Older Persons Advocacy Network

OPAN submission Aged Care Legislation Amendment

Aboriginal and Torres Strait Islander Aged Care Commissioner and Other Measures Bill 2026

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Executive Summary

The Older Persons Advocacy Network (OPAN) strongly supports the establishment of a permanent Aboriginal and Torres Strait Islander Aged Care Commissioner. The Commissioner should be genuinely independent, properly resourced and empowered to report publicly on systemic issues. The role must be accountable to older Aboriginal and Torres Strait Islander people, families, communities and community-controlled organisations, and should have a clear mandate to monitor whether culturally safe, trauma-aware and healing-informed aged care is being delivered in practice.

The Bill also contains a broad range of "other measures" with direct implications for older people's rights, financial security and access to care. OPAN is concerned that measures described as technical or administrative may affect asset treatment, co-contributions, refundable accommodation deposits, refunds and overpayments, pricing, local government accountability and the continuation of transitional arrangements. These measures should be separately and transparently scrutinised, with a clear explanation of the problem each measure is intended to address, its likely impact on older people and the safeguards that will apply. The Committee should also distinguish between protections that require amendment to the Bill and those that should be secured through binding Aged Care Rules, policy, regulatory guidance, implementation commitments and public reporting.

OPAN is particularly concerned that changes to asset treatment could increase an older person's contributions even where an assessed asset represents an unrealised capital gain or cannot practically be converted into accessible income or cash flow. Financial assessments and hardship arrangements must reflect actual capacity to pay. Older people should receive advance, plain-language notice of any change to their fees or contributions, together with accessible review and appeal rights, hardship information and referral to independent advocacy.

Refund, overpayment and pricing protections also require strengthening. Where an overcharge or overpayment is identified, refunds and any applicable interest should be calculated correctly, paid automatically and within clear timeframes, and accompanied by a written explanation of the amount, dates, interest rate and calculation. The applicable maximum permissible interest rate should be made explicit in legislation, explanatory material and consistent regulatory guidance. Protections against unreasonable pricing should be transparent, consumer-focused and supported by proactive monitoring, public reporting and effective enforcement, rather than relying on older people to identify and pursue systemic problems through individual complaints.

OPAN recommends that the Commissioner provisions proceed, while the Bill's other measures are amended or supported by binding policy and implementation safeguards where necessary. Administrative efficiency must not come at the expense of the Statement of Rights, accountability, transparency, review rights or practical access to care. The central test for every amendment should be whether it strengthens the rights, choice, financial security and wellbeing of older people.

About OPAN

The Older Persons Advocacy Network (OPAN) is the national peak body for independent aged care advocacy. Our network comprises nine state and territory organisations that have delivered advocacy, information and education services to older people across Australia for more than 30 years:

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

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 supporters to understand and address issues relating to Commonwealth-funded aged care. We provide education, information and individual advocacy support. In 2025–26, OPAN delivered 64,591 instances of advocacy and information support.

OPAN is always on the side of the older person. Its independence from government and service providers is a key strength of both individual and 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.

Introduction

The Older Persons Advocacy Network (OPAN) welcomes the opportunity to provide a submission to the Senate Community Affairs Legislation Committee inquiry into the Aged Care Legislation Amendment (Aboriginal and Torres Strait Islander Aged Care Commissioner and Other Measures) Bill 2026.

OPAN strongly supports the establishment of a permanent Aboriginal and Torres Strait Islander Aged Care Commissioner. This important and overdue reform should provide older Aboriginal and Torres Strait Islander people with an enduring, independent voice and the authority and resources to drive culturally safe, trauma-aware, healing-informed and community-led aged care.

OPAN is concerned, however, that the Bill packages this reform with “other measures” that have significant implications for older people’s rights, financial security and access to care. These measures require separate scrutiny, clear explanation and safeguards so they do not undermine the rights-based intent of the new Aged Care Act.

Some safeguards require amendments to the Bill; others may be better secured through binding Aged Care Rules, policy guidance, regulatory practice, implementation commitments, public reporting or evaluation. OPAN asks the Committee to make that distinction explicit.

Recommendations for the Committee

1. Support the establishment of a permanent Aboriginal and Torres Strait Islander Aged Care Commissioner.
2. Ensure the Commissioner is genuinely independent, properly resourced and able to speak and report publicly, with a clear mandate and sufficient funding to engage directly with older Aboriginal and Torres Strait Islander people, families, communities and community-controlled organisations, particularly in remote and

isolated communities, and to monitor culturally safe, trauma-aware and healing-informed care.

