

A New Model for Regulating Aged Care

National Aboriginal and Torres
Strait Islander Ageing and Aged
Care Council Submission

August 2023



NATSIAACC

National Aboriginal and Torres Strait Islander Ageing and Aged Care Council - NATSIAACC

About NATSIAACC

NATSIAACC is the national peak body for Aboriginal and Torres Strait Islander ageing and aged care.

NATSIAACC works to ensure that Aboriginal and Torres Strait Islander older people can access support and care that is culturally safe, trauma aware and healing-informed, and recognises the importance of their personal connections to community and Country.

NATSIAACC is building a membership base of:

- Aboriginal and Torres Strait Islander community-controlled providers of ageing and aged care, and
- non-Indigenous entities with an interest in culturally appropriate ageing and aged care services.

NATSIAACC's founding Directors are all leaders within Aboriginal and Torres Strait Islander ageing and aged care provision. They are all current or former CEOs of established and groundbreaking services within their relevant state.

Our Vision

All Aboriginal and Torres Strait Islander people are thriving, healthy, strong, with ongoing cultural connections in their older years.

Our Purpose

NATSIAACC supports Aboriginal and Torres Strait Islander older peoples, their families and communities to identify, engage in, advocate for and lead systemic reform to embed culturally safe practices across the aged care and ageing sector.

With thanks

This submission has been developed in consultation with NATSIAACC's members.

NATSIAACC thanks its members for their contributions and time engaging in this consultation.

Funding

NATSIAACC is currently funded by the Commonwealth Department of Health and Aged Care (the Department) for establishment and has been in operation for less than a year. In the context of the current aged care reforms and the need for extensive advocacy, input and leadership in the sector, it will be necessary to provide additional funding to support NATSIAACC to assist with the delivery of the additional recommendations contained in this submission and the engagement required to ensure that the aged care reforms deliver much needed support to Aboriginal and Torres Strait Islander older people and Elders.

Summary of recommendations

NATSIAACC makes the following recommendations:

- We recommend that cultural safety is incorporated end-to-end in the new regulatory model, and as a core element.
- We recommend that further flexibility for Aboriginal and Torres Strait Islander providers of aged care is provided with respect to:
 - Governance frameworks and overall governance requirements need to consider good governance from an Aboriginal and Torres Strait Islander organisational and cultural perspective - operating to meet Aboriginal and Torres Strait Islander older peoples' needs.
 - Reporting requirements should be simple and red tape should be reduced. Processes, administrative forms and documents (such as the key personnel form, self-assessment forms) need to be efficient, avoid duplication and be appropriately tailored to the way the providers operate (this should also include place-based approaches).
 - The system should support the recruitment and retention of staff in regional and remotes areas, including additional consideration for instances where English is not a person's first spoken or written language. This may include supporting innovative development of technologies that can bridge the gap.
 - Consideration of options for a degree of self-regulation within the regulatory framework.
 - Sufficient time for providers to understand, prepare and transition to the new Aged Care Act (and all associated aged care regulatory reforms).
 - Providers would like to understand the mandatory regulatory requirements so that they can advise on how the same outcomes can be achieved in ways that will work for Aboriginal and Torres Strait Islander providers, who provide holistic, integrated and culturally safe care for Aboriginal and Torres Strait Islander older people.
- In recognition of the different range of considerations required to support Aboriginal and Torres Strait Islander providers of aged care, we recommend the Department and the Regulator, in consultation with NATSIAACC as the peak body and facilitator, apply a co-design approach for the implementation of the new regulatory model and how it applies to Aboriginal and Torres Strait Islander older people and aged care providers.
- We recommend that the Department engage with the Aboriginal and Torres Strait Islander aged care sector, including older people, their families and communities to specifically ensure that cultural safety is a core part of the regulatory system. As the peak body, NATSIAACC would be pleased to assist with this important work.
- We recommend that the foundations of the new regulatory model and the aged care system as whole must be reviewed to incorporate cultural safety requirements, including family and community-centred approaches.
- We recommend that the Department consider developing a resource (or 'map') to track the reforms and the interactions between all aged care and other relevant reforms, as well as the interdependencies.

- We recommend that the Department convene a forum(s) or roundtables with Aboriginal and Torres Strait Islander aged care providers to fully discuss the impact of the reforms and what changes and supports are required to ensure a smooth transition and ongoing sector viability. This recommendation could form part of the co-design process above.
- In the absence of any prior impact assessment and needs analysis of the proposed regulatory reforms, we recommend further consultation to fully understand the impact the new regulatory requirements will have on Aboriginal and Torres Strait Islander providers. As referenced above, we also recommend that the provider governance requirements are sufficiently flexible to ensure the ongoing viability of current providers, with a view to increasing the numbers of Aboriginal and Torres Strait Islander aged care providers.
- We recommend that the Department consider providing financial and administrative transition support and additional flexibility to enable Aboriginal and Torres Strait Islander aged care providers to smoothly transition to the new regulatory regime.
- We recommend further engagement with the Aboriginal and Torres Strait Islander sector is also required to inform the most appropriate timeframe for the 'go-live' date for the new regulatory model and the new Aged Care Act.
- We recommend the development of culturally appropriate, co-designed resources to support older people to make informed decisions and understand the impact of the aged care reforms.
- We recommend that a new Aboriginal and Torres Strait Islander Division (or similar) be established within the Commission. NATSIAACC must be funded to support the Commission to build cultural competency skills and could work closely with staff in their engagement with First Nations peoples.
- We recommend that the establishment of Communities of Practice would be appropriate to support the implementation of the new model. This would likely be best commenced as a formal arrangement, and with secretariat support from the Department or the Commission.
- We recommend engagement with the Aboriginal and Torres Strait sector on performance and audit reporting to inform a performance criterion for meeting the diverse needs of Aboriginal and Torres Strait Islander people and their communities.
- NATSIAACC recommends a co-design approach with Aboriginal and Torres Strait Islander providers, older people, and communities to ensure the complaint process is fit for purpose.
- NATSIAACC recommends that an Aboriginal and Torres Strait Islander impact assessment and evaluation of the new regulatory regime is conducted within the first year of implementation.
- For future consultations, we recommend the Department and the Regulator ensure that Aboriginal and Torres Strait Islander people, providers and other peak bodies in the sector are given sufficient time and opportunity to provide input.

