

OPAN submission on:

New Aged Care Act Rules
Consultation Release 2b –
Consolidated Draft Rules Relating to
Funding

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About OPAN

Formed in March 2017, the Older Persons Advocacy Network (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, information and education services to older people across Australia for over 30 years. Our network members are:

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| 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 Advocacy (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 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 2023–24 OPAN provided 44,428 instances of advocacy and information support, an increase of 20 percent since 2022–23.

OPAN is always on the side of the older person we are supporting. It is an independent body with no membership beyond the nine SDOs. 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 in preparing this submission.

Funding for an aged care system that is fair and equitable for everyone

"I think older people should contribute to their care if they're able, because they will value it more if they pay something. But cost should never prevent someone getting the care they need."

Older person waiting for a Home Care Package

OPAN joins with other peak bodies in calling for greater assurance that older people experiencing financial hardship will not be further disadvantaged by the new funding arrangements under the new Aged Care Act.

OPAN strongly supports government continuing to be the major funder of aged care and all clinical care services being free of co-contributions. The government accepted the recommendation of the Aged Care Taskforce that it is appropriate for older people to make a fair co-contribution to the cost of their aged care based on their means. However, only a small proportion of older people are very wealthy and affording aged care remains a source of considerable worry for most older people. Given the growing need for aged care services and rising number of older people living in poverty¹, it is imperative that increased co-contributions are applied fairly and equitably.

OPAN has consistently advocated² that aged care contributions made by older people must be fair and equitable, and accompanied by a strong safety net that:

- is accessible
- is actively promoted to all aged care service users
- provides meaningful relief to people experiencing hardship at a point in time and in some instances, on an ongoing basis
- is adjusted in line with rising costs over time
- includes a user-friendly application process for a waiver or reduction in fees that is easy to understand

¹ Davidson P, Bradbury B, & Wong M (2023), [Poverty in Australia, who is affected?](#) ACOSS and UNSW Sydney.

² OPAN, (2023) [Aged Care User Contributions](#). Position Statement

- makes available support to complete applications for people with low levels of literacy and numeracy, people with communication and/or cognitive disability, people with vision impairment, people from culturally and linguistically diverse backgrounds and First Nations older people.

We are particularly concerned about the likely inequities resulting from the recent policy change to allow aged care providers to continue setting their own uncapped unit prices for the Support at Home program until 1 July 2026.³

OPAN reiterates our call for the rights-based framework that underpins the new Aged Care Act to be better reflected in the Rules⁴. We are troubled that the Statement of Principles applies only to *"the Minister, the System Governor, the Commissioner, the Complaints Commissioner and any other person or body, performing functions or exercising powers under this Act, must have regard to the principles ..."* (s 26). It is not at all clear from these Rules whether an older person can follow the complaints path outlined under the Act in relation to administrative failures by Services Australia performing means testing and financial hardship assessment functions. It appears that older people may instead be referred to other administrative complaints procedures⁵, adding to the complexity of system navigation and individual stress.

We remain deeply concerned that the current financial hardship arrangements are inaccessible and insufficient for many Support at Home participants, meaning more older people will be forced to trade-off between needed aged care services and paying for their food, rent or medicines.

Noting that accommodation payments and accommodation contributions are excluded from this release of the rules, we remain extremely concerned about the barriers to low means residents gaining access to residential aged care. Changes to funding of residential aged care accommodation, including increased maximum refundable accommodation deposits (RAD), new RAD retention amounts, and indexation of daily accommodation payments (DAPs) all have the potential to make low means residents even less attractive to providers than residents who can afford to pay a RAD and/or DAP. Advocates are aware of many instances of older people desperate to secure a place in an aged care home, selling the home their spouse is living in or borrowing from family and friends so they can pay a RAD, due to the very limited availability of residential aged care places for people of low means.

OPAN considers that there may be a need to increase both incentives for residential aged care providers to accept low means residents and penalties for 'cherry picking' more profitable residents over low means residents.

³ Department of Health and Aged Care, [Changes to Support at Home pricing arrangements](#)

⁴ OPAN, 2024, [Submission on: New Aged Care Act Rules consultation Release 1 – Service list](#)

⁵ Services Australia, [Complaints and feedback](#)

The recent capability review of Services Australia ⁶ found priority areas for improvement involved greater alignment between service delivery and social policy goals. Services Australia Aged Care Specialist Officers (ACSOs) play a critical role in assisting older people to navigate the aged care system. However, there needs to be a large capability uplift to improve Services Australia aged care financial hardship assessments.

