



# National Disability Employment Strategy

*Submission*

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**First Peoples Disability Network**

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# Recommendations

**Recommendation 1:** That the NDES include a specific priority for reducing barriers to employment for Aboriginal and Torres Strait Islander people with disability.

**Recommendation 2:** That the NDES includes measurable targets and outcomes that are reported on by the Australian Government regularly.

**Recommendation 3:** That the NDES coordinate with other appropriate strategies, including Closing the Gap.

**Recommendation 4:** That the NDES includes recognition of the impact of intersectional discrimination as a key barrier for Aboriginal and Torres Strait Islander people with disability when accessing employment

**Recommendation 5:** That action is taken to address the Sklavos decision and the implications for the DDA

**Recommendation 6:** That reform is undertaken to address the need for remedy for intersectional discrimination

**Recommendation 7:** That further legal and advocacy support for Aboriginal and Torres Strait Islander people with disability is made available to take action against discrimination at work

**Recommendation 8:** That the NDES include education issues for Aboriginal and Torres Strait Islander children and young people with disability as part of the priority for all young people with disability.

**Recommendation 9:** That the NDES coordinate with the education targets and outcomes in the National Agreement on Closing the Gap.

**Recommendation 10:** That an Aboriginal and Torres Strait Islander disability-led and controlled individual advocacy service be funded, with specific advocates to navigate employment

**Recommendation 11:** That an Aboriginal and Torres Strait Islander disability-led and controlled disability services and workforce strategy be developed, in line with the National Agreement on Closing The Gap and other relevant strategies and frameworks

**Recommendation 12:** The National Disability Employment strategy aligns with the outcomes and targets in the National Agreement on Closing the Gap, particularly Outcomes 5, 7 and 8.

**Recommendation 13:** That the upcoming new National Disability Strategy aligns with relevant Closing the Gap targets and outcomes on employment

**Recommendation 14:** That the upcoming new National Disability Strategy contains explicit priorities for Aboriginal and Torres Strait Islander people with disability.

**Recommendation 15:** That the Australian Government plan to improve outcomes for Aboriginal and Torres Strait Islander people with disability is updated to include Closing the Gap outcomes and targets

**Recommendation 16:** That Area of Focus 4 from Australian Government plan to improve outcomes for Aboriginal and Torres Strait Islander people with disability is incorporated into NDES

**Recommendation 17:** That priority reform area 1 in the NDES consultation paper is amended to refocus on retention of people with disability in the workforce, not just entry.

**Recommendation 18:** That current funding for DES be diverted to new Aboriginal and Torres Strait Islander people with disability specific services to engage in culturally appropriate employment, in line with the Closing the Gap targets.

**Recommendation 19:** That NDIS employment supports prioritises open employment for Aboriginal and Torres Strait Islander people with disability

**Recommendation 20:** That a transition plan to mainstream employment is developed for all current employees of ADEs that includes the needs of Aboriginal and Torres Strait Islander people with disability.

**Recommendation 21:** National, state and territory government procurement must not include Australian Disability Enterprises or any other supported employment. Instead, procurement must include positive incentives for employment of Aboriginal and Torres Strait Islander people with disability, including people with intellectual and cognitive disability.

**Recommendation 22:** Increase incentives to employment that don't threaten ongoing eligibility to the DSP for Aboriginal and Torres Strait Islander people with disability.

# Introduction

The National Disability Employment Strategy (NDES) needs to urgently address employment for First Peoples with disability as one of its key priorities. If there is a failure to do so, this will continue our community's exclusion from Australia's economic prosperity.

The 2016 Australian Human Rights Commission *Willing to Work* inquiry found that Aboriginal and Torres Strait Islander people overall have lower labour force participation rates than non-Indigenous people (64.5% compared with 78.6%), and that the gap is wider amongst those with disability (34.8% and 53.6%).

Aboriginal and Torres Strait Islander people with disability are also significantly less likely than non-Indigenous people with disability to be employed (25.6% compared with 48.7%), and the unemployment rate for Aboriginal and Torres Strait Islander people with disability is nearly three times as high as the comparable rate for non-Indigenous people with disability (25.3% compared with 9.0%).<sup>1</sup>

The NDES consultation paper recognises that the employment rate for people with disability is not improving with the current settings, and that these need to change. People with disability, in consultation for the next National Disability Strategy, outlined their concerns finding that economic security had got worse over the last 10 years.<sup>2</sup> In addition, people with disability reported that 'whether people with disability have enough money to make choices about where and how they live' had significantly deteriorated.<sup>3</sup>

The current settings across a variety of programs and strategies aren't working, and it's time to invest in a new way of making sure that First Peoples with disability can get out of poverty.

This submission will outline the urgent need to address the intersectional nature of the barriers to employment for Aboriginal and Torres Strait Islander people with disability, and to invest strongly in community owned and led solutions, in coordination with the relevant Closing the Gap targets.

