National Aboriginal and Torres Strait Islander Ageing and Aged Care Council

Submission

Feedback on Aged Care Rules: Stage 2c Release – Chapter 4 and 6 Rules, Relating to Funding and Regulation

March 2025

NATSIAACC

Contents

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National Aboriginal and Torres Strait Islander Ageing and Aged Care Council

About

The 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 Elders and 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/or 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.

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Funding

NATSIAACC is funded by the Commonwealth Department of Health and Aged Care (the Department). NATSIAACC has been in operation since 2022. 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 Elders and Older People.

NATSIAACC Recommendations

Chapter 1: Introduction

- Revise the definition of "key personnel" to explicitly include individuals responsible for ensuring cultural safety and competence within service delivery. This would acknowledge the role of culturally appropriate leadership in aged care settings.
- Review the regulatory burden on Aboriginal and Torres Strait Islander organisations that work across multiple service areas, offering flexibility or support mechanisms to help manage governance and compliance obligations in a way that reflects their unique operating contexts.
- Amend the definitions section to include the requirement for culturally competent and safe care, specifically addressing the needs of Aboriginal and Torres Strait Islander peoples. This should include cultural training and a recognition of the unique aspects of care needed by these communities.

Chapter 7: Funding of aged care services - Commonwealth contributions

- Enhance the section on conflict of interest by explicitly requiring grantees to disclose and manage any conflicts that may arise specifically in relation to cultural safety. For example, any potential or actual conflicts involving the cultural values or traditions of Aboriginal and Torres Strait Islander peoples should be reported, ensuring that culturally appropriate care is not compromised due to financial, personal, or institutional interests.
- Provide more specific guidance on managing conflicts of interest that are unique to community-based aged care providers, especially in rural or remote Aboriginal and Torres Strait Islanders communities, where personal relationships often intersect with professional roles.
- Revise the Grantee Code of Conduct to explicitly include the requirement for grantees to provide culturally safe and competent care for Aboriginal and Torres Strait Islander

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individuals. This should include provisions for grantees to engage with Aboriginal and Torres Strait Islander cultural protocols and involve local Aboriginal and Torres Strait Islander communities in the design and delivery of care services.

- Incorporate NATSIAACC's Cultural Safety Definition into the Grantee Code of Conduct to establish a clear, nationally recognised standard for cultural safety in aged care.
- Implement a mandatory cultural competence training requirement for all key personnel and employees of grantees. This training should be focused on understanding the cultural practices, values, and needs of Aboriginal and Torres Strait Islander peoples to ensure that aged care services are delivered in a manner that respects their cultural identity.

Chapter 12: Regulatory Mechanisms

Part 2: Banning Orders

- Amend Section 507-5 to remove the requirement to publish the suburb, locality, or postcode of individuals. Include provisions for anonymised or regionally aggregated data to fulfill identification needs without risking harm.
- Introduce mandatory guidelines requiring the Commissioner to consider cultural safety and potential harm to vulnerable populations when exercising discretion under Section 507-30. Engage Aboriginal and Torres Strait Islander stakeholders in drafting these guidelines to ensure they reflect lived experiences and cultural values.
- Embed culturally safe support measures within access and correction processes under Sections 507-10 and 507-20, including access to legal aid and advocacy services. Streamline processes to reduce administrative burdens for disadvantaged individuals.
- Introduce reporting requirements for the Commissioner to publicly disclose how cultural considerations and public interest tests were applied in decision-making, ensuring transparency.

Part 3: Recoverable Amounts

- Incorporate guidelines that allow adjustments to the formula based on cultural considerations and the debtor's socio-economic circumstances. Provide culturally safe financial counselling and advocacy services to support Aboriginal and Torres Strait Islander peoples in understanding and navigating the waiver process.
- Require the System Governor to explicitly consider the systemic disadvantages faced by Aboriginal and Torres Strait Islander peoples when determining the "annual repayment" and "repayment period." Establish mechanisms for Aboriginal and Torres Strait Islander representatives to participate in the development and application of policies related to debt recoveries and waivers.

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- Redesign the language and presentation of the formula to make it more accessible, and create simplified, culturally tailored communication materials to explain its application to Aboriginal and Torres Strait Islander communities. Offer education programs in partnership with Aboriginal and Torres Strait Islander-controlled organisations to improve financial literacy and empower communities.
- Implement ongoing reviews to assess the socio-cultural impacts of this policy on Aboriginal and Torres Strait Islander debtors and adjust the framework to promote equitable outcomes. Collect disaggregated data to identify disparities and ensure that adjustments to the formula effectively address systemic inequities.