Introduction

NATSIAACC welcomes the opportunity to comment on the Department of Health and Aged Care's consultation: *A New Model for regulating Aged Care*, Consultation Paper No.2 – Details of the proposed new model (the Consultation Paper)¹.

There is a broader picture that we need to keep in mind when considering the impact of the new model for regulating aged care on Aboriginal and Torres Strait Islander older people and aged care providers.

We need to focus on the overall goal – to increase the numbers of Aboriginal and Torres Strait Islander people receiving culturally safe support and care in their older years.

The Royal Commission into Aged Care Quality and Safety stated that:

*We are also concerned that Aboriginal and Torres Strait Islander people do not access aged care at a rate commensurate with their level of need. A combination of factors creates barriers to Aboriginal and Torres Strait Islander people's access to the aged care system. These arise from social and economic disadvantage, a lack of culturally safe care, and the ongoing impacts of colonisation and prolonged discrimination. Access issues are further compounded by Aboriginal and Torres Strait Islander people's additional vulnerability arising from higher rates of disability, comorbidities, homelessness and dementia. To feel secure and obtain culturally safe services, many Aboriginal and Torres Strait Islander people prefer to receive services from Aboriginal and Torres Strait Islander people and from Aboriginal and Torres Strait Islander organisations. However, there are currently not enough Aboriginal and Torres Strait Islander people, and other people with high levels of cultural competency, employed across the aged care system.*²

There is also a wider framework that is interconnected with the regulation of the aged care sector.

The National Agreement on Closing the Gap³ (the National Agreement) contains four Priority Reform, these are:

- Strengthening and establishing formal partnerships and shared decision-making.
- Building the Aboriginal and Torres Strait Islander community-controlled sector.
- Transforming government organisations so they work better for Aboriginal and Torres Strait Islander people.
- Improving and sharing access to data and information to enable Aboriginal and Torres Strait Islander communities to make informed decisions.

These priority reforms contribute to improving outcomes for older Aboriginal and Torres Strait Islander people in aged care.

¹ Department of Health and Aged Care, *A new model for regulating Aged Care*, Consultation Paper No.2 – Details of the proposed new model, April 2023.

² Royal Commission into Aged Care Quality and Safety, Final Report: Care, Dignity and Respect, p67.

³ <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/1-preamble>, accessed 27 July 2023.

The [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#) (the Health Plan) forms part of this. The Health Plan is consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),⁴ these rights include:

- the right to practice culture
- the right to self-determination
- the right to make decisions on matters that affect lives and communities.⁵

The Health Plan also provides that Aboriginal and Torres Strait Islander people have a right to culturally safe and responsive health care, free of racism and inequity.⁶ A significant part of this is ensuring that there are sufficient Aboriginal and Torres Strait Islander aged care providers to support older people to receive culturally safe care.

While we acknowledge there is a role for regulation, we also note that the Health Plan provides that the system must not increase the reporting burden on the Aboriginal Community Controlled Health Services (ACCHS) sector.⁷ In addition to community controlled aged care providers, we also note that some providers may predominately provide services to Aboriginal and Torres Strait Islander people, but may not be community controlled.⁸ We also acknowledge and support the role of mainstream providers who provide culturally safe care to Aboriginal and Torres Strait Islander people.

While there is insufficient information in the Consultation Paper to form a complete understanding of the detail of the regulatory reforms, NATISAACC is concerned that the new model for regulating aged care may have a detrimental impact on Aboriginal and Torres Strait Islander aged care providers. This may then discourage new Aboriginal and Torres Strait Islander providers from entering the sector, which in turn impacts older people’s access to safe and holistic aged care.

There is a risk that the cultural values base of the new regulatory model does not adequately reflect the culture of diverse groups. A regulatory framework should include elements that are important to people of Aboriginal and Torres Strait Islander cultures, such as identity, kinship, the country, totems, lore and spirituality.

It is with this broader picture in mind that NATISAACC provides the following submission.

Royal Commission Recommendations

The Royal Commission recommendations with respect to Aboriginal and Torres Strait Islander people, include, but are not limited to:

- an Aboriginal and Torres Strait Islander pathway in the new aged care system
- the provision of culturally respectful and safe, high quality, trauma-informed, needs-based and flexible aged care services
- cultural safety training for Government aged care staff and providers who promote their services to Aboriginal and Torres Strait Islander people
- the engagement of Aboriginal and Torres Strait Islander people in key roles
- establishing a statutory Aboriginal and Torres Strait Islander Aged Care Commissioner

⁴ <https://declaration.humanrights.gov.au>.