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<sup>1</sup> Australian Human Rights Commission 2016 *Willing to Work* inquiry report, p176  
<https://humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination>

<sup>2</sup> Right to opportunity Consultation report to help shape the next national disability strategy December 2019  
[https://www.dss.gov.au/sites/default/files/documents/12\\_2019/nds\\_beyond2020\\_fullreport-161219\\_o.pdf](https://www.dss.gov.au/sites/default/files/documents/12_2019/nds_beyond2020_fullreport-161219_o.pdf) p16

<sup>3</sup> As above

## About Us

The First Peoples Disability Network Australia (FPDN) is a national organisation of and for Australia's First Peoples with disability, their families and communities. Our organisation is governed by First Peoples with lived experience of disability.

We proactively engage with communities around Australia and advocate for the interests of First Peoples with disability in Australia and Internationally. We follow the human rights framework established by the United Nations Convention on the Rights of Persons with Disabilities, to which Australia is a signatory, and the United Nations Declaration on the Rights of Indigenous Peoples.

First Peoples with disability and their families are amongst the most seriously disadvantaged and disempowered members of the Australian community. We give voice to their needs and concerns and share their narratives of lived experience.

We work for the recognition, respect, protection and fulfilment of the human rights of First Peoples with disability and their families.

We work within a social model of disability, in which we understand 'disability' to be the result of barriers to our equal participation in the social and physical environment. These barriers can and must be dismantled. The social model stands in contrast to a medical model of disability, which focuses on diagnosis.

# National Disability Employment Strategy priorities

The NDES paper proposes the following priorities:

1. Lifting employer engagement, capability and demand: providing employers with the tools and abilities to confidently hire, support and develop more people with disability.
2. Building employment skills, experience and confidence of young people with disability: ensuring young people with disability are supported to obtain meaningful work and careers of their choice.
3. Improving systems and services for jobseekers and employers: making it simpler for job seekers with disability and employers to navigate and utilise government services, and driving better performance from service providers.
4. Changing community attitudes: changing people's perception and expectation about the capability of people with disability in the workplace.<sup>4</sup>

These priorities need to be extended, particularly to ensure that they are meaningful, as well as leading to actual change for Aboriginal and Torres Strait Islander people with disability.

1. Measures to target employers must include employment of Aboriginal and Torres Strait Islander people with disability, and in addition, there must be a significant emphasis on retention of people with disability in the workforce that includes specific targets for Aboriginal and Torres Strait Islander people with disability. In addition, procurement must not include Australian Disability Enterprises or any other supported employment, but instead provide positive incentives for the employment of Aboriginal and Torres Strait Islander people with disability, including in all levels of the public service.
2. This priority must include specific goals for Aboriginal and Torres Strait Islander young people to enter mainstream (or open) employment that is paid at non-supported wage level. Work needs to be a pathway out of poverty, not just 'meaningful'. This priority must also address the significant issue of Aboriginal and Torres Strait Islander young people with disability being suspended and/or excluded from school, and entering a pathway towards prison, not education and employment.
3. Disability Employment Services need major reform to ensure they actually work for people with disability, particularly Aboriginal and Torres Strait Islander people with disability. DES providers face little scrutiny or enforceable targets while delivering little for our community.
4. Any efforts to change community attitudes must be intersectional. There also needs to be significant action to amend the Disability Discrimination Act to provide real accountability for discrimination by employers, particularly the intersection between race and ableism. The DDA reform also needs to remove the legal and financial barriers for people with disability to take action on discrimination. The DDA also needs the capacity to act on structural and systematic issues.

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<sup>4</sup> <https://engage.dss.gov.au/national-disability-employment-strategy/national-disability-employment-strategy-consultation-paper/>

However, there are significant limitations with these proposed priority responses that are unlikely to change the barriers to accessing employment, particularly for Aboriginal and Torres Strait Islander people with disability, as outlined in this submission.

These key missing areas are:

- Intersectional issues and discrimination
- Education pathways to employment
- Investment in community controlled and led services
- Integration and coordination with Closing the Gap targets

There also needs to be significant coordination with other strategies, including Closing the Gap, as well as measurable targets and outcomes that show progress towards change.

**Recommendation 1:** That the NDES include a specific priority for reducing barriers to employment for Aboriginal and Torres Strait Islander people with disability.

**Recommendation 2:** That the NDES includes measurable targets and outcomes that are reported on by the Australian Government regularly.

**Recommendation 3:** That the NDES coordinate with other appropriate strategies, including Closing the Gap.

## Intersectional issues and discrimination

Scott Avery, in his recent ground breaking research *Culture is Inclusion*, found that ‘Aboriginal and Torres Strait Islander people with disability experience unique form of ‘intersectional discrimination’ and social inequality that is an interaction of discrimination that is both Aboriginal and Torres Straits Islander and disability related.’

His research also found, through direct interviews with Aboriginal and Torres Strait Islander people with disability, that ‘intersectional in-equality is acute and pervasive across all supports for Aboriginal and Torres Strait Islander people with disability; including disability services, health, education, employment housing and transport.’<sup>5</sup>

The concept of ‘double disadvantage’ has also long been used by Aboriginal and Torres Strait Islander people with disability to describe the ‘the disadvantage that was experienced by Aboriginal people with disability over and above the disadvantage associated with their disability.’<sup>6</sup>

This intersection is often overlooked in policy development, with separate and unconnected policies being developed for people with disability and for Aboriginal and Torres Strait Islander people, that fail to meet the multiple disadvantages of First Peoples with disability. It is vital that the National Disability Employment Strategy doesn’t repeat these shortcomings, and acknowledges the intersectional barriers faced in gaining employment by First Peoples with disability.

### Disability Discrimination Act

The Disability Discrimination Act (DDA) needs reform to be an effective deterrent against discrimination, particularly in a number of areas.

One is the result of the 2017 *Sklavos v Australian College of Dermatologists* decision which has meant that the reasonable adjustments provisions of the DDA, which are intended to help people with disability participate in employment, education and other areas of public life, are ineffective and unenforceable.<sup>7</sup>

The other is in reducing the cost risk for people with disability who wish to take action in regards to discrimination. Once again in 2019-20, employment made up the largest amount of complaints to the Australian Human Rights Commission.<sup>8</sup> Of the total complaints about disability discrimination, 3% were made by Aboriginal and Torres Strait Islander people.

One other concern is that there is no way to make complaints about discrimination that occurs at the intersection of race and disability, which is of particular concern for Aboriginal and Torres Strait Islander people with disability. The Australian Human Rights 2019 Discussion paper: *Priorities for federal discrimination law reform* says that reform is need to make sure that this intersectional discrimination can be address, as in “a person who has suffered discrimination can be required to meet different legal tests for a single instance of

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<sup>5</sup> Scott Avery, *Culture is Inclusion* 2018, Executive Summary of research findings - [https://fpdn.org.au/wp-content/uploads/2018/07/Culture-is-Inclusion-exec-summary-\\_2.pdf](https://fpdn.org.au/wp-content/uploads/2018/07/Culture-is-Inclusion-exec-summary-_2.pdf)

<sup>6</sup> Bostock L. (1991) 'Access and equity for people with a double disadvantage'. *Australian Disability Review*, Vol1. 2, pp. 3-8.

<sup>7</sup> <https://piac.asn.au/2019/11/13/piac-working-with-disability-advocates-to-fix-reasonable-adjustments/>

<sup>8</sup> [https://humanrights.gov.au/sites/default/files/2020-10/AHRC\\_AR\\_2019-20\\_Complaint\\_Stats\\_FINAL.pdf](https://humanrights.gov.au/sites/default/files/2020-10/AHRC_AR_2019-20_Complaint_Stats_FINAL.pdf)

discriminatory conduct where the discrimination arises as a result of the intersection of more than one protected attribute.”<sup>9</sup>

Many people with disability face barriers when trying to access support (legal and advocacy) about discrimination issues. There is significant underfunding of specialist disability legal services, including those that deal with discrimination matters and are experienced in navigating these complex systems.

**Recommendation 4:** That the NDES includes recognition of the impact of intersectional discrimination as a key barrier for Aboriginal and Torres Strait Islander people with disability when accessing employment

**Recommendation 5:** That action is taken to address the Sklavos decision and the implications for the DDA

**Recommendation 6:** That reform is undertaken to address the need for remedy for intersectional discrimination

**Recommendation 7:** That further legal and advocacy support for Aboriginal and Torres Strait Islander people with disability is made available to take action against discrimination at work

## Education pathways to employment

The National Disability Employment Strategy must link in with related strategies around education for Aboriginal and Torres Strait Islander people with disability, particularly for school retention and to stop the high rate of school suspension of young people with disability.

In 2015, FPDN gave evidence to a Senate inquiry about education for young people with disability. Our CEO Damian Griffis said:

“But the real risk we see—and this is a common experience for some of our young people—is that there is a trajectory that means they end up in the criminal justice system, and it is usually about not having an early intervention, not having their disability identified as early as possible. We describe it as the 'bad black kid' syndrome. Just to explain that: the way it usually plays out is that the kid might be in the back of the classroom, getting frustrated, getting angry, and may not feel that he has an opportunity to really participate. There are a whole lot of things going on. He gets suspended or expelled from school. He might start hanging around at the local shops or whatever. He is starting to be told to move on by the police, and away you go—a trajectory into juvenile justice et cetera. From our experience and from the stories we hear there is a disability in there: there is a hearing impairment or a vision impairment—maybe he cannot see the board—or he comes from a home where he does not get an awful lot of sleep, and there could be a whole lot of consequences around that.”<sup>10</sup>

Dr Linda Graham says that “disadvantaged children, children with a disability, Indigenous children and children in out-of-home care are all significantly overrepresented in school suspension statistics. These are the children who most need to be at school and for whom suspension is most likely to have serious and long-term negative impact.” Dr Graham also writes that school suspension and exclusion are directly linked to academic failure and school dropout which can make entry to employment much more difficult.<sup>11</sup>

For Aboriginal and Torres Strait Islander children with disability who are excluded from education, often because of their disability, accessing paid work becomes much more difficult. A study has shown the clear link between leaving school early and finding it harder to get employment with those who were ever suspended from school 19 percentage points less likely to have completed school.<sup>12</sup>

Outcome 5 in the National Agreement on Closing the Gap<sup>13</sup> has a target that ‘By 2031, increase the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining year 12 or equivalent qualification to 96 percent.’<sup>14</sup>

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<sup>10</sup> Transcript 20 November 2015, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/students\\_with\\_disability/Public\\_Hearings](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Public_Hearings)

<sup>11</sup> Expanding suspension powers for schools is harmful and ineffective, The Conversation, Dr Linda Graham, <https://theconversation.com/expanding-suspension-powers-for-schools-is-harmful-and-ineffective-106525>

<sup>12</sup> Homel, J., Mavisakalyan, A., Nguyen, H., and Ryan, C., 2012, School completion: what we learn from different measures of family background, Longitudinal Surveys of Australian Youth, Research Report 59, Adelaide.

<sup>13</sup> <https://www.closingthegap.gov.au/national-agreement>

<sup>14</sup> <https://www.closingthegap.gov.au/national-agreement>

Outcome 6 in the National Agreement on Closing the Gap also has a target that by 2031 ‘increase the proportion of Aboriginal and Torres Strait Islander people aged 25-34 years who have completed a tertiary qualification (Certificate III and above) to 70 percent.’<sup>15</sup>

There needs to be urgent attention to these targets, and integration with the NDES to ensure that resources can be most effectively utilised. There needs to be strong targets to reduce school suspensions, wider screening of Aboriginal and Torres Strait Islander children for disability and investment in ensuring that Aboriginal and Torres Strait Islander children and young people with disability have the appropriate cultural and disability support they need.

For many people with disability, including Aboriginal and Torres Strait Islander people, the transition between school and work can be difficult, and include many barriers. This can include inaccessible or unavailable work experience, lack of accessible and affordable internships or work placements, and few options for accessing mainstream/open employment, particularly for people with intellectual or cognitive disability.

For Aboriginal and Torres Strait Islander young people with disability with NDIS supports, data shows they are less likely to get support to “to learn new things (48.5% compared to 58.7% for non-Indigenous participants) or to participate in education, training and skill development.”<sup>16</sup>

**Recommendation 8:** That the NDES include education issues for Aboriginal and Torres Strait Islander children and young people with disability as part of the priority for all young people with disability.

**Recommendation 9:** That the NDES coordinate with the education targets and outcomes in the National Agreement on Closing the Gap.

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<sup>15</sup> <https://www.closingthegap.gov.au/national-agreement>

<sup>16</sup> NDIS Participant outcomes aged 15-24 2019, <https://data.ndis.gov.au/reports-and-analyses/outcomes-and-goals/participant-outcomes-report/participant-outcomes-30-june-2019>

## Investment in community controlled and led services

One way to increase employment of First Peoples with disability will be to develop a community controlled and led disability workforce and services. This would also address a range of other concerns including:

- Increase engagement with disability services (NDIS and other)
- Increase disability specific support across employment, justice, housing, education
- Increase capacity building and expertise across disability for Aboriginal and Torres Strait Islander services
- Meet Closing the Gap outcomes and targets

FPDN has long advocated for this as part of our work to make sure Aboriginal and Torres Strait Islander people with disability have equitable access to the NDIS. However, we also believe that community controlled and led disability services, including individual advocacy, would have significant positive outcomes across multiple services areas, including employment. The NDES points out that it can be difficult to access support for employment when people with disability are also ‘trying to meet basic needs such as housing, food and health, and/or dealing with issues of violence and abuse.’<sup>17</sup>

The 2016 Australian Human Rights Commission *Willing to Work* inquiry heard that connection to community and cultural competence are highly valued skills which greatly enhance service delivery for Aboriginal and Torres Strait Islander people. This has been demonstrated in relation to employment services delivery.<sup>18</sup>

FPDN conducted consultations across a range of communities for the National Disability Strategy in 2019<sup>19</sup>. These were held across Australia and heard from Aboriginal and Torres Strait Islander people with disability about different aspects of their lives.

These consultations heard strong evidence of the intersectional nature of discrimination against Aboriginal and Torres Strait Islander people with disability across the services system, including employment.

It is the experience of the FPDN that often Aboriginal and Torres Strait Islander people with disabilities require advocacy support for complex matters. What may present initially as a simple matter of supporting an individual to access the Disability Support Pension for instance invariably turns into a matter related to housing, education, employment, access to health services or any number of other more substantive issues.

A major barrier for many Aboriginal and Torres Strait Islander people with disability their families and carers and indeed the wider Indigenous community in which a person with disability may be living is access to information. Throughout Australia the disability system is overly complex. In NSW for example it is possible that a carer or parent of an Aboriginal child with disability may have to deal with as many as six or seven different government departments during the early years of the life of the child. The same sort of scenario is often replicated in other jurisdictions. Many Aboriginal and Torres Strait Islander parents and carers or the person with disability themselves may already be reluctant to engage the service sector particularly if it is government operated for reasons that are now well established such as a

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<sup>17</sup> National Disability Employment Strategy Consultation Paper, p14  
<https://engage.dss.gov.au/national-disability-employment-strategy/national-disability-employment-strategy-consultation-paper/>

<sup>18</sup> *Willing to Work* inquiry final report, p69,  
<https://humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination>

<sup>19</sup> FPDN National Disability Strategy Community Consultations 2019

general distrust of government and this only exacerbated by an overly complex, often cumbersome system.

All of these factors explain why access to First Peoples owned and operated individual advocacy services is fundamental in beginning to address these complex issues, and at the same time provide a sustainable employment option for Aboriginal and Torres Strait Islander people with disability. These must be independent from any and all disability service providers, including Aboriginal and Torres Strait Islander controlled service providers.

One solution that was raised was for the implementation of community run disability services, which would address the chronic lack of employment for First Peoples with disability as well as the lack of culturally safe and appropriate disability services. FPDN's advocates say that 'community will hire community' as a way of describing how these services would work.

The consultations found that:

First Peoples with disability are valued members of the communities in which they live, it's not until they start to engage with external systems to their community that they then experience discrimination. As a result, there is great potential for a First Peoples led community approach to disability to grow, however what is required is an investment from government to facilitate this to happen. Critically the approach must be led by First Peoples with disabilities themselves. This endeavour may take a generation or more, but it must be done.<sup>20</sup>

Further National Disability Strategy consultations found a similar result with those consulted saying that "having the chance to be supported by skilled workers to go with family to outstations or family camps to do hunting, fishing, cultural activities was perceived as one way to make life better. Additional incentives for skilled workers to live and work in remote communities is necessary to ensure quality services are delivered consistently to people with disability."<sup>21</sup>

FPDN advocates say that it is important that "locally led programs meet the needs of those communities, and are delivered by those communities." In addition, advocates believe that "people with disability can make really great advocates because they have had direct expertise and use the skills they have developed in those roles."<sup>22</sup>

**Recommendation 10:** That an Aboriginal and Torres Strait Islander disability-led and controlled individual advocacy service be funded, with specific advocates to navigate employment

**Recommendation 11:** That an Aboriginal and Torres Strait Islander disability-led and controlled disability services and workforce strategy be developed, in line with the National Agreement on Closing The Gap and other relevant strategies and frameworks

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<sup>20</sup> FPDN National Disability Strategy Community Consultations 2019

<sup>21</sup> A New National Disability Strategy Stage 2 Consultations: Report on Aboriginal and Torres Strait Islander Community Engagements December 2020 – January 2021

[https://www.dss.gov.au/sites/default/files/documents/04\\_2021/new-nds-stage-2-consultation-report-aboriginal-and-torres-strait-islander-community-engagements.pdf](https://www.dss.gov.au/sites/default/files/documents/04_2021/new-nds-stage-2-consultation-report-aboriginal-and-torres-strait-islander-community-engagements.pdf)

<sup>22</sup> Interview with FPDN advocacy staff, 2021



## Closing the Gap targets and outcomes:

There are several outcomes and targets in the National Agreement on Closing the Gap<sup>23</sup> that need to be incorporated into the National Disability Employment Strategy. As outlined in the introduction, Aboriginal and Torres Strait Islander people have much higher rates of disability, therefore all disability policy that impacts on First People with disability must be done in concert with the existing Closing the Gap framework.

The specific outcomes and targets that are relevant here are:

- **Outcome 5** - 'By 2031, increase the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining year 12 or equivalent qualification to 96 percent.'
- **Outcome 7** - By 2031, increase the proportion of Aboriginal and Torres Strait Islander youth (15-24) who are in employment, education or training to 67%
- **Outcome 8** - By 2031, increase the proportion of Aboriginal and Torres Strait Islander people aged 25-64 who are employed to 62%.

Aboriginal and Torres Strait Islander people with disability are employed at half the rate of Aboriginal and Torres Strait Islander people<sup>24</sup>. This is not a question of motivation or aspirations because both are robust. It is because of discrimination. Qualitative data reveals that people with disability experience discrimination because they turn up to interviews for jobs they are qualified for, only to be told that they can't have the job, because they have an impairment, or that they "don't fit the brand"<sup>25</sup>.

The existing data shows that both the Closing the Gap strategy and the National Disability Employment strategy have to pay particular attention to the needs of Aboriginal and Torres Strait Islander people with disability in order to reduce the barriers they face with getting paid work.

Outcome 5 in the National Agreement on Closing the Gap acknowledges that education retention is clearly linked to employment outcomes. (See Education section for more detail.)

Outcome 7 recognises that disability and long term health conditions are drivers of unemployment for Aboriginal and Torres Strait Islander young people. Closing the Gap will also disaggregate the employment and education outcomes for young people with disability, and collect data about long term health conditions, mental health or psychological distress, substance misuse and incarceration and recidivism.

Outcome 8 is similar, with recognition of the role of disability in economic inequality, and specifically looking at the data about barriers to labour market participation including health and disability.

It is vital that the NDES contain outcomes and targets that closely align with those in the Closing the Gap strategy.

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<sup>23</sup> <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>

<sup>24</sup> National Aboriginal and Torres Strait Islander Social Survey 2014-15: Private Households, aged 15 and over.

<sup>25</sup> These citations are drawn from the testimony of Aboriginal and Torres Strait Islander people with disability who participated in FPDN's 'Living our ways' research project.

**Recommendation 12:** The National Disability Employment strategy aligns with the outcomes and targets in the National Agreement on Closing the Gap, particularly Outcomes 5, 7 and 8.

# Additional policy frameworks and settings

## National Disability Strategy

The National Disability Strategy is the implementation of the Convention on the Rights of Persons with Disabilities in Australia.

The key rights outlined in the CRPD that are relevant to the NDES are Articles 27 and 28.

**Article 27** says Australia must “recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation”.

**Article 28** says Australia must “recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.”

The National Disability Strategy 2010-20<sup>26</sup> has interpreted these articles in Area 3 - Economic Security Policy Area 1, stating that there needs to be increased “access to employment opportunities as a key to improving economic security and personal wellbeing for people with disability, their families and carers.”

There are no existing policy priorities for Aboriginal and Torres Strait Islander people with disability in the previous National Disability Strategy, so it is essential that this is remedied in the new Strategy, coming into effect at the end of 2021. However, the Australian Government Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability has been developed in 2017. It is unclear what the status of this plan is.<sup>27</sup> See below section for further discussion.

In addition, the agreed relevant Closing the Gap outcomes and targets must be integrated with the NDS The 2016 NDS Progress report contains some small pilot programs and research, but no real structural change.<sup>28</sup>

**Recommendation 13:** That the upcoming new National Disability Strategy aligns with relevant Closing the Gap targets and outcomes on employment

**Recommendation 14:** That the upcoming new National Disability Strategy contains explicit priorities for Aboriginal and Torres Strait Islander people with disability.

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<sup>26</sup> [https://www.dss.gov.au/sites/default/files/documents/05\\_2012/national\\_disability\\_strategy\\_2010\\_2020.pdf](https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf)

<sup>27</sup> [https://www.dss.gov.au/sites/default/files/documents/10\\_2017/dss0001\\_atSI\\_disability\\_plan\\_accessible\\_v1.pdf](https://www.dss.gov.au/sites/default/files/documents/10_2017/dss0001_atSI_disability_plan_accessible_v1.pdf)

<sup>28</sup> [https://www.dss.gov.au/sites/default/files/documents/01\\_2019/final-national-disability-strategy-2016-progress-report-pdf.pdf](https://www.dss.gov.au/sites/default/files/documents/01_2019/final-national-disability-strategy-2016-progress-report-pdf.pdf)

## **Australian Government plan to improve outcomes for Aboriginal and Torres Strait Islander people with disability**

The Australian Government plan to improve outcomes for Aboriginal and Torres Strait Islander people with disability (The Plan) was released in 2017 to address the lack of specific measures for Aboriginal and Torres Strait Islander people with disability in the National Disability Strategy.

Area 4 of The Plan says that ‘ Aboriginal and Torres Strait Islander people with disability, their families and carers have opportunities to gain economic security through employment and business ownership, enabling them to plan for the future and exercise choice and control over their lives.’<sup>29</sup>

Many of the strategies outlined in the plan are featured in this submission, and have a range of barriers to accessing them by Aboriginal and Torres Strait Islander people with disability. One strategy is for the ‘development of community-driven solutions to maximise opportunities for investment in business enterprises owned by Aboriginal and Torres Strait Islander people with disability. Strategies on supported employer engagement and social enterprise development should be considered. This would ensure that sustainable employment opportunities are available for Aboriginal and Torres Strait Islander people with disability and their communities, particularly in remote localities.’<sup>30</sup> This aligns strongly with FPDN’s focus for community controlled disability and advocacy services.

It is unclear what the status of The Plan is, or if there are plans to coordinate this with Closing the Gap or the NDES.

**Recommendation 15:** That the Australian Government plan to improve outcomes for Aboriginal and Torres Strait Islander people with disability is updated to include Closing the Gap outcomes and targets

**Recommendation 16:** That Area of Focus 4 from Australian Government plan to improve outcomes for Aboriginal and Torres Strait Islander people with disability is incorporated into NDES

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<sup>29</sup> Australian Government plan to improve outcomes for Aboriginal and Torres Strait Islander people with disability, p26, [https://www.dss.gov.au/sites/default/files/documents/10\\_2017/dss0001\\_atsi\\_disability\\_plan\\_accessible\\_v1.pdf](https://www.dss.gov.au/sites/default/files/documents/10_2017/dss0001_atsi_disability_plan_accessible_v1.pdf)

<sup>30</sup> As above, p28

## Disability Employment Services

Disability Employment Services (DES) are failing to deliver for all people with disability, including Aboriginal and Torres Strait Islander people with disability.

The latest Labour Market Information Portal<sup>31</sup> data for March 2021 show this clearly. The outcomes data for all people with disability show a reduction of 12.6% in 26 week placements, and a reduction of 26.5% in 52 week placements. This highlights the urgent need to refocus on retention of people with disability, not just entry points.

There were 21,338 Aboriginal and Torres Strait Islander people with disability receiving DES assistance by March 2021, however, only a very small percentage had received employment. The below table outlines that 0.44% of Aboriginal and Torres Strait Islander people with disability have gained employment for 52 weeks, with 1.9% gaining employment for four weeks.

Job Seeker Characteristics	DMS - Job Pl/4 Week	DMS - 13 Week	DMS - 26 Week	DMS - 52 Week	ESS - Job Pl/4 Week	ESS - 13 Week	ESS - 26 Week	ESS - 52 Week
Indigenous	163	139	107	35	236	198	160	59

These are deeply unacceptable outcomes and require urgent action and change.

**Recommendation 17:** That priority reform area 1 in the NDES consultation paper is amended to refocus on retention of people with disability in the workforce, not just entry.

**Recommendation 18:** That current funding for DES be diverted to new Aboriginal and Torres Strait Islander people with disability specific services to engage in culturally appropriate employment, in line with the Closing the Gap targets.

<sup>31</sup> DES data 31 March 2021, accessed 5 May 2021  
<https://lmip.gov.au/default.aspx?LMIP/Downloads/DisabilityEmploymentServicesData/MonthlyData>

## National Disability Insurance Scheme

The National Disability Insurance Scheme provides essential supports for Aboriginal and Torres Strait Islander people with disability, however, the Scheme needs significant improvement to meet the needs of our community.

FPDN launched a 10-point-plan<sup>32</sup> for the implementation of the NDIS in Aboriginal and Torres Strait Islander Communities, with bipartisan support, in 2013 and updated it in 2018, with a broader, more comprehensive plan to fix the NDIS. However, the expertise and community connection of FPDN has not been adopted. A key recommendation that FPDN has long argued for is the establishment of a formal advisory structure made of First Peoples with disability and other First Peoples stakeholders to advise the NDIA.

These priorities are:

1. Invest to create an Aboriginal Community Controlled Disability Service Sector for the provision of disability supports by Aboriginal and Torres Strait Islander people with disability for their communities
2. Address the barriers facing Aboriginal and Torres Strait Islander people in accessing the National Disability Insurance Scheme (NDIS)
3. Prioritise timely intervention to ensure supports and services are provided, and available over the long-term, and at the right time in people's lives
4. Recognise and value the existing knowledge, skills and expertise within Aboriginal and Torres Strait Islander communities. We are leaders in the inclusion of people with disability
5. Resource a community-directed research strategy which specifically focuses on Aboriginal and Torres Strait Islander disability
6. Endorse and support peer-to-peer leadership to ensure that Aboriginal and Torres Strait Islander people with disability lead the engagement with community themselves
7. Develop and implement an access to justice strategy for First People with disability, particularly those with cognitive impairment, sensory and intellectual disability
8. Develop and implement programs for inclusive education and employment for First People with disability in line with national strategies for their full social participation
9. Create links between the National Disability Strategy and Closing the Gap Framework for coordinated policy and programs at the Commonwealth, State and local levels in partnership with Aboriginal and Torres Strait Islander people with disability and their organisations
10. Develop an Aboriginal and Torres Strait Islander Disability Performance Framework for the independent monitoring of the social and economic outcomes of Aboriginal and Torres Strait Islander people with disability

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<sup>32</sup> FPDN Ten Priorities to Address Inequity In Aboriginal and Torres Strait Islander Communities for the National Disability Strategy and National Disability Insurance Scheme  
<https://fpdn.org.au/wp-content/uploads/2018/10/FPDN-ten-priorities-2018.pdf>

As is clear from these priorities, FPDN has been talking about what we know will make the NDIS work for our community for some time. It is vital that the NDES take these points into consideration.