3. Ensure the Commissioner has a dedicated, ring-fenced budget that is separate from the operational budget of the Aged Care Quality and Safety Commission.
4. Provide a legislated and funded regional presence for the Commissioner through state and territory officers who report directly to the Commissioner. These officers should work alongside relevant Department of Health, Disability and Ageing regional stewardship and state and territory teams, while maintaining a distinct focus on Aboriginal and Torres Strait Islander engagement, service access, service planning and workforce gaps, particularly in regional and remote communities.
5. Subject the Bill's "other measures" to separate scrutiny and require the Department to explain the purpose, consumer and provider impacts, consultation, safeguards and appropriate legislative, policy or implementation mechanism for each measure.
6. Clarify whether the asset-related amendments capture unrealised capital gains or inaccessible assets and ensure that contributions and hardship decisions reflect actual capacity to pay.
7. Require advance plain-language notice, review and appeal rights, hardship information and referral to independent advocacy before any increase in fees or contributions takes effect.
8. Strengthen refund and overpayment protections so refunds and applicable interest are calculated correctly, paid automatically within clear timeframes and supported by effective enforcement.
9. Ensure protections against unreasonable pricing are transparent, consumer-focused and supported by clear guidance, proactive monitoring, public reporting and enforcement.
10. Ensure amendments to local government "responsible person" provisions and the permanent continuation of transitional measures do not create accountability or rights gaps and are evaluated from the perspective of older people.
11. Implement all amendments and associated policy settings consistently with the Statement of Rights and the rights-based purpose of the new Aged Care Act.

Part 1: Establishing a permanent Aboriginal and Torres Strait Islander Aged Care Commissioner

1.1. Support for a permanent Aboriginal and Torres Strait Islander Aged Care Commissioner

A permanent Aboriginal and Torres Strait Islander Aged Care Commissioner responds to long-standing calls from Aboriginal and Torres Strait Islander aged care leaders, Elders, communities and advocates, and to the Royal Commission's finding that dedicated leadership is required to drive culturally safe and appropriate care.

OPAN acknowledges the leadership of the National Aboriginal and Torres Strait Islander Ageing and Aged Care Council (NATSIAACC) and other Aboriginal and Torres Strait Islander organisations in calling for the Commissioner to be made permanent. NATSIAACC has emphasised that the Commissioner is a critical link between the Australian Government and Aboriginal and Torres Strait Islander communities and has called for the role to be independent of both government and the Aged Care Quality and Safety Commission. OPAN supports the principle that the Commissioner must have a clear, independent and public voice.

The Commissioner must be more than an advisory role. The role should have the authority, resourcing and statutory functions needed to identify systemic issues, report publicly, influence policy and regulation, and engage directly with Aboriginal and/or Torres Strait Islander Elders and older people, families, communities, Aboriginal Community Controlled Organisations and Aboriginal and Torres Strait Islander aged-care providers.

The Commissioner should also be empowered to work across the full aged care system, including assessment, care planning, provider obligations, complaints, quality and safety regulation, market stewardship, workforce capability, areas with limited-service availability, culturally safe service design, funding models and the interface between aged care, health, disability, housing and social supports.

A national office alone will not be sufficient to sustain regular engagement across diverse communities and regions. The Bill and associated funding arrangements should provide for state and territory officers who report directly to the Commissioner. Working in partnership with relevant departmental regional stewardship and state and territory teams, these officers should support local engagement, identify service and workforce gaps, and inform service planning, while retaining a distinct Aboriginal and Torres Strait Islander focus.

1.2. Independence, authority and location within the Commission

OPAN supports the Commissioner being established as an independent statutory role. However, the effectiveness of the role will depend on the Commissioner's actual authority, independence, resourcing and accountability arrangements.

OPAN notes that the Government and the Aged Care Quality and Safety Commission have indicated that the permanent Commissioner will be an independent statutory role situated within and supported by the Commission, reporting to the Minister.

OPAN recognises that location within the regulator may give the Commissioner proximity to regulatory levers. However, this arrangement also creates a risk that the role could be perceived as constrained by the priorities, processes or institutional interests of the Commission.

