

A new Aged Care Act: the foundations

Consultation paper No. 1

National Aboriginal and Torres Strait
Islander Ageing and Aged Care
Council Submission
September 2023



NATSIAACC

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National Aboriginal and Torres Strait Islander Ageing and Aged Care Council

About

National Aboriginal and Torres Strait Islander Ageing and Aged Care Council (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 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, stakeholders, and other peak bodies. NATSIAACC thanks its members, stakeholders and other peak bodies for their valuable contributions and time.

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 provide the input and engagement required to ensure that the reforms deliver much needed support to Aboriginal and Torres Strait Islander older people and Elders.

Key issues and recommendations

- 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 urban, rural, regional, and remote 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 aged care 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 range of considerations required to support Aboriginal and Torres Strait Islander providers of aged care, we strongly recommend the Department, in consultation with NATSIAACC as the peak body and facilitator, apply a co-design approach for the implementation of the new Aged Care Act and how it will apply to Aboriginal and Torres Strait Islander older people and aged care providers.
- We recommend the Objects of the new Aged Care Act give effect to Australia's commitment to UNDRIP.
- We recommend that there is system support, including funding, within the Department for ensuring that research and innovation supported under the new Aged Care Act is translated into improved practices and care for older people, where relevant. In fact, this concern is relevant to all the Objects and aspects of the new Aged Care Act: with every new obligation, there is a commensurate cost in order to provide that level of care and support within the aged care sector. This will require significant investment and must be considered and funded as part of the implementation of the new Aged Care Act.

- We recommend that meeting the *Objects* and other requirements of the new Aged Care Act is considered by the Independent Health and Aged Care Pricing Authority and appropriately costed to inform the pricing framework and ensure that the aged care system is sufficiently funded to comply with the requirements of the new Aged Care Act.
- We recommend further consideration and amendment of the proposed Purpose Statement.
- NATSIAACC recommends that the *Statement of Rights* must be consistent with UNDRIP and enshrine Aboriginal and Torres Strait Islander people’s right to diversity, cultural safety and self-determination in an aged care context, by incorporating the rights contained in UNDRIP.
- NATSIAACC recommends co-design of the list of funded aged care services. As the peak body for Aboriginal and Torres Strait Islander Ageing and Aged Care, NATSIAACC is well-placed to facilitate the co-design of this process and must be appropriately funded to support this important work.
- We also recommend that the Rights 2 and 11¹ - include reference to ‘cultural safety’ as well as ‘culturally appropriate’ care, as these are not identical or mutually exclusive terms. All people should have the right to culturally safe *and* appropriate care, irrespective of their background, culture, race, preferences, or financial circumstances.
- We recommend the inclusion of ‘Community’ in Right 14.
- We recommend the Statement of Principles include: reference to culturally safe as well as appropriate care, incorporate ‘Island Home’ in addition to connection to Community and Country, include ‘reablement’, and that older people are given the opportunity to choose where they wish to live to receive aged care services.
- We recommend that the definition of quality care includes:
 - Flexibility – and provides the care that the person feels meets their needs and takes into account their preferences. There should be freedom to choose - one person’s views of quality care might not necessarily align with another’s perspective.
 - Balancing of duty of care and dignity of risk – for instance, members and stakeholders have discussed issues relating to an older person’s freedom to connect with the broader natural environment, connection to Country and Island Home and social and cultural activities. These needs, freedoms, and preferences must be balanced and supported as far as possible, to enable optimal health and spiritual wellbeing.
 - Respect for of a person’s independence and preferences for privacy, time alone, or with others
 - Reliance on accurate and timely assessment and reassessment, so that care needs are meet in a timely manner.
 - Opportunities for Aboriginal and Tores Strait Islander people to attend and participate in cultural activities and practices, including, but not limited to supporting travel to Community, Country or Island Home if required.
 - Support for broader connection to Community and family, and other significant people.

¹ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p16.

- Provision of meaningful and respectful activities for all people, irrespective of cognitive or physical abilities.
 - Opportunities must be provided for Aboriginal and Torres Strait Islander people to choose if they would like to die/finish up/pass on Country or Island Home wherever possible. There are transport and medical costs associated with this, and these costs need to be factored into the pricing framework.
 - Support for palliative care and end-of-life care to be provided on Country, Island Home or in Community, this may include the need for carers to travel, transport costs and the costs of medical and wellbeing care for the older person, as well their carers, family and Community.
 - Accommodations for transient lifestyles and care needs within the aged care system, without loss of aged care arrangements or detrimental impacts on providers.
- We recommend the Department consult with NATSIAACC to understand the breadth of culturally safe aged care provided by NATSIAACC members.
 - NATSIAACC and its members request further information on the context in which civil and criminal penalties may be applied.
 - We recommend the Department engage with NATSIAACC to further consult with the sector to ensure the civil and criminal penalties provisions and relevant parameters are appropriate and fully understood. This must occur prior to the Stage 2 Consultation on the Exposure Draft of the legislation.
 - We recommend the Department consider how whistleblower protections will operate in small and integrated communities, where many parties are known to one another, and where parties may play dual roles (such as family members engaged as part of the care team).
 - We recommend that, in addition the list of officials able to receive disclosures, there should include provision for Aboriginal and Torres Strait Islander staff at the Department and Commission (or staff who have undertaken effective cultural safety training) to support the delivery of a culturally safe process.
 - We recommend that consideration be given to whether the First Nations Aged Care Commissioner's Office may have a role in assisting with, advising, or supporting, the whistleblower process.
 - 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.
 - We recommend funding transition arrangements to support providers to comply with new requirements under the new Aged Care Act.
 - We recommend that clear information on terminology, roles and responsibilities must be provided to support older people, their representatives, as well as the aged care and health sectors to support their interaction with people in these roles. This information must be provided in multiple formats, including written, video and audio formats, as well as in language.

