



## Office of the Interim First Nations Aged Care Commissioner: Submission on New Aged Care Act Rules consultation – Release 2b – Funding related to other aged care programs

28 February 2025

### Overarching Comments

- The comments made in this submission repeat feedback that the Office of the Interim First Nations Aged Care Commissioner (the Office) has provided for previous consultation on the New Aged Care Act Rules. It is concerning that we have not seen any indication that this feedback has been considered or that any changes have been made to previous releases based on these comments.
- As previously raised, the Interim First Nations Aged Care Commissioner (the Interim Commissioner) has heard feedback from First Nations peak bodies that the roll out of these consultations for the rules has been poorly communicated. Further, the expectation to provide feedback on such a volume of content, particularly when consultation periods are overlapping, limits their ability to provide meaningful feedback.
- The Office is available to discuss and expand upon any of the points raised below.

### Key Issues and Recommendations

#### Section 330-10 – Other amounts

- We understand the Department has previously received internal legal advice regarding how Stolen Generations redress payments received under the following schemes are treated as income and assets in the Act:
  - Territories Stolen Generations Redress Scheme (Territories Redress Scheme);
  - New South Wales Stolen Generations Reparations Scheme and Funeral Assistance Fund (NSW Reparations Scheme); and
  - Victorian Stolen Generations Reparations Package (Victorian Reparations Package).
- We were advised that payments under these schemes are not considered income for the purposes of calculating income support payments under the *Social Security Act 1991* (Social Security Act) and *Veterans' Entitlements Act 1986* (Veterans' Act). By extension, this means that the redress payments are also not considered income for the purposes of means testing under the Act.
- However, the payments are an assessable asset under the Social Security Act and Veteran's Act, and therefore taken into account for asset determination in means testing under the Act.
- How is it possible for redress payments from the *National Redress Scheme for Institutional Child Sexual Abuse* to not be considered an asset for the purposes of means testing? We recommend reconsidering whether redress payments from the



above Stolen Generations redress schemes also be considered in this way. This could ensure redress payments are protected from being considered in asset testing. This would prevent older Aboriginal and Torres Strait Islander people from being unfairly disadvantaged, compared with recipients of payments from other redress schemes, when they are assessed for aged care.

- It is well established that older Aboriginal and Torres Strait Islander people access aged care services at a reduced rate compared to non-Indigenous people (Productivity Commission, 2024).
  - At the time of the 2021 Census, there were 173,578 Aboriginal and/or Torres Strait Islander people over 50 years old living in Australia. Those aged 50 years and over make up 17.7% of the total Indigenous population and 3.96% of the Australian population eligible for aged care services (ABS, 2021). However, despite their higher burden of health and disease, in 2023 older Aboriginal and Torres Strait Islander people are underrepresented across all aged care services, particularly residential aged care, where Aboriginal and Torres Strait Islander people made up only 1.3% of residential aged care recipients (Productivity Commission, 2024).
- If government is to make meaningful progress on closing the gap and responding to the needs of older Aboriginal and Torres Strait Islander people, it must not unfairly disadvantage those who have accessed redress payments. This would also ensure that current and future Commonwealth Governments operate in good faith.
- In the Release 2a feedback summary document, the comments provided by the Office on this topic were acknowledged. However, there was no explanation of how the rules will be altered in response to this feedback.
- The issue of the inconsistent treatment of redress payments for the purposes of asset testing has been raised with the Interim Commissioner and the Office many times by multiple stakeholders.
- The Office strongly urges the Department to include Stolen Generations redress schemes in the exemption criteria for asset testing across all aged care programs.

#### Section 243-10 Specialised Aboriginal and Torres Strait Islander status – criteria

- It appears the criteria to determine an approved residential care home has Specialised Aboriginal and Torres Strait Islander status have not been updated from the current system.
- The AN-ACC funding model currently considers the impact of two specific resident-related factors in determining the base cost tariff (BCT) rate, including:
  - the provision of care to Aboriginal and Torres Strait Islander peoples in remote and very remote locations (2019 category MM 6 or 2019 category MM 7), reflecting the higher cost of operating in these locations and the extra cost related to those residents' care.