To avoid this risk, the Bill and implementation arrangements should make clear that the Commissioner can:

- speak independently and publicly;
- set priorities informed by Aboriginal and Torres Strait Islander Elders, older people, families, communities and community-controlled organisations;
- request information from the Department, the Commission and providers;
- report directly to the Minister and Parliament;
- publish own-motion reports on systemic issues;

- make recommendations to the Department, the Commission and the System Governor;
- monitor implementation of recommendations affecting Aboriginal and Torres Strait Islander aged care;
- work directly with NATSIAACC and Aboriginal Community Controlled Organisations;
- elevate community concerns even where they are uncomfortable for government, regulators or providers;
- be involved in departmental policy development, service planning and workforce planning to identify service access and workforce gaps and strategies to address them, particularly in regional and remote communities.

OPAN recommends that the Committee seek assurance that the Commissioner will have a dedicated, ring-fenced budget; sufficient staffing; a legislated regional and remote engagement presence; public reporting powers; and practical independence from the Aged Care Quality and Safety Commission's operational priorities.

1.3. Culturally safe aged care must be operational, not symbolic

The establishment of the Commissioner must be accompanied by practical mechanisms to make culturally safe aged care real in everyday service delivery.

OPAN wishes to amplify NATSIAACC's previous call for the new Aged Care Act to explicitly recognise the United Nations Declaration on the Rights of Indigenous Peoples, define cultural safety, include the Aboriginal and Torres Strait Islander Aged Care Commissioner in the Act, and require co-design wherever possible, particularly in relation to Aboriginal and Torres Strait Islander people and their providers of care. OPAN supports the principle that cultural safety must be embedded in aged-care law, rules, regulation, funding and practice.

The Committee should consider whether this Bill provides sufficient mechanisms to ensure the Commissioner can drive implementation of culturally safe, trauma-aware and healing-informed care. In OPAN's view, this requires more than broad functions. It requires the Commissioner to have a role in:

- advising on Aged Care Rules and guidance materials;
- contributing to audit processes and the development of regulatory resources within the Aged Care Quality and Safety Commission relating to Standard 1 of the Strengthened Aged Care Quality Standards;

- identifying and escalating culturally unsafe provider practice;
- reviewing whether assessment and funding models meet the needs of Aboriginal and Torres Strait Islander people;
- advising on service gaps and limited-service availability affecting Aboriginal and Torres Strait Islander communities;
- supporting the development of culturally safe complaints and advocacy pathways;
- ensuring the voices of Elders and older people are heard directly, including in regional, rural and remote communities;
- monitoring whether mainstream services are meeting their obligations, rather than assuming Aboriginal and Torres Strait Islander people should fit into mainstream models.

OPAN recommends that the Bill be strengthened, or that clear implementation commitments be made, to ensure the Commissioner has a clear function in monitoring and reporting on whether culturally safe care is being delivered in practice.

Part 2: Other Measures

2.1. Scrutiny and transparency for the "other measures"

While OPAN supports the permanent Commissioner, the Bill also includes measures concerning provider refunds, unreasonable pricing, co-contributions and daily fees, local government "responsible persons", transitional arrangements and the treatment of Refundable Accommodation Deposits in the means test. These matters directly affect affordability, accountability, provider conduct and consumer protection.

OPAN's concern is not that all of these measures are necessarily inappropriate. Some may be beneficial if properly designed. Clearer refund obligations, stronger protections against unreasonable prices, and clearer governance arrangements may strengthen consumer protections. However, each measure should be examined in its own right, and the Committee should identify the appropriate mechanism for each safeguard, whether legislation, Rules, policy, guidance, regulator practice or public reporting. They should not be treated as administrative amendments simply because they sit alongside the Commissioner provisions.

This is particularly important because recent aged-care reform has already placed significant new demands on older people, families, carers, advocates and providers. The new Act creates a fees and charges regime in which some older people will contribute more financially to their care, which is a substantive change. Rights in the Act require strong mechanisms to give them practical effect, particularly for people who face additional barriers to understanding, navigating or challenging aged care decisions.

OPAN recommends that the Committee scrutinise each "other measure" against the following questions:

- Does the measure strengthen older people's rights, or simply improve system administration?
- Could the measure increase fees, co-contributions or financial pressure?
- Could the measure affect people with illiquid assets or limited cash flow?
- Does the measure provide clear review, appeal and hardship pathways?
- Has the measure been tested with older people, carers, advocates and diverse communities?
- Has the measure been tested with Aboriginal and/or Torres Strait Islander Elders and older people?
- Does the measure reduce, shift or obscure provider accountability?
- Will older people receive plain-language information before their rights, obligations or costs change?
- Is the appropriate safeguard legislative, policy-based, regulatory, implementation-focused or a combination of these?

