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Committee Secretary
Senate Standing Committees of Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Via email: community.affairs.sen@aph.gov.au

23 January 2026

Dear Secretary,

The Healing Foundation welcomes the opportunity to provide this submission on **Aged Care – Review 1**.

The Healing Foundation is the national Aboriginal and Torres Strait Islander body for Stolen Generations Survivor and the incredible Stolen Generations organisations that tirelessly support survivor and descendants. We provide expert advice on the needs of ageing survivors, support survivor-led healing projects, and help educate about the continuing impacts of Australia's Stolen Generations history. We are governed by an Aboriginal and Torres Strait Islander Board and Executive, guided in our work by Stolen Generations Organisations to support survivors to tell their stories and drive their healing. We work cross-sector with governments, policy makers, diverse organisations and workforces to understand and take accountability for their role in meeting the needs of Stolen Generations Survivors and intergenerational healing.

Founded in 2009, following national consultation and the landmark *Bringing Them Home*¹ report, the Healing Foundation was established to implement the key report recommendation: that healing must be integrated into services for survivors. Since the report was handed down over 28 years ago, there has been no nationally coordinated response or mechanism to monitor implementation of the report's recommendations. Our February 2025 report, *Are you waiting for us to die? The unfinished business of Bringing Them Home*, analysed implementation of the recommendations and found that only **six percent** have been entirely implemented.²

Recent research by the Australian Institute of Health and Welfare (AIHW) unequivocally demonstrates that Stolen Generations Survivors face poorer health,

¹ Human Rights and Equal Opportunity Commission. (1997). *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Retrieved from: <https://humanrights.gov.au/?a=51037>

² The Healing Foundation. (2025). *Are you waiting for us to die? The unfinished business of Bringing Them Home*. Retrieved from: https://healingfoundation.org.au/media/ak5niup3/bth_report_are-you-waiting-for-us-to-die-final-2025-1.pdf

economic, and social outcomes than other Aboriginal and Torres Strait Islander people because of their experiences of forced removal from their families, communities, and culture.³ Today, many survivors are elderly, and living with an intersection of complex socioeconomic issues, chronic health conditions and unaddressed cultural needs. While most survivors are eligible for aged care, we know that many are not accessing the services they need, often due to fear of re-traumatisation and the limited availability of culturally safe and appropriate providers in their local areas.⁴

The Royal Commission into Aged Care Quality and Safety (Royal Commission) recommended the introduction of a rights-based Aged Care Act in its final report.⁵ The discussion below addresses the *Aged Care Rules 2025* (the Rules) insofar as they are made for the purposes of the provisions specified in section 602(12) of *the Aged Care Act 2024* (the Act) and are subject to review by the Committee. The Act and associated reforms were developed in response to those recommendations, and this submission draws on the Royal Commission's findings as a contextual reference point when considering whether the Rules appropriately support the objectives of the Act. This submission considers the implications of the Rules for Stolen Generations Survivors, including issues of cultural safety; the interaction between the Statement of Rights and the broader legislative framework; and redress payments that are not exempt from asset testing.

Section 14 and 15 – the Aged Care Code of Conduct and Quality Standards

- Section 14-5(f), (g) and (h) of the Code of Conduct (the Code) places responsibilities on providers to identify, respond to and prevent harm, including by 'promptly' acting on concerns of individuals to deliver aged care services free from violence, discrimination, exploitation, neglect and abuse.
- Similarly, the Quality Standards (the Standards), as outlined in the Rules, require that funded aged care services are free from all forms of discrimination, abuse and neglect, and providers must demonstrate an understanding of culture, life experiences and identity for service users.
- However, in the absence of a dedicated schedule or Rules for Stolen Generations Survivors and Aboriginal and Torres Strait Islander older people, these obligations are not realistically achievable for many and are not likely to be fulfilled.

³ AIHW. (2021). *Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over: updated analyses for 2018-2019*. Retrieved from: <https://www.aihw.gov.au/reports/indigenous-australians/indigenous-stolen-generations-50-and-over/contents/summary>

⁴ The Healing Foundation. (2025). *Are you waiting for us to die? The unfinished business of Bringing Them Home*. Retrieved from: https://healingfoundation.org.au/media/ak5niup3/bth_report_are-you-waiting-for-us-to-die-final-2025-1.pdf

⁵ Royal Commission into Aged Care Quality and Safety. (2021). *Final Report: Care, Dignity and Respect*. p.79. Retrieved from: <https://www.royalcommission.gov.au/system/files/2021-03/final-report-executive-summary.pdf>

- As the Standards rely on the Statement of Rights (the Rights, s23), which inform the broader operation of the Act, it is necessary to consider whether those Rights are clear, robust and relevant enough to meaningfully support safe and non-discriminatory care for Stolen Generation Survivors.

