

First Peoples Disability Network:

Response to the review of the School Education Act 1999 (WA)

October 2024





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About First Peoples Disability Network

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 across Australia's Disability Strategy, the NDIS and related 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.

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 centered 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 Peoples¹.

Our work is underpinned by the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) and the [Convention on the Rights of Persons with Disability \(CRPD\)](#).

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Introduction and context

FPDN's position is that the high prevalence of disability, and the subsequent double discrimination, of ableism and racism, means that First Nations people with disability need to be thoroughly represented in this review of the *School Education Act 1999* ('SE Act'). FPDN's submission to the review of the School Education Act 1999 (WA) is intended to be read with an overarching lens of a number of key topics and themes. Whilst these are mentioned specifically in certain parts of the submission, it is intended that the reader use the following themes to apply to all aspects of the submission. These topics and themes are:

- **First Nations people with disability, discrimination and 'double disadvantage'**
- **Cultural model of disability – Culture is Inclusion**
- **The United Nations Declaration on the Rights of Indigenous People (UNDRIP)**
- **The United Nations Convention of the Rights of Peoples with Disability (UNCRPD)**
- **The National Agreement on Closing the Gap**
- **Australia's Disability Strategy 2021-2031**
- **Geographic Remoteness**

First Nations people with disability, discrimination and 'double disadvantage'

First Nations people with a disability are amongst the most disadvantaged members of the Australian community¹ and are twice as likely to be living with disability as non-First Nations Australians². However, given the lack of data on prevalence of psychosocial disability, and issues around overall data collection in this space, this is almost certainly a conservative estimate. Additionally, many First Nations people with disability are reluctant to take on another perceived negative label of disability, especially when they already experience discrimination based upon their Aboriginality.

Further to this, First Nations people with disability experience a double disadvantage due to the intersection of racism and disability discrimination³. Frequent exposures to various forms of discrimination can have cumulative impact and can manifest into 'apprehended discrimination'⁴. Further to this, statistical data and testimony show that intersectional inequality is acute and pervasive across all supports for First Nations people with disability; including disability services, health, education, employment housing and transport.⁵

¹ Bostock, L., (1991) Access and inequity for people with a double disadvantage, Australian Disability Review, Vo1.2, pp 3-8.

² <https://www.indigenoushpf.gov.au/measures/1-14-disability>, viewed 4 September, 2024.

³ Lester Bostock, 'Access and equity for people with a double disadvantage', (1991), vol 2, Australian Disability Review, pp 3–8. (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report Volume 9 p.40).

⁴ Avery, S., Culture is Inclusion, Executive Summary, viewed on 1 October 2024 at https://fpdn.org.au/wp-content/uploads/2018/07/Culture-is-Inclusion-exec-summary-_2.pdf

⁵ *ibid*



Cultural model of disability – Culture is Inclusion

First Nations languages do not have a specific word for disability, for example, in Pitjantjatjara language there is no word for disability as there is an acceptance of all as part of the human experience.⁶

FPDN is 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.⁷ A First Nations cultural model of inclusion includes the human rights framework and the social model of disability to ensure that approaches, 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 from merely negating the adverse impact of difference. By centering a cultural model of inclusion, through elevating the experiences, aspirations, needs and rights of First Nations people with disability, the new School Education act can be strengthened not only for First Nations people with disability but for all.

The United Nations Declaration on the Rights of Indigenous People (UNDRIP)

The United Nations Declaration on the Rights of Indigenous People establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to Indigenous peoples. The Declaration also recognises the right of Indigenous families and communities to share responsibility for bringing up and educating their children. As such, any changes to the new SE Act, must align with UNDRIP principles. In particular, Article 1, Article 5, Article 10, Article 14, Article 15, Article 21, and Article 22.

The UN Convention of the Rights of Peoples with Disability (UNCRPD)

Adherence to international standards, such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), is crucial for ensuring that First Nations students with disabilities receive equitable educational opportunities. Article 24 of the UNCRPD states that individuals with disabilities have the right to inclusive education. Currently, many First Nations students with disabilities face barriers that contravene this right and as such the new SE Act must align with UNCRPD principles.

⁶ Arriotti Louis, Social Construction of Anangu Disability, The Australian Journal for Rural Health, Vol 7, Number 4, November 1999.

⁷ S Avery, 'Culture is Inclusion,' First Peoples Disability Network, 2018



National Agreement on Closing the Gap

The WA government is a party to the National Agreement on Closing the Gap, including the 17 Targets and 4 Priority Reforms. As such, the government needs to adhere and support the application of the Priority Reforms and progression against the relevant CTG targets in all the work that it does. FPDNs position is that while all the Targets and Priority Reforms are applicable, the outcomes that relate in particular to the review of the 1999 WA School Education Act are the following:

- Outcome 7: Aboriginal and Torres Strait Islander youth are engaged in employment or education;
- Outcome 17: Aboriginal and Torres Strait Islander people have access to information and services enabling participation in informed decision-making regarding their own lives;
- Outcome 16: Aboriginal and Torres Strait Islander cultures and languages are strong, supported and flourishing;
- Outcome 15: Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters;
- Outcome 14: Aboriginal and Torres Strait Islander people enjoy high levels of social and emotional wellbeing;
- Outcome 12: Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system;
- Outcome 13: Families and households are safe.

Additionally, due consideration and application of the *Transformational Elements* set out under Priority Reform Three: Transforming Government Organisation. These include a government commitment to “identify and eliminate racism”, “embed and practice meaningful cultural safety” which should be considered and responded to in light of the evidence provided in this submission.

Australia’s Disability Strategy 2021-2031

The WA government is a signatory to Australia’s Disability Strategy 2021-2031 and has a responsibility to ensure that policy, services and legislation demonstrate leadership towards a society in which people with disability can participate as equal members, with equal opportunities to fulfil their potential. The Strategy includes a dedicated Education and Learning Outcome which commits signatories to recognising the significant gaps in critical formal and informal pathways, supports, skill development, and wellbeing of people with disability, compounded by intersectional discrimination that inform notable gaps in the attainment and participation of people with disability. Particular priority is also given to the need to “build capability in the delivery of inclusive education to improve outcomes for school students with disability” (Education and Learning Outcome: Policy Priority 2).



Geographic Remoteness

In remote areas in WA, the majority of students are First Nations, the below table highlights these numbers.⁸ The high percentages of First Nations young people who are living in these remote communities needs to be taken into consideration throughout this submission as specific issues arise for First Nations young people with disability related to access to diagnosis and to supports, on top of the ‘double discrimination’ that all First Nations people with disability experience.

WA EDUCATION REGION	No. OF SCHOOLS	No. of STUDENTS	No. of First Nations STUDENTS	% of First Nations STUDENTS
North & South Metropolitan	525	252 968	14 630	5.78%
Goldfields	38	8 085	1 977	24.45%
Kimberley	23	5 250	3 227	61.47%
Midwest	46	7 742	2 546	32.89%
Southwest	100	29 921	2 581	8.63%
Wheatbelt	69	8 660	1 557	17.98%
TOTAL	830	312 626	29 514	9.44%

⁸ Number of Aboriginal primary and full-time secondary students – by education level, education region, school education (public and non-government) sector, and public school. [Aboriginal students by education region and level: Semester 1, 2024](https://www.education.wa.edu.au/dl/998n98v) <https://www.education.wa.edu.au/dl/998n98v>



Question 1. Should the objects of the School Education Act be changed to improve access and inclusion for students with disability? If so, what should this look like?

First Nations students in Western Australia are overwhelmingly more likely to live in regional and remote areas, with 60% of First Nations children and young people aged 0 to 19 years living outside the Perth metropolitan area, compared to 22% of non-First Nations students.⁹ FPDN would like to stress in this submission, that living in remote settings comes with a set of challenges, including under resourcing, and lack of access to services that would be more widely available in metropolitan areas. Due to the high proportion of First Nations young people living in remote settings, this is not something which only applies to a limited subset of students, and therefore needs to be at the core of the discussion about education outcomes.

For the majority of First Nations students who live in remote areas, the areas where they live and go to school are almost never equipped to provide the same level of support as those in metropolitan areas, which creates additional barriers for students with disabilities. The glaring trend is for these critical issues to be 'written off' as something that is somehow disconnected from the First Nations' experience and that is just a consequence of 'choosing to live' in these areas. However, suggesting that things are a consequence of this 'choice' ignores the right of First Nations people under UNDRIP to have continuing connections to land and culture.¹⁰

Overwhelming levels of systemic racism and discrimination, in tandem with historic (and continuing) denials of economic opportunities to accumulate generational wealth are the depressing reality for these communities. This is compounded by the stark lack of resources and infrastructure within these rural and remote areas, including the schools and disability supports. In remote communities, it is completely typical for there to be no support services at all for students with disabilities. For those First Nations students who are receiving educational support, this often means being sent to schools far from their homes and off country, and completely disconnected from their families and kinship supports. This is yet another form of institutionalisation that both generates and perpetuates intergenerational trauma.

Case Study: *The Marninwarntikura Women's Resource Centre in Fitzroy Crossing, WA, highlighted how Aboriginal children with disabilities are often sent to boarding schools far from their communities due to a lack of local resources. This separation from family and culture can lead to a loss of cultural identity and emotional distress, which affects their learning and well-being.*

⁹ WA Commissioner for Children and Young people, *Using the monitoring framework to strengthen children's and young people's wellbeing*, May 2015, viewed 24 September 2024 at <https://www.ccp.wa.gov.au/media/1319/policy-brief-wmf-education-and-aboriginal-children-and-young-people-may-2015.pdf>

¹⁰ Australian Human Rights Commission, *UN Declaration on the Rights of Indigenous Peoples*, viewed 22 September 2024 at <https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-people>





This status quo is unacceptable and cannot continue. Even though adequate statistics and diagnostic tools have never been available, which itself is a failure to adhere to the Priority Reform 4 of the National Closing the Gap Agreement to which WA is a signatory, anecdotal and qualitative evidence is revealing that upwards of 80-90% of First Nations children in these circumstances have some form of disability.

Case Study: *In one remote community, innovative online testing (to overcome distance barriers) for intellectual and cognitive impairment was undertaken via a Youth worker and psychologists. Out of 45 children tested, all 45 of them were deemed to have a cognitive disability.*

Disability is an ever-present fact of life in these communities and must be treated as such. For education outcomes to have any chance of being improved for First Nations children with disability, the Western Australian Government must immediately divert substantial resources and establish infrastructure to each and every one of the educational facilities in these rural and remote communities. Put simply, if this does not occur, and the government continues the trend of overlooking the problem and placing focus elsewhere, then outcomes cannot and will never improve. Repeating the fruitless pattern of enquiries, plans and subsequent inaction will accomplish nothing.

Every student has the right to learn, and that learning should be adjusted to be accessible to them

In Western Australia, First Nations students with disabilities face compounded challenges, including a lack of access to culturally responsive education. Nationwide, First Nations students with disabilities are twice as likely to miss out on education services compared to non- First Nations students.¹¹

Case Study: *In the Kimberley region, a program developed by the Aboriginal-led organisation Patching the Gap worked with local schools to adjust learning materials to include Aboriginal cultural knowledge, symbols, and languages while supporting students with cognitive disabilities.*

In this case study, this approach resulted in improved engagement and participation of First Nations students, highlighting the importance of culturally responsive teaching practices, and must be replicated and developed across all remote WA schools as best practice.

