

**A new Aged Care Act:
Exposure Draft**
Consultation paper No. 2

National Aboriginal and Torres Strait
Islander Ageing and Aged Care
Council

Submission

March 2024



NATSIAACC

Contents

National Aboriginal and Torres Strait Islander Ageing and Aged Care Council	4
About.....	4
Our Vision.....	4
Our Purpose	4
With thanks.....	4
Funding	4
Issues and Recommendations.....	5
Introduction	10
Context.....	10
Previous input	13
Introduction	14
Preliminary.....	14
Recognition of the United Nations Declaration on the Rights of Indigenous Peoples.....	14
Definitions and key concepts	14
Inclusion of a definition for ‘cultural safety’	16
Recommend the inclusion of ‘Island Home’ in reference to Torres Strait Islander and other Islander people	16
Aged care rights and principles.....	17
Recognition Aboriginal and Torres Strait Islander people in ‘high quality care’	17
Right to equitable access to care	18
Right to equitable access to palliative and end-of-life care	19
Right to stay connected to community, Country and Island Home	20
Supporters and representatives.....	20
Eligibility for entry and early access to aged care services	21
Flexibility and early access to aged care services for Aboriginal and Torres Strait Islander people between under 50 years of age	21
Eligibility for a needs assessment - 50-64 year old Aboriginal and Torres Strait Islander people	22
Continued eligibility	23
Assessment	24
Emergency Support.....	24
Workforce and Registered providers	25
Workforce.....	25

Provider Registration.....	25
Fees, payments and subsidies.....	26
Financial contributions.....	26
Means Testing	27
Governance of the aged care system.....	27
Statutory inclusion of the First Nations Aged Care Commissioner	27
Aged Care Quality and Safety Commission.....	28
Risk-proportionate approach	28
Aged Care Quality and Safety Advisory Council.....	29
Complaints Commissioner	29
Critical failures powers, banning orders, suspension.....	30
Information management.....	30
Whistleblower protections	31
Review of decisions.....	31
Post Implementation Impact Assessment and Evaluation of the new Aged Care Act.....	31
The reform timeline and readiness support	32
Implementation of the Act.....	32
Reporting.....	32
Guidance materials	33
Visiting communities.....	33
Funding to Support transition.....	33
Future Consultation by the Department.....	34

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, Country and Island Home.

NATSIAACC is building a membership base of:

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

NATSIAACC's founding Directors are all leaders in Aboriginal and Torres Strait Islander ageing and aged care provision.

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

NATSIAACC thanks its members, stakeholders and other peak bodies for their valuable contributions to this submission and for generously giving their time to support older Aboriginal and Torres Strait Islander people.

Funding

NATSIAACC is funded by the Commonwealth Department of Health and Aged Care (the Department). NATSIAACC has been in operation for less than two years. 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.

Issues and Recommendations

NATSIAACC makes the following recommendations:

- NATSIAACC **recommends** explicit recognition of UNDRIP in the new Aged Care Act to uphold the rights of Aboriginal and Torres Strait Islander people. This could be included in the *Objects* of the new Aged Care Act.
- We **recommend** that the application of the UNDRIP should be clearly specified in the Explanatory Memorandum to the *Aged Care Bill 2023*, to support the consistent interpretation of all provisions of the new Aged Care Act aligning with UNDRIP.
- We **recommend** the Department consider opportunities for incorporating greater flexibility for providers delivering services to Aboriginal and Torres Strait Islander people so that their needs can be met in a place-based, person-centred and community appropriate manner.
- NATSIAACC **recommends** that, in consultation with NATSIAACC and the Aboriginal and Torres Strait Islander health and aged care sector, a definition of 'cultural safety' for Aboriginal and Torres Strait Islander people in aged care be included in the section 7 Definitions provisions of the new Aged Care Act.
- NATSIAACC **recommends** that the Department engage NATSIAACC to undertake further research to inform the preferred terminology for traditional/ancestral lands and to ensure that Aboriginal and Torres Strait Islander people and their connections are recognised and supported in the new Aged Care Act.
- In the absence of further exploration, NATSIAACC **recommends** the inclusion of 'Island Home' as a baseline addition to 'community' and 'Country', with further consultation needed to explore other terminology, as contained in the recommendation above.
- NATSIAACC welcomes the provisions relating to Aboriginal and Torres Strait Islander persons as it prioritises inclusivity, cultural safety and appropriateness, accessibility, timely delivery, flexibility and **recommends** that any relevant subordinate legislation and implementation arrangements are considerate of Aboriginal and Torres Strait Islander persons unique experiences and needs.
- NATSIAACC **recommends** that the definition of 'high quality care' is more clearly distinguished from the minimum level of care expected. In particular, we wish to emphasise that cultural safety is required to meet the minimum level of care, and should not be aspirational only. NATSIAACC would be pleased to assist further and engage with the Department on developing a more aspirational definition of 'high quality care'.
- NATSIAACC welcomes the inclusion of a right to equitable access for culturally safe, culturally appropriate, trauma-aware and healing-informed assessment, and **recommends** the provisions relating to *equitable access* are expanded to include a similar right to *access* funded services, irrespective of geographic location.
- Consistent with Royal Commission recommendations 47 and 53, we **recommend** that the right to equitable access to palliative care and end-of-life care explicitly includes the right to return to

Country or Island Home for palliative care and/or end-of-life care. Further, we **recommend** that the costs associated with this must be funded through the aged care system.

- NASTIAACC commends section 20 and the explicit provision for Aboriginal and Torres Strait Islander peoples to the right to stay connected to community and Country, should they choose, and **recommends** that supportive funded arrangements are in place to facilitate the exercise of this right to return to Country and Island Home.
- We **recommend** that the provisions relating to supporters and representatives be clarified to minimise confusion about roles. We also **recommend** that guidance information be developed to support older people, supporters and representatives and providers. Consideration should be given to the roles of the Commission, the Complaints Commissioner and the First Nations Aged Care Commissioner in assisting providers to navigate any concerns about arrangements for supporters and representatives.
- We **recommend** the Department put on hold the provisions on supporters and representatives until agreement has been reached between the Commonwealth, States and Territories on the interaction between Commonwealth, State and Territory laws, and clarify on the roles and responsibilities of supporters and representatives can be provided.
- We **recommend** further consideration of the requirement for the System Governor to approve the appointment of supporters and representatives, and whether the System Governor could simply be notified of the arrangements for record-keeping purposes.
- NATSIAACC **recommends** the inclusion of flexibility and early access to aged care services for Aboriginal and Torres Strait Islander people between 45-49 years of age.
- NATSIAACC **recommends** amendment of subsection 40(c) to remove the requirement for additional completion of an approved form for Aboriginal and Torres Strait Islander people aged less than 65, consistent with the requirements for those people aged 65 and over. NATSIAACC also **recommends** that any processes related to informing Aboriginal and Torres Strait Islander people of other services prior to electing aged care services must be informed by a co-design process to ensure that that it is culturally safe and does not result in a person not receiving the safest and most appropriate care available.
- We **recommend** that clear provisions stating that people who are currently eligible for aged care will continue to be eligible for aged care services must be included in the new Act and will not require further assessment. This must include those who have already been assessed, even if they have not received any services yet.
- We **recommend** the Department engage with NATSIAACC to develop a co-design process for consultation and engagement with NATSIFAC Program providers on the application of the new Aged Care Act.
- NATSIAACC **recommends** that the Department consult with the sector in drafting alternative entry arrangements that are reasonable and necessary to ensure seamless access to funded aged

care services. These provisions must include emergency provisions and ensure no delay to older people in accessing services, and no delay to providers in accessing funding.

