

Aged Care Legislation Amendment (Aboriginal and Torres Strait Islander Aged Care Commissioner and Other Measures) Bill 2026



SUBMISSION

July 2026



NATSIAACC

National Aboriginal and Torres Strait Islander
Ageing and Aged Care Council

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Acknowledgment of Country

NATSIAACC acknowledges the Traditional Owners of the lands and waters on which we work, live and gather, as well as Country throughout Australia, and their enduring connections to land, sea and community. NATSIAACC acknowledges that these lands and waters were never ceded, and we acknowledge the sovereignty and self-determination of the Traditional Owners.

NATSIAACC pays its deepest respects to Elders past and present and recognise the continued cultural and spiritual connection to Country and/or Island Home, community, culture and knowledge.

NATSIAACC thanks them for their wisdom and courage, and for sharing their ways of knowing, being and doing – teachings that guide us to cherish and protect our Elders and Older People.

This always was, and always will be Aboriginal Land.

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. As the national representative peak, NATSIAACC provides national leadership, policy expertise and advice to governments, while representing the interests and perspectives of Aboriginal and Torres Strait Islander Elders, Older People, providers and the broader Ageing and Aged Care sector. 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 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.

Funding

NATSIAACC is funded by the Commonwealth Department of Health, Disability and Ageing (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

1. Appoint the Aboriginal and Torres Strait Islander Aged Care Commissioner on a full-time basis.
2. Amend s361A(4) to allow reappointment but limit total tenure to 10 years.
3. Add the Aboriginal and Torres Strait Islander Aged Care Commissioner as a separate governance role under Chapter 5 Part 5 of the *Aged Care Act 2024*.
4. Expand the Commissioner's functions to include:
 - a. systemic issues;
 - b. coordination of government responses;
 - c. public advocacy;
 - d. research into rights, safety and wellbeing barriers; and
 - e. advice across policies, programs and services affecting Aboriginal and Torres Strait Islander Elders and Older People.
5. Include a statutory Independence of the Aboriginal and Torres Strait Islander Aged Care Commissioner provision.
6. Amend s361D so that consultation with the Minister on the annual work plan is optional rather than mandatory.
7. Require the annual work plan to be developed primarily through engagement with Aboriginal and Torres Strait Islander Elders, Older People, communities and representative organisations.
8. Add a Division 3A provision establishing the powers of the Aboriginal and Torres Strait Islander Aged Care Commissioner.
9. Add a Division 3A provision establishing general principles for performing functions and exercising powers, including cultural safety and human rights principle.
10. Insert provisions equivalent to Part 4 Division 2 – Power to Require Information to strengthen information-gathering powers.
11. Remove s361F(2) which enables people to reject requests from the Commissioner in relation to gathering information or documents.
12. Repeal or amend s361G (Minister may give directions) to protect the Commissioner's independence.
13. Add powers enabling the Commissioner to:
 - a. initiate inquiries;
 - b. investigate systemic issues;
 - c. make recommendations; and
 - d. publish reports independently.
14. Establish a dedicated office, secretariat and staffing arrangements to support the Commissioner.
15. Amend s368 (Termination of Appointment) to include an additional ground for termination where there is a demonstrated loss of confidence by Aboriginal and Torres Strait Islander communities.

Executive Summary

The National Aboriginal and Torres Strait Islander Ageing and Aged Care Council (NATSIAACC) welcomes the opportunity to contribute this Submission to the Inquiry into the Aged Care Legislation Amendment (Aboriginal and Torres Strait Islander Aged Care Commissioner and Other Measures) Bill 2026 being undertaken by the Senate Community Affairs Legislation Committee.

NATSIAACC is particularly concerned that the Bill establishes the Commissioner as an office within the Aged Care Quality and Safety Commission rather than as an independent statutory office holder. This approach is inconsistent with the Aboriginal and Torres Strait Islander Aged Care Framework, which identifies the Commissioner as an "independent authority to embed an Aboriginal and Torres Strait Islander voice within the Aged Care system." It is also inconsistent with the model proposed by Interim First Nations Aged Care Commissioner Andrea Kelly, whose national consultations demonstrated overwhelming support for a permanent Commissioner that is independent of Government, the Department and the Aged Care Quality and Safety Commission. This concern has also been echoed by the Inspector-General of Aged Care, Natalie Siegel-Brown, whereby she strongly supports Andrea Kelly's call for an independent statutory position, saying "Full independence is vital, and the model Ms Kelly has put forward will achieve that." She fears without full independence the functions of the Commissioner will be conflicted, and Aboriginal and Torres Strait Islander Elders and Older People will be left behind.

