



9 August 2023

National School Reform Agreement Consultation  
Australian Government Department of Education

**Re: Review to inform a better and fairer education system**

FPDN welcomes the opportunity to make a submission into the review of creating a better and fairer education system.

The First Peoples Disability Network (FPDN) is the national peak organisation of and for Australia's First Peoples with disability, their families and communities. We actively engage with communities around Australia and represent Aboriginal and Torres Strait Islander people with disability in Australia and internationally. Our goal is to influence public policy within a human rights framework established by the United Nations Convention on the Rights of Persons with Disability and the United Nations Declaration on the Rights of Indigenous Peoples. Consistent with our principle of community control, our organisation is governed by First Peoples with lived experience of disability.

FPDN recognises the unique opportunity Closing the Gap and Australia's Disability Strategy to ensure the legislation, policies, programs and service delivery are accessible, inclusive and equitable for First Nations people with disability. We recognise our community operates in multiple worlds – First Nations, disability, and mainstream society. The disability sector reflects this and is a complex and interconnected web of approaches to enable First Nations people with disabilities to realise their rights to



participate in all aspects of their life. These enablers, approaches, services and supports need to exist across the entire life-course, including the Aboriginal and Torres Strait Islander Community Controlled Sector and mainstream disability sector, as well as mainstream organisations and services.

Consistent with the social and cultural models of disability within which FPDN works, we recognise that Aboriginal and Torres Strait Islander people are disproportionately affected by the education system in Australia. This impact is widespread and has social, emotional, physical, economic and cultural impacts. Of the thirty-eight questions posed in the *Review to Inform a Better and Fairer Education System – Consultation Paper* this letter will first provide an overview of FPDN’s position on addressing primary and secondary education for First Nations students with disabilities and will then address nine of the questions that impact the intersection of First Nations and disability.

## **Introduction**

FPDN strongly believes that addressing the needs of First Nations people with disability is crucial for ensuring a fair, equitable, and inclusive education system that respects the rights and well-being of all individuals. The impetus to ensure the NSRA provides a strong framework for this in all jurisdictions is critical to the lives of First Nations students with disabilities. Failing to act will have life-long impacts for individuals and the wider community. Denying students with disability appropriate support now will lead to poor employment prospects and an increased likelihood of contact with the justice system.

The current education system in Australia is failing to adequately meet the needs of students with disability, and it is rare for students with disability to be provided with a genuine inclusive educational experience.<sup>1</sup> Students with disability are being shut out and denied a future by school systems that assume they have nothing to contribute.<sup>2</sup>

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<sup>1</sup> See e.g., People with Disability Australia, ‘Submission to the Senate Inquiry into the current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of supports’, 28 August 2015; People with Disability Australia, ‘Submission to the NSW Parliament General Purpose Standing Committee 3, Inquiry into Students with a disability or special needs in New South Wales schools’, March 2017; Children with Disability Australia, ‘Hear Our Voices: Submission to the Senate Inquiry into current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of supports’, August 2015.

<sup>2</sup> See also: [Australian schools failing children with disabilities. Senate report finds](#); ABC TV (15/01/2016)

Only 36% of people with disability aged 15-64 years complete secondary education compared to 60% of people without disability.<sup>3</sup> 28% of school aged people with disability do not attend school. Students with disability report that their disability is the main reason they cannot attend school.<sup>4</sup> Further, there is no data on part time attendance of students with disability despite the frequently reported direct experience of many children not being “allowed” to attend school on a full-time basis.

Many mainstream schools are inaccessible, meaning that many students with disability are directed to ‘special’ schools instead. ‘Special schools’ in Australia are those that “only enrol students with special needs.”<sup>5</sup>

Segregation of students with disability has increased significantly over the past decade, with a shift towards students with disability attending special schools and away from attending mainstream schools. The number of students with disabilities attending a special school increased by 35% between 2003 and 2015. This increase is supported by a funding incentive, whereby a child with disability receives higher funding if they attend a special school rather than a mainstream school.<sup>6</sup>

The *Committee on Economic, Social and Cultural Rights* expressed concern about the increase in segregated education during the constructive dialogue with Australia in May 2017 and recommended that Australia implement measures to ensure children with disability have access to inclusive education.<sup>7</sup>

Students with disability routinely experience discrimination, lack of supports, inadequately trained teachers, a lack of expertise and an entrenched systemic culture of

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<sup>3</sup> Students with disability report that their disability is the main reason they do not attend school. See: Australian Institute of Health and Welfare (2017) *Disability in Australia: changes over time in inclusion and participation in education*. AIHW, Canberra.

<sup>4</sup> Australian Institute of Health and Welfare (2017) *Disability in Australia: changes over time in inclusion and participation in education*. AIHW, Canberra.

<sup>5</sup> Schools that only enrol students with special needs. Australian Institute of Health and Welfare (2017) *Disability in Australia: changes over time in inclusion and participation in education*. AIHW, Canberra.

<sup>6</sup> Students with disability at a mainstream school attract a students with disability loading of 186 per cent of the base per student amount; those at a special school attract a students with disability loading of 223 per cent. See: Senate Standing Committees on Education and Employment (15 January 2016) Chapter 5: *How to better support students with disabilities in schools* in 'Access to real learning: the impact of policy, funding and culture on students with disability'.

<sup>7</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Australia*, UN Doc E/C.12/AUS/CO/5, paras 55-56.

low expectations.<sup>8</sup> Around 3 in 4 students with disability experience difficulties at school, predominately due to fitting in socially, communication difficulties, and learning difficulties<sup>9</sup>. 20% of people with disability attending an educational institution experience discrimination, of which 25% identify a teacher or lecturer as the source of that discrimination.<sup>10</sup>

Students with disability are experiencing disturbing rates of bullying and situations of restraint and seclusion.<sup>11</sup> There are an increasing number of incidents being reported of children with disability being placed in 'withdrawal spaces', which effectively amount to restraint and seclusion in fenced off spaces, cages and cupboards.<sup>12</sup>

There is no government data on these experiences. However, a national survey of education experiences of students with disability undertaken in 2017 by the national representative organisation, Children and Young People with Disability Australia (CYDA)<sup>13</sup> found that in the preceding 12 months, 19% of students with disability experienced restraint at school and 21% reported experiences of seclusion. The survey also found that in the same period, 56% of students with disability had experienced bullying, which is more than twice the rate of bullying estimated to occur in the general population of school aged children.

The national survey found that bullying incidents reported included students with disability being attacked, punched, kicked, head butted, having food or rocks thrown at

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<sup>8</sup> See for eg: Children with Disability Australia (CDA) (2013) Inclusion in education: Towards equality for students with disability, Written by Dr Kathy Cologon for CDA. See also: Australian schools failing children with disabilities, Senate report finds; ABC TV (15/01/2016)

<sup>9</sup> Australian Institute of Health and Welfare (2017) Disability in Australia: changes over time in inclusion and participation in education. AIHW, Canberra.

<sup>10</sup> 20% of people with disability attending an educational institution experience discrimination, of which 25% identify a teacher or lecturer as the source of that discrimination. See: Australian Institute of Health and Welfare (2017) Disability in Australia: changes over time in inclusion and participation in education. AIHW, Canberra.

<sup>11</sup> The evidence base describing egregious breaches of the human rights of children and young people with disability in schools is rapidly increasing. See for eg: Children and Young People with Disability Australia (CYDA) (August 2016) Bullying and abuse of school students with disability at alarming levels; Media Release 9 August 2016. See: Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Research Report – Restrictive Practices: A pathway to elimination (2023) The University of Melbourne; University of Technology Sydney; The University of Sydney.

<sup>12</sup> See e.g., See: Australian Broadcasting Corporation (ABC) (16 August 2016) School investigated after claims boy with autism locked in 'cage'. Australian Broadcasting Corporation (ABC) (31 August 2016) School accused of leaving teen with autism outside on beanbag for whole term. The Canberra Times (11 August 2016) Autism cage details emerge as United Nations investigates abuse of children.

<sup>13</sup> Children and Young People with Disability Australia (CYDA) Education Survey 2017. CYDA, Melbourne, Victoria.

them, being teased, mimicked and spat on, cyberbullied and even being told to commit suicide. One student reportedly had a skipping rope wrapped around her neck and an attempt was made to strangle her.<sup>14</sup>

The rate of disability for Indigenous people, including children<sup>15</sup> is twice as high as that among the general population.<sup>16</sup> The retention rate to Year 12 for Indigenous students is significantly lower than that for non-Indigenous students. Although the retention rate to Year 12 for Indigenous students has increased steadily, from 47% in 2010 to 60% in 2016, it is still significantly lower than the non-Indigenous rate (79% in 2010 and 86% in 2016).<sup>17</sup>

Australia is seeking to reject its human rights obligations by seeking a clarification from the CRPD Committee “that States Parties may offer education through specialist classes or schools consistently with article 24”.<sup>18</sup> This is in violation of CRPD Article 24 and CRPD General Comment 4<sup>19</sup>. CRPD General Comment 4 clarifies that: ‘States parties must ensure the realization of the right of persons with disabilities to education through an inclusive education system at all levels, and for all students, including persons with disabilities, without discrimination and on an equal basis with others.’ It further stipulates that: ‘Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular impairment or to various impairments, in isolation from students without disabilities.’ In addition, it clarifies that: ‘For article 24 (2) (a) to be implemented, the exclusion of persons with disabilities from the general education system should be prohibited.’

Of the thirty-eight questions posed in the *Review to Inform a Better and Fairer Education System – Consultation Paper* this letter will address nine of the questions that impact the intersection of First Nations and disability.

FPDN addresses the selected consultation paper questions as follows:

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<sup>14</sup> Gotlib, S. (2018) Action Must Be Taken to Stop Bullying of Students with Disability. ProbonoAustralia, 21st May 2018.

<sup>15</sup> Australian Bureau of Statistics, 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015: Aboriginal and Torres Strait Islander People with Disability.

<sup>16</sup> Australian Institute of Health and Welfare 2018. Australia’s health 2018. Australia’s health series no. 16. AUS 221. Canberra: AIHW.

<sup>17</sup> See: Australian Institute of Health and Welfare 2017. Australia’s welfare 2017. Australia’s welfare series no. 13. AUS 214. Canberra: AIHW.

<sup>18</sup> Australia government response to LOIPR, para 275 (b).

<sup>19</sup> Committee on the Rights of Persons with Disabilities, General comment No. 4 (2016) on the right to inclusive education. UN Doc No. CRPD/C/GC/4

**Question 2: What are the evidence-based practices that teachers, schools, systems and sectors can put in place to improve student outcomes, particularly for those most at risk of falling behind? Are different approaches required for different at-risk cohorts?**

Different approaches are required for different at-risk cohorts. For example, approaches often need to be trauma-informed<sup>20</sup> and it is important to note that trauma behaviours can often have overlapping traits with anxiety and behavioural conditions.<sup>21</sup> However, trauma-informed practices are beneficial when based on relationships. Evidence has shown that a strong, positive teacher-student relationship can reverse academic underachievement in students.<sup>22</sup> Additionally, the AITSL standards state that teachers are to know their students and how they learn:<sup>23</sup> this means that teaching approaches may need to be individualised to be effective in supporting student learning.

Further evidence-based practices to improve student outcomes include using a differentiated curriculum within the classroom, and encouraging student-led learning.<sup>24</sup> These practices ensure that learning styles and learning needs are met in the classroom.

**Question 3: How can all students at risk of falling behind be identified early on to enable swift learning interventions?**

Provide specific professional development for teachers around trauma-informed classroom practices. These practices are to be implemented as part of a school-wide approach.

Educate and empower teacher aides to support the learning needs of students who need additional learning support. Also, allow enough time for teacher aides to spend with specific students in each class.

Create smaller class sizes for teachers so that there are greater opportunities for teachers to provide individualised attention for student learning support. Smaller class sizes also

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<sup>20</sup> E Berger, '[Five approaches for creating trauma-informed classrooms](#),' 2019, accessed 21 July 2023.

<sup>21</sup> NSW Government Department of Education, '[Trauma-informed practice in schools: An explainer](#),' 2020, accessed 21 July 2023.

<sup>22</sup> J Lamanna, '[Reversing and preventing academic underachievement in gifted students viewed through the lens of lived experience](#),' 2022, accessed 21 July 2023.

<sup>23</sup> AITSL, '[Australian Professional Standards for Teachers](#),' 2017, accessed 21 July 2023.

<sup>24</sup> J Lamanna, '[Reversing and preventing academic underachievement in gifted students viewed through the lens of lived experience](#),' 2022, accessed 21 July 2023.

mean that there are generally less classroom disruptions; this helps facilitate a positive learning environment where learning needs are met.

**Question 4: Should the next NSRA add additional priority equity cohorts? For example, should it add children and young people living in out-of-home care and students who speak English as an additional language or dialect? What are the risks and benefits of identifying additional cohorts?**

The data shows that students who live in out-of-home care are more likely to experience lower educational outcomes.<sup>25</sup> Based on the data, this cohort may benefit from being added to the priority equity cohort. However, it should be noted that students from out-of-home care are likely to experience intersectionality which are the additional layers that contribute to disadvantage.<sup>26</sup> With this in mind, it may be the intersectionality that creates the lower educational outcomes, rather than the single factor of being in out-of-home care.