Students also have the right to be part of decision-making along with their families, advocates, and other community support

Research shows that 86% of First Nations families in WA prefer to be involved in educational decision-making, but often report not being adequately consulted.¹² This is a critical issue for First Nations

¹¹ Hale, L, Facing the Facts about Aboriginal education, Western Teacher volume 53, 4 June 2024, viewed 30 September 2024 at <https://www.sstuwa.org.au/WesternTeacher/2024/volume-534-june-2024/facing-facts-about-aboriginal-education>

¹²WA Government, Aboriginal Family Led Decision Making, viewed 30 September, 2024 at <https://www.wa.gov.au/organisation/department-of-communities/aboriginal-family-led-decision-making>





students with disabilities, whose needs are often complex and require holistic, community-based support. Both UNDRIP, and UNCRDP outline the rights of both First Peoples, and the rights of those who have a disability to be able to be involved in decision making and self-determination, and as such, the new SE Act must adhere to these.

Case Study: *The Yiriman Project, which operates in remote Aboriginal communities in Western Australia, involves young people with disabilities in decision-making processes regarding their education and well-being. Families and community elders are also heavily involved in supporting students, ensuring that culturally important practices and family voices are incorporated into education planning. This collaborative approach has helped students feel more included and supported.*

The need for an up-to-date, clear definition of disability that includes all disabilities

First Nations children are far more likely to experience disabilities, with rates of disability among Aboriginal children being 1.7 times higher than the non-Aboriginal population.¹³ Additionally, many First Nations families do not identify with formal Western concepts of disability, leading to underreporting, lower diagnoses, and less access to services. Therefore, a Culture model of disability, as outlined in our introduction, needs to be part of the discussion about defining disability. Similarly, psychosocial disability must be included in the Act's definition of disability to capture the true level of support needed for First Nations young people.

Case Study: *In Kalgoorlie, local Aboriginal community members have expressed concerns about the definition of "disability" not fully encompassing the lived experiences of young people affected by trauma, mental health issues, and cognitive challenges related to foetal alcohol spectrum disorder (FASD). This has resulted in students not receiving the appropriate support because their conditions were not formally classified under the current definition of disability.*

Recognising and responding to the complex needs and experiences of young people's disability, mental health issues, and trauma

Mental health issues disproportionately affect First Nations young people. "The 2000–2002 Western Australian Aboriginal Child Health Survey found that among children aged 4–17, Indigenous children were 1.6 times as likely than non-Indigenous children to be at risk of social and emotional difficulties based on the SDQ (24% and 15%, respectively) (De Maio et al. 2005)."¹⁴

Case Study: *In the Martu communities of Western Australia, trauma-informed educational programs that address both disability and mental health challenges have proven successful. The local school*

¹³ ABS, 4429.0 - Profiles of Disability, Australia, 2009 , viewed 26 September, 2024 at <https://www.abs.gov.au/ausstats/abs@.nsf/lookup/4429.0main+features100292009>

¹⁴ Australian Institute of Health and Welfare, Social and Emotional Wellbeing, 25 February 2022, viewed 26 September 2024 at <https://www.aihw.gov.au/reports/children-youth/australias-children/contents/health/social-emotional-wellbeing>



system, in partnership with Aboriginal community organisations, implements mental health and trauma care into everyday schooling. This includes culturally sensitive counselling and using art and traditional storytelling as therapeutic tools, which has led to improved attendance and engagement rates.

This case study demonstrates how First Nations students with disabilities face unique challenges in accessing education. Ensuring the new School Education Act includes provisions for culturally responsive, trauma-informed, and community-inclusive practices is vital to addressing these barriers. This culturally responsive support would result in a more equitable and inclusive educational environment, ensuring that First Nations students with disabilities have the tools to succeed.

Access to education for First Nations children with disability in detention

On any given day, more than 70% of young people in custody at the Banksia Hill Detention Centre are First Nations young people.¹⁵ This was a finding of the Office of the Inspector of Custodial Services following their 2023 inspection of the facility (carried out on their three-yearly schedule), which is WA's only custodial facility for young people, outside of the infamous 'unit 18' within the adult, maximum security facility at Casuarina Prison.

The Office of the Inspector's report also referred to the results of a '2018 study at Banksia Hill', which 'found the prevalence of neurodevelopmental impairment was almost 90 per cent while more than a third of youth had Foetal Alcohol Spectrum Disorder'.¹⁶ For reference, this study was the Banksia Hill project, which was carried out by the Kids Research Institute Australia research team over two years.

Before moving further, FPDN must stress that none of the above is data that is regularly collected and published under the initiative of the WA Government or management staff at Banksia Hill. These numbers represent an unmitigated catastrophe yet this is something that is simply not being addressed in any context, including the inalienable rights of those children to receive an education. This right is enshrined in Article 28 of the United Nations Convention on the Rights of the Child, alongside Rules 38 and 39 of the Havana Rules which specifically affirm the continued existence of that right for juveniles in detention.

The limited details that we do have are unacceptably barren and indicative of yet another blatant failure to respect and comply with obligations under, Priority Reform 4 of the National Closing the Gap Agreement, which commits the WA Government to proving shared access to data at a regional level.¹⁷ There should already be precise, disaggregated figures regarding the First Nations population of these detention centres (e.g. broken down into age, gender, type of disability, types of offences, etc.) available for organisations like FPDN to use.

Banksia Hill has long been in a state of crisis, unfit for any child. FPDN wishes that it could lay out as part of this submission, in excruciating detail, the many failures of education that are currently taking place

¹⁵ Office of the Inspector General of Government Services, '2023 Inspection of Banksia Hill Detention Centre and Unit 18 at [Casuarina Prison \(Part One\)](#)', May 2023, p2

¹⁶ Ibid

¹⁷ See <https://www.closingthegap.gov.au/national-agreement/priority-reforms>, accessed 2 October 2024





at the facility. However, FPDN considers that the words of the Office of the Inspector speak for themselves:

This inspection was part of our routine three-yearly schedule set to look at all facets of life in Banksia Hill and the gazetted Unit 18 at Casuarina Prison (Unit 18). Our inspection team included specialist advisers covering education, young people, health and mental health, and cultural safety.

Given what we know about the needs of the young people in custody in Western Australia, our intention was to use our experts' knowledge and advice to examine whether the care being provided to the young people was trauma informed and contemporary. We had intended to overlay various perspectives to the inspection report...

Despite this objective, we have been unable to apply such focus to this report. The situation we observed was so far from a normal routine that anything above getting many of the young people out of cell for a few hours each day seemed unattainable.¹⁸

In essence, FPDN can barely begin discussing the adequacy of any 'education services' provided at Banksia Hill (yet alone 'unit 18'), because it is beyond obvious that, for all meaningful intents and purposes, no such services exist. The facility is in such dire straits that custodial staff insist that routine lockdowns are a necessity, and detainees are regularly reported as having been subject to solitary confinement for up to 23 hours per day on a frequent basis.¹⁹ No child at Banksia Hill receives anything even resembling an education, and it would be absurd to even suggest otherwise. The facility has an incredible deficiency of staff working in education, cultural, health or support roles, which is almost certainly even worse than the dire shortage of custodial staff.

To the extent that the School Education Regulations 2000 (WA) do provide (in Regulation 26) for compulsory aged primary/secondary students to attend school (a minimum of 25 hours and 50 minutes per week, with at least 4 hours and 10 minutes per day), it was already clear to the Office of the Inspector in 2014 that the provision of education programs at Banksia will was 'grossly inadequate'.

As the WA Department of Education currently operates, the children at Banksia Hill (who are overwhelmingly First Nations children with disability) effectively do not exist, insofar as their right to an education is concerned. Following the 2023 inspection, the Office of the Inspector briefly sought to note some of the alleged attempts to reform education at the facility, however ultimately noted that *'but no teaching occurred during our inspection. Approximately 30 dedicated and skilled staff were regularly unable to deliver meaningful education classes, and in effect their core duties.'*²⁰ These children have become hopelessly lost in the gaps between prison and school.

¹⁸ Office of the Inspector General of Government Services, '2023 Inspection of Banksia Hill Detention Centre and Unit 18 at Casuarina Prison (Part One)', May 2023, pp1-2

¹⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Final Report, Volume 8 – Criminal justice and people with disability', September 2023, p8

²⁰ Office of the Inspector General of Government Services, '2023 Inspection of Banksia Hill Detention Centre and Unit 18 at Casuarina Prison (Part One)', May 2023, p19



It must also be remembered that the above comments are in relation to Banksia Hills specifically. For 'unit 18', as set out in the Disability Royal Commission segment specifically focusing on young detention in WA, Children' Court judgements record that, amongst a myriad of other horrors, *"detainees were deprived of sunlight, some for several weeks...education was not provided due to 'operational matters', with the Court finding that it was not due to detainees' behaviour... at Unit 18, there are no school facilities, no health or psychological support facilities, no program facilities and no ability to provide for a woodwork shop or any program which requires space or dedicated equipment"*.²¹

Instead of receiving an education and having their basic needs met, these children are being subjected to treatment that is so reprehensible as to bring into application the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984*. On 11 May 2023, Amnesty International unequivocally condemned the extreme force used against children who left their cells in process (including threats with guns and pepper spray).²² It was also completely unsurprising that, in July 2023, Justice Tottle of the WA Supreme Court was able to make findings that the 'solitary confinement of a frequent basis' of over 20 hours per day was a 'systemic failure' and 'not only inconsistent with the objectives and principles of the [Young Offenders] Act but also with basic notions of the humane treatment of young people'.²³

The situation at Banksia Hill (and 'unit 18') is, and has never been anything other than, a national disgrace. To the eyes of the education system, these children are forgotten, ignored, and never even part of the discussion of what it means to 'improve access and inclusion' to education.

Accordingly, it is imperative that the new WA SE Act must include strong measures to ensure young First Nations people receive a proper education whilst they are incarcerated.

Establishing Standards Aligned with the UNCRPD

FPDN's position is that the WA government must develop clear standards that all schools meet.

Article 24 of the UNCRPD states that individuals with disabilities have the right to inclusive education. Currently, many First Nations students with disabilities face barriers that contravene this right. These standards aligned with UNCRPD need to include:

- Guidelines for inclusive teaching practices and reasonable accommodations tailored to individual needs.
- Regular assessments of school compliance with these standards to ensure that First Nations students with disabilities are fully included in the educational system.

The new SE Act must include provisions that ensure all educational standards and principles align and adhere to the UNCRPD, to which Australia is a signatory.

²¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Final Report, Volume 8 – Criminal justice and people with disability', September 2023, p8

²² See <https://www.amnesty.org.au/amnesty-international-condemns-violence-against-youth-detained-in-banksia-hill-youth-detention-centre/>, accessed 2 October 2024.

²³ See <https://www.als.org.au/supreme-court-of-wa-orders-government-to-comply-with-the-law-after-finding-frequent-use-of-solitary-confinement/>, accessed 2 October 2024.





Question 2. Should principles be added to the SE Act to improve access and inclusion? If so, what principles would you add?

FPDN's position is that principles must be added to the *School Education Act 1999* ('SE Act') to improve access and inclusion, especially for First Nations students with disabilities. These principles have to recognise both the rights of First Nations students with disability to receive an inclusive education, and the importance of cultural sensitivity in delivering educational services.

Access and inclusion are the rights of every child

Every child, regardless of their disability, has the right to access high-quality education to maximise their achievement, realise their learning potential, promote lifelong enthusiasm for learning, and allow families to actively participate in the child's education journey. However, First Nations children are more likely to experience disabilities, with rates of disability being 1.7 times higher than the non-First Nations population²⁴, and for these children, access to high-quality education is critical to their long-term development.