Throughout her report, Andrea Kelly emphasised that the permanent Commissioner must possess the authority, independence, powers and resources necessary to drive transformational change, hold the Aged Care system accountable and advocate on behalf of Aboriginal and Torres Strait Islander Elders and Older People. The proposed model included powers to undertake inquiries, gather information, issue public statements, make recommendations to government and report publicly on systemic issues. Many of these elements are either absent from, or significantly constrained within, the current Bill.

NATSIAACC supports the establishment of a strong, independent Aboriginal and Torres Strait Islander Aged Care Commissioner. An independent Commissioner is a critical statutory accountability mechanism that complements representative Aboriginal and Torres Strait Islander leadership and strengthens whole-of-system accountability for outcomes.

The Bill also falls short of the principles underpinning the National Agreement on Closing the Gap. In particular, the proposed governance arrangements do not adequately reflect Priority Reform One: Formal Partnerships and Shared Decision-Making, which requires governments to share decision-making authority with Aboriginal and Torres Strait Islander People on matters that affect them. There was no genuine co-design undertaken during the development of this Bill with NATSIAACC as the national peak body for Aboriginal and Torres Strait Islander Ageing and Aged Care, nor with the broader Aboriginal and Torres Strait Islander Aged Care sector or Aboriginal and Torres Strait Islander Elders or Older People. This is inconsistent with the commitment under the National Agreement to establish formal partnerships and shared decision-making arrangements on policies, programs and reforms that directly impact Aboriginal and Torres Strait Islander People. Nor does the Bill sufficiently support Priority Reform Three: Transforming Government Organisations, which requires government systems and institutions to be accountable, culturally safe and responsive to Aboriginal and Torres Strait Islander People. The establishment of a Commissioner with limited independence, narrow functions

and restricted powers risks perpetuating existing government-centred approaches rather than creating the transformational leadership mechanism envisioned under the National Agreement.

NATSIAACC therefore recommends a series of amendments to strengthen the Bill, including establishing the Commissioner as a genuinely independent statutory office holder, expanding the scope of statutory functions, introducing stronger information-gathering, inquiry and reporting powers, providing dedicated staffing arrangements, removing or limiting Ministerial direction powers, and embedding mechanisms that ensure the Commissioner remains accountable to Aboriginal and Torres Strait Islander communities. These amendments would better align the legislation with the aspirations of Aboriginal and Torres Strait Islander Elders and Older People, the Aboriginal and Torres Strait Islander Aged Care Framework, the National Agreement on Closing the Gap, and the recommendations arising from Andrea Kelly's national consultations.

NATSIAACC has identified 15 recommendations that collectively seek to ensure the Commissioner is equipped with the independence, authority, powers and resources required to drive transformational change across the Aged Care system and improve outcomes for Aboriginal and Torres Strait Islander Elders and Older People.

Division 3A—Establishment and functions of the Aboriginal and Torres Strait Islander Aged Care Commissioner

361A Aboriginal and Torres Strait Islander Aged Care Commissioner

(1) There is to be an Aboriginal and Torres Strait Islander Aged Care Commissioner of the Aged Care Quality and Safety Commission.

NATSIAACC maintains a strong position aligned with the preceding Aboriginal and Torres Strait Islander Aged Care Commissioner, Andrea Kelly, that the permanent commissioner role should be independent of the Government, Department of Health, Disability and Aged Care, and the Aged Care Quality and Safety Commission. The establishment of the Commissioner as an office within the Aged Care Quality and Safety Commission does not reflect the level of independence originally envisaged for the role and may limit the Commissioner's ability to act as a strong and authoritative advocate for Aboriginal and Torres Strait Islander Elders and Older People. As advocated in a previous NATSIAACC submission, "Members identified issues such as the need for independence to be able to take action and influence change, and provide stronger advocacy, coordination and influence cultural safety across Government." Embedding the Commissioner within the existing regulatory framework risks constraining the Commissioner's capacity to fulfil this function and may reduce the office's ability to drive systemic reform, facilitate whole-of-government accountability, and advocate effectively on issues that extend beyond the administration of Aged Care services.