Recommendation: Ensure the United Declaration on the Rights of Indigenous Peoples is embedded within the legislative instruments underpinning the Rules.

- During First Nations consultations on the Exposure Draft, many requests were made to include the United Nations Declaration on the Rights of Indigenous People (UNDRIP) alongside the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of Persons with Disabilities.⁶
- The inclusion of UNDRIP in the legislative framework would have anchored the new aged care system in a rights framework responsive to the collective, individual and historical impacts of the Stolen Generations, colonisation and forced removal.
- In particular, the application of Article 19 on free, prior and informed consent in the development of legislative and administrative measures, alongside Articles 3 and 22 on self-determination and the rights of our Elders respectively, would have embedded cultural safety, Aboriginal and Torres Strait Islander co-design and governance in the new aged care system.
- However, UNDRIP was not included in the Exposure Draft, and the decision to omit the declaration was not communicated to stakeholders or detailed in the Department's consultation report.⁷ As the legislative instruments are now being reviewed, the consequences of excluding UNDRIP from the objects and framework are clear.
- For example, many survivors live in urban and regional locations where there are few, if any, Aboriginal and/or Torres Strait Islander community-controlled aged care providers. This leaves survivors reliant on mainstream services, many of which are delivered by faith-based or non-Indigenous organisations and resemble the institutional environments and practices associated with forced removal and abuse.⁸
- These circumstances can be deeply traumatising for survivors and act as a barrier to accessing necessary health and aged care services. Article 18 of UNDRIP affirms Indigenous

⁶ Department of Health and Aged Care. (2024). *A New Aged Care Act: Exposure draft*. p.34. Retrieved from: <https://www.health.gov.au/sites/default/files/2024-05/a-new-aged-care-act-exposure-draft-consultation-feedback-report.pdf>

⁷ Ibid. p34.

⁸ Interim First Nations Aged Care Commissioner. (2025). *Transforming Aged Care for Aboriginal and Torres Strait Islander people*. p.30. Retrieved from: <https://www.health.gov.au/sites/default/files/2025-05/transforming-aged-care-for-aboriginal-and-torres-strait-islander-people.pdf>

peoples' right to participate in decision-making that affects their rights, while Article 21 recognises the right to improved economic and social conditions.

- The defaulting, by design, to unsuitable mainstream services demonstrates the consequences of excluding these principles from the design of the legislative instruments, resulting in disengagement rather than access, and inequity rather than safety and inclusion.
- The Conduct, the Standards and the Rights do not consider unequal starting points when entering the aged care system, instead opting for a universal, or 'one-size-fits-all' approach.

Recommendation: *Co-develop and introduce a dedicated Schedule specifically for Stolen Generations Survivors and Aboriginal and Torres Strait Islander older people.*

- A design that does not integrate cultural safety, history, and self-determination for Aboriginal and Torres Strait Islander people may actively discourage survivors from engaging with such a model. By assuming all individuals hold the same level of safety, equality, financial security and agency, the Standards contribute to further harm, trauma, discrimination and racism already endured by Stolen Generations Survivors.
- While the Standards and the Rights describe entitlements relating to choice, individual decision-making, participation, dignity, safety and equitable access, deficiencies in the underlying framework means it is nearly impossible for survivors and older Aboriginal and Torres Strait Islander people to exercise these rights.⁹
- Despite calls from Community and the Royal Commission for the establishment of a distinct Aboriginal and Torres Strait Islander aged care pathway, institutionalised care environments remain the most likely option available to survivors and Elders.
- For example, Standard 1 (s15-10) requires providers to treat 'safety, health, wellbeing and quality of life' as the primary consideration in the delivery of funded aged care services. As stated previously, engaging in mainstream aged care services for many survivors may lead to distress, re-traumatisation, health deterioration, or withdrawal from services altogether.
- Such environments are fundamentally inappropriate, unsafe, and not conducive to the effective exercise or protection of rights in the provision of care. Where meaningful alternatives do not exist, autonomy is minimal or conditional, and the ability to uphold individual rights is largely hollow.
- These design failures are also inconsistent with the Commonwealth's commitments under the National Agreement on Closing the Gap. The exclusion of feedback and shared decision-

⁹ Department of Health and Aged Care. (2024). *A New Aged Care Act: Exposure draft*. p.12.

making from the community sector during the development of the Rules undermines Priority Reform 1 directly.¹⁰

