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Committee Secretary
Senate Standing Committees on Community Affairs

FPDN Submission: National Disability Insurance Scheme Amendment Bill 2024

The First Peoples Disability Network (FPDN) welcomes the opportunity to make a submission regarding the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 (the 'Bill'), introduced in response to the recommendations contained in the Final Report of the Independent Review into the NDIS ('the NDIS Final Report').¹ This submission provides key points for consideration in relation to the design and the Bill (as amended and passed by the House of Representatives on 5 June 2024) and its underlying policy objectives.

About FPDN

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 ('UNCRPD') and the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP'). Consistent with our principle of community control, our organisation is governed by First Peoples with lived experience of disability.

More information about FPDN and the First Nations disability policy context has been included in [Appendix A](#).

¹ Independent Review of the National Disability Insurance Scheme, 'Working together to deliver the NDIS, NDIS Review: Final Report', 27 October 2023.



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Key Recommendations

Recommendations for First Nations Persons with Disability

1. The revised 'needs assessment' process must be holistic, fair, flexible and transparent. This process must finally include specialised diagnostic and assessment tools that will enable First Nations people with disability to access the NDIS at rates comparable to non-Indigenous participants.
2. The Bill should be amended to incorporate First Nations recommendations from the Disability Royal Commission:
 - a. Recommendation 9.6: Section 127 of the National Disability Insurance Scheme Act 2013 (Cth) should be amended to provide that the National Disability Insurance Agency Board must include at least one First Nations person at all times.
 - b. Recommendation 9.7: Sections 3, 4 and 17A of the National Disability Insurance Scheme Act 2013 (Cth) should be amended to refer to participation in cultural life, in addition to participation in social and economic life.
3. Government must acknowledge and address the (repeated) failure to adhere to the commitments towards consultation, co-design and power-sharing under the Closing the Gap National Agreement ('CTG Agreement') and Disability Sector Strengthening Plan ('DSSP').
4. The approach to the Bill (and the NDIS as a whole) must be redesigned 'from the ground up', with a view towards addressing the crisis that current NDIS services are not culturally appropriate for First Nations people with disability, who may need to choose between supports that are not culturally safe (or not getting funded supports at all).
5. Government must demonstrate a meaningful and tangible willingness to embrace the expertise of peak bodies, Aboriginal Community-Controlled Organisations (ACCOs) and First Nations persons with disability, which expands beyond the limited scope of a Western 'medical model' of disability. In particular, the NDIS cannot be allowed to continue in a state that does not:
 - a. Focus on the social and emotional wellbeing of First Nations Participants, excluding many conditions which disproportionately affect First Nations persons, such as diabetes, ADHD and mental illness.
 - b. Value the importance of Country, often leaving First Nations people with disability unable to access NDIS packages and services on Country, or where they live, either leading to lack of plan utilisation, or requiring individuals to leave Country to access the services.
 - c. Value the input of First Nations Communities on what types of NDIS supports should be included, and instead enforces an 'absolute' and deterministic view of which supports are (or are not) appropriately covered under the NDIS.



6. The scope of the NDIS First Nations Advisory Council's ('FNAC') role in providing advice to the NDIA must be elevated and expanded upon. All future NDIS Rules and Ministerial Declarations which have any realistic possibility of impacting First Nations participants (directly or indirectly) should be consulted upon with FNAC, with FNAC's opinions being treated with genuine deference.
7. The Bill should be amended to include a legislative requirement for meaningful co-design, consultation and power-sharing with First Nations persons with disability and peak bodies, with specific references to the CTG Agreement and DSSP, which should define the minimum extent of the Government's obligations to First Nations persons, regardless of whether the matter involves changes to primary legislation, the NDIS Rules or Ministerial Declarations.
8. The NDIA should proactively seek input about matters of concern from FPDN and FNAC, as well as open up a general line of communication with the aim of proactively improving the NDIS.
9. The NDIA/CEO needs to be willing to promptly acknowledge and alter behaviour in response to legitimate concerns and criticisms (e.g. where discretions are being taken too far and/or negatively impacting participants without sufficient justification).
10. Given the critical role that local, place based ACCOs and ACCHOs play in improved outcomes for First Nations peoples, communities, and self-determination, there must be greater investment in building the capacity of First Nations community-controlled organisations to develop services with and for First Nations participants.

General Recommendations

11. Needs Assessors must be required to possess suitable qualifications (as approved by DROs and the disability community).
12. Participants must have a right to receive a draft assessment report from a Needs Assessor, along with a right to request that mistakes to be corrected before the report is provided to the CEO. In turn, the Needs Assessor must be obligated to action these requests.
13. The NDIA should be obligated to fund any additional medical reports/assessments that are requested throughout the needs assessment process.
14. The NDIA must administer the Bill in a manner that is flexible and does not waste participant resources. This includes not frequency requesting that participants 'revalidate' their disability status through expensive and time-consuming medical reports, especially where it is obvious that a person's disability status is permanent.
15. Overall, the Bill should be delayed, in order to allow the significant revisions and re-designs that are required to make the Bill a complete piece of functional legislation which is not overly dependent upon (yet to be designed) NDIS Rules and ministerial declarations.
16. The Bill must be significantly revised and amended in order to place reasonable restrictions and participant safeguards upon the incredibly broad set of matters for which:



- a. The Minister will be able to alter via the making NDIS rules or declarations.
- b. The CEO will be able to exercise an expanded set of powers and discretions.

There should not be any real level of uncertainty regarding key aspects of the Bill, such as to what extent the Minister may choose to alter the definition of NDIS supports or needs assessment process, or whether the CEO can adopt a practice of refusing plan management requests/ forcing a participant to alter their plan management type.

- 17. The Bill cannot be allowed to take effect without the existence of a concrete 'interim measure' for determining eligible NDIS supports, prior to the Government successfully negotiating the new Disability Intergovernmental Agreement. At worst, if the Bill is going to proceed, the Bill should instead maintain the existing method (under s34 of the current NDIS Act) as the interim measure for determining NDIS supports. This is not a matter that can be left to future NDIS Rules.
- 18. The Commonwealth must not pass the Bill without making appropriate funding commitments to states and territories, sufficient to acknowledge the reality that passing the Bill will not immediately restore the types of services that will now be treated as 'foundational supports' outside of the NDIS and need to be re-established by the states and territories. Participants cannot be left with non-existent support infrastructures as a result of the Bill.



Rushed implementation, no details and missed opportunities

Overall, the disability sector has been presented with this Bill on needlessly rushed timeline, with a consequent lack of communication and willingness to engage in any genuine, meaningful process of co-design.