Students who speak English as an additional language, while benefiting from specific support around language acquisition in the classroom, may not need to be on the priority equity cohort. The focus needs to be on the student's unique strengths and abilities which includes their ability to speak an additional language. When focusing on students in a subgroup of English as an Additional Language or Dialect (EALD) there is a danger of perpetrating the assimilation strategies that Australia has imposed in the past. Instead, students should have the opportunity to learn in their own language alongside English in the classroom. This is particularly important for Aboriginal and Torres Strait Islander students. First Nations languages should be a priority in the school, especially in remote communities.

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<sup>25</sup> K Te Riele et al., '[Attending school every day counts – but kids in out-of-home care are missing out](#),' 2022, accessed 21 July 2023.

<sup>26</sup> K Te Riele et al., '[Attending school every day counts – but kids in out-of-home care are missing out](#),' 2022, accessed 21 July 2023.

**Question 6: How can the targets in the next NSRA be structured to ensure that evidence-based approaches underpin a nationally coherent reform agenda while allowing jurisdictions and schools the flexibility to respond to individual student circumstances and needs?**

At a minimum, targets and sub-outcomes should be structured and designed in alignment with targets and outcomes outlined in both *the National Closing the Gap Agreement* and *Australia's Disability Strategy*. In addition, the targets and sub-outcomes should be designed in a way that ensure all jurisdictions are required to capture and report data that is reflective of the intersectional realities of First Nations school students with disabilities. Current measures are not adequate to capture and report accurately for our most vulnerable students across the nation. This lack of data means that governments, schools and support providers do not have sufficient information to build policies, strategies and practices that build more inclusive, safe and supportive environments for First Nations students with disabilities, their families and carers.

Schools, and teachers, must individually be able to respond to student circumstances, learning styles and educational needs. If a 'cookie-cutter' approach is implemented, it undermines the teaching staffs' local knowledge of students, geographical circumstances and specific socioeconomic and intersectional factors that are part of that school.

Teachers are already subject to increasing administrative tasks, regulations and guidelines which do not reflect the needs of students within the local school; it is not advisable to insist on new levels of regulation and administration.

By enabling schools and teaching staff to implement solutions based on local knowledge, appropriate solutions are likely to occur. Enablers include sufficient funding, professional development opportunities, and time away from administrative tasks.

**Question 11: Would there be benefit in surveying students to help understand student perceptions of safety and belonging at school, subjective state of wellbeing, school climate and classroom disruption? Would there be value in incorporating this into existing National Assessment Program surveys such as NAPLAN?**

There is benefit in consulting with students across broad demographics to understand the issues raised in this question. Best practice in research recognises that co-design is essential when looking at issues that involve a range of stakeholders – such as students,



staff, parents and broader community. This engagement, or co-design, needs to be meaningful for all stakeholders, without hierarchy and power imbalances, and needs to be transparent in its processes.<sup>27</sup>

However, incorporating this into NAPLAN is unnecessary as NAPLAN is often a stressful time for both students, teachers and family with increasing pressure around NAPLAN performance outcomes. Creating additional questions, including those about wellbeing, safety and belonging in this setting is inappropriate and will likely skew the data, particularly as students who struggle at school may disengage or not participate in NAPLAN. Similarly, the results from NAPLAN take approximately two school terms to feed back to schools which means that the implementation of the findings are limited in the classroom as the majority of the school year is over.

FPDN expresses concern regarding the safety of First Nations students with disabilities who are exposed to unsafe practices and school settings. As mentioned in the introduction, First Nations students with disabilities are disproportionately impacted by discrimination and bullying at school by peers and educational staff. The recently published report by the Royal Commission into Violence and Abuse experienced by persons with Disabilities, discusses in detail how the use of restrictive practices in schools can significantly impact the safety of Indigenous disabled children, often exacerbating existing challenges and vulnerabilities they might already face. In addition the report states:

“... for the most part, it remains parents who are enabled to speak on behalf of their child about their child’s experiences. While many parents of children and young people with disability are fierce advocates, offering important insights into the impacts of restrictive practices, a parent’s testimony is not the same as that of the person who experiences this violence”<sup>28</sup>

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<sup>27</sup> NCOSS, [‘Principles of Co-design’](#) 2017, accessed 24 July 2023.