We await further details on improved access to and accessibility of financial hardship provisions via fee reduction supplements and improved effectiveness and efficiency in Services Australia processes for assessing and approving financial hardship applications.

*"We contend that people in need of aged care are gaslit into viewing the market for aged care as a series of choices; as a market in which they can participate in finding support for their unique needs. Their analysis of Royal Commission submissions finds that many people come to realise that the market functions by transferring wealth from older people, many of whom are vulnerable and frail, to the providers of aged care in exchange for essential services. The analysis shows that the aged care system is presented as a flexible system that prioritises personal choices and is focused on the clinical needs of older people. In reality, once a person or family reaches a stage when they need to interact with the aged care system, finances and budgets are foregrounded in client conversations with service providers, and clinical care is negotiated within that frame."*⁷

An older person received a letter from Services Australia three months after commencing with their Level 3 Home Care Package advising that they would not be required to pay an income tested fee. A month later the client received an invoice from their provider for \$962.08 in income tested fees. The older person placed their supports on hold while the matter was being resolved. They contacted their provider multiple times about the matter but had not heard back from the provider about a resolution. The Financial Advocacy Officer (FAO) spoke to the provider's accounts department and questioned the invoice. The provider confirmed they had reversed the invoice of \$962.08 and the older person's account was no longer in arrears. The older person was pleased the issue was resolved but were going to look at changing provider as they no longer trusted them.

⁶ Australian Public Service Commission, (2024) [Capability review: Services Australia](#)

⁷ Twyford, E., Rowe, R., & Andrew, J. (2025). [Financial gaslighting: The financialisation of care in later life](#). Critical Perspectives on Accounting, 102788.

Support at Home

OPAN reiterates recommendations made in our submission on the New Aged Care Act Rules consultation Release 2a – Funding for the Support at Home program.⁸ These include that:

- Any older person assessed as eligible for permanent residential aged care, who chooses to stay at home should have access to an equivalent level of funding.
- Older people with disability receive assistive technology and home modification funding equivalent to that available under the National Disability Insurance Scheme (NDIS).
- Contribution payments on personal and respite care are removed to ensure older people and their carers do not forgo these important services due to cost.
- The assistive technology and home modifications (AT-HM) list provides for prescription of some items currently considered excluded household items, if evidence is provided to support an assessed need. This should include installation and maintenance of air conditioning for someone living with a thermoregulatory disorder e.g. neurological and auto-immune conditions that cause a significant loss of a person's capacity to control body temperature.
- There is an exception pathway under s 221 for participants to be re-allocated up to the full amount of the HM –high classification for home modifications where they have been required to move to a new home due to circumstances beyond their control.
- The dementia and cognition supplement is reinstated to help ensure Support at Home services and supports are sufficient to support the specific needs of people living with moderate to severe cognitive impairment and their carers.
- The list of older people eligible for the care management supplement is expanded to include all older people with experience of historical or current abuse, neglect or trauma.
- Providers are required to use a standard template for Support at Home monthly financial statements.
- Consistent with Royal Commission recommendations, the aged care system should move to uncap supply on Support at Home places

Based on our experience with supporting older people at risk via the Home Care Check-in pilot project, OPAN considers that the care management supplement is too low, at only 12 additional hours of care management per year. We recommend that the care management supplement should not be a flat rate, but available on a scale of need,

⁸ OPAN, 2024, [Submission on: New Aged Care Act Rules consultation Release 2a – Funding for the Support at Home program](#)

for example, low (12 hours per annum), medium (24 hours per annum) and high (36 hours per annum).

OPAN acknowledges that the new Support at Home service list and AT-HM list are intended to ensure program clarity, consistency and integrity, so that there is sufficient differentiation between things the government does not typically pay for, and eligible aged care supports. However, gaps in the broader health, housing and social service systems means that older people often do not have access to timely and viable alternative options through other Commonwealth, State or Territory funded programs. These service system gaps can substantially impact the health and wellbeing of older people and reduce their ability to remain living independently at home. Older people experiencing financial hardship, particularly renters unable to self-fund essential items, are often impacted the most.

The most common reasons older people contacted advocates about aged care contributions was because they were not able to afford to pay the contribution and had either chosen to forgo needed services or identified that they would need to do so in the future. While there are currently fewer financial hardship applications under the Home Care Packages (HCP) program than in residential aged care due to the widespread practice of providers not charging the basic daily fee, we have many examples of advocates and financial advocacy officers (FAOs) supporting older people seeking a reduction or waiver of aged care contributions from Commonwealth Home Support Program (CHSP) providers.

