



Office of the Interim First Nations Aged Care Commissioner: Submission to public consultation on the Exposure Draft of the new Aged Care Act.

8 March 2024

The Interim First Nations Aged Care Commissioner welcomes the opportunity to make this submission on the current Exposure Draft of the new Aged Care Act, prior to finalisation and consideration by Government.

Key Issues and Recommendations

1. Consultation Process

- The Office of the Interim First Nations Aged Care Commissioner has heard consistent feedback from First Nations stakeholders that sufficient time **was not** provided **by the Department** for providers to **understand, review, or engage** with the Exposure Draft of the new Aged Care Act. This is of concern and must be addressed.
- To illustrate, the Exposure Draft of the new Aged Care Act was released on 14 December 2023 and was initially open for feedback until 16 February 2024. The timing of the release prior to Christmas/New Year shutdown and during the school holiday period did not consider the availability of organisations to review lengthy, complex legislative material.
- The Department organised and hosted a roundtable as part of the schedule of consultation activities on the Exposure Draft of the new Aged Care Act, intended to focus on the interest of First Nations advocates and providers. The invitation for the roundtable was sent 6 working days prior to the event.
- The feedback from stakeholders and consumers is that the Department did not sufficiently plan, communicate, or coordinate with the Aboriginal and Torres Strait Islander aged care sector, its peak body NATSIAAC and other key stakeholders, First Nations older people, their families or communities to empower communities to provide informed feedback on this important piece of legislation.
- The public First Nations specific workshops organised by the Department were not promoted and feedback from several First Nations CEOs were that they were unaware of the events as they were only published on the Department's website, which was unlikely to be accessed by the target audience. This lack of communication was also evident in the low numbers of First Nations attendees at a few planned workshops (for example Bairnsdale, Victoria).
- The consultation process did not demonstrate adequate commitment to, or implementation of, the four Priority Reform areas outlined in the *National Agreement on Closing the Gap*.¹

¹ *National Agreement on Closing the Gap*, 2020 [National Agreement on Closing the Gap | Closing the Gap](#)



- It is strongly recommended that the reform timetable is adjusted, noting the proposal for the new Act to commence on 1 July 2024. Further consultation, partnership and co-design must occur prior to finalisation of the new Aged Care Act with the Aboriginal and Torres Strait Islander Community Controlled sector by the Department.

2. A rights-based approach – implementing the United Nations Declaration on the Rights of Indigenous People (UNDRIP).

- Consultation on the exposure draft of the New Aged Care Act **specifically** asks *‘whether the Statement of Rights was clear and achieved its intent’*.
- It is the view of the Office of the Interim First Nations Aged Care Commissioner that the Exposure Draft in its current form **does not achieve its intent as it relates to the unique and sovereign** rights of First Nations older people, their carers, families, and communities.
- Aboriginal and Torres Strait Islander peoples have been subject to colonisation, discrimination, marginalisation, genocide and significant breaches of human rights resulting in inequitable access to current health and social care systems.
- The Interim First Nations Aged Care Commissioner strongly recommends that the Exposure Draft of the new Aged Care Act **be amended to include reference** to the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**.
- **The UNDRIP** is the most comprehensive international instrument on the rights of Indigenous peoples and sets out the minimum standards for the survival, dignity and wellbeing of Indigenous communities.
- The **UNDRIP** is an assurance that First Nations older people’s **rights to self-determination, to lands and territories, to cultural identities, to self-representation and to their unique values and beliefs** will be respected. The UNDRIP is also significant in that Aboriginal and Torres Strait Islander peoples were comprehensively involved in the drafting of the declaration and have consistently sought opportunities for its implementation in policy and legislation.
- **Incorporating the UNDRIP into the new Aged Care Act** is necessary to **fully realise and protect the human rights of Aboriginal and Torres Strait Islander people** within the health and aged care system and would meaningfully strengthen the stated intent of the Statement of Rights of the New Aged Care Act.
- **Incorporating UNDRIP into the new Aged Care Act** is consistent with **prior submissions** made by the National Aboriginal and Torres Strait Islander Ageing and Aged Care Council (NATSIAAC).² **It is currently unclear** how the Department has **responded to** this prior submission.

² NATSIAAC Submission on new Aged Care Act, September 2023, [Submission on new Aged Care Act | NATSIAACC](#)



3. Age Eligibility for Aboriginal and/or Torres Strait Islander people.

- The Office of the Interim Commissioner is concerned that the new Aged Care Act proposes for the first time, an **age threshold of 50 years or older** for First Nations people to apply to obtain aged care services.
- The Department has already received advice from the Aboriginal community-controlled sector that this change **is not supported** as ‘imposing age limits on access does not reflect the practicalities and real-life experiences of Aboriginal and Torres Strait Islander people and providers’.³
- To date, **inadequate evidence** has been shared by the Department outlining the rationale for this amendment. The current lack of data and evidence supporting such a change is alarming and contradictory to the principles, goals and outcomes the Department has committed to implementing under the *National Agreement on Closing the Gap*.