- We recommend that NATSIAACC is engaged to support and advise further on the supported decision-maker provisions.
- We recommend the Department provide further clarity on the interaction between Commonwealth and State/Territory guardianship laws and the application of the supported decision-making provision in the new Aged Care Act.
- With respect to the age of eligibility for aged care services, NATSIAACC strongly objects to the removal of flexibility and early access to aged care services for Aboriginal and Torres Strait Islander people. Imposing age limits on access does not reflect the practicalities and real-life experiences of Aboriginal and Torres Strait Islander people and providers.
- We recommend information be provided regarding the ongoing eligibility of Aboriginal and Torres Strait Islander people who are currently receiving aged care services from the commencement of the new Aged Care Act. If eligibility will not continue, supports must be in place to ensure their health and wellbeing needs are met.
- We recommend the Department provide data on how many assessments have been conducted for the ages 45-49 (broken down by calendar year, age, location and gender), and how many of those assessments were deemed eligible for aged care services.
- We strongly urge the Department to re-consider its approach in relation to the aged care eligibility criteria for Aboriginal and Torres Strait Islander people. We recommend that, once there is a system in place to support Aboriginal and Torres Strait Islander older people, National Agreement targets are being met, and there is data demonstrating the need for beneficial changes to the eligibility criteria, there must be engagement with the sector to determine the direction for any changes to the eligibility criteria.
- With respect to online platforms and unregistered providers, we recommend further consultation with NATSIAACC members and other peak bodies to ensure that safety considerations are adequately addressed and communicated to all users of aged care services.
- We recommend that the Department engage NATSIAACC to co-design a process to ensure that the data collected under the new Aged Care respects Aboriginal and Torres Strait Islander people's data sovereignty.
- In terms of the implementation of the new Aged Care Act, we recommend the Department consider real world application for the most vulnerable people in the country, including having a full understanding of ageing and what it looks like in real life.
- NATSIAACC recommends that an Aboriginal and Torres Strait Islander impact assessment and evaluation of the legislative regime is conducted within the first year of implementation.
- We recommend information be provided on the proposed interaction between the First Nations Aged Care Commissioner, the Inspector-General of Aged Care and the Regulator to ensure coordination of efforts and to ensure seamless oversight and representation for Aboriginal and Torres Strait Islander people and their aged care providers.

- As we understand that the new Aged Care Act will also replace the existing *Aged Care Quality and Safety Commission Act 2018*,² we recommend that the Aged Care Quality and Safety Commission organisational structure requiring an Aboriginal and Torres Strait Islander Division be included in the legislative reform.

² See: <https://www.agedcarequality.gov.au/about-us/new-aged-care-act>.

Introduction

NATSIAACC welcomes the opportunity to make a submission to the Department of Health and Aged Care (the Department) on *A New Aged Care Act: the foundations, Consultation paper No. 1* (the Consultation Paper).

It is important to consider the broader context of aged care for Aboriginal and Torres Strait Islander people to fully understand the impact of the aged care reforms on Aboriginal and Torres Strait Islander older people and their providers of aged care services.

The Royal Commission into Aged Care Quality and Safety (the Royal Commission) 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.*³

The Royal Commission made recommendations for Aboriginal and Torres Strait Islander people to address these issues.

There is also a wider framework that is interconnected with the aged care sector. The National Agreement on Closing the Gap⁴ (the National Agreement) contains the following Priority Reforms:

- 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.

As these Priority Reforms are implemented, we anticipate that there will be a commensurate improvement for older Aboriginal and Torres Strait Islander people in aged care. However, as we know from the recent Productivity Commission Report, *Closing the Gap, Annual Data Compilation Report July 2023*,⁵ there is a very long way to go.

³ Royal Commission into Aged Care Quality and Safety, Final Report: Care, Dignity and Respect, p67.

⁴ <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/1-preamble>, accessed 27 July 2023.

⁵ Productivity Commission (2023) *Closing the Gap, Annual Data Compilation Report*, <https://www.pc.gov.au/closing-the-gap-data/annual-data-report>.

The [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#) (the Health Plan) forms part of this. The Health Plan is also consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),⁶ 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.⁷

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 inequity⁸. A significant part of this is ensuring that the aged care system is appropriately funded to provide culturally safe and high quality aged care services and support to Aboriginal and Torres Strait Islander older people, irrespective of their geographical location or financial circumstances.