We anticipate an increase in financial hardship applications once Support at Home commences and providers start charging a percentage of the applicable unit price for each service type. We also anticipate as is currently the case with CHSP, that older people will seek services from another provider that is willing to absorb the participant contribution into the unit cost. The worst-case scenario is that older people will opt to reduce their aged care services to an affordable level or cease them altogether.

Residential aged care

Higher everyday living fees

OPAN reiterates our strong support for consumer protections related to entering and exiting from contracts for higher everyday living charges.

Advocacy cases relating to extra service fees often involved an older person not realising they were paying an extra service fee or not knowing what benefits they should be receiving as part of this fee. Financial Advocacy Officers (FAOs) have supported several people to try to renegotiate their extra service fees. Many were simply not using the extra services they were paying for. Advocates have been involved in many cases of applying for financial hardship where an older person was unable to

pay for necessities because the high care and accommodation fees for residential aged care had left them with limited funds to pay for living costs such as medications and other medical expenses.

Complexity of aged care fees and charges

The most common single issue raised in advocacy contacts with OPAN network members about residential aged care providers in 2023–24 were concerns around fees and charges, at 16 percent of all residential aged care advocacy cases. Older people typically had difficulty obtaining clear and prompt information regarding residential aged care fees and charges from providers and Services Australia.

Advocates have advised of situations where one member of a couple is entering residential aged care and the other is staying at home, that older people are unaware of the impact on their Age Pension status and the need to apply to Services Australia to be considered as an illness separated couple ⁹. The Services Australia Financial Information Service (FIS) needs to be more proactive in informing older people considering residential aged care. Older people should not have to engage and pay for a specialist aged care financial advisor to be informed of these provisions.

A lack of consistency, communication and coordination of processes between residential aged care providers and Services Australia often led to significant confusion and distress for older people and their families. For example, there is no joint/coordinated reconciliation made by both the residential aged care provider and Services Australia upon the death of a resident to ensure that the correct amount is refunded to the estate and appropriately documented. It is frequently noted by advocates that the language used by Services Australia and residential aged care providers on their statements is not aligned, which compounds other communication breakdowns regarding fees and charges.

Many contacts with advocates about fees and charges in residential care related to older people and/or their substitute decision-makers not understanding the options for, and implications of, making financial contributions towards aged care, including means tested care fees; additional services charges or extra services fees; refundable accommodation deposits; daily accommodation payments; or a combination of accommodation payment methods. Older people turned to advocates support due to the complexity of the residential aged care financial arrangements, inconsistencies and lack of coordination between providers and Services Australia, and lack of transparency and clarity in provider invoices, statements and agreements.

⁹ Guides to Social Policy Law Social Security Guide Version 1.326 – Released 12 February 2025, [2.2.5.60 Determining an illness separated couple](#)

The need for support to financially navigate the system was heightened by the fact that older people, their supporters and their substitute decision-makers often felt pressured or coerced to quickly make decisions about entering and financing residential aged care during a crisis in order to exit a hospital bed and/or secure a place or room type.

In some cases, matters are easily resolved by an advocate or financial advocacy officer (FAO) clearly explaining to the older person and/or their substitute decisionmaker their residential aged care fees and charges and financial contribution options.

Aged care provider financial errors

In other cases, FAOs identified the provider had made errors in calculating charges and invoiced older people for fees not owed to the service provider. In these cases, FAOs work with the older person and/or their substitute decision-maker and the service provider to have incorrect charges removed from the older person's account or refunded. Some cases involve historical errors made by residential aged care providers that resulted in older people, or their deceased estate, being charged large sums of backdated fees for months or even years of incorrect charging by the provider. Advocates worked with older people, families handling deceased estates, and/or their substitute decisionmaker to successfully negotiate a waiver or reduction of the backdated fees and charges as these had not been communicated to the older person or their substitute decision-maker at the time. In other cases, FAOs supported eligible older people to make backdated financial hardship applications that can be applied to historical fees to achieve a significant reduction in debt.

Some older people are threatened with eviction or refusal of services if they did not pay the invoiced fees and charges immediately, even where there was a pending income and assets assessment or financial hardship application with Services Australia. In these cases, OPAN advocates and FAOs provide support to remind providers of their obligations regarding security of tenure and to ensure the older person is able to continue to receive necessary aged care supports.

Means tested fees

OPAN holds grave concerns that the change from one means tested care fee to two separate means-tested contributions – for everyday living services such as catering, cleaning and laundry and for non-clinical care services, such as personal care, mobility assistance and lifestyle activities will be more confusing for older people entering residential aged care after 1 July 2025. We consider having two different charges also increases the risk of financial errors by providers.