⁵ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#), p2.

⁶ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#),

⁷ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#), p2.

⁸ For example, see: <https://www.arrcs.org.au/about-us/who-we-are>, accessed 1 August 2023.

- prioritising Aboriginal and Torres Strait Islander organisations as aged care providers.

Recommendation 50 is particularly relevant to the regulatory model, it provides:

Recommendation 50: Prioritising Aboriginal and Torres Strait Islander organisations as aged care providers

1. The Australian Government should assist Aboriginal and Torres Strait Islander organisations to expand into aged care service delivery, whether on their own or in partnership with other organisations, including with Aboriginal Community Controlled Organisations and existing Aboriginal and Torres Strait Islander providers.

2. The Australian Government and the System Governor should encourage and support additional Aboriginal and Torres Strait Islander aged care providers by flexible approval and regulation of them to ensure:

a. existing Aboriginal and Torres Strait providers are not disadvantaged and should continue to provide high quality and safe aged care while being assisted to meet the new provider requirements

b. other organisations that wish to move into aged care to enhance services to Aboriginal and Torres Strait Islander people across Australia are given special consideration.

3. Flexibility in approval and regulation should extend to such matters as: additional time to meet new requirements; alternative means of demonstrating the necessary capability or requirement; and, in some very limited cases, exemptions. Assistance should include financial assistance for capacity-building.

NATISAACC and its members are concerned about the new model for regulating aged care. We are concerned that the new regime adds additional regulation requirements for many providers, including those who have not been regulated under the *Aged Care Act 1997* previously. In our view, there is a risk this approach is inconsistent with Recommendation 50.

It is concerning that not only will the new regime impose additional regulation on the sector, but it is not clear whether there is any flexibility, additional time to prepare, or alternative means of demonstrating compliance with regulatory requirements. The Consultation Paper also does not provide information about whether there will be any exemptions or flexibility for Aboriginal and Torres Strait Islander providers.

A flexible and adaptive regulatory framework for Aboriginal and Torres Strait Islander providers will have the most positive impact on the quality of service provided to Aboriginal and Torres Strait Islander older people. It will support providers to provide the culturally safe care needed, while also adjusting to individual and community needs. A system in which Aboriginal and Torres Strait Islander providers are thriving will encourage sector growth, as well as trust in the aged sector.

We are also concerned that new regulatory requirements will impede the growth of Aboriginal and Torres Strait Islander aged care providers. While we understand that many of the details are yet to be determined, the lack of detail is also causing significant concern in the sector. Our members have expressed concern for smaller Aboriginal and Torres Strait Islander providers (particularly small-scale providers of only one or two of the proposed Category 1 or 2 services) as they may not be able to implement the reforms in time for the 'go-live' date and may find it is no longer viable to continue in the aged care sector. There is also a risk that the lack of information and increasing uncertainty will

result in Aboriginal and Torres Strait Islander organisations being reluctant to engage in the aged care sector until the impact of the reforms are fully understood.

This could further delay the implementation of the Royal Commission recommendations and impede progress towards the National Agreement.

We recommend that further flexibility for Aboriginal and Torres Strait Islander providers of aged care is provided with respect to:

- Governance frameworks and overall governance requirements need to consider good governance from an Aboriginal and Torres Strait Islander organisational and cultural perspective - operating to meet Aboriginal and Torres Strait Islander older peoples' needs.
- Reporting requirements should be simple and red tape should be reduced. Processes, administrative forms and documents (such as the key personnel form, self-assessment forms) need to be efficient, avoid duplication and be appropriately tailored to the way the providers operate (this should also include place-based approaches).
- The system should support the recruitment and retention of staff in regional and remotes areas, including additional consideration for instances where English is not a person's first spoken or written language. This may include supporting innovative development of technologies that can bridge the gap.
- Consideration of options for a degree of self-regulation within the regulatory framework.
- Sufficient time for providers to understand, prepare and transition to the new Aged Care Act (and all associated aged care regulatory reforms).
- Providers would like to understand the mandatory regulatory requirements so that they can advise on how the same outcomes can be achieved in ways that will work for Aboriginal and Torres Strait Islander providers, who provide holistic, integrated and culturally safe care for Aboriginal and Torres Strait Islander older people.

In recognition of the different range of considerations required to support Aboriginal and Torres Strait Islander providers of aged care, we recommend the Department and the Regulator, in consultation with NATSIAACC as the peak body and facilitator, apply a co-design approach for the implementation of the new regulatory model and how it applies to Aboriginal and Torres Strait Islander older people and aged care providers.

Cultural Safety

The Australian aged care system has failed Aboriginal and Torres Strait Islander Elders, senior and older people by not having the cultural knowledge and capability to deliver holistic care that is centred on the person, family and community.

The importance of cultural safety cannot be underestimated. It is an end-to-end requirement, across the entire system, including all aspects of the regulatory model. It is consistent with the Royal Commission recommendations, the Health Plan, the National Agreement, UNDRIP and recent Report

of the Report of the Independent Capability Review of the Aged Care Quality and Safety Commission (the Capability Report) recommendations (this is also discussed further below).

Relevantly, the Health Plan identifies access to person, family and community-centred care as a priority to improving the health system for Aboriginal and Torres Strait Islander people :

Objective 3.2.