Case Study: *In Geraldton WA, an Aboriginal student with physical and cognitive disabilities was provided with assistive technology and culturally responsive teaching materials. This allowed him not only to engage with the curriculum but also to connect to his ancestry through lessons taught in the Wajarri language, leading to improved attendance and participation.*

Recognising that First Nations children with disabilities often face compounded challenges, the SE Act must mandate the provision of individualised tailored resources and supports. This includes both physical accommodations and culturally responsive practices, such as using local languages and traditional knowledge. This principle must also recognise the critical role of family and community in supporting the education journey, ensuring they are included in ALL decision-making processes regarding the student's education.

Government schools must provide an education that is accessible and non-discriminatory, with every student having the right to attend a neighbourhood government school

First Nations students are three times more likely to experience discriminatory practices or barriers when accessing education.²⁵ Additionally, 60% of Aboriginal children in Western Australia live in remote

²⁴ Australian Institute of Health and Welfare (AIHW) 2023, *Measure 1.14 Disability - Data findings*, Aboriginal and Torres Strait Islander Health Performance Framework website, viewed 1 October 2024 at <https://www.indigenoushpf.gov.au/measures/1-14-disability>.

²⁵ The Educator, *Indigenous education: experts identify key barriers*, 20 June 2018, viewed 1 October 2024 at <https://www.theeducatoronline.com/k12/news/indigenous-education-experts-identify-key-barriers/251337>





or regional areas,²⁶ where school facilities are often not equipped to support disabilities, particularly when those disabilities are compounded by trauma or mental health issues.

The SE Act must ensure that First Nations children with disabilities have equal access to their local government school, without the need to relocate to distant urban centres for special services. Schools must be required to provide non-discriminatory and fully accessible education, with services adjusted to meet both the physical, emotional and cultural needs of the child. This includes having on-site resources, culturally informed educators including First Nations teachers, education officers and support staff, in addition to disability specialists.

Case Study: *In Broome, a family of an Aboriginal child with a developmental disability struggled to access appropriate services. The local government school lacked the resources to provide specialised support. Advocacy from the community is necessary to establish a mobile support unit, bring in specialists (who are culturally informed) to the remote school to improve outcomes for First Nations children with disabilities.*

The need for culturally sensitive actions, strategies and behaviour

First Nations children in WA face significant educational disparities, with *only* 35% of Aboriginal children attending Kindergarten or Pre-primary regularly compared to 70% of non-Aboriginal children.²⁷ Furthermore, schools often fail to incorporate the cultural practices of First Nations students, which can lead to disengagement.

To eliminate racism and discrimination (which leads to disengagement) for First Nations young people, including those with disability, principles of cultural safety and sensitivity need to underpin the actions of all schools, and all actions must consider and incorporate the experiences and needs of First Nations students.

It is essential that cultural safety be a foundational principle in the new SE Act. Schools must incorporate First Nations cultural practices and ensure that all staff are trained in cultural sensitivity/responsiveness. This principle should extend to ensuring that First Nations students with disabilities, particularly those with trauma histories, are supported in ways that are respectful of their cultural identity. This could include allowing for flexible learning opportunities such as on-Country learning, community involvement in schooling, and the integration of First Nations languages and perspectives into the curriculum.

Case Study: *In the Kimberley region, the Yiramalay/Wesley Studio School integrates traditional Aboriginal practices, such as bush tucker and on-Country learning, into its curriculum, which has resulted*

²⁶ WA Commissioner for Children and Young people, *Using the monitoring framework to strengthen children's and young people's wellbeing*, May 2015, viewed 24 September 2024 at <https://www.ccyp.wa.gov.au/media/1319/policy-brief-wmf-education-and-aboriginal-children-and-young-people-may-2015.pdf>

²⁷ Shepherd, C. et al, Socioeconomic disparities in the mental health of Indigenous children in Western Australia, BMC Public Health, Article number: 756 (2012)



in higher attendance and engagement rates for Aboriginal students. In addition, they provide specialised support for students with disabilities and mental health challenges, ensuring that cultural sensitivity is central to their educational experience.

Trauma-Informed Practices:

First Nations children are significantly more likely to experience trauma, with over 40% of Aboriginal children aged 4–17 in WA reported to have social and emotional difficulties linked to trauma.²⁸

As such, the new SE Act must require all schools to adopt trauma-informed practices, which are crucial for students with disabilities, particularly as all First Nations students have experienced intergenerational trauma. These practices need to be culturally grounded, drawing on community knowledge and incorporating traditions, like storytelling and art therapy, to support students' mental health and well-being. In some community settings this means adapting existing practices to suit the bespoke needs of children from those communities. For example, what has proven to work at some locations may not be suitable for another and forcing its application without built in allowances for adaptations undermines the application of a trauma-aware and healing-informed approaches.

***Case Study:** Schools like Yule Brook College have successfully implemented trauma-informed practices such as mindfulness and resilience programs tailored to Aboriginal cultural contexts, helping students manage their emotions and focus on learning.*

Collaborative Community Involvement:

The new SE Act must ensure that all educational plans for First Nations students with disabilities are developed in consultation with the student's family, local First Nations leaders and elders, and relevant support organisations. Community involvement is essential for ensuring that education is relevant and responsive to both the disability and cultural needs of the student.

By adding these principles, the new SE Act can better address the specific needs of First Nations students with disabilities, ensuring they have access to an inclusive, supportive, and culturally safe educational environment. This will help bridge the current educational disparities and empower students to reach their full potential.

***Case Study:** Programs like Ngroo Education, which focuses on early childhood education for Aboriginal children, work directly with communities to co-design education plans. This collaborative approach ensures the inclusion of cultural practices and community needs.*

²⁸ Australian Institute of Health and Welfare, Aboriginal and Torres Strait Islander Health Performance Framework, Tier 1 - Health status and outcomes, 1.14 Disability, viewed 25 September 2024 at <https://www.indigenoushpf.gov.au/measures/1-14-disability>,





Question 3. Should the definition of disability in the SE Act be changed to improve access and inclusion? If so, how?

The definition of disability in the new SE Act must be changed in order to improve access and inclusion for all students, but in particular for First Nations students with disabilities. The proposed changes should ensure consistency with the *Disability Discrimination Act 1992* ('DDA') and the *Disability Standards for Education 2005* ('DSE') while adopting a more inclusive, social model of disability.

Lack of consistency Between the SE Act, DDA and DSE

There is confusion when various standards and pieces of legislation use different definitions. Consistency between the SE Act, DDA, and DSE is critical to reducing this confusion and ensuring that schools have a clear understanding of when and how to apply the correct definition of disability.

Case Study: *An Aboriginal student with a temporary physical disability in Geraldton faced delays in receiving necessary accommodations because their condition did not fit the SE Act's current definition of disability. However, under the DDA, temporary disabilities are accommodated, which (if applied to this case) would have ensured quicker access to services like ramps and classroom modifications.*

Recognition of Temporary and Episodic Disabilities – Compliance with the CRPD

The United Nations *Convention on the Rights of Persons with Disabilities* ('CRPD') requires the inclusion of temporary and episodic disabilities in definitions of disability, ensuring that all individuals can access their right to education.²⁹

As such, the SE Act should align with the DDA and DSE by including both permanent and temporary or episodic disabilities. This would provide schools with clearer guidance, ensuring that First Nations students experiencing temporary disabilities are not excluded from receiving accommodations. Temporary disabilities, such as a broken limb or mental health episode, can significantly affect learning, particularly when combined with other social and cultural factors.

Case Study: *An Aboriginal student with mental health challenges, such as anxiety triggered by cultural grief, was not supported by their school because their condition was considered episodic rather than permanent. By recognising episodic conditions, the SE Act would ensure that students receive consistent support even when their disability is not always present or visible.*

The addition of consistent definitions would go towards aligning WA legislation with the CRPD and ensuring that First Nations students facing temporary challenges, like emotional trauma after the loss of a community Elder, receive the necessary educational adjustments. These supports could include flexible attendance, counselling, and alternative assessments.

²⁹ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, CRPD/C/GC/4, 2 September 2016, available at <https://www.refworld.org/docid/57c977e34.html>, viewed 25 September 2024





Shift Toward the Cultural Model of Disability

Aboriginal children are twice as likely to experience disability than non-Aboriginal children.³⁰ Many of these disabilities intersect with social determinants like poverty, intergenerational trauma, and limited access to health care.

FPDN's position is that the new SE Act needs to shift from a medical model, which focuses primarily on diagnosing and treating disabilities. And while FPDN does support a social model of disability that considers how social, cultural, and environmental factors interact with the student's condition to be preferable, we also state that the new SE Act must also include a Cultural model of disability. For First Nations students, a Cultural model of disability approach is particularly important, as disability often overlaps with experiences of trauma, historical disadvantage, and systemic racism.

In WA, Individual Education Plans (IEPs) currently exist, but in order to support First Nations kids appropriately, Personalised Learning Plans (PLPs) for every Aboriginal student must be developed by the school in partnership with parents/caregivers and include targets for learning against syllabus outcomes and agreed culturally appropriate supports, such as the involvement of Elders, students, family and community. This will give a voice to Aboriginal families and communities, to create more trusted relationships to improve outcomes for these young people.³¹

Case Study: *In the Pilbara region, an Aboriginal student with hearing loss due to untreated middle ear infections (otitis media) struggled in class because the school viewed the issue through a medical lens and provided inadequate support. Adopting a Cultural model would have prompted the school to consider the social factors affecting the child's disability and offer more comprehensive solutions, such as community-based hearing checks and adaptive learning environments.*

Aligning the SE Act with Article 24 of the CRPD – The right to an inclusive education

Article 24 of the *Convention on the Rights of Persons with Disabilities* ('CRPD') requires Australia to recognise the right of individuals with disabilities to an inclusive education on an equal basis with others. This means schools must remove barriers that prevent participation and ensure equal access to learning opportunities.

Case Study: *A Royal Commission report highlighted that many Aboriginal students with disabilities are systemically excluded from education due to negative attitudes and inadequate supports. In one case, a young Aboriginal girl in a regional town was placed in segregated classes because her intellectual*

³⁰Australian Institute of Health and Welfare, Aboriginal and Torres Strait Islander Health Performance Framework, Tier 1 - Health status and outcomes, 1.14 Disability, viewed 25 September 2024 at <https://www.indigenoushpf.gov.au/measures/1-14-disability>.

³¹ NSW Department of Education, Personal Learning pathways guidelines, viewed 2 October 2024 at https://education.nsw.gov.au/content/dam/main-education/teaching-and-learning/aec/media/documents/universal-resources-hub/Personalised_Learning_Pathways_-_Doe_Template.pdf





disability was not accommodated in the mainstream classroom. This exclusion reinforced her sense of isolation, engagement with teachers, peers and learning and contributed to poor academic outcomes.

To comply with Article 24 of the CRPD, the new SE Act must prioritise inclusive education for all students, regardless of disability. Schools must be required to provide all appropriate accommodations, such as assistive technologies, specialist staff, and flexible curriculums, to support students' full participation in both academic and extracurricular activities. For First Nations students, this should include culturally responsive teaching practices that incorporate First Nations knowledge systems, allowing students to engage with their cultural identity while learning.

Addressing Barriers to Education for Students with Disabilities

First Nations students with disabilities often face multiple barriers to accessing education, including a lack of culturally safe environments and appropriate adjustments. These barriers are too often underpinned by negative attitudes and low expectations.

Schools systemically exclude students with disability by not providing appropriate accommodations and supports to enable their participation in classrooms and in the broader school community.³² As a result, the attendance rate for First Nations students with disabilities is notably lower than for their peers, with many reporting feeling excluded from school life.

