OPAN notes that the skills and knowledge of the assessment workforce will be critical to the success of any funding model based on individual assessment of need. Lessons can be learned from the NDIS in this space. When the assessment and planning process are of poor quality, NDIS participants are often either left to manage with substandard levels of care or engage in the stressful and lengthy NDIS review and/or appeal processes. The end result is unnecessary delays in accessing necessary care. David Tune's Review of the National Disability Insurance Scheme Act 2013 highlighted how NDIS participants were concerned that NDIA staff did not understand disability or appreciate the challenges people with disability face as part of everyday life. They also felt NDIA staff did not recognise them as experts in their disability and were frustrated about delays and lack of transparency around how the NDIA makes decisions. OPAN wants to ensure that older people do not have the same experience when engaging with a new funding model based on assessed need. The process must be delivered by qualified and experienced assessors, who recognise and respect the voice of recipients and are transparent about how they determine an assessment outcome. Most importantly, OPAN considers it essential that older Australians can access the National Aged Care Advocacy Program (NACAP) advocacy support to assist them in raising and addressing concerns relating to the assessment process.

Residential Aged Care Design

Institutions are often recognised for their size, separateness from the community and for enforcing routine and regulation in all spheres of life. The routines, systems and regimes of an institution can result in "institutional abuse" with poor or inadequate standards of care and poor practices affecting the whole setting and restricting the dignity, privacy, choice, independence or fulfilment of individuals residing in care.

Deinstitutionalisation is the shift in the service delivery system away from institutional settings and towards less restrictive care in the home and the community. It is founded on a philosophy of care which emphasises better outcomes for individuals, the maximisation of independence, inclusion and participation in the community, and flexible and coordinated services to support people can live the lives they want. Deinstitutionalisation is a means to achieve positive change and ensure that the fundamental human rights of older people are upheld.

¹⁰ Ibid, Recommendation 121.

Article 19 of the Convention on the Rights of Persons with Disabilities supports deinstitutionalisation by outlining that people with a disability, including older people with a disability, have a right to live independently and be included in the community.

OPAN supports the adoption of small household accommodation models and a progressive transition away from large institutional design settings. OPAN notes that large institutions housing children and people with disability and mental illness progressively closed or replaced with smaller group homes or community-based services from the late 1960s to 1980s and onwards. Whilst the aged care system has introduced community-based care, residential care institutions continue to grow in both size and number. OPAN considers deinstitutionalisation as a means to achieve positive change for older people and ensure that fundamental human rights such as independence, self-determination and community participation are supported.