Improve cultural safety in workplaces across health, mental health, disability and aged care systems

Cultural safety values, behaviours and standards must be embedded within the workplace culture of all health care, mental health, disability and aged care systems and services, encompassing doctors, nurses, midwives, allied health professionals, administrators and other key clinical and non-clinical staff. Health and aged care bodies across the health system must be proactive in addressing this across all service settings, including through the implementation of meaningful Reconciliation Action Plans, ongoing cultural safety training, professional development and continuous quality improvement mechanisms.

Objective 9.1

Deliver flexible, culturally safe, place-based and person-centred health care across allied health, community health and primary care settings Governments and healthcare services must work with communities, including through ACCHS [Aboriginal Community Controlled Health Services], to better understand how the design and delivery of services can best meet needs across urban, regional, rural and remote locations. This will help build cultural safety and better enable the health system to identify priorities, understand local cultural contexts and language requirements, and involve Aboriginal and Torres Strait Islander people in determining their own health priorities and care pathways. Efforts should be reviewed through a continuous quality improvement framework⁹

As noted in the Health Plan, cultural safety is about how care is provided. Given Aboriginal and Torres Strait Islander cultures are diverse, what cultural safety means may differ depending on the person, location and community. This means cultural safety needs to be self-determined at the local level by Aboriginal and Torres Strait Islander individuals, families and communities.¹⁰ This also means that there is no ‘one-size fits all’ approach.

There is also no definition for cultural safety in ageing and aged care. NATSIAACC was pleased to receive some funding from the Department of Health and Aged Care to support the development of a definition of cultural safety in aged care.

Cultural safety and regulatory model

NATISAACC is concerned by the lack of reference to cultural safety, trauma-informed and healing aware approaches to aged care for Aboriginal and Torres Strait Islander people in the new model for regulating aged care. Given we know that there is a need for cultural safety in aged care, we recommend that cultural safety is incorporated end-to-end in the new regulatory model, and as a core element.

⁹ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#), p64.

¹⁰ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#), p61.

By way of assistance, below we reference a number of instances in the Consultation Paper where the inclusion of cultural safety is required, however, these are not exhaustive, and we recommend that the Department engage with the Aboriginal and Torres Strait Islander aged care sector, including older people, their families and communities to specifically ensure that cultural safety is a core part of the regulatory system. As the peak body, NATSIAACC would be pleased to assist with this important work.

We note that the new regulatory model contains a four-foundation approach that is:

- Rights based
- Person centred
- Risk proportionate
- Focused on continuous improvement¹¹

We recommend that the foundations of the new regulatory model and the aged care system as whole must be reviewed to incorporate cultural safety requirements, including family and community-centred approaches. With respect to the integration of cultural safety into the regulatory model, we note the following:

- Cultural safety training should be a requirement for all aged care health professionals and other staff, assessors, auditors and oversight bodies, and leaders in the sector. This is broadly aligned with Royal Commission recommendations.
- The *purpose* of the changes¹², should include cultural safety and competence requirements.
- Cultural safety should apply to all aspects of compliance – including risk management assessments. Notably, the Star Ratings do not include a requirement for the provision of culturally safe care or require cultural competence.
- The Statement of Rights and Principles, yet to be released, must also incorporate cultural safety in all aspects of interaction with the aged care system, for employees, older people, their carers, families and communities.
- We also note that the Charter of Rights in Aged Care does not explicitly require cultural safety. We are of the view that consideration should be given to amending the Charter of Rights to ensure consistency between the UNDRIP, Royal Commission recommendations and the Health Plan.
- All registration categories within the new regulatory model should be required to provide culturally safe care, and further consideration will need to be given to how this can be regulated, including appropriate co-design to support this.
- The relational regulation model should include reference to the relationships with older people, their families and communities, not just providers.
- It is important not to regulate the aged care sector through a mainstream lens – the safety of all diverse groups and vulnerable people must be considered and incorporated.
- Innovation should be encouraged and supported to develop a range of resources to suit all diverse groups.
- Compliance with the regulatory model can be innovative, tailored *and* meet the cultural needs of the older person.

¹¹ Department of Health and Aged Care, *A new model for regulating Aged Care*, Consultation Paper No.2 – Details of the proposed new model, April 2023, p6.

¹² Department of Health and Aged Care, *A new model for regulating Aged Care*, Consultation Paper No.2 – Details of the proposed new model, April 2023, p9.

- Mainstream providers should be supported to implement culturally safe care and monitored on delivery.
- The voice of Aboriginal and Torres Strait Islander older people should be included in the design, planning and delivery of aged care, including reforms and how complaints are managed. The engagement by the Regulator with providers must recognise the diversity of circumstances as well as the cultures of the people to whom they provide services.

We also note that there are concerns about the possibility of Aboriginal and Torres Strait Islander older people losing their connection with their current community controlled aged care provider, who also looks after their cultural needs. These concerns need to be addressed via public communication with older people, to provide them with certainty and ensure they *know* they can remain with the providers they trust.

Harmonisation

With numerous and extensive reforms occurring across the aged care sector, it is crucial that there is harmonisation. The sector is finding it difficult to understand the changes at the moment. In particular, there is insufficient information at this time to support planning and preparations for providers of the National Aboriginal and Torres Strait Islander Flexible Aged Care (NATSIFAC) Program¹³ and in-home care.