The Disability Royal Commission Final Report ('DRC Final Report') was published on 29 September 2023,² with the Government since only releasing a 'progress update' on its consideration of the DRC Recommendations on 13 March 2024.³ This 'progress update' contained a single page detailing various efforts aims towards 'Getting the NDIS back on track', and made no specific commitment to implement the thirty-three recommendations concerning the NDIS,⁴ as set out in Volume 10 of the DRC Final Report.⁵ A formal response from Government to the DRC recommendations is yet to be provided (with an indicated date of 'by mid-2024').⁶

The same progress update briefly referred to the existence of the NDIS Final Report (released on 7 December 2023) but did not address any of the substantive content of the recommendations. Instead, Government effectively listed out incredibly concise summaries for some of the recommendations, before committing to implementing some unspecified 'legislative and other changes to the NDIS to improve the experience of participants...' and designing and funding additional foundational supports.⁷ A formal response from Government is yet to be provided (with an indicated date of '2024').⁸

In other words, when the Bill was introduced and read into the House of Representatives on 27 March 2024, Disability Rights Organisations (DROs) and the disability community as a whole effectively knew 'nothing but whispers' about what to expect. No consultation sessions were held, no draft bills were provided, and at no point had Government sought to confirm that it, itself, was 'on the right track'. Now, rather than cohesively working together with Government in order to ensure that each individual recommendation of the NDIS Final Report is comprehensively implemented, DROs must instead scramble to respond to a Bill which only 'scratches the surface' of the full scope of the recommended changes.

This is the antithesis of 'nothing about us without us' and, no matter how much Government believes that it has attempted to dutifully address the Productivity Commission's concerns about the NDIS, is not a valid approach towards 'co-design'.

² Royal Commission into Violence, Abuse, Neglect and Exploitation of People and Disability, 'Final Report' 29 September 2023.

³ Department of Social Services, '[Australian Government Progress Update on the Disability Royal Commission](#)', 13 March 2024.

⁴ Ibid, 20.

⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People and Disability, 'Volume 10, Disability Services', 29 September 2023.

⁶ Above n 3, 20.

⁷ Ibid, 21.

⁸ Ibid.



It is also worth noting that, every DRO has also been functionally bombarded by the (often unfunded) workload generated by the reports, including analysis, media releases and other required 'follow-up' endeavours (e.g. submissions to the newly established NDIS Registration Taskforce). Additionally, 'normal' advocacy and policy activities have (of course) not ceased.

FPDN, other DROs, and individuals throughout the disabled community came together during the long and arduous processes of the DRC and NDIS Review, and devoted countless hours in order to contribute their experiences, struggles, and wisdoms for the future of the NDIS and NDIS participants. Many of those experiences were painful and horrific, but were conveyed regardless. Now, at the implementation stage, is not the time for Government to stop listening to those voices. Accordingly, FPDN pleads for Government to simply 'slow down', and open itself to significantly revising this Bill.

Inadequate amendments in the House of Representatives

Overall, FPDN largely shares many of the concerns which were expressed during the consideration in detail debate for the Bill, to the effect that the subsequently accepted amendments (29 Government and 1 Crossbench) are a rushed attempt to present an acceptable piece of legislation, which offers some improvements but does not come close to addressing the fundamental flaws of the Bill.

Even to the extent that 'improvements' have now been made, these have often come at the cost of an even deeper reliance upon ministerial declarations, the discretion of the CEO and the creation of NDIS Rules at a future point in time.

Whilst defending the Bill, Mr Shorten asserted that *'I don't think it's a fair characterisation of the process. The member says it's been rushed. We've had a four-year disability royal commission and a 12-month review into the whole scheme. I worry that the argument that there's too much rush is actually selling people with disability short, because there are problems which need to be dealt with now.'*⁹

This is both a contradiction and a misrepresentation of what the DRC and NDIS Review were supposed to represent. The Government cannot justify the introduction of rushed piece of legislation, which is quite clearly under-developed and does not substantively address the recommendations of either the DRC or NDIS Final Report, via appealing to the length of those processes. On the contrary, the time that was invested into designing those recommendations must now be respected.

The need for further amendments and details

The Australian Government's choice to 'press forward' as a matter of urgency has left the Bill in incredibly dubious state. Beyond the proposed legislation failing to address the specific needs and intersectional disadvantages of First Nations persons with disability (which FPDN will address further below), many of the Bill's core amendments are described in language that is 'threadbare' and/or

⁹ House of Representatives, Hansard transcript, 5 June 2024, 42-43.



ambiguous, to the extent that it fails to give any real level of certainty as to how, in practice, these changes to the NDIS will actually be implemented.

FPDN has contributed to and endorses the concerns set out in the joint submission from DROs in the National Coordination Function (NCF) ,¹⁰ including:

A lack of a clarity regarding the new processes for ‘needs assessments’ and plan budget determinations

- This new phase of the NDIS simply cannot succeed unless the revised assessment process is holistic, fair, flexible and transparent. ‘Independent assessments’ cannot return under a different name.

At present, FPDN simply cannot know this, as nearly all of the substantive details (e.g. assessment tools, qualifications for assessors, requirements for NDIA to fund additional assessments) have been left unconfirmed. Per the Bill, it does not even appear that a Needs Assessor currently even needs to provide a participant with a draft needs assessment report, in order to allow mistakes to be corrected before the report is provided to the CEO. ¹¹

Ensuring that the NDIA is flexible and does not waste participant resources

- Throughout the DRC and NDIS, participants and DROs have expressed a number of difficulties when dealing with the NDIA that appear to stem from a consistent inability/refusal of the agency to alter its behaviour, even in relation to simple, ‘common-sense’ matters.
- For example, there is no reason for the Bill itself to lack any restrictions upon the NDIA’s ability to, for example, frequently request that participants ‘revalidate’ their disability status (often through expensive and time-consuming medical reports), especially where it is obvious that a person’s disability status is permanent. ¹²

Failure to implement First Nations recommendations of the DRC Final Report.

The DRC Final Report contained a number of specific recommendations concerning the needs of First Nations people in relation to the NDIS. FPDN acknowledges that some of these recommendations go beyond the immediate scope of the Bill. However, there are many other Recommendations that (i) would improve the experience of First Nations people with disability when interacting with the NDIS, and (ii) could have easily been included in this version of the Bill.

In particular:

¹⁰ Disability Representative Organisations (National Coordination Function), ‘National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions] - Submission to the Community Affairs Legislation Committee’, 17 May 2024.

¹¹ Ibid, see 10-12.

Additionally, this is not an issue which has corrected by the subsequent addition of cl6(A), which states that the ‘CEO must give the participant a copy of the report as soon as practicable after the CEO receives the report’. By this point, any mistakes will have already gone undetected, and an unnecessary replacement assessment would be required.

