

OPAN Submission to:

**The Intergovernmental Working Group on the
conceptual framework, principles and structure of
an International legally binding instrument on the
human rights of older persons**

Table of Contents

About OPAN	3
Introduction	4
1. Overarching framework.....	4
The importance of accepting older persons as full rights holders whatever their situation	6
The instrument should clearly affirm the relevance of all human rights and fundamental freedoms to older persons	8
2. Core principles and addressing gaps in protection.....	10
Reaffirming rights and closing normative gaps	11
Addressing gaps, limitations and deficiencies in the existing international human rights framework	12
3. Overall structure and architecture of the instrument	13
Conclusion	14

About OPAN

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 members are:

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 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 52,206 instances of advocacy and information support, an increase of 18 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 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.

Introduction

The Older Persons Advocacy Network (OPAN) welcomes the opportunity to contribute to the deliberations of the working group on the conceptual framework, principles and structure of an International legally binding instrument on the human rights of older persons.

OPAN broadly endorses the approach adopted in the Global Alliance for the Rights of Older People (GAROP) Discussion Paper of January 2026.¹ This submission outlines OPAN's key concerns about ensuring the proposed convention provides increased protections for older people seeking or accessing aged care services. This submission should be read in conjunction with OPAN's submission to the report of the Special Rapporteur on violence against women and girls to the 81st session of the United Nations General Assembly on violence against older women.²

1. Overarching framework

What overarching framework should guide the international legally binding instrument on the human rights of older persons? Additionally, how can it best reflect and reinforce the recognition that older persons are rights-holders entitled to the full and equal enjoyment of all human rights and fundamental freedoms?

OPAN strongly supports the development of an international legally binding instrument grounded in a human rights-based, transformative framework that unequivocally recognises older persons as rights-holders, not passive recipients of care or protection.

¹ [Conceptual framework, underlying principles and possible scope of a new legally binding instrument on the human rights of older persons](#). Discussion paper prepared by the Global Alliance for the Rights of Older People (GAROP) 30 January 2026

² [OPAN Submission](#) to: The report of the Special Rapporteur on violence against women and girls to the 81st session of the United Nations General Assembly on violence against older women

The framework must clearly affirm that older persons are entitled to the full and equal enjoyment of all human rights and fundamental freedoms, on the same basis as all other people. Too often, older age is treated as an exception to human rights protections, rather than a phase of life in which rights must be actively protected, respected and fulfilled.

The instrument should recognise that ageing is a natural, universal part of the human experience, shaped by diverse life courses, social structures and policy choices. “Older age” should not be defined through rigid chronological thresholds, which risk excluding people affected by age-based discrimination. Instead, the instrument should ensure protection against discrimination based on ascribed or presumed age, regardless of numerical age.

OPAN supports a framework that is explicitly transformative. Preventing individual instances of harm is not enough. The instrument must address the structural drivers of ageism, including laws, policies, service systems and institutional practices that systematically marginalise older people. This includes age-based exclusions from work, healthcare, social participation, access to justice, and emerging areas such as digital systems, artificial intelligence and innovation.

Importantly, the framework must recognise older persons as full legal persons with autonomy, agency and legal capacity, entitled to make choices about their own lives and supported to do so where required. The instrument should embed participation as a core principle, recognising that all policies affecting older people must be shaped *with*, not merely *for*, them.

The importance of accepting older persons as full rights holders whatever their situation

The mission of OPAN is to provide support for older persons³ in Australia who are seeking or receiving Australian government funded aged care services, whether in the form of residential aged care or through support services to live in their own homes. Aged care service participation involves nearly 200,000 older persons living in permanent residential aged care at any point in time, and over 1,000,000 older persons receiving support services at home.

Many others are waiting for aged care eligibility assessments and once assessed as eligible, many also must wait further to be allocated funding for support at home or to find a suitable place in residential aged care. Recent reforms to aged care legislation have led to greater levels of co-contributions being expected from older persons who are assessed as being able to afford it based on means testing.

Certain rights, including the rights to:

- autonomy, independence and respect for one's dignity
- health and access to health services
- decide where and with whom one lives and to live independently and, in the community
- an adequate standard of living; and
- social security and social insurance,

may be of special prominence for older persons seeking or receiving aged care support and services.

However, what OPAN has heard from older people makes clear that the rights which are frequently violated or not fully guaranteed in the aged care context extend far beyond these rights. For example, ageism is as widespread in the aged care world as it

³ Older Australians from the age of 50 if they are Indigenous/First Nations people, people experiencing homelessness or at risk of homelessness, or from age 65 for the general population.

is in the broader community. The legal capacity and right of older persons to choose how to live their own lives is regularly not respected in small ways and large:

- physical, sexual and psychological abuse especially of older women occurs though it is underreported
- restrictive practices involving physical, chemical and environmental restraints continue to be used in ways that violate fundamental rights of the person
- institutionalised routines tend to diminish the individuality of the person and their ability to live their lives as they wish.⁴

These rights issues were highlighted and exacerbated during the COVID-19 pandemic and expanded to other violations involving separation from families and friends, among other serious encroachments on the human rights of older persons. This was amply documented by, among, others the United Nations Secretary-General in his *Policy Brief on COVID-19* and in many other United Nations reports.