Case Study: *In a school in Kalgoorlie, a young Aboriginal boy with autism was repeatedly suspended due to behavioural issues stemming from a lack of support and understanding of his disability. He and his family felt excluded from decision-making processes and struggled to advocate for appropriate accommodations. By the time appropriate supports were in place, the boy had fallen significantly behind in his studies.*

Schools must be required to provide culturally safe, trauma-informed supports for First Nations students with disabilities. This must include involving First Nations liaison officers and advocates in planning meetings, ensuring the student and the student's family is an active part of the decision-making process, and adopting restorative justice approaches rather than punitive ones when behavioural challenges arise.

By updating the SE Act to incorporate these principles, Western Australia must ensure that First Nations students with disabilities have full access to inclusive, culturally safe, and supportive educational environments. This approach recognises both the complexity of disabilities and the importance of cultural identity, ensuring that all students can reach their full potential.

³² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report Volume 7: Inclusive education, employment and housing Summary and Recommendations p.10





Question 4. Should the SE Act change so that there is a clear right for students with disability to enrol at their local government school?

The SE Act must be changed to clearly guarantee the right for students with disabilities, including First Nations students, to enrol at their local government school. This would ensure that all students, regardless of disability or cultural background, have equal access to quality education.

Historical Exclusion of Aboriginal Students, and the Impact of Remoteness on Education Outcomes

More than 100 years after European forms of education were imposed in the Swan River colony, First Nations people continued to be denied access to quality schooling. The passage of the *Elementary Education Act* in 1871 supposedly afforded all children access to schooling, yet First Nations children continue to be excluded from schools as a result of racist subsequent policies, practices and legislation.

This included, firstly, amendments made to the *Elementary Education Act* in 1893 which established school districts and school boards, effectively increasing the influence of local landowners over schooling, including the ability to determine who could be excluded. Secondly, a suite of restrictive legislation was passed between 1886-1905, placing First Nations people under strict government controls and allowing First Nations children to be excluded from government schools, beginning a period of formal school segregation between 1905- 1942.³³ This created a long-lasting legacy of educational inequality for First Nations children that persists today.

First Nations people, including those with disability, must be able to access inclusive, quality and free primary and secondary education in the communities in which they live.³⁴ However, currently, educational opportunities for students decline in proportion to the level of remoteness. A consistent finding from research on regional and remote education is that in all available measures of learning and educational outcomes, students from regional and remote areas perform, on average, below their major city peers.³⁵ In remote regions, where there may only be one local government school, First Nations students with disabilities still face significant barriers to enrolment. Families are often told that the school lacks the resources or programs necessary to support their child's needs, echoing historical patterns of exclusion.

Case Study: *A study of school attendance in the Pilbara found that Aboriginal students with disabilities had a 30% lower attendance rate than their non-disabled peers, largely due to a lack of appropriate school supports. This was compounded by the fact that the nearest school with suitable programs was over 100 kilometres away.*

³³ National Indigenous Youth Education Coalition (NIYEC), *The School Exclusion Report*, 21 March, 2024, p.38

³⁴ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 24(2)(b).

³⁵ Cassells, Dockery, Duncan, Gao, & Seymour, 2017; DESE, 2020; Halsey, 2018; Holden & Zhang, 2018; Lamb et al., 2015; The Senate Standing Committee on Rural & Regional Affairs & Transport, 2009, cited in CIREs at Victoria University (to be published) Literature review for the Review of Regional Schooling Resource Standard Loadings: Report prepared for the National School Resourcing Board, p 6





The SE Act must prioritise the development of inclusive education programs in all schools, particularly those in rural and remote areas. This would ensure that students with disabilities, including First Nations students, have equal access to high-quality education regardless of where they live. Additional investments in training for teachers, accessibility infrastructure, and culturally appropriate supports are essential to closing the educational gap for First Nations students in these areas.

The new SE Act must also mandate that all schools have appropriate programs and facilities to support students with disabilities, removing the authority from individual school principals to decide whether a child with a disability can or cannot enrol. This would prevent the ongoing exclusion of First Nations students and ensure access to local schools for all, regardless of their needs or abilities.

Impact of Racism

There are many factors that impact on the social and emotional wellbeing of First Nations peoples, such as stress, social exclusion, inequality and racism. Consequently, the implications of poor social and emotional wellbeing can cause and exacerbate disability among First Nations populations.

Racism is a stressor that has been proven to affect both mental and physical health, and consequently, racism can cause disability or exacerbate an existing disability.³⁶ Examples of this include:

- *Reduced access to the societal resources required for health (e.g. employment, education, housing, health care) and increased exposure to health risks (e.g. unnecessary contact with the criminal justice system)*
- *Negative self-esteem and self-worth leading to mental ill health.*
- *Stress and negative emotion reactions which lead to mental ill health as well as affecting the immune, endocrine and cardiovascular systems.*
- *Disengaging from healthy activities (e.g. exercise, adequate sleep, taking medications);*
- *Maladaptive responses to racism such as smoking, alcohol and other drug use; and*
- *Injury through racially motivated assault, resulting in further negative physical and mental health outcomes”³⁷*

Case Study: *The Western Australian Aboriginal Child Health Survey 2001-02 (WAACHS). It reported that 21.5% of the Indigenous children under 12 surveyed experienced racism in the previous 6-months. This was associated with increased smoking, marijuana use and alcohol consumption in these under-12s³⁸*

Given this evidence about the links between racism and disability, FPDNs position it that the new WA SE Act must take immediate, meaningful and purposeful steps to eliminate racism in schools.

³⁶ Kairuz, C.A., Casanelia, L.M., Bennett-Brook, K. *et al.* Impact of racism and discrimination on physical and mental health among Aboriginal and Torres Strait islander peoples living in Australia: a systematic scoping review. *BMC Public Health* 21, 1302 (2021), viewed 2 October 2024 at <https://doi.org/10.1186/s12889-021-11363-x>

³⁷ Zubrick, SR, Shepherd, CCJ, Dudgeon, P, Gee, G, Paradies, Y, Scrine, C & Walker, R 2014, Social Determinants of Social and Emotional Wellbeing. in P Dudgeon, H Milroy & R Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*. 2nd edn, Australian Government Department of the Prime Minister and Cabinet, Canberra, pp. 93-112.

³⁸ Australian Human Rights Commission, Social determinants and the health of Indigenous peoples in Australia, December 2012, viewed 2 October 2024, at <https://humanrights.gov.au/about/news/speeches/social-determinants-and-health-indigenous-peoples-australia>



Question 5. Should the SE Act provide greater flexibility in how students engage in education? If so, what should this look like?

FPDNs position is that the new SE Act must provide greater flexibility in how students engage in education.

The role of principals in Enrolment Decisions

Under the existing framework in WA, school principals hold a significant, unjustifiable amount of power over the enrolment process. In many cases, they can decide whether a student with a disability can or cannot be accommodated, leading to inconsistent and often exclusionary practices. This especially affects First Nations students in regional areas where school options are limited. FPDN once again reminds the Department of Education, that under the UNCRDP which Australia has ratified, people with disability should be able to access inclusive, quality and free primary and secondary education in the communities in which they live.³⁹

In 1948, the right to education was included in the United Nations (UN) *Universal Declaration of Human Rights*. Article 26 states that parents have a prior right to choose the kind of education that shall be given to their children. In the Recommendation 7.1 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability also reflects the need for an enshrined entitlement to enroll in a local mainstream school, which extends to children with disability. UNDRIP also enshrines a child's right to education in a self-determining manner.

Case Study: *A family in a rural town in WA reported that their autistic son was denied enrolment in the local school because the principal believed the school did not have the capacity to meet his needs. The family had no alternative educational options in the area, leaving the child without access to a suitable education.*

The SE Act should remove the discretion of school principals in determining enrolment for students with disabilities. Enrolment procedures should be standardised across all government schools, ensuring that no child is turned away based on their disability. Additionally, schools should be required to provide all necessary and reasonable accommodations and supports.

Support for Families and Carers in Enrolment Procedures

As previously stated, First Nations children are nearly twice as likely to have a disability compared to non-Aboriginal children.⁴⁰ Compounding this, families of First Nations students with disabilities often face additional challenges, such as navigating complex bureaucratic processes and dealing with language barriers.

³⁹ Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 24(2)(b).

⁴⁰ Australian Institute of Health and Welfare, Aboriginal and Torres Strait Islander health performance framework, Tier 1 - Health status and outcomes, 1.14 Disability, viewed 12 September 2024 at <https://www.indigenoushpf.gov.au/measures/1-14-disability>



Case Study: *In a remote Kimberley Aboriginal community, a mother of a child with cerebral palsy struggled to understand and complete the enrolment paperwork for her son due to her limited English literacy. As a result, her child's enrolment was delayed, and he missed out on crucial early interventions.*

The new SE Act needs to include provisions that offer support services for families and carers during the enrolment process so that First Nations families and carers can have reduced barriers to school engagement. This must involve First Nations liaison officers or disability advocates assisting families with the required documentation and advocating on behalf of the child to ensure their enrolment is prioritised. This would make the process more inclusive and ensure that First Nations families are empowered to secure the education their children are entitled to.

Inclusive Education and the CRPD

As previously discussed, the CRPD guarantees the right to inclusive, quality, and free primary and secondary education within local communities. However, today many First Nations students with disabilities, especially those in rural and remote areas, face significant barriers to accessing this right.

The new SE Act needs to reflect Australia's CRPD obligations by ensuring that every child has the right to attend their local school, with the necessary supports in place to accommodate their disabilities. This must involve providing sufficient funding and resources for rural and remote schools, so families are not forced to relocate in search of better educational opportunities for their children.

Case Study: *In Geraldton, an Aboriginal child with ADHD and learning disabilities was unable to enrol in the local school due to a lack of specialised support staff. The family was forced to relocate to a larger city where more educational resources were available, causing significant economic and emotional stress.*

The Lack of Cultural Sensitivity in Disability Education

First Nations students with disabilities face not only the challenges of their disability but also the impacts of historical and cultural marginalisation. Schools most often fail to consider the cultural context in which First Nations students live and learn, contributing to lower enrolment and participation rates.

Case Study: *A young Aboriginal girl with hearing loss in Broome was struggling in a mainstream classroom because her cultural needs, such as speaking in her native language, were not considered in her Individualised Education Plan (IEP). Additionally, the school did not have culturally appropriate hearing devices that could accommodate her needs.*

FPDN's position is that the new SE Act must include cultural safety principles, ensuring that schools not only provide adjustments for disabilities but also respect the cultural context of First Nations students. This needs to involve employing Aboriginal Education Officers (AEOs) who work alongside students, families and school staff to develop culturally responsive support plans, ensuring that students with disabilities can thrive both academically and culturally.

Overall, changing the SE Act to guarantee the right of all students with disabilities to enroll at their local government school is essential to creating an equitable and inclusive education system. This change in the Act would ensure that all students, particularly First Nations children with disabilities, can access the supports and programs they need to succeed in their education, regardless of where they live.





Question 6. Should there be any changes to the SE Act regarding roles and responsibilities? If so, what should this look like?

To effectively address the roles and responsibilities outlined in the SE Act through a First Nations disability and cultural lens, significant changes are necessary. These adjustments must promote a more inclusive and consultative approach that empowers educators and recognises the unique needs of First Nations students with disabilities.

Educating Teachers

It is crucial for educators to have the knowledge, ability and willingness to adapt their teaching strategies to meet the diverse learning needs of all students, particularly those with disabilities. Current practices often overlook the specific requirements of First Nations students.