¹² Ibid, 13.



- **Recommendation 9.6: National Disability Insurance Agency Board**
Section 127 of the National Disability Insurance Scheme Act 2013 (Cth) should be amended to provide that the National Disability Insurance Agency Board must include at least one First Nations person at all times.¹³
- **Recommendation 9.7 Participation in cultural life**
Sections 3, 4 and 17A of the National Disability Insurance Scheme Act 2013 (Cth) should be amended to refer to participation in cultural life, in addition to participation in social and economic life.¹⁴

There is no reason that these Recommendations should not have been incorporated into the Bill, and FPDN would be disappointed if that did not occur via further amendments.

A ‘threadbare’ Bill that is over-reliant on delegated legislation

If such a significant Bill is going to proceed, especially where the Government is effectively treating the Bill as its first formal response to the NDIS Final Report, then the disability sector is entitled to know exactly what is being proposed.

This is simply not true for the ‘Getting the NDIS Back on Track’ Bill, which is essentially an incomplete ‘shell’ of amendment proposals. Again and again, crucial details are not addressed directly by the Bill, and are instead left as interim concerns or matters to be dealt with at a later date. Without proper safeguards and co-design, such an approach is doomed to failure.

Reliance on (yet to be designed) NDIS Rules

It is clear that Government’s primary implementation mechanism for a revised NDIS will be the making of new NDIS Rules (i.e. delegated legislation) by the Minister. Under the Bill, the incredibly broad set of matters for which the Minister will be able to make NDIS rules about include (but are not limited to)

- Declaring that a particular support is or is not appropriately funded by the NDIS for the purposes of the definition of ‘NDIS support’;¹⁵
- Creating rules ‘in relation to’ whether a person meets the ‘disability requirements’ and ‘early intervention requirements’ of the NDIS, such as the methods or criteria to be applied or relevant circumstances to be taken into account;¹⁶ and

¹³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People and Disability, ‘Volume 9, First Nations people with disability’ 29 September 2023, 8.

¹⁴ Ibid.

¹⁵ *Getting the NDIS Back on Track No. 1 Bill 2024* cl25, repealing and substituting *National Disability Insurance Scheme Act 2013* s27.

¹⁶ Ibid.



- Specifying circumstances in which supports are taken to be, or not to be, acquired or provided after the person ceases to be a participant (such that the person is not entitled to be paid NDIS amounts).¹⁷

As delegated legislation, these NDIS Rules are unlikely to be subjected to any real consultation or public scrutiny. The Minister will exercise their powers and any new rules will come into effect (subject to the rare event of Parliamentary disallowance).

Moreover, it is not appropriate or necessary for the Minister to have the power to alter key aspects of NDIS eligibility via the making of delegated legislation. The NDIS Rules must not become a replacement for responsible legislative drafting practices, and delegated legislation should not typically be relied upon unless it relates to aspects of the Bill's operation which are administrative, highly technical or might need to be rapidly changed.

Substantive aspects of NDIS policy should instead be addressed in the Bill, for which proper scrutiny and public debate can occur. The Bill does not exercise this type of moderation. As extreme examples, the Minister could exercise the powers referenced above to drastically cut down the scope of the NDIS, cutting broad categories of items from being classified as 'NDIS Supports' and narrowing/raising the threshold requirements for NDIS eligibility.

All of these problems are currently being exacerbated by the fact that the relevant NDIS Rules have not even been designed, yet alone publicly released. Had Government accompanied the Bill with a draft version of the proposed NDIS Rules, this would have at least reduced public confusion surrounding many of the issues raised above (e.g. the question of what qualifications a 'Needs Assessor' will require).

At present, the Bill simply lacks detail, in ways that are confusing/ambiguous and (when describing what the NDIA/CEO can do) tend to favour broad descriptions which lack necessary safeguards for participants.

There are perfectly reasonable, 'commonsense' processes and restrictions which should be 'built-into' the Bill now, and not left up to litigation at a later point. These include (i) actions the NDIA/CEO should be obligated or prohibited from taking, and (ii) much more detailed information about the factors which the NDIA/CEO must consider before making major decisions.

For example, the Bill inserts new subsections into the existing NDIS Act which give the CEO powers to refuse a participant's plan management request (i.e. potentially deny them the ability to self-manage).¹⁸

It appears that the CEO can do this whenever 'satisfied' that the necessary circumstances exists, which are that that 'the participant would be likely to suffer physical, mental or financial harm were the

¹⁷ *Getting the NDIS Back on Track No. 1 Bill 2024 cl28, repealing and substituting National Disability Insurance Scheme Act 2013 s29(2).*

¹⁸ *Getting the NDIS Back on Track No. 1 Bill 2024 cl63, inserting National Disability Insurance Scheme Act 2013 s43(2A)-(2D).*



CEO to not make the decision', NDIS amounts have previously not been acquitted under cl46, and/or any other circumstance specified in the NDIS Rules.¹⁹

Normally, FPDN would have a number of questions:

- To what extent must the CEO consider there to be a risk of 'harm' and what exactly does that mean?
- Is any failure to correctly deal with NDIS funds under cl46 enough for the CEO to take action, even if only a minor error?
- If a new circumstance is added to the NDIS Rules, must it be reasonable?
- Has it been considered that this type of power might encourage a paternalistic approach from the NDIA/CEO that will be unduly targeted at First Nations people?

However, the concerning answer is that the Bill not only allows the Minister to make the rules about all of these matters and requirements, but also places no effective restrictions upon the Minister's behaviour/considerations when doing so.²⁰ Similar occurrences are common throughout the Bill and are obviously highly exploitable.

FPDN does acknowledge that many rules will be designated as 'Category A' and thus require an agreement between the Commonwealth and all States and Territories. However, this will not be the case for all rules, with 'Category C' and 'Category D' rules not necessarily requiring the consent of the affected host jurisdiction.²¹ The primary legislation should always be approached with enough detail to enable convenience for the NDIA/CEO, whilst simultaneously placing appropriate restraints on the agency relative to the potential consequences of its decisions.

