



# Aged Care System Governance

**Position Statement**

**August 2021**

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## Key Messages

A reformed aged care governance system must

- promote and protect the rights of older persons above all else.
- support the meaningful and active inclusion of older people in the governance structure.
- emphasise governance of care, with a focus on continuous quality improvement rather than compliance.
- be transparent and provide comprehensive and accessible information about the status of aged care.
- be accountable and answerable to older people and the broader Australian community for their decisions and actions.
- establish strong working relationships with the National Aged Care Advocacy Program (NACAP).
- Incorporate 'social care' within a 'care governance framework' that is broader than just clinical governance
- Recognises that standards and assessment against the standards are a key element of systems governance

## Introduction

The Older Persons Advocacy Network (OPAN) welcomes the Australian Government's response to the Final Report of the Royal Commission into Aged Care Quality and Safety. We note the Australian Government has accepted a governance structure closely aligned with Commissioner Brigg's recommendations, with key features of the system including a

- Cabinet Minister and Department of Health and Aged Care
- Inspector General Aged Care
- New Aged Care Safety and Quality Authority
- Council of Elders
- Aged Care Advisory Council
- Independent Hospital and Aged Care Pricing Authority

OPAN believes that the rights of older people must be embedded within this new system of governance and that their rights are upheld across the system from policy and legislative decisions to service delivery. This includes ensuring that older people and their family, friends and carers are at the centre of decision-making on aged care services. To do this, older people must be fully engaged in the co-design of these new systems of governance.

With the proposed reforms to the aged care sector being so widespread and significant, OPAN considers it essential that a new and improved governance structure be implemented in a timely manner.

## Cabinet Minister and Department of Health and Aged Care

OPAN strongly supports a dedicated cabinet-based Minister for Health and Aged Care. Aged care representation at the cabinet level will ensure that necessary aged care reforms remain a focus of the Australian Government. In addition, the Health Ministers Committee should consider both health and aged care. We acknowledge that the interface between health and aged care are closely aligned and the proposed structure will support a coordinated approach across departments and with State and Territory Governments.

## Inspector General Aged Care

OPAN supports the introduction of an Inspector General for Aged Care to provide independent oversight of the aged care system and identify and investigate systemic issues in the provision or regulation of aged care. OPAN would welcome the opportunity to work closely with the Inspector General for Aged Care and sharing insights into the systemic issues identified through the provision of advocacy support.

## New Aged Care Safety and Quality Authority

OPAN supports the creation of an independent Aged Care Safety and Quality Authority<sup>1</sup>, accountable to the Inspector General, with increased regulatory powers, and improved complaints management.<sup>2</sup> However, we do hold significant concerns that these necessary reforms will not be implemented until July 2023. Immediate improvements to the complaint's management process are required to ensure the process is thorough, timely, accessible and most importantly focused on the person receiving care. OPAN is a key partner that could work closely with the current Aged Care Quality and Safety Commission (ACQSC) to address these immediate concerns. OPAN welcomes our MoU with the ACQSC and the regular meetings we have with them to address key issues raised through our advocacy work and complaints processes.

OPAN understands that the Australian Government is still considering civil penalties and compensation for breach of certain civil penalties. OPAN holds concerns that without the introduction of strong deterrents such as civil penalties and compensation for breach of civil penalties, the effectiveness of the new Aged Care Safety and Quality Authority will be limited, and approved providers will not take their responsibilities under a new human right based Aged Care Act seriously.

## Aged Care Quality Standards and Assessment

A strong, responsive and accountable system of governance must be underpinned by robust and consumer-centric aged care quality standards, to which aged care providers are held accountable. These standards should not only incorporate equitable access to quality clinical and health care but other critical elements specific to the aged care setting, including social, emotional, spiritual and cultural factors.

OPAN argues that a more comprehensive review of the Standards should occur once the new Aged Care Act has been introduced. Following this review, OPAN would support a comprehensive periodic review of the standards every five years. All reviews of the Aged Care Quality Standards must engage older people in consultation and codesign.