OPAN recommends that the Committee ask the Department to provide a table setting out each "other measure" in the Bill, the problem it is intended to solve, the expected impact on older people, the expected impact on providers, whether consultation occurred, whether the key safeguards are legislative, policy, regulatory or implementation matters, and what safeguards apply for people at risk of hardship, confusion or reduced access to care.

2.2. Asset treatment, Refundable Accommodation Deposits and actual capacity to pay

OPAN is particularly concerned about amendments relating to asset treatment, Refundable Accommodation Deposits and means testing. The Bill seeks to confirm how Refundable Accommodation Deposits are treated when a person enters residential care; consistency is important, but it must not come at the expense of fairness, hardship protection or actual capacity to pay.

OPAN's Human Rights Advisory Group has raised concern that amendments relating to asset changes may have unintended consequences if they capture unrealised capital gains or changes in assets that are not practically available to the older person. This is a serious rights and hardship issue.

An increase in the paper value of an asset does not necessarily mean an older person has more money available to pay aged-care fees or co-contributions. Many older people hold assets that are illiquid, jointly owned, disputed, difficult to sell, needed by a spouse or family member, or otherwise inaccessible. People with cognitive impairment, limited decision-making support, family conflict or exposure to financial abuse may face particular risks.

OPAN recommends that the Committee seek clear answers from the Department and Services Australia on:

- whether the amendments could capture unrealised capital gains;
- whether an increase in the assessed value of an asset could increase an older person's contribution even where the asset has not been sold;
- how the system will distinguish between assessed wealth and actual capacity to pay;
- how hardship will be assessed where assets are illiquid or inaccessible;
- what protections apply for people with cognitive impairment or limited decision-making support;
- what protections apply where there is suspected financial abuse;
- whether contribution increases will be paused while a review or hardship application is underway;
- how older people will be notified of changes and supported to seek review.

OPAN recommends that the Bill, Rules and implementation arrangements ensure older people are not required to pay higher co-contributions based solely on unrealised capital gains or inaccessible assets. At a minimum, safeguards should require that:

- the older person receives plain-language notice before any increase takes effect;
- the notice explains the reason for the increase and how it was calculated;
- the person is told about their right to seek a review, hardship assistance and independent advocacy;
- increases are paused while a review or hardship application is underway;
- hardship can be assessed on the basis of actual capacity to pay, not only deemed assets;
- special protections apply for people with cognitive impairment, supported decision-making needs or suspected financial abuse.

2.3. Refunds, overpayments and provider accountability

OPAN supports clearer and simpler provider refund obligations. The protections must be practical and enforceable so older people do not have to navigate complex systems to recover money they should not have been charged.

Network case study: uncertainty about interest on an accommodation payment overpayment

An OPAN network member reported an advocacy matter that had remained unresolved for approximately six months because of uncertainty about whether the base interest rate or the MPIR applied to an overpaid accommodation deposit. The matter illustrates how unclear or inconsistently applied guidance can delay repayment to an older person.

Current Department of Health, Disability and Ageing and Aged Care Quality and Safety Commission guidance states that the maximum permissible interest rate (MPIR) applies to interest on refunds of overpaid daily payments and refundable deposits under rules 302-20 and 304-5 of the Aged Care Rules 2025, from 28 days after the provider becomes aware of the overpayment or receives the older person's written request. Item 29, the explanatory material and regulatory guidance should make this explicit, distinguish these arrangements from the separate base interest rate and MPIR provisions applying to refunds of accommodation lump-sum balances when a person leaves care, and support timely resolution of disputes.

OPAN recommends that refund obligations should include:

- automatic refunds where an overpayment or overcharge is identified;
- clear, short timeframes for repayment;
- written explanations to the older person and their representative or supporter;
- automatic payment of any interest owing on a delayed refund at the applicable MPIR, with a written calculation identifying the overpaid amount, relevant dates, rate applied, interest period and total amount payable;
- clear and consistent guidance for providers, advocates and Commission staff, with timely escalation and determination where the applicable rate or refund calculation is disputed;
- prohibition on providers offsetting disputed amounts without consent;
- escalation pathways where refunds are delayed;
- regulator monitoring of systemic overcharging;
- penalties or compliance action where providers repeatedly overcharge or delay refunds.

Older people should not carry the burden of identifying, proving and pursuing overcharging or the interest owed on delayed refunds. Many older people will not know that they have been overcharged. Others may fear that raising the issue will affect their care. Refund and overpayment provisions should be implemented consistently with the rights-based approach of the new Act.