The United Nations (UN) General Assembly declared 2021–2030 the UN Decade of Healthy Ageing.⁹ This seeks to reduce health inequities and improve the lives of older people, their families, and communities through collective action in four areas:

- changing how we think, feel and act towards age and ageism
- developing communities in ways that foster the abilities of older people
- delivering person-centred integrated care and primary health services responsive to older people, and
- providing older people who need it with access to quality long-term care.¹⁰

The funding of the aged care system needs to acknowledge the diversity of older people and their health and wellbeing needs. The aged care system must include elements that are important to people of Aboriginal and Torres Strait Islander cultures, such as identity, kinship, Country or Island Home, totems, lore, and spirituality.

We know that survivors of the Stolen Generations¹¹ are largely over 50 years of age¹², and therefore, now eligible for aged care services. While Aboriginal and Torres Strait Islander people do not have the same level of health and life expectancy as other Australians,¹³ people affected by the Stolen Generations are likely to have even poorer health and socioeconomic outcomes.¹⁴ These issues must be addressed urgently.

To address these gaps and resulting disadvantage, we must increase the numbers of Aboriginal and Torres Strait Islander people receiving culturally safe support and care in their older years. The aged care system must support this goal and align with the broader context of the National Agreement, the Health Plan, and be consistent with the recommendations of the Royal Commission.

⁶ <https://declaration.humanrights.gov.au>.

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

⁸ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#), p17.

⁹ World Health Organisation, [Ageing and health \(who.int\)](#).

¹⁰ World Health Organisation, [Ageing and health \(who.int\)](#).

¹¹ See <https://healingfoundation.org.au>.

¹² Australian Institute of Health & Welfare, [Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over: updated analyses for 2018–19, Summary, aihw.gov.au](#).

¹³ Australian Institute of Health and Welfare, [Deaths in Australia, Life expectancy, aihw.gov.au](#).

¹⁴ Australian Institute of Health & Welfare, [Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over: updated analyses for 2018–19, Summary, aihw.gov.au](#).

Royal Commission Recommendations

The Royal Commission recommendations 47 to 53 inclusive, with respect to Aboriginal and Torres Strait Islander people, include:

- 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
- prioritising Aboriginal and Torres Strait Islander organisations as aged care providers
- block funding providers under an aged care pathway on a three-to seven-year rolling assessment basis, with recommendations for the Pricing Authority with respect to the costs of providing culturally safe care.

These recommendations are vital considerations in developing the new Aged Care Act, as they set the expectation for the provision of aged care, and the impact on Aboriginal and Torres Strait Islander people and their aged care providers. An approach that supports Aboriginal and Torres Strait Islander people to receive culturally respectful and safe, high quality, trauma-informed, needs-based and flexible aged care services regardless of where they live is consistent with the Royal Commission recommendations.

Cultural Safety

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

While NATSIAACC is developing a definition for cultural safety in an aged care context, culturally safe care for Aboriginal and Torres Strait Islander people means care that takes account of the whole person, their individual needs, and their connection to culture, traditional lands and Community.¹⁵ Cultural safety is about:

- maintaining cultural identity
- culturally informed service delivery
- culturally competent workforce
- culturally supportive environments and
- culturally safe partnerships and collaboration within the aged care service system.¹⁶

Cultural safety must be informed *by* Aboriginal and Torres Strait Islander people *for* Aboriginal and Torres Strait Islander people. It is trauma aware and healing informed, and can vary, depending on location, Community, and people.

The importance of cultural safety cannot be underestimated. It is an end-to-end requirement across the entire aged care system. Provision of cultural safety is consistent with the Royal Commission

¹⁵ Parrella A, Pearson O, Davy C, Barrie H, Mott K, Morey K, D'Angelo S, Sambo R, Aitken R, Franks C, Canuto K, Brown A, Braunack-Mayer A. Understanding culturally safe aged care from the perspectives of older Aboriginal Australians in rural and remote communities. *Health Promot J Austr.* 2022 Jul;33(3):566-575. doi: 10.1002/hpja.541. Epub 2021 Sep 24. PMID: 3452930.

¹⁶ Parrella A, Pearson O, Davy C, Barrie H, Mott K, Morey K, D'Angelo S, Sambo R, Aitken R, Franks C, Canuto K, Brown A, Braunack-Mayer A. Understanding culturally safe aged care from the perspectives of older Aboriginal Australians in rural and remote communities. *Health Promot J Austr.* 2022 Jul;33(3):566-575. doi: 10.1002/hpja.541. Epub 2021 Sep 24. PMID: 34529305.

recommendations, the Health Plan, the National Agreement and UNDRIP and the recent Report of the Independent Capability Review of the Aged Care Quality and Safety Commission (the Capability Report) recommendations.

Recommendations of the Health Plan on cultural safety

Notably, 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...¹⁷

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...¹⁸

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.¹⁹ This also means that there is no 'one-size fits all' approach.

For further information on the provision of culturally safe care, we suggest the Department consider the *Good Spirit Good Life* ²⁰ assessment and quality of life tool and its broader application in the context of assisting to inform how cultural safety could be incorporated into the aged care framework.

The new Aged Care Act

We are concerned that new onerous legislative requirements could 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 particularly expressed concern for smaller Aboriginal and Torres Strait Islander providers, in rural, remote, regional, and urban areas, 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. However,

¹⁷ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#), p31

¹⁸ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#), p64.