OPAN has sometimes seen in public discussions and policy decisions the tendency to assume that it is only a limited range of rights that are of importance to older persons, particularly those related to legal capacity, pensions, health and long-term care. This can lead to strange omissions and adverse practical consequences.

For example, in 2024 the Australian Parliament enacted the *Aged Care Act 2024* (Cth)⁵ which sought to fundamentally reform the previous aged care legislative framework by introducing “a rights-based framework” for long-term care and at-home support for older people. This legislative initiative was in response to a major public inquiry, the Royal Commission into Aged Care Quality and Safety (2018–2021), which found the existing system failed to place the older persons and the observance of their (human) rights at the centre of the aged care system.

The Royal Commission recommended the adoption of a “rights-based framework” and placed significant emphasis on the right to health in article 12 of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities. The lack of a comprehensive international binding instrument on the human rights of older persons hamstrung the Royal Commission in articulating

⁴ OPAN, Position Statement [Deinstitutionalisation in Aged Care](#) December 2022

⁵ www.legislation.gov.au/C2024A00104/latest/text

a comprehensive human rights framework: the rights the Royal Commission specified were those it apparently saw as especially relevant to persons in aged care⁶ -- though the changes it recommended and the efforts made in the reform to adopt them were welcome.

This limited outlook influenced the drafting of the legislation. While the new legislation went beyond the list of rights suggested by the Royal Commission, there were some remarkable omissions in the *Statement of Rights* included in the new Act.⁷ While it included important human rights as well as other rights, it failed to explicitly mention the right not to be arbitrarily deprived of one's life and the right to the highest attainable standard of health.

This was no oversight on the part of government: despite submissions from older persons' organisations that these rights should be included, the government did not do so. It is unclear why the view was taken that the right to life was not sufficiently relevant to older persons in long-term care who may be nearing end-of-life to make it worthy of inclusion – despite the many examples highlighted by the Royal Commission that showed examples of unnecessary and premature death of some aged care residents.

The instrument should clearly affirm the relevance of all human rights and fundamental freedoms to older persons

Accordingly, OPAN recommends that the instrument should contain an unequivocal affirmation of older persons as the holders of all human rights and fundamental freedoms.

⁶ Royal Commission into Aged Care Quality and Safety, *Final Report: Care Dignity and Respect, Volume 1 – Summary and recommendations* (2021), p 207

⁷ Aged Care Act 2024(Cth), s 23, www.legislation.gov.au/C2024A00104/latest/text

Ageism

OPAN notes that ageism has been shown to be widespread in Australian society (as elsewhere in the world) and this has an impact in the design and delivery of aged care services. OPAN urges the Intergovernmental Working Group to clearly recognise this as an important aspect of the background to the proposed convention and to include in the new instrument explicit obligations on State parties to take effective measures to eliminate ageism and ageist practices by public and private actors in all areas of social life.

The right to long-term care and support

OPAN considers that a major gap in the international human rights framework is the absence of an explicit and nuanced right of older persons to access long-term care and support. While certain aspects of this right might be supported by specific rights such as the right to an adequate standard of living or the right to health, cobbling together effective protection from disparate rights, not formulated with a view to this matter produces unsatisfactory and patchwork coverage. An explicit freestanding right is needed.

A right to long-term care and support should have several elements that underpin and support the exercise by an older person of their agency, and which give effect to their will and preferences. This right should be:

- based firmly in the autonomy and independence of older persons
- incorporate the right of an older person to live independently and in the community (and to receive required support to enable them to do so, and provide other options for living in an environment which avoids institutionalisation⁸ and;
- respects the individuality of each individual older person.

An older person should be able to choose where they wish to live and with whom and not have their choices coerced by systemic failure to provide adequate supports in their setting.

⁸ OPAN, [Deinstitutionalisation in Aged Care](#), Position Statement, December 2022

2. Core principles and addressing gaps in protection

What core principles should underpin the legally binding instrument, to ensure it effectively protects the rights of older persons? In addition, how can the legally binding instrument both reaffirm existing human rights for older persons and clearly identify and address gaps where further normative development is required?

Core principles

OPAN supports the inclusion of strong, clearly articulated general principles that apply across the entire instrument and guide its interpretation and implementation. These principles should include:

- **Equality and non-discrimination**, with age explicitly recognised as a prohibited ground of discrimination.
- **Prohibition of ageism**, including interpersonal, institutional and systemic ageism.
- **Substantive and transformative equality**, recognising that achieving equality for older persons often requires positive measures and systemic reform.
- **Dignity, autonomy and independence**, including recognition of full legal capacity.
- **Participation and inclusion**, ensuring older persons are active contributors to decision-making at all levels.
- **Intersectionality**, acknowledging that older persons experience compounded discrimination based on gender, disability, cultural identity, socio-economic status, migration status and other factors.
- **Accountability and access to justice**, including an enforceable right to remedy.