It is unclear and of significant concern to providers how the new Aged Care Act and associated regulatory reform (anticipated to commence from 1 July 2024) will apply to NATSIFAC and in-home care providers in the context of the continuation of NATSIFAC until 30 June 2025 and the implementation of the new Support At Home program in July 2025. By way of example, we have received questions about the following:

- will category-specific conditions need to be enforced by providers with their subcontractors? If so, when will this requirement commence?
- concerns with respect to registration and then re-registration have been raised, and how this will apply to NATSIFAC and in-home support providers, and from what date?
- What consideration, if any, will be given to recent accreditations under the current governance arrangements?

The Department must provide clarity in these issues and engage in further consultation on all new regulatory system details and components with Aboriginal and Torres Strait Islander providers.

We also note the ongoing work on the harmonisation of regulation for aged care, disability and veterans' care. As this work progresses, we would appreciate further information and engagement on the impact of this work for the aged care sector, particularly if there are additional, unanticipated changes to the aged care sector.

Based on the above, we recommend that the Department consider developing a resource (or 'map') to track the reforms and the interactions between all aged care and other relevant reforms, as well as the interdependencies.

¹³ National Aboriginal and Torres Strait Islander Flexible Aged Care Program, <https://www.health.gov.au/our-work/national-aboriginal-and-torres-strait-islander-flexible-aged-care-program#Why%20it%20is%20Important>, accessed 27 July 2023.

We recommend the Department and the Regulator, in consultation with NATSIAACC as the peak body and facilitator, apply a co-design approach for the implementation of the new regulatory model and how it applies to Aboriginal and Torres Strait Islander older people and aged care providers.

This approach will contribute to the delivery of the Royal Commission recommendations with respect to supporting Aboriginal and Torres Strait Islander providers, as well as ensuring the required flexibility and appropriate degree of regulation and accountability to ensure a thriving Aboriginal and Torres Strait Islander aged care sector.

We recommend that the Department convene a forum(s) or roundtables with Aboriginal and Torres Strait Islander aged care providers to fully discuss the impact of the reforms and what changes and supports are required to ensure a smooth transition and ongoing sector viability. This recommendation could form part of the co-design process referenced above.

Timing, transition and implementation

NATSIAACC is concerned about the timing and transition to the new regulatory model. We note that the regulatory approach is in development and will be informed by this consultation, other reform and harmonisation work, and the new Aged Care Act. However, given the lack of detail, it is difficult for the sector, people and communities affected to form a view of the impact of the reforms.

We are of the view that sufficient time is required following the passage of the new Aged Care Act, so that the Department and the Regulator, providers and the sector more generally can prepare for the implementation. Support for the implementation may require financial investment, as well as considered and tailored resources to inform and to support implementation. In some circumstances this may require representatives of the Department and the Regulator to engage with the sector by visiting and understanding how the system will impact providers and older people. This will assist with informing the resources required to assist the sector transition to the reforms.

We note that the business models for providers of aged care services that are not currently governed by the *Aged Care Act 1997*, may require adjustment in order to meet the requirements for registration under the new Aged Care Act. Should such a transition be costly and overly onerous, this is likely to affect their ongoing engagement in the aged care sector or could even impact their viability.

We are interested to know whether the Department or the Commission have conducted an impact assessment of the proposed regulatory reforms on Aboriginal and Torres Strait Islander provider viability to fully understand the potential ramifications of the reforms. Further, we would like to know whether a needs analysis for the transition of Aboriginal and Torres Strait Islander providers to the proposed new model has been undertaken. We look forward to receiving advice on this as soon as practicable.

In the absence of the above impact assessment and needs analysis, we recommend further consultation to fully understand the impact these requirements will have on Aboriginal and Torres Strait Islander providers. As referenced above, we also recommend that the provider governance requirements are sufficiently flexible to ensure the ongoing viability of current providers, with a view to increasing the numbers of Aboriginal and Torres Strait Islander aged care providers.

At this stage it is unclear what supports will be provided to aged care providers to transition to the new Aged Care Act and the regulatory regime. While we note the announcement of funding to

support NATSIFAC providers to transition to the new regulatory regime,¹⁴ this needs to be considered more broadly for other Aboriginal and Torres Strait Islander providers of aged care services.

We recommend that the Department consider providing financial and administrative transition support and additional flexibility to enable Aboriginal and Torres Strait Islander aged care providers to smoothly transition to the new regulatory regime. Transition support will require an understanding of the environment and community in which Aboriginal and Torres Strait Islander providers operate and will need to be developed in collaboration with the sector. Financial support may also be required to support the any increased administrative burden on providers due to the new regulatory model, such as monthly care statements.¹⁵ We recommend further engagement with the Aboriginal and Torres Strait Islander sector is also required to inform the most appropriate timeframe for the 'go-live' date for the new regulatory model and the new Aged Care Act.

It is also important to note that older people, their carers, families and communities are also likely to be concerned. At this time, there are minimal resources available for older people and their communities to explain how the reforms more broadly, and including the regulatory reforms, will affect them. We recommend the development of culturally appropriate, co-designed resources to support older people to make informed decisions and understand the impact of the aged care reforms.