The problematic nature of Ministerial Declarations

Similar to the issues with NDIS Rules, the Minister can significantly alter the operation of the scheme 'overnight' (on the day that the legislative instrument is registered, subject to subsequent Parliamentary disallowance). In many cases, the Minister will be able to control incredibly significant matters via a unilateral declaration, such as declaring how the needs assessment process is to be undertaken.²²

Once again, persons with disability have will effectively no say in the matter. However, these ministerial declarations / legislative instruments are also not 'NDIS Rules', so will not fall under any of the oversight categorisations (e.g. 'Category B') that would otherwise somewhat restrict unilateral decisions by the Minister (e.g. imposing a rule change without the consent of an affected jurisdiction).²³

¹⁹ *Getting the NDIS Back on Track No. 1 Bill 2024 cl63(2C).*

²⁰ *Getting the NDIS Back on Track No. 1 Bill 2024 cl63, inserting National Disability Insurance Scheme Act 2013 s42(2D).*

²¹ *National Disability Insurance Scheme Act 2013 s209(6-7).*

²² *Getting the NDIS Back on Track No. 1 Bill 2024 cl36, inserting National Disability Insurance Scheme Act 2013 s32L(8).*

²³ *National Disability Insurance Scheme Act 2013 s209.*



The Bill was and is fundamentally ‘broken’ and incapable of operating

When the current NDIS Act (at s34) determines whether a support is funded under the NDIS by assessing whether it is ‘reasonable and necessary’, the Act requires the CEO to decide whether *‘the support is most appropriately funded or provided through the National Disability Insurance Scheme, and is not more appropriately funded or provided through other general systems of service delivery or support services offered by a person, agency or body’*.²⁴

Initially, the Explanatory Memorandum failed to explain how, under cl124(1-2) of the Bill,²⁵ the thoroughly outdated Applied Principles and Tables of Support (APTOS)²⁶ could possibly serve as ‘an interim measure’ for determining ‘what is and is not an NDIS support’ (as is clearly contemplated by the Explanatory Memorandum)²⁷ in the absence of the new Disability Intergovernmental Agreement which Recommendation 2.6 of the NDIS Final Report specifically recommended must be negotiated between the Commonwealth and States/Territories as the replacement for the APTOS.²⁸

Following the amendments which were accepted on 5 June 2024, it now appears that the Government has abandoned one flawed process for another, and that the Minister will simply have the ability to (subject to the restrictions of ‘Category A’ rules) develop transitional rules setting out supports that are or are not NDIS supports, which will ostensibly be based upon the existing NDIS Rules and developed in consultation with the disability community.²⁹ Once again, DROs and the disability community must effectively ‘trust’ that the Government will be capable of managing this process on a wholly interim basis, despite the (as of yet unclear) extent of the negotiations that will need to occur surrounding the practical requirements for States and Territories to progress the Government’s vision of ‘foundational supports’.

S34 of the existing NDIS Act sets out a nuanced process, which FPDN sees absolutely no reason to replace with interim NDIS Rules that have not been designed, have the potential to be highly arbitrary, and may not even resemble the current process. Furthermore, if any uncertainty is introduced regarding the definition of an NDIS support, the scope of claims which would be rejected by the NDIA should be expected to drastically increase, with the NDIA becoming legally empowered to reject NDIS support claims for anything that is asserted to fall outside of the new NDIS Rules..

Given the context of the NDIA (and its representatives) having a history of pursuing any conceivable argument in the Administrative Appeals Tribunal,³⁰ such an ‘interim measure’ cannot be allowed to exist. Ideally, the Bill should not continue before Government successfully negotiates the new

²⁴ *National Disability Insurance Scheme Act 2013* s34.

²⁵ *Getting the NDIS Back on Track No. 1 Bill 2024* cl124(1-2).

²⁶ Department of Social Services, ‘Applied Principles and Tables of Support to Determine the Responsibilities of the NDIS and other Service Systems’, 27 November 2015.

²⁷ *Getting the NDIS Back on Track No. 1 Bill 2024* Explanatory Memorandum, 46.

²⁸ Above n 1, 5

²⁹ *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024* Proposed Amendments, amendment (17).

³⁰ See FPDN, ‘Submission: Administrative Review Tribunal Bill 2023 and related Bills’, 7 March 2024.



Disability Intergovernmental Agreement which will define the revised scope of the NDIS. However, if the Bill is going to proceed, a reasonable alternative is to simply maintain the existing method (under s34 of the current NDIS Act) as the interim measure for determining NDIS supports.

FPDN acknowledges the Government's mission that the NDIS needs to become 'sustainable'. However, sustainability and 'getting back on track' cannot mean haphazard cuts to the scope of the NDIS, prior to the Government genuinely resolving the unintended proliferation of the NDIS as the primary means of accessing support for any person claiming disability (as critiqued in the recent NDIS Final Report).

A First Nations person with disability who loses their NDIS status (or has their budget/ available supports reduced) will obtain absolutely no solace from vague Government commitments to fund and rollout 'foundational supports' at some later point in time, once a new Disability Intergovernmental Agreement is negotiated. Regardless of Government's intentions, the existence of the NDIS has caused non-NDIS supports (such as disability oriented public transport services) to decline.

Without significant Commonwealth funding commitments, passing the Bill will not immediately restore the types of services that will now be treated as 'foundational supports' outside of the NDIS. Taking this approach will either (a) leave those persons entirely without necessary supports, or (b) force the Government to 'temporarily' bend the NDIS scheme to fit the level of demand, thus recreating the current state of the NDIS.

Failure of Government's Commitments under the National Agreement on Closing the Gap

FPDN is the community-controlled disability peak and a member of the Coalition of Peaks, a partner to all Australian governments to the Closing the Gap National Agreement ('CTG Agreement'), in addition to the Disability Sector Strengthening Plan ('DSSP'). All levels of Australian Government have signed these agreements. This is why, above and beyond the Government's obligation to work together with the disabled community as a whole, there can be no excuse for Government (including through DSS and the NDIA) having failed to honour its own explicit commitments to First Nations People with Disability.

Requirement to consult with First Nations people with disability

FPDN expects all jurisdictions to apply the CTG Agreement, specifically the Priority Reforms, to any work that sits within Australia's Disability Strategy (2021-2030), in line with Australia's commitments under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). All levels of government developed and also committed to the Strategy, which sets out priorities and plans for governments to work with the community, businesses, and peoples with disability, whilst recognising



the importance of making sure actions taken to deliver on its policy priorities are implemented with an intersectional and diversity-based lens.

The Bill clearly has major implications for Priority Reform 1 – Formal Partnerships and Shared Decision Making, ‘Priority Reform 2 – Building the Community-Controlled Sector’ and ‘Priority Reform 3 – Transforming Government Organisations’. Nevertheless, the Explanatory Memorandum contains no attempt whatsoever to assess the likely impact and effect of the amendments upon First Nations persons with disability.