The Aboriginal and Torres Strait Islander Aged Care Framework positions the Commissioner as an overarching voice for Aboriginal and Torres Strait Islander Elders and Older People and identifies the role as an independent authority. Establishing the office within the Aged Care Quality and Safety Commission is inconsistent with this vision and does not fully align with the intent that the Commissioner operate as an independent mechanism for leadership, advocacy, accountability and oversight across the Aged Care system and broader policy environment. This concern is further compounded by the limited scope of the functions conferred under sections 361B and 361C, which restrict the range of matters that may be investigated, reported on or raised with government. Consequently, the Commissioner's capacity to independently examine systemic issues affecting the rights, wellbeing and safety of Aboriginal and Torres Strait Islander Elders and Older People is significantly constrained, reducing the office's ability to drive reform and influence outcomes across the broader Ageing and Aged Care landscape.

(2) The Aboriginal and Torres Strait Islander Aged Care Commissioner is to be appointed by the Minister by written instrument.

NATSIAACC supports Andrea Kelly's proposal that the permanent Commissioner be a statutory office holder, appointed by the Governor General and not the Minister. The Royal Commission into Aged Care Quality and Safety Final Report 2021 highlighted the need for independent governance arrangements outside Ministerial directions that focused on older people rather than the conflicting or competing demands of the Australian Government. As a result of the Aged Care system failings under the same governance system for the past two decades, the Royal Commission recommended a number of

independent statutory officers, an Aboriginal and Torres Strait Islander Aged Care Commissioner, being one of these through Recommendation 49.

Simply recycling the same governance oversight and ignoring the Royal Commission's recommendations to fix the current underlying governance issues in the Aged Care system, will continue to disproportionately impact Aboriginal and Torres Strait Islander Elders and Older People and progress towards creating an Aged Care system that encompasses the needs of Elders and Older People will be stunted.

(3) The Aboriginal and Torres Strait Islander Aged Care Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(4) The Aboriginal and Torres Strait Islander Aged Care Commissioner may be reappointed but must not be reappointed more than once.

On the basis of the evidence found by Andrea Kelly in her report, Transforming Aged Care for Aboriginal and Torres Strait Islander People, NATSIAACC supports the recommendation for the appointment of the Aboriginal and Torres Strait Islander Aged Care Commissioner to be a set term of 5 years and no less. If a minimum term is not set, this means the period specified in the instrument could be, for example, a 1-year appointment and one reappointment of another 1 year would only result in a total 2-year term. This would not allow the Commissioner to facilitate and build meaningful relationships and trust with the Aboriginal and Torres Strait Islander community, alongside the limited ability for the Commissioner to progress long term work to contribute to reform and structural changes within the Aged Care system. Therefore, setting an appointment period and allowing reappointment up until a total of 10 years, as suggested by Andrea Kelly, will allow continuity of work in a crucial reform period of Aged Care, making sure the voices of Aboriginal and Torres Strait Islander Elders and Older People are echoed at a high and influential level.

NATSIAACC Recommendations

- Add a Subsection under Section 361A, referring to the type of appointment - The Aboriginal and Torres Strait Islander Aged Care Commissioner is to be appointed on a full-time basis.
- Amend Subsection 361A(4), to include: The Aboriginal and Torres Strait Islander Aged Care Commissioner may be reappointed but must not hold office for periods totalling for more than 10 years.