***Case Study:** Studies show that culturally responsive teaching methods significantly improve engagement and academic outcomes for Aboriginal students. A project in the Pilbara region demonstrated that integrating Aboriginal perspectives into the curriculum resulted in higher participation rates and improved academic performance among Indigenous students.*

The SE Act should be amended to mandate professional development for teachers focused on culturally responsive pedagogy and inclusive practices', and requirements for schools to implement individualised learning plans that cater to the strengths and needs of First Nations students with disabilities. FPDN recommends that in addition to the professional development, the new SE Act needs to mandate that Teaching Degrees in Western Australia have mandated subjects which teach First Nations histories, cultures and truths.

Reducing Principal Authority and Encouraging Consultative Practices

As discussed above, the current framework often places excessive power in the hands of school principals, leading to unilateral decisions that may not consider the diverse needs of students, particularly those with disabilities.

***Case Study:** Anecdotal evidence from Aboriginal families suggests that principal decisions often exclude essential voices in the school community, resulting in a lack of support for students with disabilities. For instance, one Aboriginal mother recounted her child's needs being dismissed because the principal deemed them "not a priority".*

The SE Act should be amended to facilitate a shift towards:

- A more collaborative governance structure where decisions are made in consultation with teachers, support staff, student, parents, and community representatives; and
- Establishing school advisory committees that include First Nations elders and disability advocates to ensure diverse perspectives are integrated into decision-making.



Empowering Classroom Teachers in Planning and Consultation

Classroom teachers often play a critical role in student learning yet are frequently left out of important discussions regarding their students' needs due to confidentiality constraints and hierarchical structures.

The new SE Act must be revised to require that schools:

- Create protocols that facilitate open communication between teachers and support staff, ensuring that relevant information about students' needs is shared in a manner that respects confidentiality while allowing for effective planning; and
- To hold regular collaborative meetings where teachers can discuss student progress, share insights, and develop collective strategies to support First Nations students with disabilities.

Case Study: *A survey conducted by the Western Australian Teachers' Union revealed that over 70% of teachers felt they lacked adequate information about their students' support needs, impacting their ability to provide effective instruction.⁴¹*

Eliminating Gatekeeping Practices

'Gatekeeping' often occurs when certain staff members (usually executive staff) control access to essential information about students, limiting the ability of teachers and support staff to address individual learning needs effectively.

Case Study: *Feedback from Aboriginal community representatives indicates that this practice can hinder culturally responsive approaches to teaching, as teachers may lack context about their students' backgrounds and experiences.*

To combat this, the new SE Act needs to emphasise:

- A commitment to transparency regarding student support services, ensuring all educators have access to relevant information while safeguarding privacy; and
- Policies that encourage shared responsibility among all staff for student success, fostering an environment where collaboration is the norm rather than the exception.

Cultural and Community Engagement

Changing the roles and responsibilities outlined in the SE Act to reflect a more consultative, collaborative approach will empower educators and improve educational outcomes for First Nations students with disabilities. By prioritising tailored teaching, reducing hierarchical barriers, and fostering community engagement, schools can create a more inclusive environment that supports the diverse

⁴¹ Hiatt, B, Australian Education Union demands more public school funding as survey reveals impact of teacher shortages, The West Australian, 24 April, 2024, viewed 12 September 2024 at <https://thewest.com.au/news/education/australian-education-union-demands-more-public-school-funding-as-survey-reveals-impact-of-teacher-shortages-c-14437867>





needs of all students. These changes will not only enhance the educational experience for First Nations students but also contribute to the broader goal of reconciliation and equity in the education system.

The roles and responsibilities within the SE Act should explicitly include the importance of engaging First Nations communities in the educational process. Many First Nations families have historically faced systemic barriers to participation in the school system.

***Case Study:** Community-led initiatives in regions like the Kimberley have shown that involving Aboriginal families in school planning and decision-making can significantly enhance student engagement and outcomes.*

Amendments to the SE Act should require:

- Schools to establish partnerships with local First Nations organisations and communities, ensuring their input in school governance and curriculum development; and
 - Regular cultural competency training for all staff to facilitate respectful and effective engagement with First Nations students and their families.
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Question 7. Should there be any changes to the SE Act regarding adjustments for students with disability and/or universal measures? If so, what should this look like?

To effectively enhance access and inclusion for students with disabilities within the framework of the School Education Act (SE Act), several changes must be made. These changes need to specifically consider the unique cultural context of First Nations students with disabilities and adopt a holistic, collaborative approach to education.

Flexible Study Options and a Collaborative Decision-Making Approach

The current education system often lacks the flexibility needed to accommodate the diverse learning styles and needs of students with disabilities. This is particularly important for First Nations students, who may face unique cultural and location-based challenges.

***Case Study:** The Remote Aboriginal Schools Program has shown that offering flexible learning pathways—such as blended learning or part-time study—has resulted in improved engagement and retention rates among Aboriginal students. In one school, implementing a flexible curriculum allowed students to learn at their own pace, leading to a significant rise in attendance and academic performance.*

The new SE Act must mandate:

- The establishment of flexible study options tailored to individual learning needs, including online resources, alternative assessment methods, and part-time attendance; and
- Collaboration with families and local communities to identify the most effective flexible options for each student, ensuring that cultural considerations are included.
- Better knowledge of and links to the NDIS for education staff

Currently, decision-making about accommodations for students with disabilities often rests heavily with principals, limiting input from families, advocates, and the students themselves. This top-down approach can lead to solutions that do not adequately address the needs of the students.

***Case Study:** In a case study from the Goldfields region, Aboriginal families reported feeling excluded from discussions about their children's education, resulting in mistrust and disengagement. When schools implemented collaborative meetings that included family voices, the students showed improved behaviour and academic outcomes.*

To mitigate this, the SE Act needs to be revised to:

- Require a collaborative approach in determining adjustments, where families, advocates, and students participate in decision-making processes; and





- Establish regular meetings between teachers, families, and community members to discuss student progress and necessary adjustments, ensuring that decisions are in the best interest of the child.

Redefining Disability

As discussed, rates of disability in First Nations communities is disproportionately high. ABS statistics do not reflect the true level of disability due to issues with First Nations identification, high non-response rates, and different conceptualisations of disability may mask hidden disability which contribute to under-reporting.⁴² Many First Nations students with disability are overlooked in these statistics, due to a narrow definition of disability.⁴³

The definition of disability within the new SE Act must reflect contemporary understandings of disability, including neurodiversity, psychosocial conditions, and episodic disabilities. This is crucial for aligning with a cultural model of disability that recognises the impact of societal barriers on individuals. It is also crucial for First Nations young people, who face disproportionately higher levels of neurodiversity, psychosocial and episodic disability than their non-First Nations peers.

Accordingly, to mitigate this, the new SE Act must:

- Include a comprehensive, updated definition of disability that accounts for neurodiversity, psychosocial and episodic conditions, ensuring it aligns with the CRPD; and
- Provide clear guidelines on how schools can support students with these types of disabilities through appropriate adjustments and accommodations.
- Arrange and support remote and culturally appropriate assessments for First Nations young people. This should include supporting linkages to the NDIS.

Recognition of Individual Needs

Each student with a disability has unique needs that cannot be met through a one-size-fits-all approach. This is particularly true for First Nations students, who face intersecting challenges related to their cultural identity and experiences.

By implementing these proposed changes to the SE Act, the Western Australian Education Department must foster a more inclusive educational environment for students with disabilities, particularly those from First Nations backgrounds. A collaborative, culturally responsive approach will not only improve

⁴² Productivity Commission: Disability Care and Support, Report no. 54. 2011, Canberra: Commonwealth of Australia, ISSN 1447-1329

⁴³ Capiello MM, Gahagan S: Early Child Development and Developmental Delay in Indigenous Communities. *Pediatr Clin North Am.* 2009, 56 (6): 1501-1517. 10.1016/j.pcl.2009.09.017.





educational outcomes but also empower families and communities, ensuring that all students have access to high-quality education that meets their unique needs. This aligns with Australia's commitments under international human rights frameworks and promotes social equity within the education system.

Case Study: *In a pilot program in the Mid-West region, personalised learning plans were developed for Aboriginal students, considering their cultural backgrounds and individual learning styles. The initiative led to a 30% improvement in academic results and higher engagement levels among students.*

Accordingly, the new SE Act must:

- Emphasise the need for individualised learning plans that cater to the specific strengths, challenges, and cultural contexts of each student with a disability; and
 - Encourage schools to adopt a diverse range of teaching methods and accommodations tailored to individual needs, rather than relying on standard practices.
 - Ensure that all First Nations students with disability, irrespective of their location, have access and conduits to the supports they require, including the NDIS.
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Question 8. Should there be any changes to the SE Act regarding duties to communicate, consult and/or collaborate with students with disability and their parents. If so, what should this look like?

The SE Act must undergo changes to better address the duties of communication, consultation, and collaboration with students with disabilities and their families. This would ensure that students, particularly First Nations students with disabilities, are fully supported in their educational journey, respecting both their individual needs and cultural context.

Children Have the Right to Share Their Views and Access Assistance in expressing their views

First Nations students with disabilities often face cultural barriers in expressing their views or engaging with formal school structures. This can be exacerbated when disabilities are undiagnosed or misinterpreted due to a lack of culturally sensitive approaches in schools.

***Case Study:** A young Aboriginal boy in a remote Pilbara school, living with undiagnosed auditory processing disorder, struggled to communicate his learning needs. Because his teachers lacked cultural awareness and specialised training, his difficulty was dismissed as inattentiveness rather than a disability.*

The new SE Act must explicitly mandate schools to provide culturally appropriate communication supports, such as the use of First Nations liaison officers, community members and interpreters, allowing students to express their needs. This would ensure that First Nations students with disabilities have access to the necessary tools to engage in decision-making about their education, in line with their rights under the CRPD, and UNDRIP.

A Collaborative Approach with Inclusive Consultation to Meet Educational Needs

The exclusion of First Nations families and students from consultations on their educational needs is common, often resulting in one-size-fits-all solutions that don't account for unique and individual differences in their disabilities and culture.

***Case Study:** A Nyungar family from the Southwest region reported that their daughter, who has cognitive disabilities, was placed in a mainstream class without consultation. As a result, she struggled with the curriculum, and the family's repeated requests for culturally sensitive support were ignored.*

The new SE Act must include inclusive consultation processes, where both students and their families are actively involved in developing Individualised Education Plans (IEPs). This collaboration should not only focus on disability adjustments and accommodations but also incorporate cultural aspects that affect how First Nations students learn and engage.

The Principal Should Not Determine Access to Learning

Currently, school principals have too much autonomy and discretion in determining the types of support and accommodations available to students with disabilities. This discretionary power often leads to inconsistent and sometimes exclusionary practices, which can particularly negatively affect First Nations students.





Case Study: *In a Kimberley school, a principal decided that a student with intellectual disabilities should be placed in a segregated classroom without consulting the family or student. This decision further isolated the student, who already faced learning and cultural barriers to engagement.*

The new SE Act must limit the authority of principals in determining access to learning. Instead, there should be system-wide guidelines that mandate the inclusion of students with disabilities in mainstream classrooms, with the necessary accommodations made in consultation with the student, families, teachers, school support staff, First Nations community representatives, and disability advocates.

Moving Away from the Medical Model of Disability

Many First Nations students with disabilities have undiagnosed or undisclosed disabilities, which are often not addressed by schools focused solely on a medical model of disability. As previously discussed, the medical model tends to ignore the social and cultural factors that influence and cause disability in First Nations communities.

Case Study: *A teenage boy in the Goldfields region, living with undiagnosed dyslexia, was not supported by his school because his condition hadn't been formally diagnosed. As a result, his inability to keep up with the curriculum was attributed to behavioural issues rather than a learning disability.*

The new SE Act must adopt a cultural model of disability, which focuses on identifying and removing the barriers that prevent students from participating fully in their education. Schools should also be mandated to work with First Nations health services, families and community organisations to identify and address undiagnosed disabilities, particularly in regional and remote areas.