Executive Summary

The National Aboriginal and Torres Strait Islander Ageing and Aged Care Council **('NATSIAACC')** welcomes the opportunity to contribute to the Aged Care Rules – Stage 2c Release – Chapter 4 and 6 Rules, relating to funding and regulation, set to come into effect in July 2025. As the national peak body for Aboriginal and Torres Strait Islander ageing and aged care, NATSIAACC advocates for reforms that embed cultural safety, respect self-determination, and support community-led service delivery.

The Aged Care Rules 2025 form a crucial component of the regulatory framework underpinning the Aged Care Act 2024. These rules provide operational guidance for stakeholders involved in aged care service delivery, covering provider responsibilities, grant management, and regulatory mechanisms such as banning orders and recoverable amounts. While the consultation draft aims to enhance accountability and efficiency, several areas require refinement to ensure that the framework upholds principles of equity, accessibility, and cultural safety, particularly for Aboriginal and Torres Strait Islander peoples.

This submission critically analyses key aspects of the Aged Care Rules 2025, focusing on cultural competence, the Grantee Code of Conduct, regulatory mechanisms, and the accessibility of information. It highlights critical concerns raised by NATSIAACC members regarding the lack of cultural safety provisions, burdensome compliance requirements, inadequate funding models, and the exclusion of Aboriginal and Torres Strait Islander Community-Controlled Organisations (ACCOs) from decision-making processes. To ensure the framework does not reinforce systemic inequities, targeted reforms are essential, including increased resources and support for ACCOs to meet governance expectations. This may involve capacity-building initiatives, dedicated funding for governance support, and mechanisms to ensure culturally safe regulatory processes.

Feedback from NATSIAACC consultations indicates widespread dissatisfaction with the consultation process, which was perceived as tokenistic, with limited opportunities for meaningful engagement. Members raised concerns about unrealistic service caps, flawed funding allocations, and compliance frameworks that disproportionately disadvantage

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Aboriginal and Torres Strait Islander providers. Additionally, the banning orders framework lacks culturally appropriate rehabilitation pathways, exacerbating workforce shortages in Aboriginal and Torres Strait Islander aged care services.

To address these issues, NATSIAACC urges the government to implement targeted structural reforms that prioritise cultural safety, self-determination, and equitable access to aged care services.

Notably, enhancing support for the Aboriginal and Torres Strait Islander Community-Controlled sector is not only critical to improving aged care outcomes, but is also a priority reform under the National Agreement on Closing the Gap. Without meaningful investment in this sector, systemic barriers to culturally safe aged care services will persist, further marginalising Aboriginal and Torres Strait Islander Elders and Older people.

The following sections outline key challenges within the Aged Care Rules 2025 and provide recommendations to ensure an inclusive, culturally responsive aged care system for Aboriginal and Torres Strait Islander peoples.

Chapter 1: Introduction

Part 2: Definitions

The Aged Care Rules 2025, as currently drafted, fail to sufficiently address the unique cultural needs of Aboriginal and Torres Strait Islander peoples in aged care services. While the definitions of "key personnel" and "grantee" provide structural clarity, they overlook the necessity of cultural competence, cultural safety, and the incorporation of Aboriginal and Torres Strait Islander perspectives within aged care frameworks. These elements are fundamental to ensuring equitable and respectful care for Aboriginal and Torres Strait Islander Elders and Older people.

Aboriginal and Torres Strait Islander peoples have distinct cultural practices, values, and holistic care needs that must be recognised and embedded in aged care policies. The absence of explicit requirements for culturally safe care risks perpetuating systemic barriers to service access and quality outcomes. It is essential that the Rules mandate cultural competence in care delivery, including explicit requirements for aged care providers to uphold cultural safety within their services.

Additionally, the increasing personal accountability placed on "key personnel" within aged care governance structures disproportionately affects Aboriginal and Torres Strait Islander organisations. Many of these organisations operate across multiple sectors, including health, housing, aged care, and justice, often with limited resources. The burden of governance and

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compliance expectations must be balanced with appropriate support, recognising the unique operational realities of Aboriginal and Torres Strait Islander Community-Controlled Organisations. Feedback from NATSIAACC members highlights the urgent need for additional resources, funding, and structural flexibility to support the governance capacity of ACCOs without imposing unnecessary regulatory barriers that undermine service sustainability.