361B Functions of the Aboriginal and Torres Strait Islander Aged Care Commissioner & 361C Aboriginal and Torres Strait Islander Aged Care commissioner functions

The Aged Care Commissioner's functions are largely focused on improving access to Aged Care services, advising the System Governor, workforce development, provider capability building, cultural safety, and engagement with Aboriginal and Torres Strait Islander communities. The role is closely tied to improving the operation of the Aged Care system itself and does not give scope to address systemic issues, coordinate government responses, undertake public advocacy, conduct research into barriers affecting rights and wellbeing, and advise government across the full spectrum of policies, programs and services affecting Aboriginal and Torres Strait Islander Elders and Older People.

The Aged Care Commissioner's functions include promoting and advocating for the incorporation of the views and experiences of Aboriginal and Torres Strait Islander Elders and Older People in the Aged Care system. However, this advocacy is specifically tied to the design and delivery of Aged Care services and advice to the System Governor and sector. NATSIAACC considers that the advocacy function should be broadened to explicitly enable the Commissioner to advocate on systemic issues affecting Aboriginal and Torres Strait Islander Elders and Older People, including matters relating to health, housing, disability, workforce participation, cultural safety, social and emotional wellbeing, and other factors that influence ageing outcomes. A broader advocacy mandate would strengthen the Commissioner's ability to act as a genuine voice for Elders and Older People and support a whole-of-government approach to addressing the challenges faced by Aboriginal and Torres Strait Islander communities as they age.

At current, the Aboriginal and Torres Strait Islander Aged Care Commissioner may undertake research only in relation to access to and delivery of funded Aged Care services and related workforce and cultural safety matters. Broadening the research ability to allow for the Aboriginal and Torres Strait Islander Commissioner to further develop insights into systemic issues, barriers affecting rights, safety and wellbeing, regulatory activities, Commonwealth policy and program delivery and broader social determinants, would enable the Commissioner to develop a stronger evidence base to inform policy reform, identify emerging issues impacting Aboriginal and Torres Strait Islander Elders and Older People, and provide government with independent advice on the systemic factors influencing outcomes both within and beyond the Aged Care system. Such an approach would better support the Commissioner's role as a permanent mechanism for accountability, reform and continuous improvement across the Aged Care sector and related policy areas.

In line with the current Aboriginal and Torres Strait Islander Aged Care Framework, and Andrea Kelly's recommendation, the Bill should include an explicit statutory independence provision to ensure the Aboriginal and Torres Strait Islander Aged Care Commissioner can perform their functions free from actual or perceived Government influence. As currently drafted, the Commissioner is subject to Ministerial directions regarding the performance of their functions, which may limit the capacity of the office to act as an independent advocate for Aboriginal and Torres Strait Islander Elders and Older People. Introducing a legislative guarantee of independence would better reflect the role of the Commissioner as a permanent statutory office holder and strengthen confidence in the Commissioner's ability to raise systemic issues and advocate for reform without undue influence.

NATSIAACC Interpretation Example:

Under Division 3A — Establishment and functions of the Aboriginal and Torres Strait Islander Aged Care Commissioner, NATSIAACC recommends including the additional Section:

Independence of the Aboriginal and Torres Strait Islander Aged Care Commissioner

- (1) The Aboriginal and Torres Strait Islander Aged Care Commissioner:
 - (a) has complete discretion in performing functions and exercising powers; and
 - (b) is not subject to direction by any person in relation to performing functions or exercising powers.

(2) To avoid doubt, the Aboriginal and Torres Strait Islander Aged Care Commissioner may, in the course of performing functions and exercising powers, publicise any matter relating to the Aboriginal and Torres Strait Islander Aged Care Commissioner functions in any way the Aboriginal and Torres Strait Islander Aged Care Commissioner thinks appropriate.

(3) This section is subject to this Act and to other laws of the Commonwealth.

Further, the limited scope of the functions conferred under Sections 361B and 361C has broader implications for the effectiveness and independence of the office. By narrowly defining the Commissioner's functions, the Bill correspondingly restricts the range of matters that may be the subject of inquiries, reports and advice provided to government according to Subsection 361G (1). This constrains the Commissioner's capacity to independently identify and examine systemic issues affecting Aboriginal and Torres Strait Islander Elders and Older People and limits the breadth of matters that may be brought forward for Ministerial consideration, reducing the ability to drive broader reform and accountability.

NATSIAACC Recommendations

- Expand functions of the Aboriginal and Torres Strait Islander Aged Care Commissioner to include systemic issues, coordinating government responses, undertaking public advocacy, conducting research into barriers affecting rights and wellbeing, and advising government across the full spectrum of policies, programs and services affecting Aboriginal and Torres Strait Islander Elders and Older People.
- Add an independence Section under Division 3A - Independence of the Aboriginal and Torres Strait Islander Aged Care Commissioner.

361D Aboriginal and Torres Strait Islander Aged Care Commissioner must prepare annual work plan

NATSIAACC supports the requirement for the Aboriginal and Torres Strait Islander Aged Care Commissioner to publish an annual work plan, as this promotes transparency, accountability and clarity regarding priorities and intended outcomes. However, section 361D, as currently drafted, does not adequately support the role of an independent statutory office holder. Subsection 361D(3) requires the Commissioner to consult the Minister in preparing the annual work plan. While consultation with government is appropriate, the requirement may create a perception that the Commissioner's priorities are influenced by government priorities rather than being independently determined based on the needs, concerns and experiences of Aboriginal and Torres Strait Islander Elders and Older People. Further, because the functions contained in sections 361B and 361C are relatively narrow, the work plan is necessarily constrained to matters relating to funded Aged Care services and the existing statutory functions of the office. This limits the Commissioner's ability to identify and prioritise emerging issues affecting Aboriginal and Torres Strait Islander Elders and Older People where those issues fall outside the immediate Aged Care system but nevertheless have a significant impact on ageing outcomes, wellbeing and access to care. NATSIAACC considers that the work plan should be developed primarily through engagement with Aboriginal and Torres Strait Islander Elders, Older People, communities and representative organisations, with Ministerial consultation remaining optional rather than mandatory. This would better align the office with its intended role as a representative voice and advocate for Aboriginal and Torres Strait Islander Elders

and Older People, while also satisfying Andrea Kellys recommendation for the Commissioner to engage with Aboriginal and Torres Strait Islander People, as well as meeting Priority Reform 1 of the National Agreement on Closing the Gap.

NATSIAACC Recommendations

- Amend Section 361D so that consultation with the Minister on the annual work plan is optional rather than mandatory.
- Require the annual work plan to be developed primarily through engagement with Aboriginal and Torres Strait Islander Elders, Older People, communities and representative organisations.

361F Aboriginal and Torres Strait Islander Aged Care Commissioner may request information or documents from persons

The effectiveness of the Aboriginal and Torres Strait Islander Aged Care Commissioner would be enhanced through stronger statutory powers to obtain information relevant to the performance of their functions. Section 361F only permits the Commissioner to request information or documents on a voluntary basis, which may limit the Commissioner's ability to identify emerging issues, investigate systemic concerns and assess the impact of policies and programs. Consideration should be given to removing Subsection 361F(2) and instead towards providing more robust information-gathering powers, supported by appropriate safeguards, to enable the Commissioner to undertake evidence-based oversight and provide informed advice on matters affecting Aboriginal and Torres Strait Islander Elders and Older People. Strengthening these powers would better support the Commissioner's role as a permanent mechanism for accountability, reform and sector improvement.

NATSIAACC Interpretation Example:

Under Division 3A — Establishment and functions of the Aboriginal and Torres Strait Islander Aged Care Commissioner, NATSIAACC recommends including the additional Sections:

Powers of The Aboriginal and Torres Strait Islander Aged Care Commissioner

The Aboriginal and Torres Strait Islander Aged Care Commissioner has power to do all things necessary or convenient to be done for or in connection with the National Commissioner's performance of functions.

Note 1: Section X sets out general principles for The Aboriginal and Torres Strait Islander Aged Care Commissioner's exercise of powers.

Note 2: The Aboriginal and Torres Strait Islander Aged Care Commissioner may require information or documents relevant to the Aboriginal and Torres Strait Islander Aged Care Commissioner performance of functions: see Section XX.

X General principles for performing functions and exercising powers

Best interests of Aboriginal and Torres Strait Islander Elders and Older People

- (1) It is the intention of the Parliament that the Aboriginal and Torres Strait Islander Aged Care Commissioner is to perform functions and exercise powers in a manner that promotes the best interests of Aboriginal and Torres Strait Islander Elders and Older People.