¹⁹ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#), p61

²⁰ University of Western Australia, <https://www.iawr.com.au/gsgl>.

concerns are not limited to small providers. Larger providers have significant workforce costs and those with wider footprints across a range of services and locations will have numerous systems and requirements to navigate. 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 may be too late for some older Aboriginal and Torres Strait Islander people.

The impact of the rate and scale of reforms and accompanying changes could also 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 urban, rural, regional, and remote 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 aged care 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 range of considerations required to support Aboriginal and Torres Strait Islander providers of aged care, we strongly **recommend** the Department, in consultation with NATSIAACC as the peak body and facilitator, apply a co-design approach for the implementation of the new Aged Care Act and how it will apply to Aboriginal and Torres Strait Islander older people and aged care providers.

Proposed Objects of the new Aged Care Act

We welcome the Objects of the new Aged Care Act giving effect to Australia's obligations under the *Convention on the Rights of Persons with Disabilities, the International Covenant on Economic, Social and Cultural Rights*.

We **recommend** the Objects of the new Aged Care Act give effect to Australia’s commitment to UNDRIP. NATISAACC is of the view that it is crucial that the new Aged Care Act reflects and affirms the minimum standards for the dignity, security, and well-being of older Aboriginal and Torres Strait Islander people.

We have received member feedback regarding the Object: “*promotes innovation in aged care based on research and supports continuous improvement*”.²¹ Concern was expressed regarding the effectiveness of translation of research into practice. For instance, research on improving dementia management has been conducted, identifying both enablers and barriers to high quality dementia care, and arguing that substantially increased investment in supporting best-practice diagnosis and management of dementia in Aboriginal communities is required.²² It is concerning that this kind of research has not resulted in a significant investment in improving practices and outcomes for older Aboriginal and Torres Strait Islander people to date. Inclusion of this Object is unlikely to achieve continuous improvement in models of care on its own.

On this basis, we **recommend** that there is system support, including funding, within the Department for ensuring that research and innovation supported under the new Aged Care Act is translated into improved practices and care for older people, where relevant. In fact, this concern is relevant to all the Objects and aspects of the new Aged Care Act: with every new obligation, there is a commensurate cost in order to provide that level of care and support within the aged care sector. This will require significant investment and must be considered and funded as part of the implementation of the new Aged Care Act.

We also **recommend** that meeting the *Objects* and other requirements of the new Aged Care Act is considered by the Independent Health and Aged Care Pricing Authority and appropriately costed to inform the pricing framework and ensure that the aged care system is sufficiently funded to comply with the requirements of the new Aged Care Act.

Proposed purpose

We note the proposal to include a Purpose Statement in the new Aged Care Act. In the context of the provision of culturally safe and appropriate care that is trauma-aware and healing-informed, NATISAACC is of the view that the current Purpose Statement does not fully embrace the need to provide care that addresses the diverse needs of the whole-person, their family and Community. While referencing aged care services as supporting ‘active...lives’, this is not the same as providing care that supports reablement and independence, or the provision of care that enables the optimisation of an older person’s health and wellbeing. Finally, the proposed Purpose Statement does not refer to the provision of ‘high quality care’, which, will need to be considered in the context of a broader discussion below on terminology and accountability for delivering ‘quality’ or ‘high quality care’. On this basis, we **recommend** further consideration and amendment of the proposed Purpose Statement.

The Statement of Rights

NATISAACC welcomes a new rights-based Aged Care Act with the wording derived from the International Covenant on Economic, Social and Cultural Rights. This is significant for the aged care

²¹ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p11.

²² Bryant, J., Noble, N., Freund, M. *et al.* How can dementia diagnosis and care for Aboriginal and Torres Strait Islander people be improved? Perspectives of healthcare providers providing care in Aboriginal community controlled health services. *BMC Health Serv Res* 21, 699 (2021). <https://doi.org/10.1186/s12913-021-06647-2>.

sector, however, we note that the Consultation Paper does not refer to the incorporation of the rights contained in UNDRIP. This is of particular significance to NATSIAACC and its members as all aspects of the new Aged Care Act will be underpinned by the Statement of Rights.

For instance, the list of 'funded aged care services' will be included in subordinate legislation and those services must require the provision of culturally safe and respectful care that recognises and supports the diversity and self-determination of older Aboriginal and Torres Strait Islander people. Such services must include supporting connection to Country, Island Home, and Community. This may include transport costs for travelling to Country, Island Home, or Community. It may also include the ability to attend cultural events and participate in cultural practices.

NATSIAACC **recommends** that the *Statement of Rights* must be consistent with UNDRIP and enshrine Aboriginal and Torres Strait Islander people's right to diversity, cultural safety and self-determination in an aged care context, by incorporating the rights contained in UNDRIP.

NATSIAACC **recommends** co-design of the list of funded aged care services. As the peak body for Aboriginal and Torres Strait Islander Ageing and Aged Care, NATSIAACC is well-placed to facilitate the co-design of this process and must be appropriately funded to support this important work.

We are of the view that all rights must be culturally safe. This will mean that upholding rights will involve dignity of risk and the careful balance associated with supporting a person's rights, preferences and needs, while managing any risk of harm. We also **recommend** that the Rights 2 and 11²³ - include reference to 'cultural safety' as well as 'culturally appropriate' care, as these are not identical or mutually exclusive terms. All people should have the right to culturally safe *and* appropriate care, irrespective of their background, culture, race, preferences, or financial circumstances.