- We **recommend** a co-design approach to assist with developing a model for worker screening that reflects community expectations as well as protecting older people.
- We **recommend** that the Department engage with NATISAACC to implement a process for engaging with NATSIFAC Program providers to consult and co-design the application of the new Aged Care Act to NATSIFACP providers.
- We **recommend** that as the policy on this Chapter 4 of the new Aged Care Act is developed, that there must be extensive, sector-wide consultation on the proposed policy and draft legislation and any subordinate legislation.
- In light of the Productivity Commission's recent report into the Closing the Gap National Agreement, we encourage the Department to engage in co-design with the sector wherever possible, particularly as it relates to Aboriginal and Torres Strait Islander people and their providers of care.
- Consistent with the recommendation of the National Health Leadership Forum submission to this Consultation process, we **recommend** that any monies received by individuals resulting from any Commonwealth or State Stolen Generations Redress Scheme should be exempt from consideration under income and assets means testing.
- With a view to safeguarding the rights of Aboriginal and Torres Strait Islander Elders and older people, NATSIAACC **recommends** the inclusion of the role of the First Nations Aged Care Commissioner in the new Aged Care Act as an independent, statutory office.
- We **recommend** that there should be reference to the existence of the First Nations Aged Care Commissioner in the new Aged Act, which can then be expanded on once the interim First Nations Aged Care Commissioner's consultations have been completed.
- NATSIAACC also **recommends** that information be provided on the proposed interaction between the First Nations Aged Care Commissioner, the Inspector-General of Aged Care, the Aged Care Quality and Safety Commission, and the Complaints Commissioner, to ensure coordination of efforts and to ensure seamless oversight and representation for Aboriginal and Torres Strait Islander people and their aged care providers.
- We **recommend** that a new Aboriginal and Torres Strait Islander Division (or similar) be established within the Commission. We **recommend** that the organisational structure requiring an Aboriginal and Torres Strait Islander Division be included in the new Aged Care Act.
- NATSIAACC **recommends** that details about the risk-proportionate approach must be detailed clearly in writing both in the guidance material for the Standards and in the guidance material on the new Aged Care Act.

- NATSIAACC **recommends** diverse representation on the Aged Care Quality and Safety Advisory Council, with a specific, mandatory requirement for Aboriginal and/or Torres Strait Islander membership on the Aged Care Quality and Safety Advisory Council.
- We **recommend** that the Complaints Commissioner should be an independent, statutory role, explicitly referenced in the new Aged Care Act.
- NASTIAACC **recommends** that there be specific consideration in the drafting of the critical failures powers, banning orders and suspension provisions for the needs of older Aboriginal and Torres Strait Islander people in this context, and their connections to their Country/Island home, family, community, kin and totems as well as positive connections with staff and other health professionals in their current aged care provider. Consideration of these factors will assist with achieving optimal health and wellbeing for older Aboriginal and Torres Strait Islander people.
- NATSIAACC **recommends** that the new Aged Care Act information management and data processes should be consistent with principles of Indigenous Data Sovereignty and Indigenous Data Governance: <https://www.maiamnayriwingara.org/mnw-principles>.
- We **recommend** that the Department engage with NATSIAACC to facilitate a co-design a process to ensure that the data collected under the new Aged Care respects Indigenous Data sovereignty.
- We **recommend** that the Department provide a more detailed explanation for the reasons and the legal implications for not requiring 'good faith' as an element of the whistleblower provisions.
- In the context of Aboriginal and Torres Strait Islander communities, there remain concerns about how the whistleblower protections will apply, particularly given the strong connections among community members. We **recommend** the Department consider the value of co-design and place-based approached in this context, to ensure that the whistleblower protections will be practical and fit for purpose.
- NATSIAACC **recommends** that an independent arrangement and process is in place to review decisions made by the officials prescribed in Chapter 5 Governance of the Aged Care System.
- 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** that Aboriginal and Torres Strait Islander people and aged care sector be provided the opportunity to co-design and to be consulted on all further components of the aged care system.
- We **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 aged care providers.
- We **recommend** consideration of opportunities that will reduce provider reporting requirements, particularly as part of the new Aged Care Act. We **recommend** the Department specifically

engage with NATSIAACC to share information with providers, and to engage in consultation regarding the refinement of these reporting processes.

- We **recommend** that the Department provide guidance information for the aged care workforce on the system and the roles and responsibilities of the workforce in accessible formats, including translated versions.
- We **recommend** the Department visit a broad range of locations providing aged care services to consider the application of the new Aged Care Act in these places and contexts.
- To ensure the *Consequential Amendments and Transitional Arrangements Bill*¹ is fit for purpose, we **recommend** that the Department adopt a co-design and consultative approach to ensure that the transitional supports meet the varied needs of providers.
- NATSIAACC **recommends** that the Department consider opportunities for co-design on all future aged care forms, including future components of the new Aged Care Act. Not only is this consistent with the Priority Reforms in the National Agreement, but it will also support the best possible outcome for Aboriginal and Torres Strait Islander people.
- For future consultations, including on the new Aged Care Act, we **recommend** the Department consider releasing discrete and complete Chapters or Parts, in a range of accessible formats.
- We also **recommend** that advertising and promotion of face to face and online consultations may require a multi-faceted approach, including consideration of mailouts and posters, as well as opportunities for input to be provided in multiple formats, such as voice recordings, mail and text messages, as appropriate. We also note previous feedback provided to the Department regarding the time and approach required for effective consultation with the sector.

¹ Department of Health & Aged Care, 2023, *A New Aged Care Act: Exposure Draft, Consultation paper No 2*, p 6.

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: Exposure Draft, Consultation paper No. 2* (the Consultation Paper). NATSIAACC strongly advocates for the new legislation to acknowledge and be inclusive of Aboriginal and Torres Strait Islander people and their unique needs. While we also welcome a person-centred and rights-based new Aged Care Act, this will need to acknowledge the culture of Aboriginal and Torres Strait Islander people and support them to remain connected to their culture, family and community.

In formulating this submission, NATSIAACC has consulted its members, which are largely aged care providers to Aboriginal and Torres Strait Islander people, as well as other health and aged care peak organisations and alliances in its endeavour to provide a comprehensive submission. NATSIAACC looks forward to working closely with the Department to ensure that the new legislation reflects the unique needs of Aboriginal and Torres Strait Islander people.

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. We must ensure Aboriginal and Torres Strait Islander people, including those impacted by the Stolen Generations, have access to the aged care services they need. Further, we must create an environment of trust and understanding to ensure Aboriginal and Torres Strait Islander people are supported to safely access these services.

The new Aged Care Act offers a unique opportunity to shape the way aged care can support Aboriginal and Torres Strait Islander Elders and older people to thrive and be healthy and strong, with ongoing cultural connections in their older years.

Context

To fully understand the impact that the proposed aged care reforms will have on Aboriginal and Torres Strait Islander older people and providers of aged care services, it is important to consider the broader context.

The [Royal Commission into Aged Care Quality and Safety](#) (the Royal Commission) was established in 2018 to investigate and address issues related to the quality and safety of aged care services. The Commission made several important recommendations to comprehensively reform the aged care system through a new Aged Care Act that uses a rights-based approach, with enhanced oversight for aged care governance, providing safe and 'high quality' care and with commensurate funding. These recommendations aim to transform the aged care sector, ensuring that older Australians receive the best possible care and support as they age.

The Royal Commission highlighted issues of access, vulnerabilities and cultural safety for Aboriginal and Torres Strait Islander people that are poignant in illuminating the impediments and difficulties to accessing aged care services and ageing with dignity:

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

The Royal Commission made specific recommendations to improve aged care services for Aboriginal and Torres Strait Islander communities:

- the need for an Aboriginal and Torres Strait Islander aged care pathway within 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
- the establishment of an Aboriginal and Torres Strait Islander Aged Care Commissioner.

These recommendations are vital considerations to address the unique needs and cultural context of Aboriginal and Torres Strait Islander communities, 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-aware and healing informed
- needs-based and
- flexible aged care services

regardless of where they live is consistent with the Royal Commission recommendations.

The [National Agreement on Closing the Gap](#) (the National Agreement) is a crucial agreement aimed at addressing the inequality experienced by Aboriginal and Torres Strait Islander people that was developed in genuine partnership between Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations. The National Agreement centres around four Priority Reforms that aim to transform the way governments collaborate with Aboriginal and Torres Strait Islander people and communities:

1. Formal Partnerships and Shared Decision Making
2. Building the Aboriginal and Torres Strait Islander Community-Controlled Sector

² Royal Commission into Aged Care Quality and Safety, Volume 1, page 67.