A current trigger in many advocacy cases related to fees and charges relate to the means-tested care fee. In some cases, older people had not had the requirement for

an income and assets assessment explained to them, or they had not understood the consequences of not disclosing their income and assets to Services Australia. A lack of clarity or support to understand the income and assets assessment process and implications for care contributions resulted in some older people being charged at the maximum rate, or a higher rate than warranted. Wait times for Services Australia income and assets assessments also contribute to older people incurring significant debt to their provider. In some cases, the provider engaged debt collection agencies to recover these maximum daily rate payments.

Advocates, with the support of FAOs, older people and/or their estates are often able to successfully negotiate an extension to the payment date of these fees to allow time for Services Australia to complete the income and assets assessment and determine if any reduction in historical fees and charges was applicable.

The need to engage an advocate for an older person to be able to understand their aged care fees and charges causes significant and unnecessary distress.

Financial hardship

OPAN advocates regularly support disadvantaged older people to understand and apply for financial hardship assistance. We are concerned that there will be a substantial increase in demand for this support once the new fees and charges are in place from 1 July 2025.

Significant wait times of up to 9 months for Services Australia to process older people's financial hardship applications has been reported by advocates which significantly contributes to increased distress, lack of access to aged care services, further financial hardship, and conflict among family members. In cases where the older person was experiencing financial abuse by family members, these excessive wait times placed them at increased risk of further abuse.

In many cases older people are unaware of the availability of financial hardship assistance and had not been told of this option by their service provider, even after they had raised concerns with their provider about not being able to afford contributions.

OPAN recommends:

- Continued investment in face-to-face supports for older people accessing aged care services including Aged Care Specialist Officers (ACSOs) at Services Australia and increased resources in the Services Australia team assessing aged care financial hardship applications to reduce wait times for an assessment to no longer than 28 days.
- That specialist aged care advocates are provided with a Services Australia provider number so they can access the aged care provider phone line, or other

pathways for fast tracking calls, so they can deliver timely support to older people to resolve their aged care financial issues.

- That any older person eligible for both Commonwealth Rent Assistance and Support at Home is automatically assessed by Services Australia for financial hardship to ensure they have at least 15 percent of their age pension remaining after all necessary expenses.
- That assessment of the older person's financial position includes their level of debt. Debt accrues over time and can have a significant impact on the amount of money people have to spend on necessary items like food, medicines and health care.

We are disappointed to see no change in the rules in the notification period for older people to notify the System Governor of a change of circumstances that may affect their income and assets assessment.

OPAN reiterates our recommendation that the notification period for an individual to notify the System Governor of a change of circumstances affecting their contribution rate under s 315B should be 28 days. This is the same as the period allowed for the System Governor to notify the individual of the determination of the individual contribution rate for each means testing category under s 314AB, or under s 317, to decide if an individual's contribution rate determination is no longer correct or under s 318A to decide whether to vary or revoke individual contribution rate determination following events or change in circumstances. We further reiterate our recommendation regarding means not disclosed status under s 314AB that Services Australia must make every effort to contact an individual who has not disclosed or updated their means within the prescribed period to determine if this is a deliberate choice or due to oversight or error.

The lengthy waiting times endured for income and assets assessments are unacceptable and a source of considerable financial stress for older people accruing debt to their aged care provider.

OPAN recommends:

- Set a maximum timeframe of 28 days for Services Australia to process financial hardship applications.
- Improve communication and education to registered providers regarding the need to clearly explain to older people how to apply for financial hardship fee reductions or waivers.
- Improved regulation of provider debt collection practices, particularly their use of external debt recovery agencies.

An older person contacted an advocate following the death of their partner shortly after entering residential aged care. At the time of their partner's death, the income and assets assessment had not been completed, and they were being billed the maximum fees by the provider. The total amount owing was \$35,884.67.

The older person stated that due to grief and fear of the debt, they were initially willing to pay the amount owing despite the significant financial hardship this would cause. However, following a discussion with the Financial Advocacy Officer (FAO) about their options, they decided to complete the income and asset testing (SA457) form with the support of the local Aged Care Specialist Officer (ACSO).

The FAO guided the older person through the Services Australia assessment process and advocated with the service provider collections department for further time due to processing delays in the Services Australia system. The assessment was eventually completed, and the aged care service reconciled the fees owing which resulted in a \$30,574.00 reduction in the fees payable. The older person was very happy with the result.

OPAN member organisations by state or territory:

