



**Office of the Interim First Nations Aged Care Commissioner:
Submission on New Aged Care Act Rules consultation – Release 3 –
Provider obligations**

March 2025

Overarching Comments

In providing our feedback, we have considered the:

- four priority reforms of the National Agreement on Closing the Gap (National Agreement) agreed to by all Australian governments
- statement of rights in the *Aged Care Act 2024* relating to the right to culturally safe, trauma-aware and healing informed aged care
- issues and recommendations in the Interim First Nations Aged Care Commissioner's (Interim Commissioner) recently released report.

The Aged Care Act Rules must give effect to the National Agreement

The National Agreement provides a transformational framework to change the way governments work with Aboriginal and Torres Strait Islander people, organisations and communities. It was developed in partnership between all Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations.

All government initiatives need to align with the four priority reforms:

1. Formal partnerships and shared decision-making
2. Building the community-controlled sector
3. Transforming government organisations
4. Shared access to data and information at a regional level

The Aged Care Rules must give effect to the right to culturally safe services

The *Aged Care Act 2024* introduced a Statement of Rights. These include the right to aged care services that are culturally safe, culturally appropriate, trauma-aware and healing informed (part 3, s23). The Explanatory Memorandum to the Act includes a definition of cultural safety which is highly relevant to the Aged Care Rules relating to provider obligations:

“Registered providers and aged care workers of registered providers must take responsibility for building trust and relationships with Aboriginal and/or Torres Strait Islander service users, and their families, and for creating a new aged care system which centres on their living experience, cultural, and ageing needs, as determined by Aboriginal and/or Torres Strait Islander service users themselves. The implementation of a trauma aware, healing informed approach to professional practice, and facilitating a greater understanding and respect for individual and collective cultures, histories, knowledge, traditions, stories, and values of Aboriginal and/or Torres Strait Islander service users, their families and communities, will greatly support the delivery of a quality and culturally safe aged care system. Registered providers must also firmly commit to continuously measure and improve structures and behaviours necessary for cultural safety and quality support to remain embedded in the Australian aged care system.”

Priority Reform 1 – Formal partnerships and shared decision-making

The Aged Care Act definition of high-quality care (Ch1, Part 2, Division 2, s20) includes:

- (viii) implementing inclusive policies and procedures, in partnership with Aboriginal or Torres Strait Islander persons, family and community to ensure that culturally safe, culturally appropriate and accessible care is delivered to those persons at all times, which incorporates flexibility and recognises the unique experience of those persons;

The Interim Commissioner's 2024 report Transforming Aged Care for Aboriginal and Torres Strait Islander people recommends the government support and incentivise partnerships between mainstream and Aboriginal Community-Controlled Organisations (ACCOs) to work together to ensure older Aboriginal and Torres Strait Islander people receive culturally safe, trauma-aware and healing informed aged care services (recommendation 19).

Recommendation 1:

The Aged Care Rules need to reference and provide guidance about the obligation on providers to work in partnership with Aboriginal and Torres Strait Islander people, their families and communities in order to deliver culturally safe, culturally appropriate, trauma-aware and healing informed aged care supports and services. The guidance should pay particular attention to the specific needs of Stolen Generations survivors.

Priority Reform 2 – Building the community-controlled sector

Regulatory burden

ACCOs raised the significant regulatory barriers and disincentives they face to become aged care providers. This was raised in the Interim Commissioner's report. The sector has expressed that due to the density of the Act, the draft Rules and the supporting documents, there is confusion about which elements of the Rules apply to ACCOs more broadly, particularly in relation to governance obligations.

Recommendation 2:

Develop options to amend the Aged Care Rules to reduce the regulatory burden on ACCOs seeking to be registered aged care providers and compliant with the Quality Standards.

Recommendation 3:

Clearly and simply communicate the changes of the governance requirements that will apply to the ACCO sector.

Building the Aboriginal and Torres Strait Islander workforce

Building the Aboriginal and Torres Strait Islander workforce is also a priority. It is understood that the Rules related to worker screening that will apply to National Aboriginal and Torres Strait Islander Flexible Aged Care Program (NATSIFACP) providers replicate the provisions these providers operate under now. However, this is an interim solution, and it is proposed that

NATSIFACP providers will need to comply with nationally consistent worker screening Rules in the future.

As outlined in the Interim Commissioner's report, ACCOs are concerned that the introduction of a national worker registration scheme will create new barriers for the recruitment and retention of Aboriginal and Torres Strait Islander aged care workers, by removing discretion to employ workers with low grade criminal convictions.

Recommendation 4:

Ensure future requirements for worker screening allow NATSIFACP providers and other ACCO operated aged care providers to use discretion to employ workers with low grade criminal convictions.

Priority Reform 3 – Transforming government organisations

Cultural Safety

Cultural safety is not an add on or something to be considered in addition to the standard service offering for aged care. It is a fundamental human right and minimum standard. The inclusion, in the Act, of the right to culturally safe aged care is a significant step to improving Aboriginal and Torres Strait Islander people's access to aged care. The Interim Commissioner's consultations found that interpersonal and structural racism is an ongoing and persistent feature of the aged care system. Older Aboriginal and Torres Strait Islander people told of not being valued or respected and identified the lack of cultural safety as the primary deterrent for them accessing aged care.

In this context, it is clear that the aged care sector needs substantial guidance about how to implement and embed the Statement of Rights and cultural safety. The Rules do not provide this guidance.

There are opportunities to embed cultural safety throughout the Rules, in partnership with Aboriginal and Torres Strait Islander people. The Aged Care Code of Conduct (14-5) could include a meaningful commitment to cultural safety.

Cultural safety is also relevant to each area of provider obligations, particularly:

- 15-10 – Standard 1, the individual
- 15-20 – Standard 3, care and services
- 15-30 – Standard 5, palliative care and
- 15-35 – Standard 6, food

Recommendation 5:

Work with the ACCO sector to embed cultural safety into the Rules.

Cultural safety and abuse

The national plan to end violence for Aboriginal and Torres Strait Islander people, the Aboriginal and Torres Strait Islander Action Plan 2023-2025, identifies that some Aboriginal and Torres

Strait Islander people face a disproportionate risk of family, domestic and sexual violence including older people and women.

The additional risk needs to be considered in the design of Rules for substituted decision makers and representatives in order to protect against perpetrators using these systems to continue their abuse (refer to 6-10 and 6-20). Safeguards are needed around perpetrators trying to present themselves to a provider as someone who has a connection with the older person.

Part 7 of the Rules details reportable incidents, which include the unreasonable use of force, unlawful sexual contact, and psychological or emotional abuse. Violence against women is defined more broadly than this in the [National Plan to End Violence Against Women and Children](#) to include “physical, sexual, emotional, psychological, social, cultural, spiritual, financial and technology-facilitated abuse (including image-based abuse), and stalking” (p.35).

Practicing culture, staying connected to country, and being supported to fulfil their role as Elders are essential to the spiritual health and wellbeing of older Aboriginal and Torres Strait Islander people. Deliberate attempts to deny older people’s access to these are a form of violence.

Recommendation 6:

Consideration be given to expanding the reportable incidents list to include all forms of violence identified in the National Plan.

Priority Reform 4 – Shared access to data and information at a regional level

Across the Rules there are opportunities to improve data collection about the aged care experiences of older Aboriginal and Torres Strait Islander people. Data could be collected in reports provided by aged care providers and quality care advisory bodies.