3. Transforming Government Organisations
4. Shared Access to Data and Information at a Regional Level.

These reforms are directly informed by the voices of Aboriginal and Torres Strait Islander communities and are pivotal to achieving progress in closing the gap and reflect a commitment to genuine collaboration, empowerment, and positive change for Aboriginal and Torres Strait Islander peoples. 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 [Review of the National Agreement on Closing the Gap, Study Report](#), there is a very long way to go, and there is now an opportunity to:

recognise that Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs) have knowledges, expertise and connection to community that governments do not have. This means that ACCOs are often better placed than governments to design and deliver high-quality, holistic and culturally safe services.³

The [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#) (the Health Plan) is the national policy aimed at improving health and wellbeing outcomes for Aboriginal and Torres Strait Islander people over the next decade and emphasises cultural safety in health care, prioritises Aboriginal and Torres Strait Islander community-controlled services and adopts a holistic and strengths-based approach, recognising the cultural and social factors that impact a person's health and wellbeing throughout their life. A significant part of this is ensuring that the aged care system is appropriately funded to provide culturally safe and quality aged care services and support to Aboriginal and Torres Strait Islander older people, irrespective of their geographical location or financial circumstances.

The Health Plan is also consistent with the [United Nations Declaration on the Rights of Indigenous Peoples](#) 2007 (UNDRIP), a global milestone in recognising and safeguarding the rights of indigenous peoples worldwide. Having endorsed the UNDRIP, Australia recognises that:

...indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests...

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies,⁴

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.

The United Nations General Assembly declared 2021–2030 the [UN Decade of Healthy Ageing](#), an initiative aimed to reduce health inequities and enhance the well-being of older peoples, their families and communities through collective action in four key areas: changing attitudes, empowering communities, person-centred care and quality long-term care.

³ Productivity Commission, 2024, *Review of the National Agreement on Closing the Gap*, p 12.

⁴ UNDRIP, 2007, p3.

The funding of the aged care system needs to acknowledge the specific place of older Aboriginal and Torres Strait Islander people in Australia as well as the diversity of older Aboriginal and Torres Strait Islander people and their health and wellbeing needs. 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 as they age. The aged care system and the new Aged Care Act 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.

Previous input

NATSIAACC notes that it has made a number of submissions to government relating to the aged care reforms. These are available on our [website](#).

We note and value the Department's consideration of our previous submissions. There are instances where we can identify our requests and recommendations have been considered and are evidenced in the Exposure Draft of the new Aged Care Act.

We respectfully request that the Department also consider our previous submissions on the aged care reforms, in particular, our commentary on the regulatory regime, as well as this submission, in informing the next steps for and amendments to the Exposure Draft of the new Aged Care Act.

Introduction

Preliminary

Recognition of the United Nations Declaration on the Rights of Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is the comprehensive universal framework establishing minimum standards, rights and freedoms for the survival, dignity and well-being of Indigenous peoples. It is especially significant for Aboriginal and Torres Strait Islander peoples as they were involved in its drafting. Australia endorsed UNDRIP in 2009 however, the current draft of the new Aged Care Act does not reference UNDRIP. Further, on 28 November 2023, the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs published its report on its inquiry into the application UNDRIP in Australia. The report makes six recommendations, including that the Commonwealth Government ensure that its policies and legislation on matters relating to Aboriginal and Torres Strait Islander people be consistent with the Articles of UNDRIP.⁵

The UNDRIP is pertinent to Aboriginal and Torres Strait Islander people as Indigenous peoples have, among other rights, the right to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions and should not face discrimination based on their indigenous status. Aboriginal and Torres Strait Islander people have the right to participate in decision-making processes that affect them.

The recognition of UNDRIP in the new Aged Care Act would demonstrate the Australian government's commitment to providing quality, culturally appropriate aged care services to Aboriginal and Torres Strait Islander people, as well as permeate the new Aged Care Act and its application. This would also support the recommendations of the Royal Commission regarding Aboriginal and Torres Strait Islander people and amplify the rights-based approach adopted by the new Aged Care Act.

NATSIAACC **recommends** explicit recognition of UNDRIP in the new Aged Care Act to uphold the rights of Aboriginal and Torres Strait Islander people. This could be included in the *Objects* of the new Aged Care Act.

We **recommend** that the application of the UNDRIP should be clearly specified in the Explanatory Memorandum to the *Aged Care Bill 2023*, to support the consistent interpretation of all provisions of the new Aged Care Act aligning with UNDRIP.

Definitions and key concepts

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.

⁵ Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2023, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, Recommendation 1, p xix, accessed 12 March 2023.

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.⁶

Cultural safety is about:

- maintaining cultural identity
- culturally informed service delivery
- culturally competent workforce
- culturally supportive environments and
- partnerships and collaboration within the aged care service system.⁷

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 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.

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...

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

⁶ 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.

⁷ 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.

and language requirements, and involve Aboriginal and Torres Strait Islander people in determining their own health priorities and care pathways...⁸

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.⁹ This also means that there is no 'one-size fits all' approach.

We welcome the commitment to ensuring the aged care system upholds the rights of all older people receiving aged care services. We also note that meeting these rights requires greater levels of support and flexibility for providers working with Elders and older Aboriginal and Torres Strait Islander people.

We **recommend** the Department consider opportunities for incorporating greater flexibility for providers delivering services to Aboriginal and Torres Strait Islander people so that their needs can be met in a place-based, person-centred and community appropriate manner.

Inclusion of a definition for 'cultural safety'

We commend the Department for including reference to 'cultural safety and culturally appropriate' care in the new Aged Care Act.

We note that the Department has also engaged NATSIAACC to develop a definition of cultural safety in aged care, informed by older Aboriginal and Torres Strait Islander people. While this work is still underway, we encourage the Department to develop NATSIAACC's definition into a legislative definition to be included in the new Aged Care Act to ensure consistency of application of cultural safety in an aged care context.

NATSIAACC **recommends** that, in consultation with NATSIAACC and the Aboriginal and Torres Strait Islander health and aged care sector, a definition of 'cultural safety' for Aboriginal and Torres Strait Islander people in aged care be included in the section 7 Definitions provisions of the new Aged Care Act.

Recommend the inclusion of 'Island Home' in reference to Torres Strait Islander and other Islander people

The Exposure Draft uses 'community/ communities' and 'Country' to refer to the physical, cultural and temporal spaces identified by Aboriginal and Torres Strait Islander people. However, during our consultations, we have received input that the term 'Country' is not equally identifiable or owned by some Torres Strait Islander people.

Researcher Lui explored the complexities of identity formation and the exclusion of mainland Torres Strait Islanders from key provisions and representation in matters concerning cultural practices, governance, and political structures. Lui found there were critical aspects of identity for Torres Strait Islanders linked to the continued presence living away from ancestral home islands.¹⁰ Discussions surrounding the rights and representation of Torres Strait Islanders often overlook the complexities of identity formation and fail to address cultural questions from their perspective. As a result,

⁸ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#), p 64.

⁹ Department of Health, [National Aboriginal and Torres Strait Islander Health Plan 2021–2031](#), p 61.

¹⁰ Felecia Watkin Lui (2012) My island home: re-presenting identities for Torres Strait Islanders living outside the Torres Strait, *Journal of Australian Studies*, 36:2, 141-153, DOI: 10.1080/14443058.2012.674544.

Islanders are excluded from key provisions and are not adequately represented in matters concerning cultural practices, governance, and political structures.¹¹

As part of our consultations on the new Aged Care Act, we obtained some input from Torres Strait Islander people. We were advised that their preference was to refer to their traditional/ancestral lands as 'Island Home', rather 'Country'. We were also informed that this terminology was the same for many older and younger Torres Strait Islander people. We received input that some Torres Strait Islander people feel as though they are forgotten when discussing 'Aboriginal and Torres Strait Islander' people. As a national peak body, NATSIAACC would like to ensure that all First Peoples and their diversity are properly recognised in the new Aged Care Act, and in particular, the way in which they refer and connect to their traditions, knowledges and ancestral lands.

While NATSIAACC has undertaken some engagement with Torres Strait Islander people, we are aware of the diversity of all Aboriginal and Torres Strait Islander communities, including those in the Torres Strait Islands, other island communities and across mainland Australia. We are also mindful that there may be other communities that use alternative terminology to connect to their ancestral homelands.

NATSIAACC **recommends** that the Department engage NATSIAACC to undertake further research to inform the preferred terminology for traditional/ancestral lands and to ensure that Aboriginal and Torres Strait Islander people and their connections are recognised and supported in the new Aged Care Act.

In the absence of further exploration, NATSIAACC **recommends** the inclusion of 'Island Home' as a baseline addition to 'community' and 'Country', with further consultation needed to explore other terminology, as contained in the recommendation above.

Aged care rights and principles

Recognition Aboriginal and Torres Strait Islander people in 'high quality care'

The Royal Commission report expanded the definition of 'high quality care' by prioritising '...inclusive policies and procedures being implemented, in partnership with Aboriginal and Torres Strait Islander persons, to ensure that culturally safe and accessible care, which incorporates flexibility and recognises their unique experiences, is delivered at all times.'¹² The Exposure Draft reflects this as follows:

Exposure Draft section 19 Meaning of *high quality care*

The delivery of a funded aged care service by a registered provider to an individual is high quality care if the service is delivered in a manner that:

- (a) puts the individual first; and*
- (b) upholds the rights of the individual under the Statement of Rights; and*
- (c) prioritises the following:*
 - ...(viii) implementing inclusive policies and procedures, in partnership with Aboriginal or Torres Strait Islander persons, family and community to ensure that culturally safe,*

¹¹ Felecia Watkin Lui (2012) My island home: re-presenting identities for Torres Strait Islanders living outside the Torres Strait, *Journal of Australian Studies*, 36:2, 141-153, DOI: 10.1080/14443058.2012.674544.

¹² Royal Commission into Aged Care and Safety report, Embedding high quality care in the new Act (Chapter 1, Part 3, p22).

culturally appropriate and accessible care is delivered to those persons at all times, which incorporates flexibility and recognises the unique experience of those persons;...

NATSIAACC welcomes the provisions relating to Aboriginal and Torres Strait Islander persons as it prioritises inclusivity, cultural safety and appropriateness, accessibility, timely delivery, flexibility and **recommends** that any relevant subordinate legislation and implementation arrangements are considerate of Aboriginal and Torres Strait Islander persons unique experiences and needs.

We have received positive feedback from members and stakeholders, including:

- Support for the reference to animals, nature, and spiritual connections for the care of aged persons.
- Support the cascading of provisions in this section where the aged person's interest is prioritised, then followed by other considerations (personalised individual approach).

Our members have also noted that the tools and resources available to deliver 'high quality care' will need to be translated and deployed in the implementation phase of the Act. We note that there will need to be sufficient training and funded support to ensure continuous improvement goals are achieved.

NATSIAACC also cautions that the use of 'high' in the phrase 'high quality care' suggests an expectation of an elevated level of care that may inadvertently reduce the level of minimum expected care that is expected. For instance:

- if achievement of 'high quality care' is aspirational, then it is concerning that putting the individual first and upholding the rights contained in the Statement of Rights is aspirational.
- Self-determination is a priority under the National Agreement, this should not be aspirational as there is a risk that this will not be achieved.
- The implementation of inclusive policies for Aboriginal and Torres Strait Islanders and the provision of culturally safe, culturally appropriate and accessible care should be a requirement for all care.

NATSIAACC therefore **recommends** that the definition of 'high quality care' is more clearly distinguished from the minimum level of care expected. In particular, we wish to emphasise that cultural safety is required to meet the minimum level of care, and should not be aspirational only. NATSIAACC would be pleased to assist further and engage with the Department on developing a more aspirational definition of 'high quality care'.

Right to equitable access to care

The Royal Commission recognised a right of equitable access to complex care including palliative care and end-of-life care for persons accessing or seeking to access funded aged care services when required.¹³ This is reflected in the Exposure Draft below:

Exposure Draft section 20 Statement of Rights

Equitable access

(2) An individual has a right to equitable access to:

¹³ Aged Care Royal Commission *Final Report: Summary*, p 94.

- (a) have the individual's need for funded aged care services assessed, or reassessed, in a manner which is:
 - (i) culturally safe, culturally appropriate, trauma-aware and healing-informed; and
 - (ii) accessible and suitable for individuals living with dementia or other cognitive impairment; and
- (b) palliative care and end-of-life care when required.

While the provision of *Equitable access* applies to assessment, unfortunately, it appears that this provision does not relate to equitable access to funded aged care services. While NATSIAACC welcomes the inclusion of a right to equitable access for culturally safe, culturally appropriate, trauma-aware and healing-informed assessment, we **recommend** the provisions relating to *equitable access* are expanded to include a similar right to *access* funded services, irrespective of geographic location. This is of particular concern given the relatively high care needs and low uptake of care services by Aboriginal and Torres Strait Islander people.¹⁴

Right to equitable access to palliative and end-of-life care

We also welcome the reference to an equitable right to palliative care and end-of-life care and are of the view that that this is further expanded to specify that Aboriginal and Torres Strait Islander people should have access to culturally safe palliative and end-of-life care and the opportunity to return to Country or Island Home.

Aboriginal and Torres Strait Islander people can face barriers to accessing palliative care services 'owing to a lack of awareness of service availability, difficulty accessing culturally trained health professionals, and fear influenced by a history of health service inequality.'¹⁵ Palliative care is 'a person-centred, whole-of-person approach and considers the emotional, psychological, spiritual and social aspects of care, which are deeply linked to a person's cultural identity' and '... requires an integrated approach in a multidisciplinary team environment across the health system.'¹⁶

We consistently receive input that Aboriginal and Torres Strait Islander older people wish to die on Country (or Island Home) and that there is a real fear of dying away from community and 'off-Country/Island Home'. This has a corresponding impact on Aboriginal and Torres Strait Islander people accessing aged care services.

This connection is crucial and is part of Aboriginal and Torres Strait Islander traditions and beliefs with respect to the circle of life.^{17 18} Consistent with Royal Commission recommendations 47 and 53, we **recommend** that the right to equitable access to palliative care and end-of-life care explicitly includes the right to return to Country or Island Home for palliative care and/or end-of-life care.

¹⁴ [Aged care for First Nations people - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au)

¹⁵ Janamian, T., Dawda, P., Crawford, G., True, A., Wentzel, M., Whaleboat, D., ... & Edwards, C. (2022). Building capacity in those who deliver palliative care services to Aboriginal and Torres Strait Islander peoples. *Medical Journal of Australia*, 216, S14-S18. Janamian et al examined the Gwandalan National Palliative Care Project which aims to embed culturally responsive care for Aboriginal and Torres Strait Islander peoples in all end-of-life settings and build capacity in those who deliver palliative care and reduce health inequity through value co-creation and user-centred design.

¹⁶ Janamian, T., Dawda, P., Crawford, G., True, A., Wentzel, M., Whaleboat, D., ... & Edwards, C. (2022). Building capacity in those who deliver palliative care services to Aboriginal and Torres Strait Islander peoples. *Medical Journal of Australia*, 216, S14-S18.

¹⁷ Gayaa Dhuii, *Nine principles of Aboriginal and Torres Strait Islander social and emotional wellbeing*, gayyadhui.org.au.

¹⁸ [Country, culture and spirituality - Social and Emotional Wellbeing - Australian Indigenous HealthInfoNet \(ecu.edu.au\)](https://www.ecu.edu.au).

Further, we **recommend** that the costs associated with this must be funded through the aged care system.

Right to stay connected to community, Country and Island Home

Section 20 of the Exposure Draft provides for the maintaining of social connections, as reproduced in part below:

Exposure Draft section 20 Statement of Rights

Advocates, significant persons and social connections

...(12) An individual has a right to opportunities, and assistance, to stay connected (if the individual so chooses) with:

(a) significant persons in the individual's life and pets, including through safe visitation by family members or friends where the individual lives and visits to family members or friends; and

(b) the individual's community, including by participating in public life and leisure, cultural, spiritual and lifestyle activities; and

(c) if the individual is an Aboriginal or Torres Strait Islander person—community and Country.

NASTIAACC commends section 20 and the explicit provision for Aboriginal and Torres Strait Islander peoples to the right to stay connected to community and Country, should they choose, and **recommends** that supportive funded arrangements are in place to facilitate the exercise of this right to return to Country and Island Home.

Supporters and representatives

We have consistently received input from members and stakeholders that there is a range of concerns about the supporters and representative provisions. These concerns include the definitions, meaning and operational aspects, including how the provisions will interact with current State and Territory arrangements. We understand that the Department is currently engaging with States and Territories to reach agreement on this.

We also note the Attorney General's Department 2023 consultation on *Achieving Greater Consistency in Laws for Financial Enduring Powers of Attorney*.

We have also received feedback with respect to circumstances in which one person may hold multiple roles and responsibilities, as well as risks relating to multiple supporters and representatives at the same time. Member input indicated that there is a preference for older people to have the ability to have both a supporter and representative. We also received member feedback that clear guidance on roles and responsibilities will be required.

Members noted that there can be issues with nominee arrangements, so would value the inclusion of avenues for the provider to raise concerns about the nominated roles to protect the older person. As part of this consideration, member feedback included noting the value of advocates as providing a distinct role to ensure that the rights of the older person are paramount at every point, including with respect to interactions with supporters and representatives.

Clarification on these roles will need to be available to those working in aged care, to ensure that they can assist both older people and their potential supporters and representatives, families and

carers to navigate these roles, and also, to ensure they understand who is able to make decisions about the care of the older person.

We **recommend** that the provisions relating to supporters and representatives be clarified to minimise confusion about roles. We also **recommend** that guidance information be developed to support older people, supporters and representatives and providers. Consideration should be given to the roles of the Commission, the Complaints Commissioner and the First Nations Aged Care Commissioner in assisting providers to navigate any concerns about arrangements for supporters and representatives.

We **recommend** the Department put on hold the provisions on supporters and representatives until agreement has been reached between the Commonwealth, States and Territories on the interaction between Commonwealth, State and Territory laws, and clarify on the roles and responsibilities of supporters and representatives can be provided.

Stakeholders have also expressed concerns about the language used in the Exposure Draft that outlines the System Governor approving these appointments and the intention and basis for this approval. We **recommend** further consideration of the requirement for the System Governor to approve the appointment of supporters and representatives, and whether the System Governor could simply be notified of the arrangements for record-keeping purposes.

Eligibility for entry and early access to aged care services

Flexibility and early access to aged care services for Aboriginal and Torres Strait Islander people between under 50 years of age

The new Act introduces clear eligibility requirements for a person to access the aged care system and have their needs for funded aged care services assessed (section 40).

Exposure Draft section 40 Eligibility determination for an aged care needs assessment

The System Governor must not make an eligibility determination for an aged care needs assessment under section 39 for an individual unless the System Governor considers that:

(a) the individual:

- (i) is aged 65 or over; or
- (ii) is an Aboriginal or Torres Strait Islander person and is 24 aged at least 50; or
- (iii) is homeless, or at risk of homelessness, and is aged at least 50; and...

A number of stakeholders NATSIAACC consulted were pleased to see a lower age limit for Aboriginal or Torres Strait Islander persons, reflecting their unique experiences. Some stakeholders also raised concerns about the lack of discretion to enable access to aged care services for Aboriginal or Torres Strait Islander persons aged 45-49 years.

With respect to the age of eligibility for aged care services, NATSIAACC is concerned by the removal of flexibility and early access to aged care services for Aboriginal and Torres Strait Islander people between 45-49 years of age. We understand that support and care (including meals and social supports) is often provided to Aboriginal and Torres Strait Islander people under the age of 50. While we note the intent of the Royal Commission recommendation that younger people should not be in aged care, this reform limits access to *all* forms of funded aged care services. 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 eligibility criteria for Aboriginal and Torres Strait Islander people.

We are informed through our engagement with members that many Aboriginal and Torres Strait Islander aged care providers will continue to provide care to people in the 45-49 years age range. Where these costs are not funded under the aged care system, or any other system, the provider will need to cover these costs. This poses a potential risk to the future sustainability of the provider, as a trusted Aboriginal and Torres Strait Islander provider will provide care when it is needed. This is because the care of Elders and older people is a community responsibility and cannot be ignored.

Where services are provided by an aged care provider, but not funded by the aged care system, this will also contribute to an ongoing lack of data in the sector about the true cost of need. On one level, this could be considered unmet need, in that an aged care service is provided, but it is not funded by the aged care system. There needs to be some acknowledgement that this occurs, and that there is a responsibility of the aged care system to support trusted providers to effectively deliver such supports.

We do not want to see young people living in residential aged care without alternative choices – but we do want to see people who are living with age related conditions have the supports required for their optimal wellbeing. This is about providing opportunity and choice, so that people can remain on Country/Island Home or as close to it and their community, family, traditions and connections as possible, rather than needing to relocate to receive services that do not address their holistic wellbeing needs.¹⁹

Feedback from our members has indicated that wherever possible, providers will attempt to identify the most appropriate service for a person. Long wait times associated with the National Disability Insurance Scheme (NDIS), as well as significant housing supply issues have impacted providers. We have received input that there can be gaps between the real costs of providing residential care and NDIS support, which the provider may cover until a person turns 50 and is then eligible for an aged care assessment. This is concerning because it does not support the financial sustainability of providers or a smooth transition for the person.

We have previously received member feedback that some NDIS services are not considered culturally safe. In such circumstances, the NDIS may not be an appropriate option for Aboriginal and Torres Strait Islander people. Where the NDIS services are provided by a community-controlled organisation, it can provide a culturally safe service, however, the NDIS funding may not cover all the costs associated with providing care. Member feedback included that it can be very difficult for a provider to manage multiple requirements at the same time, and there are not enough other appropriate supports (financial or otherwise) if a person is not eligible for aged care funding.

NATSIAACC **recommends** the inclusion of flexibility and early access to aged care services for Aboriginal and Torres Strait Islander people between 45-49 years of age. We note this is consistent with Royal Commission recommendation 47e, in supporting the objectively established aged care needs and service delivery preferences of Aboriginal and Torres Strait Islander populations and communities.

Eligibility for a needs assessment - 50-64 year old Aboriginal and Torres Strait Islander people

The Exposure Draft provides that Aboriginal and Torres Strait Islander people between 50-64 years of age are eligible for an aged care needs assessment at section 40. However, subsection 40(c) of the new Aged Care Act, provides that, *inter alia*, if a person is less than 65, they must elect, in an

¹⁹ Gayaa Dhuii, *Nine principles of Aboriginal and Torres Strait Islander social and emotional wellbeing*, gayyadhui.org.au.

approved form, to be provided with funded aged care services AND be informed of other services, prior to making the election for aged care services.

We are of the view that the eligibility criteria for Aboriginal and Torres Strait Islander people under 65 years of age should not be any more onerous than those for people aged 65 years or older. Our members were not concerned about explaining options to older people and Elders, as this may often already occur, and noted the value of ensuring that people have as much knowledge as possible to make informed decisions. However, processes should not be administratively burdensome for providers, particularly given the current extensive investment in administration and reporting requirements.

While we also recognise that there may be instances in which there are more appropriate services to support a person, this process should not result in a person not receiving any care or becoming concerned that a trusted provider cannot deliver the care required. Discussions of this nature must be supported to be culturally safe, trauma-aware and healing informed, to ensure the person feels supported and safe, acknowledges self-determination and increases opportunity for choice. It should also be noted that all additional obligations have a commensurate increase in investment and time for providers, and we recommend that this must be incorporated into the true cost of providing aged care services.

NATSIAACC **recommends** amendment of subsection 40(c) to remove the requirement for additional completion of an approved form for Aboriginal and Torres Strait Islander people aged less than 65, consistent with the requirements for those people aged 65 and over. NATSIAACC also **recommends** that any processes related to informing Aboriginal and Torres Strait Islander people of other services prior to electing aged care services must be informed by a co-design process to ensure that that it is culturally safe and does not result in a person not receiving the safest and most appropriate care available.

Continued eligibility

NATSIAACC's previous submission on the *Foundations of the Aged Care Act* requested information regarding the ongoing eligibility for aged care services for those who might not be eligible under the requirements of the new Aged Care Act.

We understand that the new Aged Care is likely to include 'sunset' or 'grandparenting' provisions, as appropriate, to ensure that those who are currently eligible for aged care services will continue to be eligible for aged care services under the new Aged Care Act. Information regarding such provisions does not appear to have been provided in the Consultation Paper, or the Exposure Draft of the new Aged Care Act.

We **recommend** that clear provisions stating that people who are currently eligible for aged care will continue to be eligible for aged care services must be included in the new Act and will not require further assessment. This must include those who have already been assessed, even if they have not received any services yet. This is because member and stakeholder feedback has advised that the aged care assessment process can be onerous, stressful and traumatic for some older people. As a result, such processes should be limited wherever possible. In addition, it would not be appropriate for a person to be assessed as eligible under the current system and then no longer be eligible under the new aged care system.

Assessment

We have generally received positive feedback on the concept of having a single assessment model for Aboriginal and Torres Strait Islander people.

Currently, flexible aged care is provided through grants administered outside of the framework of the current *Aged Care Act 1997* via the National Aboriginal and Torres Strait Islander Flexible Aged Care (NATSIFAC) Program.

Many NATSIFAC Program providers have expressed significant concern about the application of the assessment process to Aboriginal and Torres Strait Islander people receiving aged care services under the NATSIFAC Program. While there is an acknowledged potential benefit for older people to move between different aged care services without requirement for further assessment, providers are concerned that the overall impact on the flexibility of the NATSIFAC program to meet the needs of older Aboriginal and Torres Strait Islander people could be at risk. Of particular concern is the risk the older Aboriginal and Torres Strait Islander people may not feel comfortable engaging in the assessment process. We **recommend** the Department engage with NATSIAACC to develop a co-design process for consultation and engagement with NATSIFAC Program providers on the application of the new Aged Care Act.

We have also received member and stakeholder input that assessors require training for cultural safety and sensitivity when assessing Aboriginal and Torres Strait Islander people. Members and stakeholders have also identified the following issues with respect to the new assessment process:

- Older people already find it extremely difficult to navigate the aged care system. The system is currently overwhelming to go through the assessment process.
- The new assessment model does not need to be complex.
- The new assessment process must be simple, streamlined and easy for people to navigate, and not overly burdensome (in length or question-based format).
- It is imperative that there are Aboriginal and Torres Strait Islander assessors for Aboriginal and Torres Strait Islander people.
- Where an assessor is not Aboriginal or Torres Strait Islander, they must have a sophisticated understanding of Aboriginal and Torres Strait Islander people. Some providers have not met an assessor who is an Aboriginal and/or Torres Strait Islander person.
- Providers should be able to complete an assessment instead of having to wait for a separate assessment by a Government-appointed assessor.
- Concerns have included that some older Aboriginal and Torres Strait Islander people will not feel comfortable undertaking an assessment process and will then not be able to access funded aged care services.

We understand that the Commission is taking steps to develop its cultural capability and is exploring options for improving its capability. We appreciate the Commission's engagement with NATSIAACC to date and encourage the Commission to continue this engagement to assist with its own continuous improvement journey and response to the Royal Commission recommendation, the Capability Review and ongoing feedback from the sector.

Emergency Support

The Aged Care Exposure Draft prescribes that the System Governor determines who can be assessed to receive aged care service and the type of service(s) that is accessible (see section 132). While the timelines for assessment will be prescribed later in the rules (see subsection 39(2)), the Exposure

Draft does not contain provisions for those in emergency situations accessing aged care services, such as, but not limited to, people at-risk of homelessness, living in remote or rural areas, areas with limited access to services, or experiencing health-related crises. The comparatively higher risk of those in emergency situations warrants clear and unambiguous provisions in the new Aged Care Act to enable them to access services seamlessly and urgently. A failure to provide aged care services to those in emergency situations can be viewed as a failure of the entire aged care framework.

NATSIAACC **recommends** that the Department consult with the sector in drafting alternative entry arrangements that are reasonable and necessary to ensure seamless access to funded aged care services. These provisions must include emergency provisions and ensure no delay to older people in accessing services, and no delay to providers in accessing funding.

Workforce and Registered providers

Workforce

To support the Aboriginal and Torres Strait Islander workforce, member input received by NATSIAACC notes that the worker screening requirements may require some amendment and increased flexibility to ensure that valuable, trusted people can continue to engage in the aged care sector. We **recommend** a co-design approach to assist with developing a model for worker screening that reflects community expectations as well as protecting older people.

Provider Registration

NATSIFAC providers have expressed concern about the proposed new registration processes, regulation and other requirements under the new Aged Care Act. This include concerns that the proposed new Aged Care Act will impose an additional layer of administration when there is already significant administration associated with aged care compliance and reporting. There is also additional concern about how the new Aged Care Act provisions will apply in the context for the current grant arrangements in place until 2025 and whether the flexibility associated with the NATSIFAC Program could be compromised. While we have made a number of broad recommendations for the transition to the new Aged Care Act for all providers of care to Aboriginal and Torres Strait Islander people, there are particular issues relevant to NATSIFAC Program providers. We propose to engage separately with the Department on these issues.

We appreciate that the Department has acknowledged the concerns of NATSIFAC Program providers and is open to further engagement on this.

With respect to the NATSIFAC Program, we have received input from members and stakeholders with respect to the following:

- NATSIFAC flexibility must be retained. Flexibility to respond to fast changing care needs of Aboriginal and Torres Strait Islander Elders and older people must be built-in to the framework, programs and funding.
- The aged care workforce delivering NATSIFAC program services will require training and education to support transition to the new Aged Care Act requirements and the regulatory regime. This will require sufficient time and appropriate funding.
- Should it be decided that the registration and regulatory requirements under the new Aged Care Act will apply to the NATSIFAC providers, providers will require sufficient time and financial

support to prepare for transition to the new Aged Care Act, including transitioning current business models to ensure sustainability.

We **recommend** that the Department engage with NATISAACC to implement a process for engaging with NATSIFAC Program providers to consult and co-design the application of the new Aged Care Act to NATSIFACP providers.

Fees, payments and subsidies

We note that at the time of the release of the Exposure Draft of the new Aged Care Act, the report of the Aged Care Taskforce had not been released. We understand that it is on this basis that Chapter 4 – Fees, payments and subsidies has not yet been drafted.

Given the release of the Aged Care Taskforce’s report on 12 March 2024, we look forward to reviewing the report, as well as the Government’s response, and will consider opportunities for further input. Our members noted that it is not possible to comment on this part of the Act until it has been drafted.

We **recommend** that as the policy on this Chapter 4 of the new Aged Care Act is developed, that there must be extensive, sector-wide consultation on the proposed policy and draft legislation and any subordinate legislation.

In light of the Productivity Commission’s recent report into the Closing the Gap National Agreement, we encourage the Department to engage in co-design with the sector wherever possible, particularly as it relates to Aboriginal and Torres Strait Islander people and their providers of care.

Financial contributions

We have received input from providers that there are varied approaches to co-payments/co-contributions and otherwise charging older Aboriginal and Torres Strait Islander people. There needs to be a fulsome understanding of the approach taken by providers, who also have a role as members of their communities. They cannot undermine the trust their communities put in them.

We understand that many providers do not seek contributions from older people, we also understand that if contributions are sought, the contributions are not necessarily received.

To provide some context for this, a stakeholder recently explained that financial contributions can be considered in the context of inviting an older person into your home. *When they arrive, we host them, we do not ask a visitor to pay!* Further, the concept of co-contributions does not reflect cultural views of family and community. *It is not appropriate to ask an Elder or older person for money - you would not ask your own mother.*

Following the release of the Aged Care Taskforce’s Report, we look forward to engaging on the development of these provisions. We **recommend** a co-design process, with extensive engagement with the Aboriginal and Torres Strait Islander aged care sector to inform these provisions.

Means Testing

We note the Exposure Draft does not contain information in this section, with the detail yet to be drafted.

Consistent with the recommendation of the National Health Leadership Forum submission to this Consultation process, we **recommend** that any monies received by individuals resulting from any Commonwealth or State Stolen Generations Redress Scheme should be exempt from consideration under income and assets means testing.

Governance of the aged care system

Statutory inclusion of the First Nations Aged Care Commissioner

Recommendation 49 of the Royal Commission²⁰ recommended the establishment of an Aboriginal and Torres Strait Islander Aged Care Commissioner (now named the First Nations Aged Care Commissioner). The Royal Commission further recommended that the Commissioner have a statutory role that *'involves the ongoing fostering, promotion and development of culturally safe, tailored and flexible aged care services for Aboriginal and Torres Strait Islander people across the country.'* The Royal Commission proposed that the First Nations Aged Care Commissioner should be a statutory office within the Department of Health and Aged Care (referenced as the 'System Governor' in the Report).