Aboriginal and Torres Strait Islander cultural identity and safety

- (2) It is the intention of the Parliament that the Aboriginal and Torres Strait Islander Aged Care Commissioner is to perform functions and exercise powers in a manner that recognises the need to protect and promote the cultural identity and safety of Aboriginal and Torres Strait Islander Elders and Older People through maintaining and building their connections to their family and community.

International human rights

- (3) It is the intention of the Parliament that the Aboriginal and Torres Strait Islander Aged Care Commissioner is to perform functions and exercise powers in a manner consistent with the promotion of the following:

(a) the principles set out in:

- (i) the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), being the Resolution adopted by the General Assembly of the United Nations on 13 September 2007;
- (ii) the United Nations Principles for Older People, being the Resolution adopted by the General Assembly of the United Nations on 19 December 1991.

(b) Australia's obligation under the following:

- (i) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006;
- (ii) any other relevant international instrument (within the meaning of the Australian Human Rights Commission Act 1986);
- (iii) any other international agreement relating to human rights.

Insert the whole of Part 4 Division 2 – Power to require information, from the *National Commission for Aboriginal and Torres Strait Islander Children and Young People Act 2026*, replacing the National Commissioner with the Aboriginal and Torres Strait Islander Aged Care Commissioner.

NATSIAACC Recommendations

- Add a Section under Division 3A Powers of The Aboriginal and Torres Strait Islander Aged Care Commissioner
- Add a Section under Division 3A General principles for performing functions and exercising powers
- Add Part 4 Division 2 – Power to require information, from the *National Commission for Aboriginal and Torres Strait Islander Children and Young People Act 2026*
- Remove Subsection 361F(2) which enables people to reject requests from the Commissioner in relation to gathering information or documents

361G Minister may give directions

NATSIAACC is concerned that Section 361G significantly undermines the independence and effectiveness of the Aboriginal and Torres Strait Islander Aged Care Commissioner. While the Bill establishes the office as a permanent Commissioner, although of general nature, Subsection 361G(1) permits the Minister to give written directions to the Commissioner regarding the performance of their functions, and subsection 361G(3) requires the Commissioner to comply with those directions. This approach is inconsistent with the intent of establishing a permanent Commissioner as a statutory office holder and authoritative voice for Aboriginal and Torres Strait Islander Elders and Older People. The ability of a Minister to direct the performance of the Commissioner's functions creates a risk of actual or perceived influence over the Commissioner's priorities, activities and public positions, particularly where the Commissioner seeks to raise concerns regarding government policy, program delivery, regulatory settings or systemic failures affecting Aboriginal and Torres Strait Islander People. Accordingly, NATSIAACC recommends the repeal of section 361G, or alternatively that the section be amended so that any Ministerial directions are limited to administrative matters and cannot relate to the performance of the Commissioner's statutory functions, priorities, advocacy activities, research activities, inquiries, reports or public statements. This would better align the role with the expectation that the Commissioner serve as an independent statutory office holder responsible for promoting accountability, driving reform and advocating for improved outcomes for Aboriginal and Torres Strait Islander Elders and Older People.

NATSIAACC Recommendations

- Repeal or amend Section 361G Minister may give direction

375A Annual reporting on matters relating to the Aboriginal and Torres Strait Islander Aged Care Commissioner & 375B Minister may request report on matters relating to Aboriginal and Torres Strait Islander Aged Care Commissioner's functions

NATSIAACC notes that sections 375A and 375B provide mechanisms for annual reporting and Minister-requested inquiries. While these provisions support transparency and accountability, they do not equip the Aboriginal and Torres Strait Islander Aged Care Commissioner with sufficient powers to independently identify, investigate and report on systemic issues affecting Aboriginal and Torres Strait Islander Elders and Older People. Section 375A requires the Commissioner to provide an annual report outlining activities undertaken, outcomes achieved, engagement activities and other prescribed matters. However, the provision is primarily retrospective in nature and focuses on reporting against the Commissioner's existing functions. It does not establish a broader power to initiate investigations, undertake independent reviews of systemic issues, develop recommendations for reform, or require a response from government to those recommendations. As a result, the reporting mechanism is limited in its capacity to drive accountability and systemic change.