NATSIAACC recommends:

- Revise the definition of "key personnel" to explicitly include individuals responsible for ensuring cultural safety and competence within service delivery. This would acknowledge the role of culturally appropriate leadership in aged care settings.
- Review the regulatory burden on Aboriginal and Torres Strait Islander organisations that work across multiple service areas, offering flexibility or support mechanisms to help manage governance and compliance obligations in a way that reflects their unique operating contexts.
- Amend the definitions section to include the requirement for culturally competent and safe care, specifically addressing the needs of Aboriginal and Torres Strait Islander peoples. This should include cultural training and a recognition of the unique aspects of care needed by these communities.

Chapter 7: Funding of aged care services- Commonwealth contributions

The Grantee Code of Conduct outlined in Section 268-10 provides a crucial framework for ensuring safety, transparency, and accountability in aged care services. However, there are significant gaps that fail to reflect the distinct needs of Aboriginal and Torres Strait Islander providers and communities.

While the Code mandates that grantees treat individuals with dignity and respect, it does not explicitly reference cultural safety, nor does it outline the responsibilities of providers in ensuring aged care services meet the social, emotional, and cultural well-being needs of Aboriginal and Torres Strait Islander Elders and Older people. The absence of these principles risks further marginalisation of Aboriginal and Torres Strait Islander communities, limiting access to aged care services that align with cultural traditions and values.

Additionally, NATSIAACC members raised concerns that current funding models fail to account for the higher costs associated with providing culturally competent care. While the

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government assumes economies of scale benefit larger providers, Aboriginal and Torres Strait Islander organisations experience the opposite—fragmented funding streams increase administrative burdens rather than improving efficiency. Furthermore, the Grantee Code of Conduct places excessive regulatory and accountability burdens on ACCOs without addressing the root issues of underfunding and workforce shortages.

A disproportionate impact is also evident, where Aboriginal and Torres Strait Islander Community-Controlled Organisations —despite their strong track record in accountability, cultural responsiveness, and community engagement—are subjected to blanket regulatory measures designed for mainstream providers. These compliance burdens divert resources away from direct service delivery, limit organisational sustainability, and create barriers to culturally safe care.

NATSIAACC recommends:

- Enhance the section on conflict of interest by explicitly requiring grantees to disclose and manage any conflicts that may arise specifically in relation to cultural safety. For example, any potential or actual conflicts involving the cultural values or traditions of Aboriginal and Torres Strait Islander peoples should be reported, ensuring that culturally appropriate care is not compromised due to financial, personal, or institutional interests.
- Provide more specific guidance on managing conflicts of interest that are unique to community-based aged care providers, especially in rural or remote Aboriginal and Torres Strait Islander communities, where personal relationships often intersect with professional roles.
- Revise the Grantee Code of Conduct to explicitly include the requirement for grantees to provide culturally safe and competent care for Aboriginal and Torres Strait Islander individuals. This should include provisions for grantees to engage with Aboriginal and Torres Strait Islander cultural protocols and involve local Aboriginal and Torres Strait Islander communities in the design and delivery of care services.
- Incorporate NATSIAACC's Cultural Safety Definition into the Grantee Code of Conduct to establish a clear, nationally recognised standard for cultural safety in aged care.
- Implement a mandatory cultural competence training requirement for all key personnel and employees of grantees. This training should be focused on understanding the cultural practices, values, and needs of Aboriginal and Torres Strait Islander peoples to ensure that aged care services are delivered in a manner that respects their cultural identity.

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Chapter 12: Regulatory Mechanisms

Part 2: Banning Orders

The draft Rules (Sections 507-5 to 507-30) introduce provisions for banning orders to strengthen accountability in the aged care sector. While these measures are intended to safeguard aged care recipients, significant concerns have been raised regarding their unintended consequences, particularly for Aboriginal and Torres Strait Islander aged care workers. NATSIAACC members have identified several risks associated with the framework, including issues of transparency, privacy, workforce rehabilitation, and systemic inequities.

Privacy and Stigma Risks

The public register of banning orders presents a risk of social stigma, marginalisation, and long-term reputational harm, especially in small and remote Aboriginal and Torres Strait Islander communities where individuals are easily identifiable. The requirement under Section 507-5 to list a person's state, suburb, and postcode exacerbates these risks, leading to potential social exclusion and loss of employment opportunities.

While the Aged Care Quality and Safety Commissioner has discretionary power to withhold publication if deemed "not in the public interest" (Section 507-30), there is no culturally specific guidance on how this discretion should be applied. Without explicit criteria that consider cultural sensitivities and community dynamics, the framework risks failing to protect Aboriginal and Torres Strait Islander workers from disproportionate harm.

Barriers to Workforce Rehabilitation

The banning orders framework prioritises punitive measures over workforce rehabilitation, disproportionately affecting Aboriginal and Torres Strait Islander aged care workers who already experience systemic barriers to employment. The absence of culturally safe pathways for rehabilitation, such as mentoring, training, and restorative justice mechanisms, limits opportunities for affected individuals to reintegrate into the workforce.

Additionally, Sections 507-10 to 507-30 outline mechanisms for individuals to access and correct information in the register. However, these processes may not be fully accessible to Aboriginal and Torres Strait Islander individuals due to systemic barriers, including limited access to legal resources, digital platforms, and culturally safe advocacy services.

NATSIAACC members have expressed dissatisfaction with the consultation process, highlighting that concerns about the banning orders framework were largely dismissed. Key points from the feedback session include:

- The consultation process felt predetermined, with limited opportunity for genuine engagement.

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- The framework does not acknowledge the historical over-policing of Aboriginal and Torres Strait Islander peoples and its impact on workforce participation.
- The financial burden of police checks and multiple screening processes disproportionately affects Aboriginal and Torres Strait Islander-controlled aged care providers, further limiting employment opportunities.
- The lack of a formal role for Aboriginal and Torres Strait Islander Community-Controlled Organisations in reviewing banning orders means that culturally safe, community-led assessments are not considered.

NATSIAACC recommends:

- Amend Section 507-5 to remove the requirement to publish the suburb, locality, or postcode of individuals. Include provisions for anonymised or regionally aggregated data to fulfill identification needs without risking harm.
- Introduce mandatory guidelines requiring the Commissioner to consider cultural safety and potential harm to vulnerable populations when exercising discretion under Section 507-30. Engage Aboriginal and Torres Strait Islander stakeholders in drafting these guidelines to ensure they reflect lived experiences and cultural values.
- Embed culturally safe support measures within access and correction processes under Sections 507-10 and 507-20, including access to legal aid and advocacy services. Streamline processes to reduce administrative burdens for disadvantaged individuals.
- Introduce reporting requirements for the Commissioner to publicly disclose how cultural considerations and public interest tests were applied in decision-making, ensuring transparency.

Part 3: Recoverable Amount

The debt recovery provisions within the aged care regulatory framework disproportionately impact Aboriginal and Torres Strait Islander peoples, particularly those in remote or disadvantaged communities who are overrepresented among individuals facing economic hardship. The formula used to determine "recoverable amounts" does not adequately account for structural inequities such as financial instability, systemic barriers to financial recovery, and limited access to financial services. A more flexible, culturally responsive approach is needed to prevent further economic harm and ensure equitable treatment within the aged care sector.

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NATSIAACC members have highlighted several key concerns with the approach taken in these provisions. NATSIAACC urges policymakers to adopt these recommendations to promote financial fairness and sustainability for Aboriginal and Torres Strait Islander communities.

Systemic Inequities in Debt Recovery

The reliance on rigid repayment periods and interest rates may overlook critical socio-economic realities, such as:

- Income instability in Aboriginal and Torres Strait Islander communities, which is often impacted by communal obligations and financial responsibilities beyond individual means.
- The assumption of financial stability among aged care providers, despite many Aboriginal and Torres Strait Islander Community-Controlled Organisations (ACCOs) already operating at a loss due to systemic underfunding.
- The exclusion of cultural factors, such as traditional economic practices that do not align with Western financial models, particularly regarding the concept of "interest."

The debt recovery model assumes that providers can absorb repayment obligations without considering that many ACCOs are stretched to their financial limits. The failure to incorporate culturally relevant financial structures or relief mechanisms risks deepening the financial strain on both providers and community members and goes against Priority Reform Two of the National Agreement on Closing the Gap.