While Right 14²⁴ references that older people will "have the role of persons who are significant to the individual acknowledged and respected," we question how this will operate in practice. For many Aboriginal and Torres Strait Islander people, there is a significant emphasis on family and cultural connection. Older people may have the role of Elder, parent, grandparent as well as responsibility to care for those who are kin or otherwise connected but may not be biologically related. The new Aged Care Act needs to acknowledge the diversity of family and community relationships, that may not follow narrow perceptions of 'immediate family'. In this context, we **recommend** the inclusion of 'Community' in Right 14.

We also note that it is critical to ensure that the Statement of Rights and Statement of Principles intersect, rather than compete. In instances where there may be competing rights, there will need to be guidance material provided on how the relevant rights can be balanced to ensure the optimal service provision for the older person, and well as compliance with the new Aged Care Act.

Our member feedback has raised concerns about how rights that cannot be chosen are balanced and explained to older people, such as choice about living and dying. Members also raised issues about how the rights will affect the provision of care in regional, rural, remote, and urban and what the rights will mean in practice for providers? We have also received concern about how older people in residential aged care have the right to be protected from other residents if they pose a risk to their health, safety, and/or wellbeing. Given these issues are not sufficiently addressed in the Consultation Paper, we look forward to receiving further details and information to support the sector.

²³ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p16.

²⁴ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p17.

Further, while the Consultation Paper references a number of ways in which rights will be upheld and assessed by the Regulator, it does not currently anticipate how the regulatory regime will affect diverse groups. In this context, NATSIAACC has previously made a submission on the consultation on *A New Model for Regulating Aged Care*. It is vital that these recommendations be considered further in the context of both supporting Aboriginal and Torres Strait Islander people to receive safe care, as well as to regulate their aged care providers in a way that supports them to deliver the highest possible level of culturally safe care.

Based on the above issues and concerns, we **recommend** the provision of co-designed guidance material and supports for all providers and older people to assist with understanding how the new Aged Care Act will be upheld and applied. Such material will need to be adaptable to the diverse needs of people, locations, and Communities. NATSIAACC would be pleased to support the co-design of the development and drafting of these materials.

The Statement of Principles

We understand that the Statement of Rights is intended to outline the right of people accessing, or seeking to access, funded aged care services. Whereas the Statement of Principles will guide the decisions, actions, and behaviours of everyone operating in the aged care system.²⁵ On this basis, it will be important to ensure that the system is established in a way that the Statement of Principles upholds the Statement of Rights. While we are of the view that the Statement of Principles should incorporate cultural safety in all the stated Principles, we detail below some specific examples in which cultural safety should be explicitly incorporated.

Principle 1 references First Nations people and their connection to Community and Country. To ensure relevance to the diverse Aboriginal and Torres Strait Islander people, we **recommend** that connection to Island Home is also incorporated.

Principle 3 refers to older people being able to reside at home, if it is their choice.²⁶ Given the premise of the rights-based new Aged Care Act is that older people should have choice, we **recommend** that older people must, wherever possible, be provided with the opportunity to choose where they would like to live, whether this is at home, residential aged care, or in supported accommodation arrangements. Our submission to the Aged Care Taskforce on the *Draft Aged Care Funding Principles* refers to this requirement.²⁷

Principle 3 refers to 'enablement'. We suggest consideration and inclusion of 'reablement' as the system should also support older people to regain their abilities and, as far as possible, their independence.

We also note that in some Communities, there can be negative connotations of the term 'enablers'. This can be used as a reference to people who try to fix issues, without building resilience and supportive systems within a Community. It can also be a reference to a person who attempts to carry all burdens and is prone to burnout and leaving the Community, resulting in little or no ongoing improvement. This supports our recommendations that guidance materials and the actual implementation of the new Aged Care Act must be adapted to people's diverse needs and reflect the location, culture and Community in which people live or are connected.

²⁵ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p21.

²⁶ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p22.

²⁷ See www.natsiaacc.org.au.

Principle 4 refers to ‘culturally appropriate services’.²⁸ We **recommend** this be amended to include ‘culturally safe’ care and this should be embedded throughout the Principles and the new Aged Care Act. This is because all services need to be focused on the whole person’s needs – and only the person who is receiving the care can determine if the care is appropriate and safe for them. A one-size fits all approach will not work. Recognition of diversity and self-determination is consistent with UNDRIP as part of a rights-based approach, and requires flexibility and adaptation to the person, their family and Community.

Principle 13, with respect to regulation, will also need to include culturally safe care.²⁹

The issue will be how the Principles are *implemented* under the new Aged Care Act. Will the Department and Regulator and other relevant agencies all implement culturally safe practices to ensure that the diversity and right to self-determination of Aboriginal and Torres Strait Islander people is respected? We look forward to assisting the Department and Regulator to implement the new Aged Care Act in a culturally safe manner.

Quality care

Quality care is culturally safe care. The definition of quality care included in the proposed legislation needs to include cultural safety as an integral component. We **recommend** the following elements of culturally safe care also be included.