4. Aged Care Worker Screening Scheme

- Further information is requested by the Interim Commissioner regarding how the forthcoming **aged care worker screening scheme** will be designed and implemented.
- It is of concern that the proposed provisions in the Exposure Draft, whilst intended to strengthen the safety of workers within the aged care system may **disproportionately and negatively impact** upon First Nations providers to **employ First Nations workers with lower-grade criminal convictions**.
- The design of a new aged care worker screening scheme must consider the reality that First Nations people in Australia experience disproportionate criminalisation and over-incarceration.
- Many First Nations people who come into contact with the criminal justice system have experiences of intergenerational and interpersonal trauma due to the ongoing impacts of settler colonisation.
- For community-controlled organisations delivering services under the *National Aboriginal and Torres Strait Islander Flexible Aged Care (NATSIFAC) Program*, there **already** exists sufficient safeguards in place to screen workers, and there are instances where providers should be able to exercise discretion and put in place mitigation strategies for less serious convictions. **This flexibility to screen workers with lower-grade criminal convictions must be preserved** under a new Aged Care Worker Screening scheme.
- This Office wishes to reiterate that the New Aged Care Act and its supporting regulatory instruments, policies and guides must align to the principles, targets and priority reform areas within the *National Agreement on Closing the Gap*.
- Consequently, it is **recommended** that the Department, through the First Nations Aged Care Branch’s partnership with the National Aboriginal and Torres Strait Islander Ageing

³ NATSIAAC Submission on new Aged Care Act - [Submission on new Aged Care Act | NATSIAACC](#)



and Aged Care Council (NATSIAAC) ensures the new Aged Care Act is fit for purpose and responds to the needs of First Nations older peoples, carers, families and communities. Taking this action would address many of the concerns outlined in this submission, but is also a requirement of the Department in order to implement the Priority Reforms of the National Agreement on Closing the Gap:

- Strengthening and establishing formal partnerships and shared decision-making.
- Building the Aboriginal and Torres Strait Islander community-controlled sector.
- Transforming government organisations so they work better for Aboriginal and Torres Strait Islander people.
- Improving and sharing access to data and information to enable Aboriginal and Torres Strait Islander communities to make informed decisions.

5. First Nations Aged Care Commissioner

- The Draft Bill to **explicitly reference** the position of First Nations Aged Care Commissioner whose location, role and functions would be prescribed in Rules.

6. Unincorporated Associations

- *Part 5 Application of this Act, Chapter 8 Miscellaneous, Section 391 Unincorporated Associations* should be **deleted in its entirety**. Retaining this Part will lead to, and exacerbate, existing concerns associated with Elder abuse, which was a key feature of the Royal Commission.

7. Aboriginal and Torres Strait Islander Community Controlled Organisations

- The Draft Bill to **explicitly reference and prioritise** Aboriginal and Torres Strait Islander Community Controlled Organisations as a provider of Aged Care (whole of person-centred care) with the cultural expertise and experience required to effectively serve First Nations older people.

8. General prioritisation within the Draft Bill

- There are aspects with the Draft Bill where language needs to be reviewed and access need to be prioritised.
 - Currently **equitable** access does not exist for First Nations older people. The Draft Bill could address this by prioritising where an Aboriginal and/or Torres Strait Islander older person is deemed eligible for care, they are prioritised for immediate care, wherever they live.
 - Consideration is given to **reforming the MM model**. To illustrate, Victoria has a large population of Aboriginal and Torres Strait Islander older people yet only have two appropriate providers of residential aged care within the state for this group.



- **Equitably treatment** is not the same as **equitable access**, the Draft Bill needs to revise this language.

9. A 10-year Pathway

- The existing system is not fit for purpose for First Nations older people or the sector that assists them physically, emotionally and spiritually from cradle to grave. To address this the Draft Bill should specifically identify that to bring about equality for First Nations older people (noting that to reach equality we must address the flaws in the existing system) we need to approach this differently.
 - Consideration must be given to a **10-year pathway** to address equality of access. The Draft Bill should identify a pathway co-designed with the Aboriginal and Torres Strait Islander Community Controlled sector. This 'Pathway' could be explicitly referenced in the Draft Bill with details outlined in Rules to allow for design, development and operations of this 'Pathway'.

I look forward to future engagement on the Exposure Draft of the new Aged Care Act.

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