Similarly, section 375B provides that the Minister may request the Commissioner to inquire into and report on a matter relating to the Commissioner's functions. While this enables inquiries to be undertaken, the power is dependent on Ministerial initiation. The Bill does not provide the Commissioner with a clear statutory authority to independently commence inquiries into matters of

concern, investigate emerging systemic issues, or determine their own priorities for examination and reporting

In alignment with the recommendations given by Andrea Kelly, of powers and resources of the Commissioner, NATSIAACC considers that a permanent Aboriginal and Torres Strait Islander Aged Care Commissioner should have the authority to independently undertake inquiries into matters affecting Aboriginal and Torres Strait Islander Elders and Older People, particularly where systemic issues, service gaps, policy failures or emerging risks are identified. The Commissioner should also be empowered to make recommendations arising from such inquiries, publish reports, and seek formal responses to recommendations from relevant government agencies or decision-makers. These powers would strengthen the Commissioner's ability to fulfil a leadership, oversight and accountability role and support evidence-based reform across the Aged Care system and related policy areas.

The absence of independent inquiry and recommendation powers limits the Commissioner's capacity to proactively address issues affecting Aboriginal and Torres Strait Islander Elders and Older People and places significant reliance on government direction to determine what matters are investigated. NATSIAACC therefore recommends that the Bill be amended to provide an express power for the Commissioner to initiate inquiries, investigate systemic issues, make recommendations and publish reports on matters within their remit, consistent with the role envisaged for a permanent and independent statutory office holder

NATSIAACC Recommendations

- Add additional Sections under Division 3A to ensure the Aboriginal and Torres Strait Islander Commissioner can initiate inquiries, investigate systemic issues, make recommendations and publish reports.

576A Delegation by Aboriginal and Torres Strait Islander Aged Care Commissioner

NATSIAACC notes that section 576A permits the Aboriginal and Torres Strait Islander Aged Care Commissioner to delegate functions and powers to Commission staff and consultants. While delegation provisions are common for statutory office holders, the effectiveness of this provision must be considered in the context of how the office itself is structured.

Unlike other independent statutory offices, the Bill does not establish a dedicated office, secretariat or staffing arrangements for the Aboriginal and Torres Strait Islander Aged Care Commissioner. As a result, the Commissioner appears to be wholly reliant on staff of the Aged Care Quality and Safety Commission and, where necessary, external consultants to undertake the functions of the office. Sections 576A envisage that Commission resources will be made available to support the Commissioner, but there is no legislative guarantee that the Commissioner will have their own dedicated staff or organisational capability.

This raises concerns regarding both independence and capacity. A Commissioner whose work is undertaken primarily by staff employed within the broader Aged Care Quality and Safety Commission may face practical limitations in pursuing priorities that differ from those of the Commission or government. Similarly, reliance on consultants creates a risk that critical functions of the office, including research, engagement, policy development and reporting, may be outsourced rather than

being developed and retained within a dedicated Aboriginal and Torres Strait Islander-led capability. The issue is particularly important given that the Commissioner is intended to serve as a permanent national voice for Aboriginal and Torres Strait Islander Elders and Older People. A role of this significance should be supported by a dedicated team with specialised expertise in Aboriginal and Torres Strait Islander ageing, policy, research, community engagement and systemic reform. Without legislated staffing arrangements, the Commissioner's ability to undertake independent work, build institutional knowledge and maintain continuity across successive appointments may be significantly constrained.

NATSIAACC considers that the Bill should establish a dedicated office to support the Aboriginal and Torres Strait Islander Aged Care Commissioner, including staff employed specifically for the purposes of assisting the Commissioner in the performance of their functions. While the ability to engage consultants should remain available where specialist expertise is required, consultants should supplement rather than substitute for a permanent secretariat.

NATSIAACC Recommendations

- Add additional Sections under Division 3A to ensure the Aboriginal and Torres Strait Islander Commissioner have their own employed staff and team.