Assistance with Engaging Specialists and Agencies

First Nations families often face challenges when trying to engage with disability services and agencies, due to geographical, linguistic, or cultural barriers. This limits their ability to access the diagnoses and supports their children need to succeed in school.

The new SE Act must require schools to actively assist families in engaging with relevant specialists and services, providing support in navigating the system and ensuring students receive timely assessments. Schools must partner with First Nations medical services or telehealth providers to ensure that students in rural or remote areas aren't left behind due to lack of access.

Case Study: *An Aboriginal child with autism in a rural Wheatbelt community waited over two years for an assessment from a visiting specialist due to the lack of local resources. In the meantime, the school failed to provide any interim adjustments or accommodations for the student.*

Recognise Families and Carers as Central to a Student's Care Network

In First Nations culture, family and community play a central role in a child's upbringing. However, schools often fail to engage meaningfully with families when planning educational supports for students with disabilities, or during decision making.⁴⁴

⁴⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report Volume 7: Inclusive education, employment and housing Summary and Recommendations p.10





The SE Act must be changed to recognise family and community involvement as critical to the support network of students with disabilities. Schools need to be required to consult the students and their families regularly and involve them in every step of the educational planning process. This would ensure that the supports provided at school align with the student's needs outside the classroom as well.

Case Study: *In a Perth metro school, an Aboriginal student with cerebral palsy was placed in a program without consultation with the extended family, who provide her day-to-day care. This led to a mismatch between the student's school schedule and her medical appointments, causing additional stress for the family.*

Take a Collaborative Approach with Communities and Partners

First Nations communities possess valuable knowledge about cultural practices and traditional approaches to care, yet this expertise is rarely incorporated into school support programs.

The new SE Act must mandate that schools collaborate with local First Nations organisations, ensuring that culturally appropriate supports and services are integrated into the education system. This collaborative approach would not only benefit students with disabilities but also strengthen the school's connection to the broader First Nations community.

Case Study: *A school in Fitzroy Crossing partnered with the local Aboriginal Medical Service to design a culturally sensitive approach to supporting students with Foetal Alcohol Spectrum Disorder (FASD). This collaborative model significantly improved the students' engagement and well-being.*

Be Evidence-Informed

Data from the Australian Institute of Health and Welfare shows that 45% of Aboriginal children with disabilities do not receive the necessary support services in their local schools.⁴⁵ This is even more pronounced in remote communities, where the ability to access to specialised services is profoundly unreliable at best, and essentially non-existent at worst.

The new SE Act needs to require that all educational support plans for students with disabilities be based on evidence-informed practices, tailored to the specific needs of First Nations students. Schools need to have access to the latest research and data on culturally appropriate interventions, and this should be reflected in their planning and service delivery.

Case Study: *In a survey conducted by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Aboriginal families in remote WA reported that schools often failed to use evidence-based approaches when designing learning plans for their children.*

⁴⁵Australian Institute of Health and Welfare (AIHW) 2023, *Disability - Data Findings, Aboriginal and Torres Strait Islander Health Performance Framework*, viewed 2 October 2024, <https://www.indigenoushpf.gov.au/measures/1-14-disability>.





Question 9. Should there be any changes to the SE Act regarding discipline, suspensions or exclusions? If so, what should this look like?

FPDN's position is that it is essential to make significant changes to improve the treatment of First Nations students with disabilities in the context of discipline, suspensions, and exclusions within the revised SE Act. These changes must prioritise individual student needs and must emphasise support over exclusion. First Nations have been systematically excluded from public schools across Australia.⁴⁶ Because of these historical and current exclusion practices, particular effort needs to be included in the new SE Act to ensure that exclusions and suspension are a last resort, and not used as disciplinary measures for behaviors linked to disability in First Nations children and young people.

The new SE Act must also include measures to stop the 'school to prison pipeline'. Research from the United States indicates that school exclusion contributes to what has been labelled a school-to-prison pipeline, defined by Sander as 'systemic setbacks' that gradually shepherd students away from positive school connections and academic success and into increasing criminal activity'.⁴⁷

Overall, in Australia, First Nations young people are disproportionately overrepresented in the justice system. On an average day in 2021–22, First Nations young people represented 47% (1,746) of young people under community-based supervision, and 55% (452) of young people in secure detention facilities.⁴⁸ Given these alarming statistics, combined with the 'school to prison pipeline' research, which links exclusions to a 'prison pipeline', means it is essential that the new SE Act take immediate, serious and meaningful steps to reduce exclusions for First Nations young people

Individualised Consideration for Discipline Decisions

The current approach often fails to account for the unique circumstances and challenges faced by First Nations students with disabilities. Each case must consider the individual's background, support needs, and cultural context.

The new SE Act must mandate that any disciplinary action includes:

- A comprehensive assessment of the individual student's circumstances, including cultural, social, and psychological factors; and
- A requirement for schools to implement alternative support measures prior to considering suspensions or exclusions, such as counselling, mentoring, or culturally appropriate programs.

Case Study: Reports indicate that Aboriginal students are disproportionately affected by disciplinary actions. A study by the National Indigenous Youth Education Coalition (NIYEC) highlighted that

⁴⁶ National Indigenous Youth Education Coalition (NIYEC), The School Exclusion Report, 21 March, 2024

⁴⁷ Sander, J., "School Psychology, Juvenile Justice, and the School to Prison Pipeline." *Communique* 39, no. 4 (2010): 4-6.

⁴⁸ Australian Institute of Health and Welfare, Aboriginal and Torres Strait Islander Health Performance Framework, 2.11 Contact with the criminal justice system, viewed 2 October 2024 at <https://indigenoushpf.gov.au/measures/2-11-contact-with-the-criminal-justice-system>



Aboriginal students face higher rates of suspension and exclusion compared to their non-Indigenous peers, leading to significant educational disruption.⁴⁹

Focus on Reasonable Adjustments and Individualised Support Plans

The new SE Act must be revised to require the development of individual support and behavior plans that are collaboratively created with the student, their family, and relevant support personnel. It also needs to be reshaped to include regular review and adjustment of these plans to ensure they are effective and responsive to the student's evolving needs.

Rather than resorting to exclusion as a primary response to behavioural issues, schools should explore reasonable accommodations and create tailored support plans that acknowledge each student's specific needs. More supports need to be funded for all schools, but particularly schools in remote areas which currently have very little to no supports for First Nations children with disability.

Case Study: *A study in a WA school demonstrated that students who received individualised support plans that involved family consultation showed a marked improvement in behaviour and academic engagement, reducing the need for disciplinary action.*

Historical Context of Systemic Exclusion

First Nations students have long faced systemic exclusion from public schools. This history has created mistrust and reluctance amongst families to engage with the education system. First Nations children and families with disability often have (and continue to have) experienced disproportionate levels of school exclusion due to double discrimination.

Case study: *The NIYEC School exclusion report highlights that many Aboriginal families have had negative experiences with schooling, leading to a reluctance to advocate for their children when disciplinary issues arise.⁵⁰*

The new SE Act must explicitly address this historical context by:

- Establishing guidelines that ensure cultural sensitivity and recognition of the historical injustices faced by First Nations students.
- Implementing mandatory training for school staff on cultural responsiveness, trauma informed practices, and the impacts of systemic exclusion on First Nations communities.

⁴⁹ National Indigenous Youth Education Coalition (NIYEC), The School Exclusion Report, 21 March, 2024

⁵⁰ National Indigenous Youth Education Coalition (NIYEC), The School Exclusion Report, 21 March, 2024





Transparency in Suspension and Exclusion Statistics

A recent WA Department of Education report (2021-22) noted that ‘Since the launch in late 2018 of *Let’s take a stand together*, the state government’s plan to address violence in schools, the numbers of students suspended and excluded have increased.’⁵¹ This increase suggests that current interventions may not be effectively supporting students and could be exacerbating existing issues.

FPDN recommends that the new SE Act must include provisions for:

- Regular public reporting of suspension and exclusion rates, disaggregated by First Nations status, disability, and other relevant factors, to track trends and hold schools accountable.
- A requirement for schools to provide data-driven justifications for disciplinary actions taken, ensuring that these decisions are transparent and subject to review.
- The fact that all exclusions that aren’t formally recorded – i.e. students who are sent home from school because of disability related behaviours where teachers have no supports or capacity to manage the behaviour.

Engagement with Families and Support Networks

Engaging students and families in the disciplinary process is crucial for ensuring that students receive appropriate support. First Nations families have valuable insights into their children’s needs and circumstances, and as such, families should be involved in decision making processes. Involving students and families in decision-making processes has been shown to lead to better educational outcomes and improved behaviour among students, as demonstrated in various community-led initiatives across WA. As previously stated in our response to question one, 86% of First Nations families in WA prefer to be involved in educational decision-making, but often report not being adequately consulted.⁵²

The proposed changes to the SE Act regarding discipline, suspensions, and exclusions needs to focus on transparency, individualised support, cultural sensitivity, and the active involvement of families. By addressing the unique needs of First Nations students with disabilities and acknowledging the historical context of exclusion, schools can create a more equitable and supportive educational environment. These changes will not only enhance the educational experience for First Nations students but also contribute to their overall well-being and success.

Accordingly, FPDN’s position is that the new SE Act must stipulate that:

- Students and families be actively involved in any discussions related to discipline, ensuring their perspectives are considered and respected.
- Schools provide support to families in understanding their rights and the disciplinary process, fostering a collaborative environment.

⁵¹ National Indigenous Youth Education Coalition (NIYEC), The School Exclusion Report, 21 March, 2024, p 42

⁵² WA Government, Aboriginal Family Led Decision Making, viewed 30 September, 2024 at <https://www.wa.gov.au/organisation/department-of-communities/aboriginal-family-led-decision-making>





Question 10. Should there be any changes to the SE Act (or regulations) regarding restrictive practices? If so, what should this look like?

First Nations children are overrepresented among students with disabilities.⁵³ Further to this, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability found that First Nations children with disabilities are more likely to be subjected to restrictive practices, with many experiencing multiple barriers to accessing appropriate education and support services.⁵⁴ FPDN's position is that the School Education Act (SE Act) and its regulations must be revised to ensure clear and culturally appropriate guidelines regarding the use of restrictive practices in schools, particularly in addressing the unique needs of First Nations students with disabilities.

Subjectivity in Decision-Making: Principals Have Too Much Independent Power

The SE Act must be amended to reduce the autonomous power of principals in determining when restrictive practices can be used. Instead, there must be a utilizing decision-making framework with culturally competent oversight from a panel that includes students and their families, disability experts, First Nations advocates, and community members to ensure that these practices are only used as a last resort.

School principals currently hold significant discretion in the use of restrictive practices, such as restraint or seclusion, which can lead to inconsistent applications across schools. This subjectivity can be influenced by a lack of understanding, cultural biases, or negative attitudes toward disability, particularly for First Nations students.