Aboriginal and Torres Strait Islander older people require care that includes:

- Flexibility – and provides the care that the person feels meets their needs and takes into account their preferences. There should be freedom to choose - one person’s views of quality care might not necessarily align with another’s perspective.
- Balancing of duty of care and dignity of risk – for instance, members and stakeholders have discussed issues relating to an older person’s freedom to connect with the broader natural environment, connection to Country and Island Home and social and cultural activities. These needs, freedoms, and preferences must be balanced and supported as far as possible, to enable optimal health and spiritual wellbeing.
- Respect for of a person’s independence and preferences for privacy, time alone, or with others
- Reliance on accurate and timely assessment and reassessment, so that care needs are met in a timely manner.
- Opportunities for Aboriginal and Torres Strait Islander people to attend and participate in cultural activities and practices, including, but not limited to supporting travel to Community, Country or Island Home if required.
- Support for broader connection to Community and family, and other significant people.
- Provision of meaningful and respectful activities for all people, irrespective of cognitive or physical abilities.
- Opportunities must be provided for Aboriginal and Torres Strait Islander people to choose if they would like to die/finish up/pass on Country or Island Home wherever possible. There are transport and medical costs associated with this, and these costs need to be factored into the pricing framework.

²⁸ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p23.

²⁹ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p24.

- Support for palliative care and end-of-life care to be provided on Country, Island Home or in Community, this may include the need for carers to travel, transport costs and the costs of medical and wellbeing care for the older person, as well their carers, family and Community.
- Accommodations for transient lifestyles and care needs within the aged care system, without loss of aged care arrangements or detrimental impacts on providers.

There are numerous examples across the sector of the delivery of high quality, culturally safe care and adaptations for the diverse needs of Aboriginal and Torres Strait Islander people across Australia. We **recommend** the Department consult with NATSIAACC to understand the breadth of culturally safe aged care provided by NATSIAACC members.³⁰

Civil and Criminal penalties

NATSIAACC and its members **request** further information on the context in which civil and criminal penalties may be applied. There is some fear about how individuals who are trying to do the right thing may be subject to civil and criminal penalties. We have also received questions about the application of reporting requirements to the Australian Health Practitioner Regulation Agency, and the role this may play in the context of the new Aged Care Act.

We absolutely support an aged care system that protects older people and ensures their safety. We also want to see the providers of culturally safe aged care services to Aboriginal and Torres Strait Islander people thrive. We are concerned that the unknowns of the application and implementation of the new Aged Care Act are serving as disincentives to new aged care providers joining the system. There is also a risk that the reforms may impact the continuity of providers of aged care services to Aboriginal and Torres Strait Islander people. Ultimately, the system must be built and implemented in a balanced way that supports both older people and the ongoing sustainability of aged care providers. This is consistent with the recommendations of the Royal Commission and would also support the National Agreement commitments.

Once additional information and details of the proposed regime have been developed, we **recommend** the Department engage with NATSIAACC to further consult with the sector to ensure the civil and criminal penalties provisions and relevant parameters are appropriate and fully understood. This must occur prior to the Stage 2 Consultation on the Exposure Draft of the legislation.

Protections for whistleblowers

We welcome the inclusion of whistleblower protections in the new Aged Care Act.³¹ We **recommend** the Department consider how whistleblower protections will operate in small and integrated communities, where many parties are known to one another, and where parties may play dual roles (such as family members engaged as part of the care team). There will need to be careful consideration of processes and procedures to ensure the ongoing actions and inquiries following a disclosure, do not result in identification or reduction in the protections afforded to the whistleblower. Should there be a need to disclose the identity of a whistleblower, we suggest that the whistleblower be contacted and given the opportunity to consider any personal implications prior to this occurring. We also **recommend** that, in addition the list of officials able to receive disclosures, there should include provision for Aboriginal and Torres Strait Islander staff at the Department and Commission (or staff who have undertaken effective cultural safety training) to

³⁰ <https://natsiaacc.org.au/members/>.

³¹ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p37.

support the delivery of a culturally safe process. We also **recommend** that consideration be given to whether the First Nations Aged Care Commissioner’s Office may have a role in assisting with, advising, or supporting, this complaint handling process.

We have also received commentary and questions about how the proposed whistleblower protections and other complaints processes will offer procedural fairness – including the handling of vexatious complaints, providing details on the appeals process and recourse for providers, reputational damage and impact on Star Ratings. We support a system that is not punitive and incorporates a ‘no fault’ element in situations in which a provider has taken all reasonable steps to remedy the issue.

It is also important that, should serious conditions or sanctions be imposed on a provider, the care of older people be at the core of the basis for the condition/s – 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 and may cause trauma) or where older people are left without a service provider at all. Further information on how such conditions or sanctions would be applied is required, including how providers can be assisted to improve while maintaining their current services.

It is important that the sector is given the opportunity to provide input on new details of the complaints system. 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.

Provider costs for implementing procedures to ensure confidentiality and support for whistleblowers may also require additional financial and administrative support. We **recommend** funding transition arrangements to support providers to comply with new requirements under the new Aged Care Act.