The Report of the Independent Capability Review of the Aged Care Quality and Safety Commission

On 21 July 2023, the Capability Review of the Aged Care Quality and Safety Commission (the Commission) was publicly released.¹⁶

Among other things, the Capability Report makes the following recommendations with respect to Aboriginal and Torres Strait Islander people:

Recommendation 4.6:

The Commission to accelerate the development and implementation of its Diversity and Inclusion Strategy.

As part of the Diversity and Inclusion Strategy, the Commission to immediately identify positions to be filled by First Nation people in all areas of the Commission which have contact with aged care consumers, their families, aged care providers and the public, so that First Nations people can liaise directly with First Nations staff.¹⁷

¹⁴ "NATSIFAC providers will also be funded to meet increased transparency and accountability requirements introduced under the *new Aged Care Act*." from <https://www.health.gov.au/our-work/aged-care-reforms/what-were-doing/equitable-access>, accessed 1 August 2023.

¹⁵ [Monthly Care Statements for residential aged care | Australian Government Department of Health and Aged Care](#), accessed 24 July 2023.

¹⁶ [Release of the final report of the Independent Capability Review of the Aged Care Quality and Safety Commission | Aged Care Quality and Safety Commission](#), <https://www.agedcarequality.gov.au/news/media-releases/release-final-report-independent-capability-review-aged-care-quality-and-safety-commission>, accessed 27 July 2023.

¹⁷ [Final Report – Independent Capability Review of the Aged Care Quality and Safety Commission \(health.gov.au\)](#) <https://www.health.gov.au/sites/default/files/2023-07/final-report-independent-capability-review-of-the-aged-care-quality-and-safety-commission.pdf>, accessed 27 July 2023, p 44.

Recommendation 4.7:

The Commission to develop a Cultural Capability Framework, in partnership with its Indigenous Staff Network, trusted First Nations Groups and the proposed Aboriginal and Torres Strait Islander Aged Care Commissioner.

The Framework should bolster the role of the Indigenous Staff Network and articulate the changes required to ensure:

- *the Commission's systems, processes, practices, structure and culture are responsive to the cultural needs of First Nations people*
- *all staff are supported to develop the skills, knowledge and behaviours that are essential to provide culturally appropriate regulatory activity*
- *the work environment is culturally respectful and supportive for First Nations staff.*

The Commission should review the Framework regularly, and report publicly on associated measures and initiatives.¹⁸

While we will be considering this report further, in the context of the above recommendations, we further recommend that a new Aboriginal and Torres Strait Islander Division (or similar) be established within the Commission. In this context, consideration should be given to the following:

- An Aboriginal and Torres Strait Islander division (or similar) of the Commission could service Aboriginal and Torres Strait Islander community more productively and efficiently by being totally staffed by first nation employees – particularly as feedback received from our members that staff conducting inspections or accreditation visits have very little understanding of the sector.
- Aboriginal and Torres Strait Islander staff would work within the Division (or similar) and provide end-to-end regulatory functions. This could also contribute to increased staff retention as staff are able to support each other, there is succession planning and career development within the Division. This would also contribute to a strong, cohesive and consistent workplace culture.
- Such a Division within the Commission could also consider how older people living in remote and regional areas can be provided with a culturally safe, confidential and also direct way to provide feedback to the regulator.

By way of example of an end-to-end, culturally safe regulatory function, an Aboriginal and Torres Strait Islander Regulator could visit a remote community with an iPad, using technology to collect evidence through photos, voice to text, videos etc, to demonstrate compliance with requirements.

As the peak Aboriginal and Torres Strait Islander aged care body, NATSIAACC must be funded to support the Commission to build cultural competency skills and could work closely with staff in their engagement with First Nations peoples.¹⁹ We look forward to future engagement on this.

¹⁸ <https://www.health.gov.au/sites/default/files/2023-07/final-report-independent-capability-review-of-the-aged-care-quality-and-safety-commission.pdf>, accessed 27 July 2023, p45.

¹⁹ <https://www.health.gov.au/sites/default/files/2023-07/final-report-independent-capability-review-of-the-aged-care-quality-and-safety-commission.pdf>, accessed 27 July 2023, p41.

Regulator

While the Consultation Paper refers to a 'Regulator' and refers to the Regulator being the Commission, considering the ongoing reforms and the recent Report, we note sector concerns about pertaining to which body will deliver the regulatory functions.

NATSIAACC stakeholder engagement has included concerns about whether there will be a new regulator, whether regulatory / Commission functions will (in-part or otherwise) be delivered by contracted service providers, and whether this could result in varied approaches, conflicts of interest, poor cultural safety and competency, and national inconsistency. We look forward to receiving clear public communication about the Regulator to address these concerns. We note that, should there be new arrangements or a new Regulator, further consultation and engagement with the sector will be required.

Regulatory approach

We have received feedback that both providers and users of the current system find system navigation complex. The new model for regulating aged care will need to be as simple as possible to ensure proper compliance by providers and recognition of rights and options, and avenues for ensuring high quality care for older people. We have also received concerns from members that engagement with assessors and auditors can be time consuming, and challenging, particularly within a system that appears to penalise providers, rather than focus on how to improve.

On this basis, we note that the relational regulatory approach is broadly welcomed, particularly in the context of collaborating with the sector, and listening and acting on feedback from the sector.

The concept of risk proportionate regulatory practices is also welcomed, particularly given previous provider experience that the current auditing requirements are not risk proportionate and impose excessive administration. However, we note that clarity regarding the application of the risk proportionate approach is required to ensure providers fully understand the requirements (particularly those providing all categories of services).