Case study: *In a school in remote Western Australia, an Aboriginal student with an undiagnosed sensory processing disorder was placed in seclusion repeatedly by the principal. The student's behaviour, a result of overstimulation, was misunderstood by school staff as being deliberately disruptive. Restrictive practices were used on this child in violation of their human rights*

Restrictive Practices Only Used When There is a Serious Risk of Harm

FPDN's position is that the SE Act must specify that restrictive practices are only permissible in situations of serious and immediate risk and must be documented in every instance. In Western Australia, the rules surrounding the use of restrictive practices are far too reliant on the 'Student Behaviour in Public Schools',⁵⁵ as opposed to meaningful and enforced legislative restrictions. Enforcement of these policies is lax and inconsistent and is putting children with disabilities at risk.⁵⁶

Additionally, cultural and disability training should be mandated for all school staff to better understand the behaviours and needs of First Nations students with disabilities, reducing the likelihood of

⁵³ Australian Institute of Health and Welfare, Education of First Nations people, Release date 7 September 2023, viewed 2 October 2024 at, <https://www.aihw.gov.au/reports/australias-welfare/indigenous-education-and-skills>

⁵⁴ Australian Institute of Health and Welfare, Education of First Nations people, Release date 7 September 2023, viewed 2 October 2024 at, <https://www.aihw.gov.au/reports/australias-welfare/indigenous-education-and-skills>

⁵⁵ See <https://www.education.wa.edu.au/web/policies/-/student-behaviour-in-public-schools-procedures>, accessed 2 October 2024

⁵⁶ See <https://www.squarepeggroundwhole.com.au/blog/wa-schools-are-not-safe>, accessed 2 October 2024





unnecessary restraint or seclusion. Restrictive practices, such as physical restraint or isolation, should only be used in cases of imminent risk of harm to the student or others. However, for First Nations students, especially those with disabilities, these practices can be applied disproportionately due to misunderstandings of cultural behaviour or disability-related behaviour.

Case Study: *An Aboriginal boy in a Perth metro school was restrained by teachers during a sensory overload episode, which was interpreted as aggression. Staff had little specialised training in managing his Autism Spectrum Disorder symptoms, and no culturally appropriate strategies were employed to manage the situation. In this situation, the staff used restrictive practices when they should not have, violating the child's human rights as set out by the UN CPRD.*

Clear Guidelines, Some Restrictions Banned

FPDN's position is that the SE Act must introduce comprehensive, state-wide guidelines that clearly define which restrictive practices are permissible, and ban those that are harmful, such as unsupervised seclusion or prolonged isolation. Schools should be required to follow strict procedures, including obtaining approval from a specialised panel before implementing restrictive practices.

There are currently inconsistent guidelines across schools regarding the use of restrictive practices, and in some cases, certain practices (such as prolonged seclusion) may still be allowed. This is particularly dangerous for First Nations students, who disproportionately have higher levels of disabilities, combined with levels of racism and racial discrimination. Additionally, these inconsistent guidelines can further harm First Nations students with disability, as what a non-First Nations teacher/classroom aid might think is non-restrictive, a First Nations child can have a differencing experience due to their cultural lens.

Case study: *In Kimberley schools, it has been reported that students with disabilities, including Aboriginal students, are sometimes placed in unsupervised isolation rooms as a behaviour management strategy, often without clear guidelines or time limits. This exacerbates trauma, particularly in communities already affected by historical practices of segregation and exclusion.*

De-escalation Strategies

FPDN states that the SE Act must mandate that schools prioritise culturally sensitive de-escalation strategies before considering any restrictive practices. Teachers must be trained in trauma-informed approaches, particularly for First Nations students who have experienced intergenerational trauma, and how these experiences manifest in behaviour.

Case Study: *In a remote Pilbara school, an Aboriginal girl with Post-Traumatic Stress Disorder (PTSD) frequently acted out in class when exposed to triggers related to her past trauma. Instead of using trauma-informed de-escalation strategies, staff repeatedly used physical restraint, escalating the situation.*

The over-reliance on restrictive practices often stems from a lack of alternative strategies for de-escalating potentially volatile situations. First Nations students with disabilities may display behaviours related to trauma, cultural disconnection, or undiagnosed conditions that require sensitive handling.





Restrictive practices can not only place additional trauma on these students but can be an infringement their human rights.

In particular, the trend of placing of First Nations children with disabilities (or any child) in isolation rooms (which are often effectively ‘padded cells’) is a drastic, completely inappropriate mechanism of behaviour control in almost every possible circumstance, and invites comparisons to the use of solitary confinement in detention settings.⁵⁷ The *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984* is not restricted to detention settings. Unnecessary (and especially prolonged) infliction of conditions akin to solitary confinement within schools is a human rights violation, capable of inflicting irreparable harm. Similar risks apply to *any* type of restrictive practice, when implemented poorly.

Workforce Capabilities

FPDN’s position is that SE Act must require schools to ensure that staff undergo comprehensive training in understanding disabilities and culturally appropriate behaviour management strategies. In remote settings, there are additional factors that require an additional level of training. Schools should be required to employ staff with specialised training in both disability and cultural competency, particularly in regions with high First Nations populations. Workers in remote settings must be imparted with knowledge about culturally specific matters, so that workers can act in a culturally responsive way in these settings. One way of achieving this, is for new workers in remote school communities to be linked to 1-2 cultural mentors, who can impart knowledge of cultural nuances and situations.

Additionally, many schools lack the workforce capabilities to handle students with disabilities appropriately, especially when cultural factors are involved. This is particularly true of remote schools, and often leads to the misuse of restrictive practices due to a lack of understanding, personal bias or training. Due to the higher rates of disability in remote communities, this then further disproportionately negatively affects First Nations children with disability.

Case Study: *A Noongar student in Southwest WA with Foetal Alcohol Spectrum Disorder (FASD) was restrained multiple times due to behavioural challenges that staff were not equipped to manage. There was no specialised staff in the school with training in FASD or how it affects behaviour, leading to repeated misapplications of restrictive practices.*

Cultural Considerations

The SE Act and its regulations must be updated to provide clear, culturally sensitive guidelines on restrictive practices. This includes reducing the discretionary power of principals, specialised de-escalation strategies, banning harmful practices, and building workforce capabilities through specialised

⁵⁷ See, for example, https://au.news.yahoo.com/school-padded-cell-outcry-165500562.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAEva6nZoLrW4xHv35zmTKIe6pjXAntEdqAnSPOrnmRtlaz6weu8g51wHRjzVIA8TA_BnlXMmCLcQDBs74ycmsVLciBVYFO3lrp7P6z_PiBi3dlCxENMNFtVFuNuzK2L5nUAKENcnGzKVoOsIG1aCgUYJwKwRZzv0kS1uifwoXbJ, accessed 2 October 2024.





training. First Nations students with disabilities deserve to be treated with dignity and respect, with culturally competent supports that recognise the complex interplay of disability, trauma, and cultural identity. These changes would ensure that schools create safe, inclusive, and supportive environments where all students can thrive.

The SE Act must require that any application of restrictive practices be viewed through a trauma-informed lens. This would ensure that decisions are made with an understanding of the historical and cultural context of First Nations students, particularly in communities where the impacts of colonisation and segregation are the most prevalent and impactful.

Intergenerational trauma and the legacy of exclusion in First Nations communities must be factored into the development of behaviour management strategies.

Many First Nations students with disabilities come from communities where past government policies, including forced removal and segregation, have left deep emotional scars. Applying restrictive practices without consideration of these histories can retraumatise students.

***Case study:** In the Northern Goldfields, Aboriginal students were frequently subjected to isolation as a form of punishment for behavioural outbursts, which were often linked to trauma. This approach was criticised for mirroring historical segregation practices, further alienating these students from their peers and education.*



Question 11. Should there be any changes to the Disability Advisory Panel and/or Discipline Advisory Panel sections of the SE Act? If so, what should this look like?

FPDN's position is that there must be significant changes to the Disability Advisory Panel and Discipline Advisory Panel sections of the School Education Act (SE Act) to enhance their effectiveness and cultural responsiveness, particularly for First Nations students with disabilities.

First Nations children are underrepresented in the disability statistics, and this is an underrepresentation due to lower rates of reporting disability for First Nations children.⁵⁸ However, as previously discussed, through qualitative research, the numbers of First Nations children are disproportionately high, particularly in remote settings. This highlights the urgent need for inclusive practices tailored to their specific needs. Further to this, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability emphasised the importance of inclusive decision-making, stating that schools often fail to engage students with disabilities and their parents, particularly in First Nations contexts.

Reforming the Disability Advisory Panel and Discipline Advisory Panel sections of the SE Act is crucial for creating a more equitable and culturally responsive education system. By ensuring diverse representation, reducing the power of Director Generals to override panel recommendations, and promoting individualised assessments, the education system can better meet the needs of First Nations students with disabilities. These changes would foster an inclusive environment where every student can access quality education and support tailored to their unique circumstances and cultural backgrounds.

Diverse Representation on the Advisory Panels

The current composition of advisory panels often lacks adequate representation of First Nations voices, disability advocates, and community members. This limits the panels' ability to make culturally informed and effective recommendations regarding the needs of First Nations students with disabilities.

The SE Act must mandate that advisory panels include diverse representatives, including students, First Nations elders and community members, parents/caregivers of First Nations students, disability advocates, and cultural advisors. This ensures that all decisions made are culturally informed and reflect the community's values and needs.

Case Study: *A remote school in the Goldfields region faced challenges when addressing behavioural issues among Aboriginal students. The advisory panel, primarily composed of school administrators, lacked representation from the student, local Aboriginal elders or family members. This led to decisions that did not consider the cultural context of the students' behaviours, resulting in misunderstandings and further alienation from the education system.*

⁵⁸ Australian Institute of Health and Welfare, Australia's children, updated 25 February 2022, viewed 2 October 2024 at <https://www.aihw.gov.au/reports/children-youth/australias-children/contents/health/children-disabilities>





Decision-Making Power of the Director General

Currently, the Director General may have the exclusive authority to make final decisions, often sidelining the recommendations of the advisory panels. This top-down approach can lead to disconnection from the realities faced by students and families.

Case Study: *In one case, a recommendation from a Disability Advisory Panel to provide additional support and resources for an Aboriginal student with a learning disability was overruled by the principal and District Director, who prioritised budget constraints over the individual needs outlined by the panel. This decision left the student without necessary support, exacerbating their challenges.*

The SE Act must be revised to ensure that the recommendations of the advisory panels are taken seriously and that the Director General's power to override these recommendations is limited. Instead, a collaborative decision-making process should be established, where the input from panels is integrated into final decisions, ensuring that the voices of those directly affected are prioritised (including the student). These decisions need also to be informed by First Nations understandings and experiences of disability, and all forms of communication must be accessible and in community language, where required.

Individualised Adjustments and Case-by-Case Considerations

The current practice often applies blanket policies to discipline and disability adjustments without considering the unique circumstances and cultural contexts of individual students. This one-size-fits-all approach can exacerbate existing disparities.

Case Study: *An Aboriginal student in a Metropolitan Perth school faced disciplinary action for behaviour related to a traumatic experience that had not been properly addressed. The panel applied standard disciplinary measures without considering the student's background and cultural context, leading to further disengagement from school.*

The new SE Act must require that advisory panels assess each case individually, considering the student's background, cultural identity, and specific needs. This needs to include creating a framework for individualised education plans (IEPs) that address not only educational needs but also social, emotional, and cultural factors, ensuring a holistic approach to support.

Cultural Sensitivity and Cultural Responsiveness Training

FPDN prefers the term Cultural Responsiveness and will use it in place of 'competency' (which is commonly used) in this section. Many members of the advisory panels (including principals) may not have received adequate training in cultural responsiveness, leading to decisions that do not consider the complexities of First Nations culture and history. This can further alienate First Nations students and their families from the education system.

Case Study: *A Noongar student was subjected to disciplinary measures based on behaviour that was misinterpreted by school staff as disrespectful. The lack of cultural understanding contributed to a punitive response rather than a supportive one.*





The SE Act must mandate cultural sensitivity and responsiveness training for all members of the advisory panels. This training should include the historical context of First Nations education, the impact of intergenerational trauma, disability in a First Nations context, and strategies for building positive relationships with First Nations families and communities.