- Furthermore, the lack of specific Aboriginal and Torres Strait Islander aged care pathways and universal framing of cultural safety conflict with Priority Reforms 2 and 3.¹¹ In particular, the new Act does not focus on building Aboriginal Community-Controlled Organisations (ACCOs), leadership or cultural safety, but instead promotes engagement with mainstream and existing services which are unlikely to be fit-for-purpose.
- This is particularly concerning when considering that the Rules and objects outlined in the Act do not include mandatory training or education requirements, nor do they impose any enforceable obligations on providers to deliver culturally safe, trauma-informed or Stolen Generations-specific history and subsequent care pathways.
- Without explicit accountability and compliance mechanisms to ensure consistent and safe practice, these matters are largely dependent on provider discretion rather than legal obligation. This is reinforced by the fact that individuals are only entitled to an assessment under the Act, not to the care identified as necessary through that assessment, weakening the practical realisation of any rights purportedly established.¹²
- In these circumstances, the delivery of aged care services is highly unlikely to maintain wellbeing or independence as intended by the Standards and is instead, likely to increase risk and effectively exclude survivors from accessing care despite ongoing or complex needs.
- For many Stolen Generations Survivors, their lived experience of care will not include the fulfilment of the Rights and Standards, including the lifelong impacts of colonisation and forced removal, including trauma, financial insecurity, racism, systemic discrimination and power imbalances when participating in necessary institutional aged care or health services.

Chapter 4 – Funding of aged care services

Section 330 – Working out the value of an individual’s assets

Aged Care Rules 2025 – section 330-10 (Other amounts)

- This section focuses on section 330 of the Act, and in particular section 330-10 of the Rules, which governs the treatment of redress payments for aged care asset testing under Chapter 4. While the administration of redress schemes sits outside the Act, the Rules determine how

¹⁰ Interim First Nations Aged Care Commissioner. (2025). *Transforming Aged Care for Aboriginal and Torres Strait Islander people*. p.65.

¹¹ National Agreement on Closing the Gap. (2025). *Priority Reforms*. Retrieved from: <https://www.closingthegap.gov.au/national-agreement/priority-reforms>

¹² Office of the Inspector-General of Aged Care. (2025). *2025 Progress Report on the Implementation of the Recommendations of the Royal Commission into Aged Care Quality and Safety*, p.28.

those payments are treated for aged care asset testing purposes and therefore fall within the scope of this review.

- Section 330-10 of the Rules states that redress payments under the National Redress Scheme (NRS) are exempt from both *income and assets* means testing, with income measurements addressed through existing exclusions under the *Social Security Act 1991* (Cth).¹³
- By contrast, equivalent exemptions do not apply to redress payments made to survivors under other schemes, including any in the future and those currently operating in Victoria, the Territories, and Western Australia (recently opened in November 2025).
- As a result, survivors who receive redress payments outside of the NRS are subject to different treatment based solely on jurisdiction, despite having experienced similar or identical harms.
- This disparity compromises consistency, transparency and equity within aged care means testing by subjecting all other redress payments to assessment and co-contributions not applied to recipients of NRS payments.
- This is contrary to the objectives of a rights-based, culturally safe and accessible aged care system, as reflected in the Code of Conduct (s14), the Aged Care Quality Standards (s15), and the Statement of Rights (s23).¹⁴
- Additionally, the Rules are incompatible with the Royal Commission recommendations of a system built upon the principle of entitlement that allows for all older Australians to access quality aged care, regardless of their income.¹⁵ Retaining the current approach would further compound inequality and disadvantage many survivors have carried throughout their lives.

Recommendation: *The Healing Foundation reiterates our firm position that Stolen Generations Survivors should not face unintended adverse impacts of any payment they receive as part of redress.*

- We already know that Stolen Generations Survivors are ‘the gap within the gap’, with the impacts of forced removal continuing well into older age, including limited access to superannuation, little or no home equity, and few financial assets to draw on.¹⁶ We also know that descendants are unlikely to receive generational transfer of wealth and will continue to experience the intergenerational impacts of the Stolen Generations.

¹³ *Aged Care Rules 2025*. (Cth). s330-10(2)(b). Retrieved from: <https://www.legislation.gov.au/F2025L01173/asmade/text>

¹⁴ *Aged Care Act 2024*. (Cth). s14, 15, 330. Retrieved from: <https://www.legislation.gov.au/C2024A00104/latest/text>

¹⁵ Office of the Inspector-General of Aged Care. (2025). *2025 Progress Report on the Implementation of the Recommendations of the Royal Commission into Aged Care Quality and Safety*, p.29.

¹⁶ The Healing Foundation. (2025). *Are you waiting for us to die? The unfinished business of Bringing Them Home*, p.14.