Supported decision-making arrangements

We welcome the intention to provide clarity and consistency across aged care law and systems.³² There is a risk that the obligations for supported decision-makers could cause apprehension, resulting in people not wanting to commit to being a supported decision-maker. For instance, if a representative is required to also consult with the person’s partner, close family members and friends,³³ this may inhibit the ability of the representative to make a decision or to provide the required support. It may also be necessary to consider potential conflicts of interest, particularly in smaller communities, where the roles and responsibilities of family, friends and health/aged care workers can overlap. NATSIAACC **recommends** further testing of the whistleblower provisions and processes to support decision-making and managing conflicts of interest.

We also note that the different terms for supported decision-makers may cause further confusion in the sector. The Consultation Paper refers to ‘supporters’, ‘nominees’ and ‘representatives’. We **recommend** that clear information on terminology, roles and responsibilities must be provided to support older people, their representatives, as well as the aged care and health sectors to support their interaction with people in these roles. This information must be provided in multiple formats, including written, video and audio formats, as well as in language. We **recommend** that NATSIAACC is engaged to support and advise further on the supported decision-maker provisions.

The Consultation paper contains little detail and explanation of how the system will operate, particularly with respect to the interaction between the new Aged Care Act and State/Territory

³² Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p39.

³³ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p43.

Guardianship laws.³⁴ While the Consultation Paper references this issue,³⁵ it does not provide any clarity on how this will work in practice. We **recommend** the Department provide further clarity on the interaction between Commonwealth and State/Territory guardianship laws and the application of the supported decision-making provision in the new Aged Care Act.

There also needs to be an accommodation for flexibility to ensure that in instances where a decision-maker may be out of contact, (e.g. restricted phone and internet; transient; experiencing hardship), there are alternative arrangements in place, which must also be culturally safe.

Eligibility for funded aged care services

As referenced in the Consultation Paper, currently, outside of the current Aged Care Act, age requirements only apply to the Commonwealth Home Support Program (CHSP).³⁶ Aboriginal and Torres Strait Islander people are eligible for CHSP from age 50, or 45 if on a low income and homeless, or at risk of being homeless.³⁷

Eligibility from age 45

The Consultation Paper proposes the removal of the existing eligibility for aged care services from 45 years of age for Aboriginal and Torres Strait Islander people. NATSIAACC strongly objects to this removal of flexibility and early access to aged care services for Aboriginal and Torres Strait Islander people. Imposing age limits on access does not reflect the practicalities and real-life experiences of Aboriginal and Torres Strait Islander people and providers.

According to Australian Institute of Health and Welfare data, fifty Aboriginal and Torres Strait Islander people aged between 0-49 were using aged care services (home, residential or transition care) at 30 June 2020.³⁸ We **recommend** information be provided regarding the ongoing eligibility of Aboriginal and Torres Strait Islander people who are currently receiving aged care services from the commencement of the new Aged Care Act. If eligibility will not continue, supports must be in place to ensure their health and wellbeing needs are met.

Data on people 45-49 years accessing aged care services

Aboriginal and Torres Strait Islander people are more likely to use aged care services earlier in life than other Australians. A higher proportion of Aboriginal and Torres Strait Islander people using residential care are in younger age groups, compared with the broader population.³⁹ The National Aboriginal and Torres Strait Islander Aged Care Program also provides aged care services, but data on people using those services are not available.⁴⁰ Further, given Aboriginal and Torres Strait Islander people have been eligible for assessment from age 45 for some time, we **recommend** the Department provide data on how many assessments have been conducted for the ages 45-49 (broken down by calendar year, age, location and gender), and how many of those assessments were deemed eligible for aged care services.

We have received input from members and stakeholders that support and care is often provided to Aboriginal and Torres Strait Islander people under the age of 50. We note this care can include

³⁴ See: <https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-dp-81/10-review-of-state-and-territory-legislation/guardianship-and-administration/>.

³⁵ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations*, Consultation Paper No.1, p40.

³⁶ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations*, Consultation Paper No.1, p46.

³⁷ <https://www.myagedcare.gov.au/help-at-home/commonwealth-home-support-programme>.

³⁸ Australian Institute of Health & Welfare, <https://www.aihw.gov.au/reports/older-people/older-australians/contents/population-groups-of-interest/indigenous-australians#Aged%20care>.

³⁹ Australian Institute of Health and Welfare (2019) GEN Aged Care Data: Fact Sheet 2017 -2018 People using aged care.

⁴⁰ Australian Institute of Health and Welfare (2019) GEN Aged Care Data: Fact Sheet 2017 -2018 People using aged care.

meals and social supports and is not limited to residential care. In this context, the reason for changing the age range appears to be based on the Royal Commission recommendation that younger people should not be in residential aged care.⁴¹ However, it is not only residential aged care services that are being accessed by Aboriginal and Torres Strait Islander people under the age of 65, yet the proposal limits access to *all* forms of funded aged care services, rather than just residential aged care. It is our understanding that it was the intention of the Royal Commission to reduce the number of young people in aged care as it is inappropriate for young people to live in a residential aged care environment as their needs are not similar, nor surrounded by relevant aged groups of people. We are of the view that it was not necessarily the intention of the Royal Commission to remove Aboriginal and Torres Strait Islander people from 45 years of age living with ageing-related health conditions, from all aged care services.