Throughout NATSIAACC's consultations, there has been strong support for the new Aged Care Act to expressly provide for a First Nations Aged Care Commissioner as has been proposed in the Royal Commission report *'responsible for managing the performance of the Commission's functions and relating to ensuring that appropriate aged care services are widely available for Aboriginal and Torres Strait Islander people'* (Royal Commission Recommendation 5(4)). We welcome the recent appointment of the interim First Nations Aged Care Commissioner. We also note that it is of concern to NATSIAACC that neither the Exposure Draft of the new Aged Care Act nor the Consultation Paper anticipate or reference this significant role.

We note that there are many interdependencies that will affect the implementation of the new Aged Care Act. The Act should clearly describe the interaction of roles and functions between the First Nations Aged Care Commissioner, Inspector-General of Aged Care, System Governor, Aged Care Quality Safety Commissioner and Complaints Commissioner to ensure seamless oversight and representation for Aboriginal and Torres Strait Islander people and communities. It will be important for the First Nations Aged Care Commissioner to be independent and free of influence of other parties administering the aged care system.

With a view to safeguarding the rights of Aboriginal and Torres Strait Islander Elders and older people, NATSIAACC **recommends** the inclusion of the role of the First Nations Aged Care Commissioner in the new Aged Care Act as an independent, statutory office.

We understand the interim First Nations Aged Care Commissioner is currently undertaking consultations on the role of the Commissioner's office. Despite this, we **recommend** that there should be reference to the existence of the First Nations Aged Care Commissioner in the new Aged Act,

²⁰ [Aged Care Royal Commission Final Report: Recommendations](#),

which can then be expanded on once the interim First Nations Aged Care Commissioner's consultations have been completed.

NATSIAACC also **recommends** that information be provided on the proposed interaction between the First Nations Aged Care Commissioner, the Inspector-General of Aged Care, the Aged Care Quality and Safety Commission, and the Complaints Commissioner, to ensure coordination of efforts and to ensure seamless oversight and representation for Aboriginal and Torres Strait Islander people and their aged care providers.

Aged Care Quality and Safety Commission

As referenced in NATSIAACC's previous submission to the Department on the *A new Aged Care Act: the foundations*, the *Capability Review of the Aged Care Quality and Safety Commission* made recommendations with respect to diversity and cultural capability of the Commission.²¹

We again **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:

- 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 assessments, inspections or accreditation visits have minimal understanding of the sector and Aboriginal and Torres Strait Islander people.
- 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.
- 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 direct way to provide feedback to the Commission, the Complaints Commissioner or the First Nations Aged Care Commissioner.

We **recommend** that the organisational structure requiring an Aboriginal and Torres Strait Islander Division be included in the new Aged Care Act. 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.

Risk-proportionate approach

We have received input from members and stakeholders that they are concerned about how the Commission will take a 'risk-proportionate approach', and what this actually means for reliable, repeatable and consistent regulation. While there is a reference in the Exposure Draft of the new

²¹ <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.

Aged Care Act at paragraph 13(b) to an aged care system that is ‘responsive and proportionate to risk’, this approach is not outlined further for providers.

While we are aware the *Strengthened Aged Care Quality Standards guidance* is now available for consultation, NATSIAACC **recommends** that details about the risk-proportionate approach must be detailed clearly in writing both in the guidance material for the Standards and in the guidance material on the new Aged Care Act. This information needs to cater for the needs of providers, the aged care workforce and older people to fully understand the approach and to ensure consistency and reliability of the approach by the Commission.

Aged Care Quality and Safety Advisory Council

We welcome the proposed establishment of the Aged Care Quality and Safety Advisory Council (the Council) to monitor the performance of the ACQSC’s functions.²²

While the new Act outlines the proposed experience and/or knowledge required of a member of the Council, there is no reference to the need for the Council itself to represent the diversity of the Australian community.²³

Further, in the context of the *Report of the Independent Capability Review of the Aged Care Quality and Safety Commission*, concerns were raised about the cultural capability of the Commission and the need to acquire a better understanding of the diverse needs and circumstances of older people, especially First Nations people.²⁴ If there is a genuine intention to increase the knowledge and capability of the Commission with respect to Aboriginal and Torres Strait Islander people, we are of the view the Advisory Council must be equipped with the requisite skills and life experience to effectively fulfil its remit.

NATSIAACC **recommends** diverse representation on the Aged Care Quality and Safety Advisory Council, with a specific, mandatory requirement for Aboriginal and/or Torres Strait Islander membership on the Aged Care Quality and Safety Advisory Council.

Complaints Commissioner

Based on member and stakeholder feedback, we **recommend** that the Complaints Commissioner should be an independent, statutory role, explicitly referenced in the new Aged Care Act. The Complaints Commissioner should be separate from the Aged Care Quality and Safety Commission and not report directly to the Aged Care Quality and Safety Commissioner, due to the risks of potential conflicts of interest. Separation of the Complaints Commissioner from the office of the Aged Care Quality and Safety Commissioner would also engender confidence across the sector, both from provider and consumer perspectives. We note that there remains a benefit in a close working relationship and strong information sharing arrangements with the Aged Care Quality and Safety Commission and the Complaints Commissioner, however, in our view, this can be managed with clear and supportive legislative provisions.

Aside from receiving complaints, the Complaints Commissioner can also offer an educational role on complaint handling and exploration of options available to people making complaints. The

²² Exposure Draft *Aged Care Bill 2023*, sections 168, 169.

²³ Exposure Draft *Aged Care Bill 2023*, section 172.

²⁴ *Report of the Independent Capability Review of the Aged Care Quality and Safety Commission*, 2023, p3.

Complaints Commissioner can also offer alternative dispute resolution processes, such as mediation/restorative engagement processes which could assist with resolving complaints as well as supporting a culturally safe approach to complaint management for Aboriginal and Torres Strait Islander people.

NATSIAACC currently engages with the Commission, including the current Complaints Commissioner. We **recommend** NATSIAACC be funded to support the proposed Complaints Commissioner role to facilitate and co-design a culturally safe and appropriate engagement and dispute resolution process for Aboriginal and Torres Strait Islander people and providers.

Critical failures powers, banning orders, suspension

Member and stakeholder feedback has referenced concerns about the needs of older people when critical failures occur and banning orders are made. We note the section on Critical Failures (Chapter 6, Part 11, Section 285) is still to be drafted. We also note that the comments that follow can be applied to a broad range of Commission powers.

Feedback raised with NATSIAACC is that there is concern around a situation arising where there is suspension/banning/critical failure of a provider, and its aged care clients are moved to a different provider to deliver aged care services. This could enable the entry of larger aged care providers and inadvertently push out smaller and medium sized providers, especially small Aboriginal and Torres Strait Islander community-controlled aged care providers.

An additional concern is that the older person's social-emotional and wellbeing needs will not be met. The importance of cultural safety cannot be underestimated and will contribute to the optimal health of an older Aboriginal and Torres Strait Islander person. Removing an Aboriginal and Torres Strait Islander person from Country/Island Home, and their connection to their community and family can pose significant risk to their wellbeing. This may mean that despite the intention to protect an older person from a provider failing to meet its statutory obligations, there is a risk that the older person fails to thrive in another environment. The significance of cultural safety and its impact on access to care services was also noted by the Royal Commission, as noted in the *Context* of this submission.

NASTIAACC **recommends** that there be specific consideration in the drafting of the critical failures powers, banning orders and suspension provisions for the needs of older Aboriginal and Torres Strait Islander people in this context, and their connections to their Country/Island home, family, community, kin and totems as well as positive connections with staff and other health professionals in their current aged care provider. Consideration of these factors will assist with achieving optimal health and wellbeing for older Aboriginal and Torres Strait Islander people. In light of the intention for the new Aged Care Act to be person-centred, all decisions made under the Act to protect older people will need to be focussed on the best outcomes for the person.

Information management

NATSIAACC **recommends** that the new Aged Care Act information management and data processes should be consistent with principles of Indigenous Data Sovereignty and Indigenous Data Governance: <https://www.maiamnayriwingara.org/mnw-principles>.

We **recommend** that the Department engage with NATSIAACC to facilitate a co-design a process to ensure that the data collected under the new Aged Care respects Indigenous Data sovereignty. This data must be shared with relevant communities, while respecting data privacy, to support increasing capability and to make informed decisions for the aged care sector.