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<sup>1</sup> Royal Commission into Aged care Quality and Safety, 2021, Final Report: Care, Dignity and Respect, Recommendation 10

<sup>2</sup> Ibid, Recommendation 98.

The new Aged Care Quality and Safety Authority will have a key role in conducting assessments against the standards and publicly reporting on the outcomes achieved by providers. OPAN maintains that strong processes must be put in place to ensure the measures against these standards are robust and inclusive.

### New Commissioners

OPAN strongly supports the creation of an Aboriginal and Torres Strait Islander Aged Care Commissioner whose role will be to ensure ongoing fostering, promotion and development of culturally safe, tailored and flexible aged care services for Aboriginal and Torres Strait Islander people. The Commissioner must be someone who is Aboriginal and/or Torres Strait Islander.

OPAN also supports the creation of a Complaints Commissioner in the new Aged Care Safety and Quality Authority with suitable authority to review complaints and enforce findings. In addition, this Commissioner will have a key role in ensuring complainants are informed of the outcomes of a resolution process and provide an additional route of review of any findings. The new Complaints Commissioner should engage regularly with OPAN on issues being raised through OPAN members.

### Council of Elders

OPAN welcomes the Australian Government's acceptance of the proposed Council of Elders. The Council of Elders has the potential to provide older people with lived experience of the aged care system with an opportunity to influence the design of future aged care reforms. OPAN and members of the National Older Persons Reference Group (NOPRG) consider the establishment of a Council of Elders to be an essential step in recognising the right of older people to participate actively in the formulation and implementation of policies that directly affect their well-being.

OPAN suggests that the Australian Government needs to pay close attention to who participates on the Council of Elders and minimise unintended configurations of power. An outcomes-based approach to recruiting Council members may assist in ensuring the voices of diverse groups are represented. OPAN recommends the Australian Government not only consults with a Council of Elders, but actively engages the Council in the codesign of aged care reform.

OPAN acknowledges that the Australian Government will want to move swiftly to implement necessary aged care reforms and the literature on experience-based co-design typically refers to codesign as a time-consuming process. However, we note that the short-term costs of codesign are likely outweighed by the long-term benefits (Reich et al. 23 1996:171).

The benefits associated with codesign in public policy include the generation of more innovative ideas, economic efficiencies associated with improving responsiveness, the fostering of cooperation between different groups, reinvigorating trust between citizens and government, and transformative effects on participants' agency and wellbeing. (Blomkamp, 2018)

OPAN stresses the importance of ensuring older people involved in the Council of Elders have access to the information, capacity building opportunities and supports necessary to ensure they can participate effectively in co-designing services (Burkett, 2012:8). OPAN and members of the NOPRG call for the development of Lived Experience Frameworks to support this process. OPAN notes the mental health sector's success in supporting lived

experience and implementing co design approaches. In particular, OPAN refers to the Mental Health Commission of New South Wales Lived Experience Framework and the National Mental Health Commission's Best practice guide for consumer and carer engagement and participation.

OPAN acknowledges that some Aboriginal and Torres Strait Islander and non-Indigenous groups do not support the term Council of Elders, whereas others do. OPAN recommends consultation with Aboriginal and Torres Strait Islander people and organisations to determine the most appropriate name going forward.

### **Aged Care Advisory Council**

OPAN is supportive of an Aged Care Advisory Council, as another key governance structure, to provide expert advice to government on key matters relating to the aged care sector including implementation of reforms, ensuring advice reflects needs and expectations of older people, their families, carers and the diverse needs of these groups. Membership and Terms of Reference must reflect that this Council has an important role to play in governance of the aged care system and is not just about stakeholder engagement.

OPAN considers it essential that older people are represented on the Aged Care Advisory Council. OPAN recommends nominated representatives from the proposed Council of Elders, for example the Chair and one other, are included as members on the Aged Care Advisory Council.

### **Independent Hospital and Aged Care Pricing Authority**

OPAN supports the move to have the Independent Hospital Authority expanded to include aged care pricing. Transparency of pricing and decisions is essential to older people and the general community restoring trust in the aged care system.