First Nations persons with disability and their families have been and continue to be amongst the most seriously disadvantaged and disempowered members of Australian society, yet the Explanatory Memorandum does not even provide an adequate Statement of Compatibility, addressing the human rights implications of the Bill under the International Convention on the Elimination of all Forms of Racial Discrimination (‘ICERD’) --- particularly insofar as Article 5(a) requires Australia to guarantee the enjoyment of civil, political, economic, social and cultural rights without racial discrimination.³¹

It is generally accepted that First Nations people experience disability at up to twice the rate of non-Indigenous Australians,³² with that figure increasing when key vulnerabilities (such as susceptibility to mental health issues and diabetes) are not excluded. Even on a relatively conservative definition of ‘disability’, the prevalence of disability in the First Nations community is 1.5 times higher than in non-Indigenous communities, which equates to 38% of First Nations people living with disability, and 8.1% (66,100) First Nations people living with severe or profound disability.³³

The NDIS Review also contained a specific recommendation (No.14) to ‘Improve access to supports for First Nations participants in remote communities through alternative commission arrangements’,³⁴ in addition to an acknowledgement that for all participants living in remote communities who have been in the scheme for at least one year:

- Around two in five participants are not getting daily activity supports; and
- One in three participants are not getting therapy services.

Even in towns and cities, many NDIS services are not culturally appropriate for First Nations people with disability. As a result, First Nations participants may need to choose between supports that are not culturally safe or not getting funded supports at all.³⁵

All in all, the report contained an abundance of references to the specific intersectional disadvantages of First Nations people with disability when attempting to engage with the NDIS, and it ought to have

³¹ United Nations, ‘International Convention on the Elimination of Forms of Racial Discrimination’, 4 January 1969.

³² Above n 1, 1.

³³ AIHW, ‘[Specialised support and informal care for First Nations people with disability](#)’, 2023, accessed 10 May 2024

³⁴ Above n 1, 12.

³⁵ *Ibid*, 186.



been obvious that prompt consultations with FPDN and other peak bodies were required prior to the introduction of legislation.

A significant amount of consultation and further design is required before this Bill should proceed any further. Given the seriousness of the recommendations contained within the NDIS Final Report and the DRC, there is absolutely no excuse for the introduction of a Bill which may undermine the intention of those recommendations and devalue the underlying voices of First Nations persons with disability.

Consultation with First Nations people with disability will improve the NDIS

FPDN proactively engages with communities around the country, influences public policy and advocates for the interests of First Peoples with disability in Australia and internationally. The expertise of peak bodies, Aboriginal Community-Controlled Organisations (ACCOs) and First Nations persons with disability should be something that is actively being embraced by Government, on its own merits and not as an afterthought.

To begin with, First Nations communities have an understanding of disability that is profoundly different from the Western modern model of disability. FPDN advocates for the concept of disability (which previously did not exist within traditional Aboriginal languages) to be understood within the framework of 'a cultural model of inclusion'.³⁶ This avoids many of the entrenched biases/preconceptions of the medical model of disability (e.g. deemphasising the focus on extent of impairment or barriers, in favour of 'what a person needs to be happy and included in their community').

Whilst FPDN advocates for First Nations people with disability, that expertise can and should be used to improve the NDIS for everyone. The Government's approach towards the NDIS should be empathetic, sensitive to intersectional disadvantages of all forms (e.g. poverty and LGBTQI+ status), and consistent with the human rights framework of the UNCRPD, which sets out (in article 1) that:

'The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.'

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'³⁷

It is difficult to imagine a group of people within Australia who are more disadvantaged than First Nations persons with disability, and therefore more capable of providing lived experience of attempting to overcome those intersectional disadvantages.

³⁶ See S Avery, FPDN, '[Culture is Inclusion](#),' 2018.

³⁷ United Nations, 'Convention on the Rights of Persons with Disabilities', 30 March 2007.



Within the context of the NDIS, this includes assisting the Australian Government/NDIA with overcoming concepts of 'disability' and 'disability supports' which implicitly carry a great deal of historical baggage regarding what 'counts' as a disability for eligibility purposes.

Focusing on the health of First Nations persons is an area where, to date, the NDIS/NDIA has struggled. For instance:

- Within the structure of the NDIS, there is a serious lack of understanding of the disparities faced by First Nations communities; a medical condition which might not otherwise be recognised as a disability can have profound, life-altering effects. This is particularly apparent in extremely rural and remote areas.
- Consequently, many conditions which disproportionately affect First Nations persons, such as diabetes, ADHD or mental illness, are not acknowledged as 'real disabilities' (despite very real health consequences), leaving First Nations persons unable to obtain NDIS assistance until their level of impairment has sufficiently deteriorated.
- First Nations persons have not been able to access the NDIS, especially in rural and remote areas. FPDN would submit that First Nations communities have generally been 'hit hardest' by the rollout of the NDIS in a state which is overly dependent on the ability of a person to obtain a formal diagnosis. A DRC Research Report has found that First Nations people with disability are underrepresented to in the NDIS to the extent that they are 28% less likely to access and receive NDIS services.³⁸
- This has been particularly devastating in rural and remote areas, where 'pseudo-foundational' supports for those who are experiencing the consequences of disability (but are not eligible for the NDIS) are often sparse to non-existent. According to the same DRC Research Report, 55% percent of First Nations people live in these types of communities, compared for 30% for non-Indigenous persons.³⁹
- Due to a severe lack of specialists and services in the rural and regional areas of Australia, NDIS participants have spoken about having to travel extremely long distances to even access diagnostic assessments. Whilst these communities can be visited by General Practitioners (GPs) on a fly in, fly out (FIFO) basis, the GPs were often different each time, and therefore lacked the relevant cultural training and history of building trusting relationships with the community that is required to make accurate diagnostic assessments.⁴⁰
- The Bill not only fails to provide any sort of legislated solution for these issues, but arguably generates even further risks for First Nations participants, stemming from the expanded powers of the CEO (which were not a recommendation of the NDIS Final Report).

³⁸ Disability Royal Commission, 'Research Report: Options to Improve Service and Accessibility for First Nations People with Disability', June 2023, 4.

³⁹ Ibid, 44.

⁴⁰ Ibid, 82.



- The requirement that the CEO, when considering revoking a participant's status, must do so if information or reports that have been requested are not provided within 90 days (unless 'satisfied' of a reasonable justification for non-compliance) is highly problematic,⁴¹ and demonstrative of a general lack of understanding of the position of First Nations persons with disability in rural and remote areas. Depending on the location, certain specialists may only be available once or twice a year, without prohibitively expensive and difficult travel. FPDN's knowledge of participant experiences gives FPDN no reason to believe that the CEO would, in those all too common of circumstances, accept the practical reality of extensive delays in obtaining reports and show hesitation when revoking the participant status of First Nations persons.

NDIS supports do not value the importance of Country

- For First Nations people with disability, connection to Country and culture is deeply important to both individual and collective identity, to wellbeing, to self-determination and to resilience. However, many First Nations people with disability are not able to access NDIS packages and services on Country, or where they live, either leading to lack of plan utilisation, or that individuals need to leave Country to access the services they need.⁴² This impacts on wellbeing, responsibilities, obligations, connection and participation on and with Country, family and community.

NDIS supports are not designed to be culturally safe and inclusive

- Even when some form of NDIS supports are available to First Nations persons with disability, the current disability sector and its processes and structures were never designed to consider the needs for First Nations People, in order to provide culturally safe and effective outcomes that respond to the needs of First Nations People with disability.
- This is largely a consequence of the NDIS becoming centred around an approach to disability supports that is overcommercialised, difficult to navigate, and unsupportive of funding the 'informal supports' which are often provided by members of a participant's kinship group. The current 'free market' approach towards NDIS supports is failing these participants.
- This is also reflected by the limited number of Aboriginal Community Controlled Organisations (ACCOs) and Aboriginal Community Controlled Health Organisations (ACCHOs) that deliver NDIS services. These are the organisations which are best placed to consider the cultural needs of First Nations participants and their communities.⁴³

In short, it is not viable or acceptable for Government agencies to just interpret the results of expansive participant reviews (particularly the DRC and NDIS Final Report) and press forward with their own decisions as to how (and in what form) legislation should proceed. If practical issues with

⁴¹ *Getting the NDIS Back on Track No. 1 Bill 2024* cl30, repealing and substituting *National Disability Insurance Scheme Act 2013* s30(2).

⁴² Above n 38, 129.

⁴³ *Ibid*, 109-110.



the implementation of the NDIS are ever going to be resolved, then Government must finally recognise that DROs and persons with disability are subject matter experts, whose opinions and approval should be actively sought out at every stage (including prior to drafting). The wisdom, expertise and needs of First Nations peoples should not be treated like a nuisance. On the contrary, acceptance of these factors as core tenets of the NDIS will allow the scheme to thrive, for all Australians.

Moving Forward

As above, FPDN does not agree with the Government's approach towards the Bill to date. Significant 'course correction' is required. Government must immediately commence the following steps towards co-design with First Nations persons with disability.

The status quo must change. Now that the NDIA is refreshing its partnership with FPDN to support the ongoing improvement and cultural responsiveness of the NDIA and the NDIS it is time FNAC be empowered to become a 'guiding hand' during (i) the creation of NDIS Rules, and (ii) the consideration of Ministerial Declarations in relation to the NDIS.

During the announcement of FNAC, Minister Shorten stated that:

The collaboration between the NDIA and FPDN, exemplified by the new partnership, represents the type of cooperation necessary for the NDIS to thrive for all its participants...

First Nations people with disability often have different experiences when it comes to accessing supports, and the First Peoples Disability Network can help guide the Scheme to ensure it is inclusive and representative.

We're focused on co-designing improvements to the Scheme. We want to make sure First Nations participants are heard and can meaningfully contribute to making the NDIS the best it can be.⁴⁴

Governments have pledged time and time again to engage with First Nations people, but the Productivity Commission's 2024 Review of the National Agreement on Closing the Gap draws the damning conclusions that the commitment to decision-making is rarely achieved in practice (Priority Reform 1) and the transformation of government organisations has barely begun (Priority Reform 3).⁴⁵ Further:

The wide gap between governments' rhetoric and action appears to stem, in part, from a failure by governments to fully grasp the nature and scale of the change required to fulfil the Agreement. Despite some pockets of good practice, many parts of government are still

⁴⁴ NDIA, 'Media release from the Minister - New Partnership between NDIA and First Peoples Disability Network', 28 February 2023.

⁴⁵ Australian Government Productivity Commission, 'Review of the National Agreement on Closing the Gap – Study Report', January 2024, 4-6.



*operating in what amounts to a variation of business-as-usual, where their actions to implement the Agreement are simply tweaks of, or actions overlayed onto, existing systems, rather than root-and-branch transformations.*⁴⁶

For the NDIS, it is time for Government's words to be put to the test, and for 'co-design' to signal more than consultations followed by ignored advice. To this end:

- All future NDIS Rules and Ministerial Declarations that have any realistic possibility of impacting First Nations participants (directly or indirectly) should be consulted upon with FNAC. As part of this process, FNAC's opinions must be treated with genuine deference, as a show of legitimate power-sharing and trust. Rules which are likely to be problematic for First Nations persons (and even the NDIS as a whole) can be captured before problems ever arise.
- The Bill must also be amended to contain separate commitments that are specific to First Nations persons with disability. This should take the form of a legislative requirement to ensure meaningful co-design, consultations and power-sharing with First Nations persons with disability and peak bodies, distinguished by specific references to the CTG Agreement and DSSP, which should define the minimum extent of the Government's obligations to First Nations persons, regardless of whether the matter at hand involves changes to primary legislation, the NDIS Rules or Ministerial Declarations.

These are not large asks, given that they largely reflect commitments that Government has already made numerous times to First Nations communities.

Engaging FNAC and FPDN at every opportunity

There does not need to be a special occasion (e.g. a NDIS Rule Change) for the NDIA to seek the expertise of First Nations organisations and persons with disability.

FPDN is always positioned to assist. Our extensive national work includes community engagement, capacity building and rights education; systemic advocacy, policy, research, evaluation and data; the development and delivery of evidence-informed training and resources with community for community and to a range of sectors including the Community Controlled sector and mainstream disability sector, Commonwealth and state/territory government policy and service delivery agencies and departments.

There is no reason that the NDIA cannot proactively seek input about matters of concern from FNAC, as well as open up a general line of communication with the aim of proactively improving the NDIS.

This is something that is going to be increasingly important in light of the apparent expansion of the NDIA's scope of powers under the Bill (e.g. the CEO's apparent ability to alter a person's plan management type). If these powers are going to exist, then the NDIA/CEO needs to be willing to promptly acknowledge and alter behaviour in response to legitimate concerns and criticisms (e.g.

⁴⁶ Ibid, 79.



where discretions are being taken too far and/or negatively impacting participants without sufficient justification).

Additionally, this strategy will allow FPDN to utilise its media reach and community presence towards addressing low awareness and information about the NDIS within First Nations communities, who may not be adequately informed about changes to the eligibility criteria, benefits and available supports under the scheme.

Addressing the needs of First Nations persons with disability

As addressed above, FPDN has a wide variety of concerns with the current drafting of the Bill, and generally endorses the problems which have been laid out in the NCF joint submission.⁴⁷

In addition to suffering from these consequences at a heightened rate, the intersection of First Nations status and disability will likely mean that these characteristics will interact and result in unique, additional consequences for First Nations people with disability. A selection of examples are detailed below, as matters that would need to be resolved during the design stages of any NDIS Rules.

The lack of information about a diagnostic tool

DROs have effectively been asked to trust the Government that the new 'needs assessment' process (which is yet to be consulted upon, designed or made publicly available) will not be a repeat of 'independent assessments'. However, First Nations people with disability have never been able access the NDIS at rates comparable to non-Indigenous participants, and no indication has been provided that the NDIA is equipped to alter its processes in any manner that will sufficiently address this.

Even if it is assumed that (moving forward) assessments will be funded by the NDIA, there are a lack of culturally responsive diagnostic tools and availability of services to help with receiving a diagnosis. In addition to the fundamental flaw in the diagnostic tests as being culturally inappropriate, especially the WHODAS and Pedi-CAT, key barriers include locational barriers to undertaking the diagnostic testing, and the Western medical model of disability juxtaposed with the First Nations cultural inclusion model of disability.⁴⁸

First Nations participants in regional, rural and remote areas are routinely challenged by the lack of culturally responsive diagnostic tools that centre value systems or cultural ways of seeing the world, designed by Western non-Indigenous frameworks, often numeracy and English literacy heavy.

As noted in FPDN's NDIS Review submissions, across all of the NDIS Review community consultations and the survey, participants expressed frustration about the reliance of the NDIS on medical diagnoses when determining access eligibility. Due to barriers associated with location, finances and cultural differences, medical diagnoses were described as being inaccessible to First

⁴⁷ Above n 10.

⁴⁸ FPDN, 'The NDIS and Medical Model Gatekeeping,' 2023, accessed 15 March 2024.



Nations communities. In response to a question about what could improve the NDIS for example, participants said:

“Need to help First Nations people get access to earlier assessments and diagnosis so that they can have supports earlier. These should be funded in NDIS plans as most people cannot get these done and without them, they cannot get access to NDIS.”

More wrap around support with health and education I know NDIS doesn't support but first nations have a hard time accessing these support at the best of time.

Nevertheless having disability.”⁴⁹

Additionally, a number of First Nations people in the community have expressed hesitancy about accessing medical and government services, due to having experienced historical mistreatment and abuse from these providers. These problems were acknowledged in Recommendation 9.1 of the DRC Final Report (‘Culturally appropriate parenting capacity assessments’).⁵⁰ Parents of children with disability in particular, have expressed fear of having their children removed if they are identified as having a disability.

Alternative Commissioning and the Expansion of ACCOs / ACCHOs

The design, implementation, and evaluation of alternative commissioning models needs to be undertaken in line with the National Agreement of Closing the Gap. This includes place-based partnerships with communities and the community-controlled sector, including FPDN as the peak. It will also require sector strengthening of the community controlled and non-Indigenous disability sector to build a localised culturally safe, inclusive and disability rights informed sector.

Making certain that such approaches are then evaluated with First Nations disability principles (in line with the Cultural Model of Inclusion Framework) will ensure that the measures of success for First Nations people with disability living in regional, rural and remote locations guide the alternative commissioning approaches, as well as the identification of opportunities for upscaling.

The disability sector is becoming one of the fastest growing sectors of the Australian economy over the coming decade, as noted by the Care and Support Workforce Taskforce. Given the critical role that local, place based ACCOs and ACCHOs play in improved outcomes for First Nations peoples, communities, and self-determination, there needs to be greater investment in building the capacity of First Nations community-controlled organisations to develop services with and for First Nations participants.

Some of the current challenges include the registration process and circumstances where ACCO's and ACCHO's are being asked to deliver disability services with insufficient funding and resourcing.

⁴⁹ FPDN, ‘Submission: Inquiry into NDIS participant experience in rural, regional and remote Australia’, 12 March 2024, 10.

⁵⁰ Above n 13, 7.



As noted in the Disability Sector Strengthening Plan, the requirements for becoming a registered NDIS provider and maintaining registration present significant challenges, particularly for smaller service providers.⁵¹ There is a need to build capability and systematise promising practice across the sector.

First Nations input on included NDIS supports

The fact of that matter is that, the NDIA must not enforce upon First Nations communities an 'absolute' and deterministic view of which supports are (or are not) appropriately covered under the NDIS. As it is currently exists, the scheme is unconsciously designed around a level of privilege that plainly does not apply to many First Nations persons with disability.

First Nations communities bear the ongoing legacies of colonisation, institutionalisation, incarceration, stolen wages, removal of children and institutionalised ableism and racism in policies, programs and services across the life-course, and across all sectors and systems --- from early childhood, housing, health, education, justice and aged care.

Without funding and resources, basic needs are left unmet in our communities. In FPDN consultations across remote areas, First Nations people with disability explained to us that services were so limited that they would often go days or weeks without access to basic assistance, such as assistance with showering or buying perishable items. In order to fill these support gaps, participants described having to rely on family members (who are ineligible for financial compensation under NDIS legislation) which they said put pressure on their relationships.⁵²

Recommendation 9.5 from the DRC Final Reports speaks to ways in which the above concerns can be addressed: The NDIA should provide block funding for First Nations community-controlled organisations to flexibly deliver supports to First Nations people with disability.⁵³ This could include:

- Respite or accommodation in connection with their plan or disability services;
- Cultural supports to maintain or improve health and wellbeing;
- Essential supports such as food, bedding and clothing;
- Supports that enable access to therapy, such as transport and fuel;
- Translation or other services to build understanding around disability and the NDIS; and
- Other matters as agreed by the NDIA and First Nations Community Controlled Organisations.

Conclusion

⁵¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People and Disability, 'Volume 10, Disability services', 29 September 2023, 254-255.

⁵² FPDN, 'The NDIS Workforce and First Nations People,' NDIS Review Submission, 2023.

⁵³ Above n 13, 8.



FPDN thanks the Senate Standing Committees on Community Affairs for the opportunity to participate in this submission. FPDN welcomes discussion on any aspects of this submission.

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APPENDIX A:

Further information about FPDN and the First Nation Disability Policy Context

FPDN is the community-controlled disability peak and a member of the Coalition of Peaks, a partner to all Australian governments to the Closing the Gap National Agreement. We are also the First Nations Disability Representative Organisation actively representing the voices of First Nations peoples within Australia's Disability Strategy governance structures. For millennia, First Nations peoples, communities, and cultures have practiced models of inclusion. However, despite this, since colonisation, First Peoples with disability and their families have been and continue to be amongst the most seriously disadvantaged and disempowered members of the Australian community. FPDN gives voice to their aspirations, needs and concerns and shares their narratives of lived experience. Our purpose is to promote recognition, respect, protection, and fulfilment of human rights, secure social justice, and empower First Peoples with disability to participate in Australian society on an equal basis with others. To do this, we proactively engage with communities around the country, influence public policy and advocate for the interests of First Peoples with disability in Australia and internationally.

Our extensive national work includes community engagement, capacity building and rights education; systemic advocacy, policy, research, evaluation and data; the development and delivery of evidence-informed training and resources with community for community and to a range of sectors including the Community Controlled sector and mainstream disability sector, Commonwealth and state/territory government policy and service delivery agencies and departments. FPDN also has an international presence and networks, including with the United Nations, and provides consultancy and support to international regions.

We follow the human rights framework established by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), to which Australia is a signatory, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

We are also guided by both the social and cultural models of disability. The social model views disability to be the result of barriers to equal participation in the social and physical environment. These barriers can and must be dismantled. However, FPDN recognises the critical need to move beyond a social model to ensure the cultural determinants of what keeps First Nations people with disability strong is centred when working with and in designing policies and programs to improve outcomes for First Nations people. We call this a cultural model of inclusion.

A cultural model of inclusion recognises the diversity of cultures, languages, knowledge systems and beliefs of First Nations people and the importance of valuing and enabling participation in society in ways that are meaningful to First Peoples.⁵⁴ A First Nations cultural model of inclusion includes the human rights framework and the social model of disability to ensure that enablers, approaches,

⁵⁴ S Avery, 'Culture is Inclusion,' 2018, First Peoples Disability Network.



services and supports are culturally safe and inclusive, and disability rights informed. It is the only disability model that seeks to improve the human condition through focussing on what keeps people strong, as distinct to merely negating the adverse impact of difference.

Our community has to operate 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, including safe, affordable, accessible and inclusive housing. 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.

The policy context

FPDN recognises the unique opportunity both 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.

FPDN discussion points and recommendations are in line with the Closing the Gap (CTG) National Agreement Priority Reforms and the Disability Sector Strengthening Plan (Disability SSP) and its Guiding Principles. The Priority Reforms focus on changing the way governments work with Aboriginal and Torres Strait Islander peoples and the Disability SSP outlines high-level priorities and actions at a national level to strengthen and build a Community Controlled Disability Sector. The Commonwealth government, all State and Territory Governments and the Local Government Authority are signatories and partners to the National Agreement and also the Disability SSP. The CTG Priority Reforms are:

1. Formal partnerships and shared decision-making
2. Building the community-controlled sector
3. Transforming government organisations
4. Shared access to data and information at a regional level

Applying the Closing the Gap approach to disability as a cross-cutting outcome through the Priority Reforms offer structure to government to ensure First Nations peoples with disability have:

- A greater say in how policies and programs are designed and delivered;
- Have access to community-controlled services and sectors that delivers culturally safe, accessible and inclusive, and disability right informed services;
- Have access to mainstream organisations and services, such as NDIS services, hospitals, schools and government agencies, that are culturally safe, accessible and inclusive, and disability right informed;



- And have access to, and the capability to use, locally-relevant, First Nations disability informed, data and information.

Australia's Disability Strategy

Australia's Disability Strategy (2021-2030) (ADS) is Australia's national disability policy framework and plays a role in protecting, promoting and realising the human rights of people with disability, in line with Australia's commitments under the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). All levels of government developed and committed to the Strategy, which sets out priorities and plans for governments to work with the community, businesses, and peoples with disability to deliver the needed changes identified by the sector. The Strategy recognises the importance of making sure actions taken to deliver on its policy priorities are implemented with an intersectional and diversity lens.

First Nations Inclusion and Disability

For millennia, First Nations peoples, communities, and cultures have practiced models of inclusion. This embracing of diversity and inclusion "is derived from a belief system and worldview of humanity in which biological, physical and intellectual differences are accepted as part of the fabric of society".⁵⁵ Drawing on nation-wide available data, First Nations people with disability are included in their own communities across social, cultural and community events on average more than other Australians with disability.

However, despite this strength, since colonisation First Nations people with disability experience significant levels of inequality across all other life areas compared to other Australians, including in areas of health, education and social inequality.⁵⁶ Whilst population prevalence data is limited, First Nations people are twice as likely to experience disability than the rest of the Australian population.⁵⁷ Using the statistical definitions of 'severe and profound disability' in the Australian Bureau of Statistics (ABS) datasets, including the ABS Survey of Disability, Ageing and Carers (SDAC), 2018,⁵⁸ it is estimated that over 60,000 Aboriginal and Torres Strait Islander people live with severe or profound disability in Australia today.⁵⁹

First Nations people with disability experience many intersectional forms of discrimination, including discrimination based on age, gender, sexuality and geographic location. These intersecting forms of discrimination are institutionalised and embedded in how policies and programs have been designed, including the NDIS.

⁵⁵ S Avery, 'Culture is Inclusion,' 2018, First Peoples Disability Network.

⁵⁶ S Avery, 'Culture is Inclusion,' 2018, First Peoples Disability Network: Australian Bureau of Statistics (ABS) (2016) National Aboriginal and Torres Strait Islander Social Survey, (NATSISS) 2014-15 (Release 4714.0).

⁵⁷ Australian Bureau of Statistics (ABS) (2016) National Aboriginal and Torres Strait Islander Social Survey, (NATSISS) 2014-15 (Release 4714.0).

⁵⁸ ABS, 'Disability, Ageing and Carers, Australia: Summary of Findings,' 2018, accessed 29 August 2023.

⁵⁹ S Avery, 'Culture is Inclusion,' 2018, First Peoples Disability Network.



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 poor outcomes. This impact is widespread and has social, emotional, physical, economic and cultural impacts.

Disability Sector Strengthening Guiding Principles

The CTG Disability SSP included Guiding Principles to reflect the unique experiences of First Nations people with disability and their specific social and cultural rights and needs. These principles were developed in line with both the Closing the Gap Agreement and Australia's Disability Strategy and were endorsed by all levels of government. The Guiding Principles set a minimum standard for all existing and future work with First Nations Peoples with disability and further developing jurisdiction led sector strengthening actions in Implementation Plans. They also align with both the Australia's Disability Strategy Guiding Principles and CtG.

The Disability Sector Strengthening Plan Guiding Principles focus on the following:

- Human rights
- Self-determination
- Cultural integrity
- Cultural safety
- Partnership
- Place based
- Innovation
- Empowerment
- Equity
- Sustainability
- Knowledge
- Nationally consistent approach.

More needs to be done by all governments to meet the minimum standard set by the Disability SSP Guiding Principles and to achieve outstanding commitments to First Nations people, their communities, services providers and peak organisation under the National Agreement on Closing the Gap.