2.4. Unreasonable pricing and transparent price determination

OPAN supports stronger consumer protections and regulatory oversight to ensure aged care prices are reasonable, transparent and connected to the cost of delivery. This is particularly important given the shift to greater co-contributions for non-clinical care and everyday living services. OPAN understands that providers determine their prices and that IHACPA can recommend prices and provide pricing advice. The focus should therefore be on clear rules and guidance about how co-contributions, daily fees and other charges are determined, alongside effective monitoring and enforcement where pricing is unreasonable.

OPAN also welcomes Minister Rae's 19 May 2026 announcement that a working group will focus on establishing a more robust definition of "reasonable" pricing, undertaking further consultation on the multi-provider model, and developing further guidance and supports for older people who self-manage their packages. OPAN looks forward to working with COTA Australia, Ageing Australia, the Department and the Commission to ensure this guidance is practical, consumer-focused and enforceable. At the time of writing, OPAN is awaiting confirmation of the working group's approach and structure.

OPAN's experience is that older people often find aged care pricing difficult to understand and compare. Information asymmetry between providers and consumers is significant, and people may not feel able to challenge prices where provider choice is limited, culturally safe services are scarce, or they fear losing access to care.

Any framework to address unreasonable pricing should be supported by:

- transparent criteria for determining whether a price is unreasonable;
- public reporting on price monitoring, provider price ranges, investigations and enforcement action;
- consumer-friendly information about what can and cannot be charged;
- strong protections against pressure selling or bundled charges;
- continued and strengthened pathways with the Commission for older people, advocates and representative bodies to raise concerns;
- strengthening proactive monitoring rather than relying on individual complaints.

The Committee should also consider whether pricing policy, regulatory oversight and consumer protections are sufficient to address systemic affordability issues, including where older people are technically liable for charges but cannot realistically afford them without reducing other essential spending.

2.5. Local government "responsible persons" amendment

OPAN supports the Bill's intention to ensure elected local councillors are no longer captured as "responsible persons", while non-elected officials who manage or lead aged care services remain within scope. This is appropriate, provided the narrower definition does not create accountability gaps.

OPAN recognises that local councils play an important role in aged care, particularly in regional and rural communities and in areas where alternative providers may be limited.

OPAN recommends that the Committee seek assurance that:

- the amendment will support clearer accountability by locating responsibility with the manager or leader of the service;
- older people will still have clear complaint and escalation pathways;

- local government providers will remain subject to appropriate governance obligations;
- responsibility for compliance cannot be displaced or obscured by council structures, political governance arrangements or delegations.

2.6. Permanent continuation of transitional measures

The Bill makes permanent measures that have supported system administration since commencement of the new Act. Administrative continuity does not necessarily mean those measures are working well for older people, so the Committee should examine whether they have been evaluated from the perspective of older people, families, carers and advocates.

OPAN recommends that no temporary or transitional measure be made permanent unless the Government can demonstrate that it:

- is consistent with the Statement of Rights;
- has not reduced access to care;
- has not increased confusion or administrative burden for older people;
- has not reduced review, appeal or complaint rights;
- has been tested with consumers and advocates;
- includes monitoring and public reporting.

2.7. Plain-language communication and independent advocacy

The aged care system is undergoing significant reform, requiring older people to understand new rights, contribution arrangements, assessments, provider obligations and complaints pathways. Many older people, families and representatives remain unclear about what has changed, what can be charged or refused, and how to challenge decisions.

Any legislative or policy amendments in this Bill that affect fees, contributions, refunds, pricing, asset treatment, assessments or provider accountability must be accompanied by:

- plain-language public guidance;

- translated and accessible resources;
- specific guidance for Aboriginal and Torres Strait Islander people;
- examples showing how changes apply in real-life circumstances;
- clear information for people with cognitive impairment and their supporters;
- proactive referral to independent aged care advocacy.

Independent advocacy should be embedded in the implementation of all consumer-facing amendments.

Conclusion

OPAN supports the establishment of a permanent Aboriginal and Torres Strait Islander Aged Care Commissioner. This necessary and overdue reform is strongly aligned with the rights-based intent of the new Aged Care Act. OPAN nevertheless urges close and separate scrutiny of the Bill's "other measures", which affect asset treatment, accommodation payments, refunds, pricing, governance and transitional arrangements.

The Committee should ensure these measures do not increase hardship, reduce accountability or add to the burden on older people and families. OPAN recommends that the Bill proceed only with clear legislative, policy and implementation safeguards that strengthen, rather than dilute, the rights-based aged care system promised to older people.