Whistleblower protections

We have been interested to note the removal of the good faith requirement for potential whistleblower disclosures in the new Aged Care Act.²⁵ We are very interested to further understand the reasons for this and why 'reasonable grounds' might be considered a more appropriate requirement for the whistleblower protections. We **recommend** that the Department provide a more detailed explanation for the reasons and the legal implications for not requiring 'good faith' as an element of the whistleblower provisions.

In the context of Aboriginal and Torres Strait Islander communities, there remain concerns about how the whistleblower protections will apply, particularly given the strong connections among community members. We **recommend** the Department consider the value of co-design and place-based approached in this context, to ensure that the whistleblower protections will be practical and fit for purpose.

Review of decisions

NATSIAACC **recommends** that an independent arrangement and process is in place to review decisions made by the officials prescribed in Chapter 5 Governance of the Aged Care System. The review system is recommended to be streamlined, accessible and flexible.

Consideration should be given to the respective roles of the Inspector-General of Aged Care, the First Nations Aged Care Commissioner and the Complaints Commissioner in reviewing decisions made by the System Governor.

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 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, on Aboriginal and Torres Strait Islander people, and ensure there are no unintended negative consequences, as well as ensuring the ongoing viability of Aboriginal and Torres Strait Islander providers of aged care and high quality, culturally safe care to older people.

Consideration should be given to the roles of the Inspector-General of Aged Care, and the First Nations Aged Care Commissioner as part of the review.

²⁵ Department of Health & Aged Care, 2023, *A New Aged Care Act: Exposure Draft, Consultation paper No 2*, p 87.

The reform timeline and readiness support

Implementation of the Act

In terms of the reform timeline of the new Aged Care Act, there must be sufficient time for the aged care sector to prepare for transition, implementation and integration of the new Aged Care Act to effectively support older people. This means that the details of the new Aged Care Act must be finalised, with the relevant subordinate legislation, rules and guidance material for the providers to implement. There will need to be sufficient time between the passage of the legislation and its commencement for the aged care sector to receive training, supports, guidance materials, and to implement new/updated policies and procedures. It is very difficult for any provider, aged care employee or older person to prepare for a system when there are numerous and significant unknowns. In the absence of sufficient transition time and support, there is a risk to older people, providers of their care, and the aged care workforce, which is already stretched.

One of the concerns with the timeframes is that there are numerous parts of the new Act, including Rules and other subordinate legislation that have not been drafted and will require extensive consultation. We **recommend** that Aboriginal and Torres Strait Islander people and aged care sector be provided the opportunity to co-design and to be consulted on all further components of the aged care system.

We **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 aged care providers.

Reporting

Providers have consistently raised concerns with us about the aged care reporting systems and obligations. Many providers already spend significant amounts of time delivering and complying with government reporting requirements, which is often considered to be somewhat duplicative (but not identical) across different aged care programs. We **recommend** consideration of opportunities that will reduce provider reporting requirements, particularly as part of the new Aged Care Act. Streamlining administrative and reporting burdens will ensure already stretched providers are not unnecessarily burdened and can prioritise their time on delivering the highest quality of care for older people.

We are also concerned that the phasing of the new Aged Care Act and transition provisions should not increase reporting requirements before a provider's services has fully transitioned to the new Act. For example, the application of the new Aged Act requirements while NATSIFAC providers are funded until July 2025, appears to impose two sets of reporting and governance requirements. It could be quite detrimental to providers if they are subject to more than one reporting regime for compliance, regulation and other administrative requirements due to phased program implementation dates. We **recommend** the Department specifically engage with NATSIAACC to share information with providers, and to engage in consultation regarding the refinement of these reporting processes.

Guidance materials

Throughout NATSIAACC's member consultations and engagement with stakeholders, we have received input on the need for investment in training and support for providers, workers, older people, and others interacting with the aged care system, such as family members and carers.

Member feedback received by NATSIAACC includes acknowledgement of the complexity of cultural safety needs. For instance, cultural connection is more than community, Country and Island Home – it is holistic, end-to-end and must be part of scaffolded training programs within the aged care system. We know that the training elements need to be thoroughly considered to be effective. This includes consideration of place-based considerations and approaches.

Feedback from members has included requesting that materials for older people, their families and carers must clearly refer to roles and support such as Elder Care Support and Navigator/Carefinder roles. This will support older Aboriginal and Torres Strait Islander people to engage with the aged care system.

It will be crucial that responsibilities of the aged care workforce are fully understood. The aged care sector is supported by a dedicated and diverse workforce. It is also a workforce that needs to grow. Ensuring that the workforce is protected and supported is crucial to contribute to its ongoing viability. It is critical to ensure that the workforce has a comprehensive understanding of the system and their own personal and professional responsibilities. We **recommend** that the Department provide guidance information for the aged care workforce on the system and the roles and responsibilities of the workforce in accessible formats, including translated versions.

Visiting communities

We have also received input from members and stakeholders that they would welcome a visit from the Department to see what it is like working on the ground and meeting the needs of Aboriginal and Torres Strait Islander Elders and older people. A clear understanding of how providers operate will assist with informing the direction of the new Aged Care Act and how it can best support Aboriginal and Torres Strait Islander older people to receive the care they so desperately need.

Visiting locations where people do not have phones or access to reliable internet services, or experience long-term communications issues, creates a very different environment to those operating in well serviced areas with established infrastructure. We **recommend** the Department visit a broad range of locations providing aged care services 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 support everyone.

Funding to Support transition

We appreciate that there will be a *Consequential Amendments and Transitional Arrangements Bill*²⁶ to ensure that there are arrangements in place to support existing providers to transition to the new system. Our understanding is that providers of aged care services will have varying degrees of technical and system support, awareness of and preparedness for the aged care reforms and administrative, legal and financial capacity to prepare for the successful implementation of the new Aged Care Act. Financial support must be provided to support providers to be appropriately prepared and transition to the new Aged Care Act.

²⁶ Department of Health & Aged Care, 2023, *A New Aged Care Act: Exposure Draft, Consultation paper No 2*, p 6.

Ensuring appropriate financial supports for transition to the new Aged Care Act will require a full understanding of the diverse needs of the providers, and in particular, providers of Aboriginal and Torres Strait Islander aged care. To ensure the *Consequential Amendments and Transitional Arrangements Bill*²⁷ is fit for purpose, we **recommend** that the Department adopt a co-design and consultative approach to ensure that the transitional supports meet the varied needs of providers.

Future Consultation by the Department

NATSIAACC looks forward to engaging in further consultation on those parts of the Act that have not yet been drafted, as well as any amendments and subordinate legislation.

We note reference in the Consultation Paper to future ‘targeted consultation’²⁸. We recommend that the Department ensures there is broad and genuine representation when undertaking ‘targeted consultation’ and any further consultation on the aged care reforms, the new Aged Care Act and any subordinate legislation, including but not limited to, consulting with NATSIAACC. Further, for all targeted consultation, there will need to be consideration of the needs of Aboriginal and Torres Strait Islander people and the providers of their care. NATSIAACC **recommends** that the Department consider opportunities for co-design on all future aged care forms, including future components of the new Aged Care Act. Not only is this consistent with the Priority Reforms in the National Agreement, but it will also support the best possible outcome for Aboriginal and Torres Strait Islander people.

This would include consultations about the details of the Aged Care Rules and other subordinate legislation and any future legislative amendments, policy and program development how aged care programs will operate to address increasing the access and participation of Aboriginal and Torres Strait Islander people in the aged care system.

For future consultations, including on the new Aged Care Act, we **recommend** the Department consider releasing discrete and complete Chapters or Parts, in a range of accessible formats. We also **recommend** that advertising and promotion of face to face and online consultations may require a multi-faceted approach, including consideration of mailouts and posters, as well as opportunities for input to be provided in multiple formats, such as voice recordings, mail and text messages, as appropriate.

We also note previous feedback provided to the Department regarding the time and approach required for effective consultation with the sector. We look forward to assisting the Department with future consultation processes.

²⁷ Department of Health & Aged Care, 2023, *A New Aged Care Act: Exposure Draft, Consultation paper No 2*, p 6.

²⁸ Department of Health & Aged Care, 2023, *A New Aged Care Act: Exposure Draft, Consultation paper No 2*, pp 42, 79.