We look forward to receiving further information on the governance provided for registration, how this approach will be implemented, and promote genuine engagement and co-design.

Registration

While the information about the registration categories is minimal at this stage, we consider the registration categories generally seem appropriate.

We look forward to receiving further information with respect to the 'conditions of registration'²⁰ and we would appreciate the opportunity to comment further on this.

We welcome the proposal to streamline registration categories²¹ for providers who register into multiple categories to reduce the administrative burden and duplication. In this context, we suggest consideration of Aboriginal and Torres Strait Islander providers delivering holistic wrap around services, which encompass all categories as part of this streamlined process.

We also note that there is concern in the sector regarding those providers that provide all categories of services. We have received questions from our members about whether this means that all

²⁰ Department of Health and Aged Care, *A new model for regulating Aged Care*, Consultation Paper No.2 – Details of the proposed new model, April 2023, p26.

²¹ Department of Health and Aged Care, *A new model for regulating Aged Care*, Consultation Paper No.2 – Details of the proposed new model, April 2023, p27.

service types will be risk-assessed at the highest level. There is a concern that such an approach could risk deterring multi-disciplinary or integrated care, which would have a detrimental impact on older Aboriginal and Torres Strait Islander people.

We would be grateful for further information on how the categories, service types and proportionate risk approach will be applied. We note that as this information is developed, it will also be important to engage in further consultation on these matters.

We are also mindful that there may be some additional change between the release of the Consultation Paper and the passing of the new Aged Care Act. Should the registration categories or approach change, providers may require further transition time.

Regulatory interventions and tools to support the new model

We recommend that the establishment of Communities of Practice would be appropriate to support the implementation of the new model. This would likely be best commenced as a formal arrangement, and with secretariat support from the Department or the Commission. This would then contribute to increased Aboriginal and Torres Strait Islanders provider and community capability as well as capacity to model and lead change across the sector.

Audits, Performance and Incentives

We note that the graded audits and assessment have generally been well-received, particularly as it appears to allow providers an opportunity to self-regulate and self-correct while managing business and reputation.

We note the Consultation Paper refers to using the outcomes of audits to support providers to share their plans for continuous improvement with older people and their representatives and work with their consumer and quality advisory bodies to implement and sustain these improvements over time.²²

We would like to further understand what information is proposed to be published.²³ For instance, is it proposed that minor non-conformance issues, which *do not* affect the safety of an individual be published? Consideration should be given to whether information is published regarding minor non-conformance if it has already been remedied in a short (specified) period. We look forward to receiving further information and engagement on this.

Further, with respect to the publication of performance and audit information, additional information regarding what results will be published and whether there will be clarifying notes or additional context provided to assist with interpretation of published information would also be of value.

We recommend engagement with the Aboriginal and Torres Strait sector on performance and audit reporting to inform a performance criterion for meeting the diverse needs of Aboriginal and Torres Strait Islander people and their communities.

We note the numerous references to incentivising change, continuous improvement and high performance in the sector. From the information provided, it is not clear what these incentives will be and how this will have a positive effect on the performance of the aged care sector. We also note

²² Department of Health and Aged Care, *A new model for regulating Aged Care*, Consultation Paper No.2 – Details of the proposed new model, April 2023, p18.

²³ Department of Health and Aged Care, *A new model for regulating Aged Care*, Consultation Paper No.2 – Details of the proposed new model, April 2023, p22.

that flexibility is required and that incentives may need to be adjusted to reflect the community and cultural values of the Aboriginal and Torres Strait Islander sector.

Based on the above, we reiterate our recommendations for further engagement with the Aboriginal and Torres Strait Islander aged care sector to support the co-design of the regulatory model.

Online platforms and unregistered providers

Our members expressed concern about how vulnerable older people will receive culturally safe care and be protected from non-genuine online platforms and unregistered providers. Noting that greater regulation may not be preferable, and older people are entitled to choose their provider, there are risks associated with online and unregistered providers. Issues raised include whether there is a broader system duty of care to protect the older person, whether such services could compromise older people's health and financial security, and whether there are accessible options for recourse, should there be issues with the service. It will be necessary to ensure that supports are in place to inform older people of the potential risks associated with unregistered providers and online platforms.

Restricting numbers of older people

With reference to the provider-specific conditions table,²⁴ we recognise the importance of protecting older people, and that there may be instances in which restricting the number of older people a provider can deliver care and services to may need to be applied. However, it is also important that, should such a condition be imposed, the care of older people is at the core of the basis for the condition – and that the risk to older people in the service is carefully weighed against the risk of moving older people to another service (which may not be culturally safe) or where older people are left without a service provider at all. Further information on how this condition would be applied is required.

Fees and Payments

The Consultation Paper refers to compliance with fees and payments requirements.²⁵ We have received feedback from a number of members that they do not charge fees or co-payments to older Aboriginal and Torres Strait Islander people. These costs are often absorbed by the provider and are the result of personal and cultural commitments on the part of Aboriginal and Torres Strait Islander providers to deliver services to their communities. Older people are revered and often play a significant role in guiding and caring for their families and community. This broader cultural and community lens needs to be acknowledged as part of the ongoing cost of the aged care system as well as understood in the context of regulatory requirements for Aboriginal and Torres Strait Islander providers.

Complaint processes

As referenced above, the complaint processes provided in the Consultation Paper do not refer to the need for cultural safety.