These principles should not be aspirational statements alone; they must be operationalised through binding obligations on States.

Reaffirming rights and closing normative gaps

While existing international human rights treaties apply to people of all ages, OPAN agrees with GAROP that they have failed to provide adequate, visible and enforceable protection for older persons in practice.

The new instrument must therefore:

- Reaffirm the application of all human rights to older persons; and
- Clearly articulate how those rights apply in contexts where older people face heightened or distinct risks.

This includes, but is not limited to:

- Violence, abuse, neglect and exploitation;
- Economic security, work and access to decent income;
- Access to health care, including long-term care, palliative and end-of-life care;
- Housing and aged care settings, including residential and community-based services;
- Digital access and exclusion;
- Climate change, disasters, humanitarian emergencies and conflict.

The instrument must also clearly recognise ageism as a root cause of many human rights violations experienced by older persons and place binding obligations on States to prevent, eliminate and redress ageism across both public and private sectors.

Importantly, the instrument should not replicate limitations or exclusions found elsewhere in international law. Instead, it must close long-standing protection gaps, providing clarity, enforceability and accountability.

Addressing gaps, limitations and deficiencies in the existing international human rights framework

Right to remedy must be explicitly included in the new instrument

OPAN considers that the explicit inclusion of the right to remedy under national law for violations of older persons' human rights is critical. Where there is a right, there should be a remedy –that is accessible, through a prompt procedure that provides effective relief. The explicit provision of an enforceable remedy when it comes to the human rights of older persons is not something that can be taken for granted.

For example, the “rights-based” Australian *Aged Care Act 2024 (Cth)*, which has a *Statement of Rights*, which sets out a combination of human rights, human rights-derived guarantees and other rights (consumer rights, etc). Section 24(1) of the Act states that “[a]n individual is entitled to the rights specified in [the *Statement of Rights*] when accessing, or seeking to access, funded aged care services” and requires aged care providers to “take all reasonable and proportionate steps to act compatibly” with those rights, while noting certain limitations on those rights may be permitted or required.

However, section 24(3) of the Act explicitly rules out the possibility of an older person directly invoking these rights before independent courts and tribunals to seek a remedy for an alleged violation of their rights. Instead, the Act provides a framework under which an individual may lodge a complaint of violation of the Aged Care Quality Rules with a Complaints Commissioner based within the regulatory agency (The Australian Aged Care Quality and Safety Commission), who is tasked with responding to complaints appropriately but cannot rendering binding legal decisions.

The Commission has a broader regulatory role and powers to monitor providers compliance with the standards as well as out regulatory requirements (e.g. financial and governance issues).

This example underlines the importance of including in the new instrument an explicit obligation on States parties to provide for effective judicial remedies under national law (in addition to other remedial options) for violations of the rights guaranteed in the new convention.

3. Overall structure and architecture of the instrument

What overall structure or architecture should the legally binding instrument adopt to ensure clarity and effectiveness? For example, should it include a preamble, definitions, general principles, general obligations, specific rights, and implementation provisions?

OPAN supports a clear, accessible and comprehensive structure that aligns with established UN human rights instruments while remaining focused on real-world impact for older people. A strong structure should include:

Preamble

The preamble should acknowledge:

- The historical and ongoing marginalisation of older persons;
- The pervasive impact of ageism across societies and institutions;
- Global demographic change and increased longevity;
- The inadequacy of existing frameworks to fully protect the human rights of older persons.

Purpose, Scope and Definitions

Key concepts, including “older persons”, “ageism” and “age discrimination”, should be clearly defined in a way that ensures broad, inclusive protection.

General principles

A standalone section should set out principles guiding interpretation, policy development and implementation.

General obligations

The instrument should clearly articulate State obligations to:

- Respect, protect and fulfil the rights of older persons;
- Regulate and oversee private and non-State actors;
- Take positive measures to eliminate ageism and discrimination.

Specific rights

The instrument should include a comprehensive set of rights, articulated in a way that reflects the lived experiences of older persons rather than rigid categories of rights.

Implementation, monitoring and accountability

Robust mechanisms must ensure:

- Accessible remedies for rights violations
- National implementation measures
- Data collection and disaggregation by age; and
- Effective international monitoring.

Conclusion

OPAN strongly supports a legally binding international instrument that moves beyond symbolic recognition and delivers practical, enforceable human rights protections for older persons. This represents a critical opportunity to challenge ageism, strengthen accountability and affirm that older people, everywhere, are entitled to dignity, autonomy, participation and equality throughout the course of their lives.

OPAN member organisations by state or territory:



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