- In their present form, the legislative instruments reinforce well-documented gaps in aged care outcomes for Stolen Generation Survivors, primarily by increasing financial thresholds and narrowing access to culturally safe and appropriate care.
- We share the concerns raised by the Parliamentary Joint Committee on Human Rights in its recent report, particularly regarding the lack of clarity around whether this legislative instrument may increase aged care costs for survivors who have received redress payments outside of the NRS.¹⁷ We agree with the Committee's assessment that this approach is regressive and risks placing additional financial pressure on survivors, further contributing to disproportionate impacts.
- This outcome directly contradicts the rights-based framework underpinning and promoted by the Act and effectively constrains survivors' capacity to uphold their rights to health, dignity, secure living, and equitable access to appropriate care.
- As noted by the Inspector General in the recent report on the implementation of the Royal Commission recommendations, a 'one-size-fits-all' approach to aged care is more than insufficient to providing safe and adequate care to survivors, while also conflicting with whole-of-government commitments under the National Agreement on Closing the Gap.
- The Healing Foundation and other national stakeholders provided repeated and consistent advice throughout the consultation processes preceding the introduction of the new Act. Despite this, no amendments were made to the legislative instruments prior to the new Act commencing on 1 November 2025.
- During consultations on the draft rules in February 2025, Aboriginal and Torres Strait Islander peak bodies and other stakeholders recommended to the Department's Aged Care Group that the government amend the new Act Rules (*Release 2b – Funding related to other aged care programs, Section 330-10 Other Amounts*) to ensure all redress payments are exempt from aged care means testing.
- We were disappointed to see that payments made under the Territories Stolen Generations Redress Scheme continue to be identified as an asset for the aged care means assessment in the *Aged Care (Accommodation Payment Security) Levy Amendment Bill 2025* and *Aged Care and Other Legislation Amendment Bill 2025*, under *Compensation*.
- The Healing Foundation had also raised this issue formally with the National Indigenous Australian's Agency (NIAA) and consistently through the First Nations Aged Care Governance Group (FNACGG) which is co-chaired by First Assistant Secretary, Market and Workforce Division, Ageing and Aged Care Group.

¹⁷ Parliamentary Joint Council on Human Rights, *Report 8 of 2025*, s1.117, p.45; (2025) AUPJCHR 61

- It is also unclear what limitations have prevented decisive action being taken by officials within the Ageing and Age Care Group when the Department was first made formally aware of this matter as early as February 2025.
- Further, the Interim First Nations Aged Care Commissioner has highlighted the issue of ‘inconsistent treatment of redress payments’ for asset testing numerous times and on behalf of multiple stakeholders, indicating that this is a known and ongoing concern of survivors, Elders, Aboriginal Community-Controlled Organisations, service providers and other workers within the aged care sector.¹⁸
- To date, no actions or recommendations have been implemented to ensure equitable exemptions for all redress or reparation payments received by Stolen Generations Survivors.

Recommendations

The Healing Foundation calls on the Government to:

1. **Embed UNDRIP within the legislative framework underpinning the Rules**

The Government should amend the Aged Care Rules 2025 to expressly recognise the United Nations Declaration of Indigenous Peoples (UNDRIP) as a guiding framework for the interpretation and application of the Code of Conduct and Quality Standards.

2. **Introduce a dedicated schedule specifically for Stolen Generations Survivors and Aboriginal and Torres Strait Islander people.**

The Government should develop a dedicated Schedule within the Aged Care Rules or design an Aboriginal and Torres Strait Islander Quality Standard framework to ensure both the Code of Conduct and Quality Standards are meaningfully achievable for Stolen Generations Survivors and Elders.

3. **Urgently implement the same exemptions to redress payments for Stolen Generations Survivors from being counted as an ‘asset’ for aged care means testing, in line with exemptions that already exist for payments made under the National Redress Scheme.**

Specifically, we implore the Government to update section 330-10 in the *Aged Care Rules 2025* to exempt all redress payments, with suggested wording such as:

¹⁸ Interim First Nations Aged Care Commissioner. (February 2025). *Submission – Aged Care Rules – 2b*. Retrieved from: <https://www.health.gov.au/sites/default/files/2025-10/ifnacc-submission-aged-care-rules-release-2b.pdf>

(b) Any redress payment paid to the individual, or to an administrator for the individual, under section 48 of the National Redress Scheme for Institutional Child Sexual Abuse Act 2018, or under a corresponding redress scheme established under a law of State or Territory.

If urgent action is not taken to rectify the above through implementing our recommendations, Stolen Generations Survivors who are already vulnerable and at risk of not getting the care they need, will continue to face additional financial disadvantages as a result of the new Aged Care Act.

Most critically, The Healing Foundation strongly recommend that amendments be made to the legislative instruments to ensure payments received under any Stolen Generations redress scheme are exempt from aged care means testing, in line with exemptions in place for the National Redress Scheme (NRS).

The Healing Foundation welcomes the opportunity to discuss our concerns further and if additional information is required, please contact Sarah Davidson via phone 0492 329 558 or email Sarah.Davidson@healingfoundation.org.au

Yours faithfully,



Shannan Dodson
Chief Executive Officer
The Healing Foundation