Further, we are of the view that this will not increase the number of Aboriginal and Torres Strait Islander people accessing aged care services, as recommended by the Royal Commission. Devastatingly, there is a higher burden of disease, with many conditions, comorbidities and frailties associated with ageing which apply to Aboriginal and Torres Strait Islander people from a younger age.⁴² There is also a significant gap in life expectancy for Aboriginal and Torres Strait Islander people, compared to other Australians. Recent Closing the Gap monitoring determined that the target to close the life expectancy gap is not on track to be met by 2031.⁴³

We are aware that there is little data on Aboriginal and Torres Strait Islander older people accessing aged care services, however, it is concerning that the Department would consider it appropriate to alter the eligibility of Aboriginal and Torres Strait Islander people to aged care services in the absence of supporting data to demonstrate the benefit to Aboriginal and Torres Strait Islander older people.

Interaction with the National Disability Insurance Scheme

With reference to the concern expressed in the Consultation Paper⁴⁴ that Aboriginal and Torres Strait Islander people may miss out on the full range of National Disability Insurance Scheme (NDIS) assistance, we note that eligibility for aged care services does not automatically mean older people living with disabilities will choose aged care services. Older people should be able to choose the service that best meets their needs. We have also received member input that the NDIS is not necessarily culturally safe and older people may have a preference to receive care from their preferred provider.

If the new Aged Care Act is genuinely intended to be rights-based, with a focus on the health and wellbeing of older people, then **we strongly urge** the Department to re-consider its approach in relation to the aged care eligibility criteria for Aboriginal and Torres Strait Islander people. We further **recommend** that, once there is a system in place to support Aboriginal and Torres Strait Islander older people, National Agreement targets are being met, and there is data demonstrating the need for beneficial changes to the eligibility criteria, there must be engagement with the sector to determine the direction for any changes to the eligibility criteria.

⁴¹ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p50.

⁴² Temple, J.B., Wilson, T., Taylor, A., Kelaher, M. and Eades, S. (2020), Ageing of the Aboriginal and Torres Strait Islander population: numerical, structural, timing and spatial aspects. *Australian and New Zealand Journal of Public Health*, 44: 271-278. <https://doi.org/10.1111/1753-6405.13001>.

⁴³ <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area1>.

⁴⁴ Department of Health & Aged Care (2023), *A new Aged Care Act: the foundations, Consultation Paper No.1*, p50.

Online platforms and unregistered providers

Our members have 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. We **recommend** further consultation with NATSIAACC members and other peak bodies to ensure that safety considerations are adequately addressed and communicated to all users of aged care services.

Data Sovereignty

Consistent with the National Agreement, we **recommend** that the Department engage NATSIAACC to co-design a process to ensure that the data collected under the new Aged Care respects Aboriginal and Torres Strait Islander people's data sovereignty and this data must be shared with relevant Communities to support increasing capability and to make informed decisions for the aged care sector.

Implementation of the Act

In terms of the implementation of the new Aged Care Act, we **recommend** the Department consider real world application for the most vulnerable people in the country, including having a full understanding of ageing and what it looks like in real life. We are not aware of Departmental representatives visiting aged care locations where people do not have phones or access to reliable internet services, or whether there are long-term communications issues, or no or limited services. We encourage the Department to consider the application of the new Aged Care Act in these places and contexts. Using universal design principles, if the system is constructed to protect and support the most vulnerable people, it will also serve to support those who are more fortunate.

Post Implementation Impact Assessment and Evaluation of the new Aged Care Act

NATSIAACC **recommends** that an Aboriginal and Torres Strait Islander impact assessment and evaluation of the legislative 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 to 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 must fully assess the impact of the new Aged Care Act, and 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 implementation of the new Aged Care Act. 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 Consultation Paper.

We also **recommend** information be provided on the proposed interaction between the First Nations Aged Care Commissioner, the Inspector-General of Aged Care and the Regulator to ensure coordination of efforts and to ensure seamless oversight and representation for Aboriginal and Torres Strait Islander people and their aged care providers.

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

As referenced in NATSIAACC's submission to the Department on *A New Model for Regulating Aged Care*, the Capability Review of the Aged Care Quality and Safety Commission (the Commission) made recommendations with respect to diversity and cultural capability of the Commission.⁴⁵

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:

- o The establishment of an Aboriginal and Torres Strait Islander Division (or similar) within the Commission, which could service the Aboriginal and Torres Strait Islander community more productively and efficiently by being totally staffed by Aboriginal and Torres Strait Islander employees. This is particularly important as feedback received from our members indicate that staff conducting inspections or accreditation visits have very little understanding of the sector.
- o 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 and there is succession planning and career development within the Division. This would also contribute to a strong, cohesive and consistent workplace culture.
- o Such a Division within the Commission could also consider how older people living in remote and regional areas or smaller communities can be provided with a culturally safe, confidential and also direct way to provide feedback to the Regulator.

As we understand that the new Aged Care Act will also replace the existing *Aged Care Quality and Safety Commission Act 2018*,⁴⁶ we **recommend** that the organisational structure requiring an Aboriginal and Torres Strait Islander Division be included in the legislative reform. Further, 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 Commission staff to develop their engagement capability with Aboriginal and Torres Strait Islander peoples. We look forward to future engagement on this.

⁴⁵ <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.

⁴⁶ See: <https://www.agedcarequality.gov.au/about-us/new-aged-care-act>.