The NDIS provides some employment support<sup>33</sup> through individual's overall funding packages, if employment is a goal. However, several of the options provided, such as access to DES or entry into an Australian Disability Enterprise, have not worked for First Peoples with Disability. There is also the School Leavers Employment Support (SLES) but data is not available about the take up of these supports for Aboriginal and Torres Strait Islander people with disability.

The "Economic development opportunities for Indigenous Australians & the National Disability Insurance Scheme"<sup>34</sup> workshop again highlighted the same recommendations to the National Disability Insurance Agency (NDIA) of valuing the expertise of First Peoples with disability, and the vital role of Aboriginal and Torres Strait Islander people with disability in running and delivering services to community.

The clear failure of DES, outlined above, for Aboriginal and Torres Strait Islander people with disability shows this isn't a viable option, and should not be supported via the NDIS. Additionally, as detailed below, FPDN does not support the ongoing marginalisation of people with disability via so-called supported employment, paying a few dollars an hour.

**Recommendation 19:** That NDIS employment supports prioritises open employment for Aboriginal and Torres Strait Islander people with disability

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<sup>33</sup> <https://www.ndis.gov.au/understanding/ndis-and-other-government-services/employment>

<sup>34</sup>

[https://www.niaa.gov.au/resource-centre/indigenous-affairs/economic-development-opportunities-indigenous-australians-national-disability-insurance-scheme#publication\\_content\\_type\\_view-block\\_2-8](https://www.niaa.gov.au/resource-centre/indigenous-affairs/economic-development-opportunities-indigenous-australians-national-disability-insurance-scheme#publication_content_type_view-block_2-8)

## Australian Disability Enterprises

Australian Disability Enterprises (ADEs) do not provide sustainable work for people with disability, particularly for Aboriginal and Torres Strait Islander people with disability.

This kind of segregated employment for people with disability ADEs enables employers to pay people with disability lower wages than other people, and with less than 1% having opportunities to move into mainstream employment.

Aboriginal and Torres Strait Islander peoples make up approximately 2 percent of the current supported employment workforce.<sup>35</sup>

The NDES needs to clearly identify a pathway to mainstream employment for all people with disability who want to work, and a transition plan for people with disability currently working in ADEs. This includes no new employees entering into ADEs, no more NDIS funded supports to enter ADEs and a long term funded transition for existing ADE employees to mainstream employment with the right supports.

**Recommendation 20:** That a transition plan to mainstream employment is developed for all current employees of ADEs that includes the needs of Aboriginal and Torres Strait Islander people with disability.

**Recommendation 21:** National, state and territory government procurement must not include Australian Disability Enterprises or any other supported employment. Instead, procurement must include positive incentives for employment of Aboriginal and Torres Strait Islander people with disability, including people with intellectual and cognitive disability.

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<sup>35</sup> Ageing and Australian Disability Enterprises, Shannon McDermott, Robyn Edwards, David Abello, Ilan Katz, Social Policy Research Centre, University of New South Wales, 2010, <https://library.bsl.org.au/jspui/bitstream/1/2029/1/Ageing%20and%20Australian%20Disability%20Enterprises.pdf>

## Income support

Different income support payments play an important role in the lives of Aboriginal and Torres Strait Islander people with disability, including the Disability Support Pension (DSP) and JobSeeker.

In 2014–15, '52% of Indigenous Australians aged 15 and over received a government pension or allowance as their main source of personal income, 44% relied on employee income, and a small group (4%) reported other main sources.'<sup>36</sup>

In addition, Aboriginal and Torres Strait Islander people with disability are more likely to be in receipt of the Disability Support Pension or Carers payment.

'As at 29 June 2018, 61,700 Aboriginal and Torres Strait Islander Australians aged 18–64 received DSP or Carer Payment. This equates to 14% of the Indigenous population aged 18–64 receiving these payments, compared with 5.6% for Other Australians (11% compared with 4.2% for DSP and 3.4% compared with 1.4% for Carer Payment; Figure 2).

After taking into account the differences in the age structures between Indigenous and Other Australians, Indigenous Australians were 3.1 times as likely as Other Australians to receive DSP and 2.7 times as likely to receive Carer Payment.'<sup>37</sup>

It is essential that disincentives are removed from the Disability Support Pension when it comes to employment, in order to both make the transition to work sustainable, but also take into account the variable nature of many disability types. This may require ongoing secure access to the DSP, with no penalties for ceasing employment if needed. People with disability will be reluctant to take on employment that could risk their ongoing access to the DSP if their disability worsens, for example.

**Recommendation 22:** Increase incentives to employment that don't threaten ongoing eligibility to the DSP for Aboriginal and Torres Strait Islander people with disability.

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<sup>36</sup> Indigenous income and finance, Australian Institute of Health and Welfare, <https://www.aihw.gov.au/reports/australias-welfare/indigenous-income-and-finance>

<sup>37</sup> Disability Support Pension and Carer Payment Snapshot 2019, Australian Institute of Health and Welfare, <https://www.aihw.gov.au/reports/australias-welfare/disability-support-pension-and-carer-payment>