- The criteria also require a service to have more than 50% of its permanent residents identifying as Aboriginal or Torres Strait Islander.
- The residential care home must also prove it has demonstrated experience in providing specialist Aboriginal and Torres Strait Islander programs, and is delivering those programs, or will be within 3 months of the application.
- The majority of older Aboriginal and Torres Strait Islander people using permanent residential care live in metropolitan areas (MM1 38.4%) or rural towns (MM3-5 31.8%) (AIHW, 2023). Throughout consultations, the Interim Commissioner heard of critical aged care access gaps that persist for older Aboriginal and Torres Strait Islander people in metropolitan locations as well as rural, remote and very remote.
- While the Office acknowledges the obvious need for supplementary funding for residential aged care providers in remote and very remote locations, we recommend the Department reconsider the narrow remoteness-based eligibility requirement (Modified Monash Model [MM] 6 and 7) for this specialisation to the BCT rate and expand the adjustment payments to services providing care outside remote and very remote locations.
- Throughout consultations providers expressed concerns that the MMM categorization is a flawed application in determining need and cost for aged care services. The rigid MMM classification does not account for nuance or local circumstances and disadvantages providers who are delivering services to Aboriginal and Torres Strait Islander people outside of the MM6-7 locations and, therefore, do not receive the additional supplement to support the delivering of high quality, culturally safe aged care.
- The Final Report of the Aged Care Taskforce recognised that the additional funding created by these adjustments is insufficient and recommended reappraising the eligibility for this specialisation for regional areas that may be less remote but also incur higher operating costs than metropolitan areas when delivering care to older Aboriginal and Torres Strait Islander people.
- The Aged Care Taskforce also identified that thin markets exist where there is not the quality or choice of services to meet specific needs. The aged care system has been criticised for not adequately addressing the specific needs of older Aboriginal and Torres Strait Islander communities, which conceptualise health at a community level rather than an individual one. It is crucial that Government understands thin markets exist in urban and regional areas, where older Aboriginal and Torres Strait Islander people do not have access to culturally safe services, or a meaningful choice between mainstream and Aboriginal and Torres Strait Islander service providers.
- The Office recommends reviewing the application process for Specialised Aboriginal and Torres Strait Islander approval.
  - This system disadvantages services who may miss the 50% resident threshold but still have increased costs related to providing culturally safe care to their residents.



- The criteria require a service to already be delivering specialised care, or to commence within 3 months of the application. Without the additional funding of the specialised status, there may be providers who are unable to meet the provider-based criteria.
- It is unclear what criteria the Department uses to assess the capacity of the services to deliver specialised care programs.
- It would be good to understand if there have been consultations and co-design with Aboriginal and Torres Strait Islander organisations to determine how applicants are assessed.

#### Sections 213-5, 222-5 – Rural and remote supplement

- The rural and remote supplement for assistive technology (section 213) and home modifications (section 222) needs comprehensive modelling and targeted consultation to determine the most representative supplement.
- As it is currently written in the Rules, the amount of rural and remote supplement is 50% of the tier amount for individuals who reside in MM6 and MM7 locations.
- Throughout the Interim Commissioner's consultations, she saw firsthand how the thin market setting is a significant barrier to service delivery for aged care. Thin markets are particularly evident in remote and very remote geographical locations. In thin market settings, where service provision is costly due to geographical challenges, issues of inadequate funding are exacerbated.
- Again, these comments were provided for Release 2a, and it is unclear how our (and by extension Aboriginal and Torres Strait Islander peoples) concerns are being considered. The Release 2a feedback summary document acknowledges these concerns were raised in several submissions but provides no plans in response to the feedback.

#### NATSIFAC Program and the *No Worse Off Principle*

- In reading the supporting documentation for this Rules release, the explanation as to how the no worse off principle would impact older Aboriginal and Torres Strait Islander people accessing aged care services through a National Aboriginal and Torres Strait Islander Flexible Aged Care (NATSIFAC) Program provider was confusing and unclear. In particular, the following passage was confusing:

*“However, individuals who are accessing residential care through MPSP or NATSIFAC, and do not have a home care approval as at 12 September 2024, will not be eligible for the no worse off arrangements should they enter mainstream residential care after the new Act commences.”*

- The Office recommends the Department create an easily accessible FAQ-style document describing how the changes to the aged care system will impact those accessing services through a NATSIFAC provider, with clear case examples of what would happen if a care recipient moved between NATSIFAC and mainstream providers.
- It would also be useful to understand how the decision was made to explicitly exclude individuals who are accessing residential care through NATSIFAC. When discussing this



with the Department, we were advised that the chance of someone moving from NATSIFAC to mainstream is very close to zero. Therefore, any grandfathering arrangements would actually have no impact on those accessing NATSIFAC. The departmental officer also explained that there are already hardship provisions in place in the Act that allow low means people to be exempt from paying a deposit (RAD) on entering a home, which reflects the current NATSIFAC system.

- Our understanding is that access to NATSIFAC services is not based on hardship or financial need. It would be useful to understand if an individual accessing residential care through NATSIFAC changes location will not be worse off, notwithstanding their eligibility for hardship exemptions or means testing.
  - For example, if an individual accessing residential care through NATSIFAC needs to move to a location that does not have a NATSIFAC facility, they will need to move into a mainstream facility. Would they be exempt from paying a RAD and thus no worse off – or would they be required to pay the RAD?
- The Department should be clear about what assumptions are being made to support the exclusion of individuals who are accessing residential care through NATSIFAC and what evidence has been used to support those assumptions.