Additional Comments

NATSIAACC believes the amendments to the *Aged Care Act 2024*, in relation to the Aboriginal and Torres Strait Islander Aged Care Commissioner should sit under Chapter 5 as an additional Part labelled Part 5 in accordance with the addition of the Aboriginal and Torres Strait Islander Aged Care Commissioner as a separate role in the suggested instructions in Schedule 1 Item 1 in this Bill. By amending the 'Simplified outline of this Act' Section, the Act will then state, "The system is governed by the Secretary (known as the System Governor), the Aged Care Quality and Safety Commissioner (the Commissioner), the Complaints Commissioner, and the Aboriginal and Torres Strait Islander Aged Care Commissioner". Therefore, including an additional Part 5 will then be consistent with the above statement, acknowledging The Aboriginal and Torres Strait Islander Aged Care Commissioner as a Commissioner that the system is governed by and not a Commissioner sitting under the Aged Care Quality and Safety Commission, as originally proposed in the current Bill.

Additionally, the current Bill does not take into consideration a recommendation made by Andrea Kelly that in addition to the standard grounds for termination such as misbehaviour, incapacity, bankruptcy, unexplained absence and conflicts of interest, there should be an additional mechanism for termination where the Commissioner has lost the confidence of Aboriginal and Torres Strait Islander communities. NATSIAACC recommends that Section 368 of the *Aged Care Act 2024* be amended to include an additional ground for termination of the Aboriginal and Torres Strait Islander Aged Care Commissioner where there has been a demonstrated loss of confidence by Aboriginal and Torres Strait Islander communities. Such an amendment would better align the legislation with the design principles identified through the national consultations, particularly the principles that the Commissioner must remain accountable to Aboriginal and Torres Strait Islander People and operate with the authority, independence and community trust necessary to drive transformational change.

NATSIAACC Recommendations

- Add the Aboriginal and Torres Strait Islander Aged Care Commissioner as Part 5 under Chapter 5 in the *Aged Care Act 2024*
- Amend Section 368 of the *Aged Care Act 2024*, to include additional grounds for termination if there is loss of confidence by Aboriginal and Torres Strait Islander communities.

Conclusion

The establishment of a permanent Aboriginal and Torres Strait Islander Aged Care Commissioner should strengthen Australia's governance arrangements for Aboriginal and Torres Strait Islander Ageing and Aged Care through complementary roles for Government, the Commissioner and the national peak body, each contributing distinct responsibilities to improve outcomes for Elders and Older People.

The establishment of a permanent Aboriginal and Torres Strait Islander Aged Care Commissioner represents one of the most significant reforms for Aboriginal and Torres Strait Islander Aged Care since the Royal Commission into Aged Care Quality and Safety. NATSIAACC strongly supports the creation of the role and acknowledges the Government's commitment to progressing Recommendation 49. However, the success of the office will ultimately depend on whether the Commissioner is equipped with the independence, authority, powers and resources necessary to fulfil the purpose for which the role was originally proposed.

The current Bill does not yet reflect the vision articulated by Aboriginal and Torres Strait Islander communities, the Aboriginal and Torres Strait Islander Aged Care Framework, the National Agreement on Closing the Gap or the recommendations developed by Interim First Nations Aged Care Commissioner Andrea Kelly following extensive national consultation. Rather than establishing a genuinely independent authority, the Bill creates a Commissioner whose functions are narrowly framed, whose activities are subject to Ministerial direction, whose ability to undertake inquiries is constrained and whose office lacks dedicated staffing and structural independence.

NATSIAACC therefore urges the Australian Government and Parliament to strengthen the Bill through the adoption of the recommendations contained within this Submission. Doing so will ensure that the permanent Aboriginal and Torres Strait Islander Aged Care Commissioner is established in a manner consistent with the aspirations of Aboriginal and Torres Strait Islander communities, the intent of the Royal Commission, the commitments under the National Agreement on Closing the Gap and the model developed by Andrea Kelly. This will provide the foundation for enduring accountability, culturally safe Aged Care and transformational reform that improves outcomes for Aboriginal and Torres Strait Islander Elders and Older People both now and into the future.



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You can find more information at:



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