<sup>28</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Research Report (2023) Restrictive Practices: A pathway to elimination (2023) The University of Melbourne; University of Technology Sydney; The University of Sydney.

These practices can lead to physical and emotional harm, erode trust between students and educators, and contribute to a hostile learning environment. The intersection of cultural differences and disabilities adds complexity, as the cultural backgrounds of Indigenous children may not be adequately understood or respected by school staff. This lack of cultural sensitivity in the implementation of restrictive practices can perpetuate a sense of exclusion and contribute to a disconnection from cultural identity.

It is unclear how surveys of safety within schools will be conducted with students with disabilities in an impartial and trauma informed way that does not potentially expose the student to further harm.

**Question 19: What can be done to attract a diverse group of people into the teaching profession to ensure it looks like the broader community?**

FPDN draws attention to the strategies and implementation plans of the National Closing the Gap Framework and Australia's Disability Strategy, and suggests that the NSRA should align with actions and efforts being undertaken and planned under both of these frameworks.

Firstly, efforts need to be taken to retain current teaching staff. Without creating an environment where teachers feel supported and valued, there will always be a considerable attrition rate.

Alongside bettering teaching conditions, alternate pathways need to be offered to attract a diversity of teachers. The alternate pathways could include:

- recognising cultural and linguistic capabilities as strengths and crediting this as prior learning within a teaching degree;
- recognising prior learning or work experience in any subject area (such as music education, mathematics, etc) and crediting this within a teaching degree;
- fast-tracking teaching degrees;
- having specific academic support hubs for targeted diversity groups such as Culturally and Linguistically Diverse people, First Nations people, first-in-family at university, and people from low socioeconomic backgrounds;

- having mentors who support diverse teaching staff during teacher training and in the first three years of teaching.

**Question 20: What can be done to attract more First Nations teachers? What can be done to improve the retention of First Nations teachers?**

FPDN draws attention back to the National Closing the Gap Framework, in particular Priority Reform One: Formal Partnerships and Shared Decision Making Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements. This includes decision making regarding the education and schooling of First Nations children and young people with disabilities at strategic policy making levels as well as practice.

True shared decision making will ensure that First Nations perspectives, culture and languages are prioritised in education settings, making education more attractive to not only First Nations teachers, but also students. This specifically includes First Nations people with disabilities. Scott Avery argues that “enhancing self-determination of Aboriginal and Torres Strait Islander peoples with disability, including their access to culture and Country, should be central to strategies, support mechanisms and policy in relation to people with disability”<sup>29</sup>.

The NSRA should also consider what it means to attract First Nations teachers with disabilities and the impact on developing inclusive and supporting schooling environments and practices for First Nations students with disabilities.

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<sup>29</sup> Scott Avery in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Research Report (2023) Restrictive Practices: A pathway to elimination (2023) The University of Melbourne; University of Technology Sydney; The University of Sydney

**Question 26: What types of data are of most value to you and how accessible are these for you?**

Due to paywalls, peer-reviewed research is not accessible to teaching staff and teaching administrators. When evidence-based research is not efficiently disseminated to the audience that could implement it, this gatekeeping means that research cannot be integrated into teaching practices.

Additionally, any data needs to be collected in agreement with First Nations peoples and communities in support of the principles of First Nations data sovereignty: recognising that data should only be used as a tool for improving the lives of First Nations people and not as a means of surveillance. Additionally, data collection should be overseen by First Nations people experienced as data collection experts.

With this in mind, the data that needs to be gathered are data around intersectionality; that is, data that reflects the intersectional layers of First Nations, disability, socioeconomic backgrounds, rural and remote locations, and English as an additional language. Currently, there are data around First Nations or cohorts with disability but not the intersection of both. This is true for other layers of intersectionality.

**Question 32: Should an independent body be responsible for collecting and holding data? What rules should be in place to govern the sharing of data through this body?**

As mentioned in Question 26, data collection and data sharing are to be governed by the principles of First Nations data sovereignty. This process is to be transparent, accountable, and led by First Nations researchers and data collectors.

Likewise, the Disability Standards for Education 2005<sup>30</sup> states that a prospective student with disability must be treated on the same basis as any other prospective student, and an enrolled student with disability must be able to participate in course, programs and activities on the same basis as all other students. These principles must be upheld.

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<sup>30</sup> Australian Government, 'Disability Standards for Education 2005,' <https://www.legislation.gov.au/Details/F2005L00767> accessed 28 July 2023.

FPDN thank the Department of Education for the opportunity to participate in this review and FPDN would be happy to discuss the matter further with you.