Barriers to Understanding and Compliance

The complexity of the formula and terminology (e.g., "present value of unpaid amount") creates significant barriers to understanding and compliance, particularly for individuals with limited financial or legal literacy. Members highlighted the following concerns:

- The absence of culturally safe financial counselling, interpreters, or community advocates to support affected individuals in navigating repayments or waivers.
- The onus placed on debtors to negotiate settlements or seek exemptions, despite widespread challenges in accessing legal and financial assistance.
- The prioritisation of financial recoverability for the Commonwealth over the socio-cultural impact on vulnerable debtors, further exacerbating systemic disadvantage.

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NATSIAACC recommends:

- Incorporate guidelines that allow adjustments to the formula based on cultural considerations and the debtor's socio-economic circumstances. Provide culturally safe financial counselling and advocacy services to support Aboriginal and Torres Strait Islander peoples in understanding and navigating the waiver process.
- Require the System Governor to explicitly consider the systemic disadvantages faced by Aboriginal and Torres Strait Islander peoples when determining the "annual repayment" and "repayment period." Establish mechanisms for Aboriginal and Torres Strait Islander representatives to participate in the development and application of policies related to debt recoveries and waivers.
- Redesign the language and presentation of the formula to make it more accessible, and create simplified, culturally tailored communication materials to explain its application to Aboriginal and Torres Strait Islander communities. Offer education programs in partnership with Aboriginal and Torres Strait Islander-controlled organisations to improve financial literacy and empower communities, which NATSIAACC would be happy to be involved with.
- Implement ongoing reviews to assess the socio-cultural impacts of this policy on Aboriginal and Torres Strait Islander debtors and adjust the framework to promote equitable outcomes. Collect disaggregated data to identify disparities and ensure that adjustments to the formula effectively address systemic inequities.

Conclusion

The Aged Care Rules 2025, as currently drafted, reflect a well-intentioned effort to enhance accountability, transparency, and service quality in aged care. However, the framework does not adequately address the unique cultural, social, and economic realities of Aboriginal and Torres Strait Islander peoples. The absence of explicit provisions for cultural competence, safety, and Aboriginal and Torres Strait Islander-led service design creates systemic barriers that could exacerbate existing inequities in the aged care sector.

One of the most pressing concerns is the governance and compliance burden placed on Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs). These organisations operate across multiple sectors—health, aged care, housing, and justice—yet the proposed regulations do not provide the flexibility or support required to manage these multifaceted responsibilities or align with the National Agreement on Closing the Gap Priority Reform Two. Without tailored adjustments, the increasing regulatory requirements could divert essential resources away from direct service provision, reducing the capacity of ACCOs to deliver culturally safe care to Elders and Older people.

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The framework's approach to banning orders also raises significant ethical and practical concerns. The requirement to publish identifiable details of individuals subjected to banning orders, particularly in small or remote communities, poses a risk of long-term reputational harm, social exclusion, and loss of cultural standing. Given the historical and ongoing marginalisation of Aboriginal and Torres Strait Islander workers, the public disclosure of banning orders without sufficient safeguards could disproportionately impact Aboriginal and Torres Strait Islander people and create further barriers to workforce participation. Additionally, the current provisions prioritise punitive measures over rehabilitation, failing to consider culturally appropriate pathways for workforce reintegration.

Similarly, the financial recovery mechanisms embedded in the Rules lack consideration for the socio-economic challenges faced by Aboriginal and Torres Strait Islander peoples. Many Aboriginal and Torres Strait Islander individuals, particularly those in remote communities, experience systemic financial disadvantage, limited access to legal and financial services, and cultural obligations that influence their financial priorities. The rigid repayment structures and lack of culturally safe financial support mechanisms could further entrench economic hardship among Aboriginal and Torres Strait Islander aged care workers and service providers.

Overall, the Aged Care Rules 2025 reflect a mainstream approach to aged care regulation that does not fully align with the needs and realities of Aboriginal and Torres Strait Islander peoples. Without meaningful engagement with Aboriginal and Torres Strait Islander communities and tailored policy adjustments, the implementation of these Rules could unintentionally reinforce systemic disadvantages. A more culturally responsive approach—grounded in cultural safety, Aboriginal and Torres Strait Islander governance, and equitable regulatory mechanisms—is essential to ensuring that aged care services truly meet the needs of Aboriginal and Torres Strait Islander Elders and Older persons, workers, and service providers.

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