With respect to a restorative justice approach, this approach will need to be adapted to meet the cultural and other needs of the person and the relevant community. It is important that such approaches acknowledge the diversity of Aboriginal and Torres Strait Islander people and

²⁴ Department of Health and Aged Care, *A new model for regulating Aged Care*, Consultation Paper No.2 – Details of the proposed new model, April 2023, p44.

²⁵ Department of Health and Aged Care, *A new model for regulating Aged Care*, Consultation Paper No.2 – Details of the proposed new model, April 2023, p49.

communities, by providing approaches that are place-based and appropriate to the environment and context.

We have also received commentary and questions about how the complaints process will offer procedural fairness, handle vexatious complaints, details on the appeals process and recourse for providers, including reputational damage and impact on Star Ratings. We are of the view that the system should not be punitive and should also incorporate a 'no fault' element in situations in which a provider has taken all reasonable steps to remedy the issue.

It is important that the sector is given the opportunity to provide input on new details of the complaints system and corresponding legislations. NATSIAACC recommends a co-design approach with Aboriginal and Torres Strait Islander providers, older people, and communities to ensure the complaint process is fit for purpose.

Civil penalties

We are also interested in understanding the context in which civil penalties may be applied. Once additional information and details of the regime is available, it will be necessary to further consult with the sector to ensure the civil penalties provisions and relevant parameters are appropriate.

Workforce and Worker registration requirements

Members have expressed concerns about the worker registration requirements, particularly given the current workforce issues in the aged care sector. NATSIAACC would like to engage further with the Department in this issue, to ensure that workforce requirements are appropriate and support the delivery of culturally safe aged care to Aboriginal and Torres Strait Islander older people.

We also note that some employees may be subject to other regulations and registration requirements. We also note that there are broader health workforce considerations. In addition to the current workforce shortages, worker registration processes can have a significant impact on the provision of aged care services. NATSIAACC looks forward to the opportunity to advise further on this.

Post Implementation Impact Assessment and Evaluation of the regulatory model

NATSIAACC recommends that an Aboriginal and Torres Strait Islander impact assessment and evaluation of the new regulatory regime is conducted within the first year of implementation. This is to ensure that any unforeseen and negative impacts of the new system, including emerging issues are identified and remedied as quickly as possible to retain Aboriginal and Torres Strait Islander providers in the sector and ensure continuity of high quality and culturally safe care for older people. It is also important to ensure that mainstream providers of services to Aboriginal and Torres Strait Islander people are supported to improve or continue to provide high quality and culturally safe care to Aboriginal and Torres Strait Islander older people.

This impact assessment should not be focused on provider compliance. It must be underpinned by a supportive and enabling approach to assess the impact of the regulatory model and to ensure ongoing viability of Aboriginal and Torres Strait Islander providers of aged care and high quality, culturally safe care to older people.

First Nations Aged Care Commissioner

We note that there are many other changes and interdependencies that will affect the regulatory model and its delivery. In particular, we note that the Consultation Paper does not refer to the First Nations Aged Care Commissioner. While we recognise that the interim office has not yet been established, it is of concern to NATSIAACC that this role is not identified or anticipated in the new regulatory model.

We also request further information on the interaction between the First Nations Aged Care Commissioner, the Inspector-General of Aged Care and the Regulator.

Input and Submissions

We note that there appears to be minimal reference to, and incorporation of, existing submissions, papers and reports from previous consultation processes with Aboriginal and Torres Strait Islander entities, communities and peoples.

We suggest the Department consider reviewing previous input from the Aboriginal and Torres Strait Islander aged care sector and community input in other aged care consultations, such as workforce and roundtable input and submissions, submissions to the Royal Commission. With multiple simultaneous consultation processes, it is a cause of concern to an already stretched sector that there appears to be a need to provide repeated input on similar issues.

Co-design and consultation

The Consultation Paper references prior consultation with Aboriginal and Torres Strait Islander people and providers. While this engagement is welcomed, we emphasise the need to ensure that engagement with Aboriginal and Torres Strait Islander people, providers and other stakeholders must be representative of the aged care sector. That is, stakeholder engagement must incorporate remote, urban, regional and rural settings. It must also include providers representing the various aged care services, and include mainstream providers that provide services to Aboriginal and Torres Strait Islander people.

In addition, outcomes of consultation and pilots of aspects of the aged care system need to be made available to inform ongoing consultation with the sector (such as in relation to the pilot for monthly care statements). In the absence of this information, there is a risk the sector is not sufficiently informed to provide comprehensive input.

For future consultations, we recommend the Department and the Regulator ensure that Aboriginal and Torres Strait Islander people, providers and other peak bodies in the sector are given sufficient time and opportunity to provide input. This may require consultation opportunities specifically for Aboriginal and Torres Strait Islander organisations and older people, their families and community. Opportunities may include webinars, roundtables, and face to face meetings, including at aged care facility locations to better understand the way the Aboriginal and Torres Strait Islander sector operates.

As the national peak for Aboriginal and Torres Strait Islander ageing and aged care, NATISAACC is well-placed to support the Department and the Commission with sector engagement on aged care reform. We look forward to engaging with the Department to explore funding options for NATISAACC to facilitate the co-design of the implementation of the regulatory model and obtain input that is representative of the diversity of Aboriginal and Torres Strait Islander people, communities and aged care providers.