Monitoring and Accountability Mechanisms

Currently, there is a lack of accountability regarding the effectiveness of the advisory panels' recommendations and their implementation. This leads to a cycle of recommendations that may not be acted upon, perpetuating systemic issues. FPDN's position is that this can have a particular impact on First Nations children with disability and their families.

Case Study: *In various regions, reports have indicated that while advisory panels make recommendations for improving access and inclusion, the actual implementation is sporadic and often depends on the resources available, which are not evenly distributed across schools. Disability supports are often not available in remote schools, which disadvantages First Nations children with disability.*

To address this, FPDN's position is that the new SE Act must include provisions for regular monitoring and evaluation of the advisory panels' activities and outcomes. This must involve creating an independent body that assesses how well recommendations are being implemented and their impact on students with disabilities, particularly in First Nations communities.



Question 12. Should the SE Act change so complaints are handled in a different way? If so, what should this look like?

FPDN's position is that it is imperative that the School Education Act (SE Act) undergoes significant changes to improve the way complaints are handled, especially for First Nations students with disabilities and their families. A culturally responsive and accessible complaint resolution process is crucial for ensuring that all students feel safe, valued, and heard in their educational environment. It is also crucial that all these changes are made, to uphold the rights of First Nations children and their families, and to comply with the UNCRPD.

Changing the SE Act to improve the handling of complaints is vital for creating an inclusive and supportive educational environment for First Nations students with disabilities. By enhancing avenues for complaints, providing education on rights, ensuring culturally appropriate processes, focusing on student-centred approaches, and addressing historical trauma, the education system can foster greater engagement and trust among First Nations families.

This is imperative, given that the Australian Institute of Health and Welfare, states that First Nations students are twice as likely to experience bullying compared to non-First Nations peers, highlighting the need for effective complaint mechanisms.⁵⁹ Further to this, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability noted that students with disabilities often face systemic barriers to reporting mistreatment, which can exacerbate their challenges in educational settings.

Enhanced Avenues for Complaints

Currently, many students and families may not know how to lodge complaints effectively. This lack of clear pathways can prevent issues from being addressed, particularly for First Nations families who may already feel alienated from the education system.

Case Study: *An Aboriginal student faced bullying but felt discouraged from reporting it due to previous negative experiences with authority figures at school. As a result, the situation worsened, affecting the student's mental health and academic performance.*

The new SE Act must establish clear, accessible avenues for complaints that are well-publicised within schools. This could include:

- Dedicated First Nations liaison officers who understand both the educational system and First Nations culture.
- Translations into community language for regional and remote schools where there are many people who speak community languages.

⁵⁹ Australian Institute of Health and Welfare (AIHW) 2018, *Aboriginal and Torres Strait Islander adolescent and youth health and wellbeing 2018*, AIHW, Canberra, doi:10.25816/5ebcc63bfa7e8





- Anonymous reporting systems, such as suggestion boxes or digital platforms, where students and parents can safely report concerns.
- Community workshops that explain the complaints process in accessible language and formats. This is essential to ensure First Nations children and or their families who have disability, can access and understand the information; and so those who speak community languages are also able to access and understand the material and processes.

Education on Rights and Actions

Many First Nations parents have had negative schooling experiences, leading to distrust in educational institutions. This historical context can discourage them from seeking help or reporting issues.

Case Study: *A family in a rural area felt unable to advocate for their child's needs after being met with resistance from school staff, which stemmed from their own past experiences of being in unresponsive and traumatizing education institutions.*

For children and families who have disability, it can be even more difficult to advocate for their children's needs, due to the "double disadvantage" of facing dual discrimination because of racism and ableism. To mitigate this, the new SE Act must mandate that schools provide education for students and families about their rights regarding complaints and mistreatment. This needs to include:

- Informational sessions held in culturally safe spaces, by trusted persons, focusing on students' rights, complaint procedures, and support services.
- Resource materials in multiple languages and easy-read formats that outline the steps to take when making a complaint, tailored specifically for First Nations families.
- Training for staff handling complaints so that they can proactively encourage and manage complaints in a culturally safe a responsive way.

Culturally Appropriate and Accessible Processes

As outlined, because First Nations families find traditional complaint mechanisms intimidating or inaccessible due to cultural differences or past experiences with authority figures, the new SE act must contain measures to remove these barriers for First Nations families and students.

Case study: *An Aboriginal parent experienced trauma when attempting to discuss their child's needs with the school principal, recalling their own negative schooling experiences. This resulted in disengagement from the school, affecting their child's education.*

Accordingly, the new SE Act must promote culturally appropriate complaint processes, such as:

- Peer support programs, where First Nations community members and advocates act as intermediaries between families and schools, helping to navigate the system in a culturally sensitive manner.
- Use of culturally relevant communication methods, such as storytelling or community forums, to discuss concerns and solutions.





Focus on Student-Centred Approaches

Complaints processes often prioritise administrative procedures over the student experience, leaving students feeling unheard. This can be compounded if the student is First Nations and has a disability as the student voice is often minimised in these cases due to the double discrimination of racism and ableism.

Case Study: *A First Nations student with a disability reported feeling ignored when expressing concerns about their classroom environment, leading to increased anxiety and disengagement from school.*

The SE Act must ensure that the complaints process is student-focused, emphasising:

- Regular feedback mechanisms that allow students to voice their experiences and suggestions, such as surveys or focus groups led by trusted staff members.
- Training for staff around different presentations of all disabilities, combined with the intersection of the different understandings of disability in First Nations communities.
- Regular training for school staff on active listening and cultural responsiveness to ensure they can effectively support students and address their concerns.

Addressing Historical Trauma

Historical trauma from past discriminatory practices in education continues to impact First Nations families today, creating barriers to engagement with schools. Many First Nations parents refrain from attending school meetings due to fears of discrimination, stemming from their own experiences of exclusion and systemic racism in educational settings. It must be noted that for First Nations parents with a child with disability might be even more unlikely to engage due to historical trauma centering on both historical (and current) child removals related to the child's disability.

The new SE Act must include provisions that recognise and address historical trauma:

- Cultural safety training for all school staff, ensuring they understand the historical context of First Nations education and its impact on current relationships. This could occur at the Teacher Education and Training level, and or at post qualifying, to ensure all teachers receive this upskilling.
 - Community engagement initiatives that involve First Nations families in decision-making processes, helping to rebuild trust and ensuring that their voices are heard.
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Question 13. With all the changes you have suggested in mind, how can the government monitor what is happening and show things are improving?

To effectively monitor improvements in access and inclusion for First Nations students with disabilities in Western Australian schools, the government must implement a multi-faceted approach that incorporates data collection, community feedback, regular reporting, adherence to standards, and collaboration with advocacy groups.

Collecting Accurate and Accessible Feedback

Feedback from students and families must be accurately gathered and made accessible to inform continuous improvement efforts. Many First Nations families may feel uncomfortable providing feedback through traditional channels due to historical mistrust. One example shared with FPDN was of *a family who spoke of their reluctance to use official complaint procedures due to fears of retaliation or being misunderstood by school staff.*

Indigenous Data Sovereignty (IDS) and Indigenous Data Governance (IDG) principles⁶⁰ should be explored and employed in order to collect the more useful and rich data that adequately reflects the experiences of our community. This means building local Aboriginal Community-Controlled Organisation's capacities and capabilities to collect, store, manage and analyse data from our communities, about our communities.

Priority Reform Four of the National Agreement also encourages the establishment of partnerships with local communities to improve the collection, access, management and use of data. While IDS and IDG applications in Australia are still in many cases, in their infancy. These models should be aspired to, with any interim measures to serve as a building block towards an end state that not only sustains IDS and IDG, but one that recognises that First Nations people with disability have their own distinct right to IDS and IDG, this means any advisory and management functions need to be inclusive of First Nations people with disability. Who inform the collection and analysis processes about data about them.

To encourage applications of these models schools, need to be mandated in the new SE Act to:

- Invest in partnerships with local Aboriginal Community Controlled Organisations to build data capabilities and understandings
- Create multiple channels for feedback (formal and informal), such as community meetings or focus groups that are led by trusted First Nations community members
- Have dedicated forums, positions and/ or representations that prioritise understanding and responding to the needs of intersectional cohorts such as First Nations people/families/children with disability
- Utilise technology, like anonymous digital feedback forms, to ensure that families can share their thoughts safely and privately. In remote areas where technology may be used less, and internet

⁶⁰ Maiam Nayri Wingara, (2018) Indigenous Data Sovereignty Communique, Indigenous Data Sovereignty Summit Retrieved: <https://static1.squarespace.com/static/5b3043afb40b9d20411f3512/t/63ed934fe861fa061ebb9202/1676514134724/Communique-Indigenous-Data-Sovereignty-Summit.pdf>



connections less reliable, an alternative way of collecting information more anonymously must be implemented. Such as feedback mechanisms with local organisations, councils and community forums.

Collecting Data on Student Satisfaction

FPDN's position is that the WA government must working in partnership with Aboriginal Community-Controlled Organisations to implement systematic surveys that assess satisfaction levels among students and families regarding their educational experiences.

The *Transformational Elements* of Priority Reform Three of the National Agreement on Closing the Gap includes a commitment to “identify and eliminate racism”, alongside the commitment to “embed and practice meaningful cultural safety”. Failure to establish the appropriate feedback mechanism to measure the successful implementation of these commitments would be a critical gap.

Gathering data on student and family satisfaction is crucial to understanding the effectiveness of new policies and practices. This can reveal how well schools are meeting the needs of First Nations students with disabilities. However, governments and colonial institutions such as schools are not always best placed to undertake this task.

Research discusses parental concerns about the educational experience of First Nations children, with many First Nations parents believing that schools are not adequately addressing the needs of their children.⁶¹ Others, fear giving information about their concerns for their children to government at all, given historical and ongoing misuse of this data to identify children to justice and policing partnerships. These examples underscore the importance of targeted data collection, led and managed by the community.

The *Transformational Elements* of Priority Reform Three of the National Agreement on Closing the Gap includes a commitment to “identify and eliminate racism”, alongside the commitment to “embed and practice meaningful cultural safety”. Failure to establish the appropriate feedback mechanism to measure the successful implementation of these commitments would be a critical gap.

Building on what has been said above, any and all data collection activi:

- Be culturally appropriate and accessible, utilizing local languages and formats that resonate with First Nations communities.
- Be undertaken by local community members
- Be developed in partnership with First Nations people, including a dedicated role for First Nations people with disability and youth
- Be accompanied by investment in building the capabilities and capabilities of local organisation in IDS, IDG, data expertise, collection, management and appropriate infrastructures.

⁶¹ Trudgett, M., Page, S., Bodkin-Andrews, G., Franklin, C., Whittaker, A. (2017). Another Brick in the Wall? Parent Perceptions of School Educational Experiences of Indigenous Australian Children. In: Walter, M., Martin, K., Bodkin-Andrews, G. (eds) Indigenous Children Growing Up Strong. Palgrave Macmillan, London

- Include specific questions regarding inclusivity, accessibility of information and support services in the local community, disability and general, NDIS and Foundation, as well as overall satisfaction with the education environment.

Maintaining Regular Reporting and Data Collection

FPDN's position is that the WA government must establish a framework for regular reporting that includes:

- Annual reviews of student achievement data disaggregated by disability and First Nations status to track and monitor progress.
- Publicly available reports that detail findings, improvements, and ongoing challenges, ensuring transparency and accountability.
- Adhering the commitments made under Priority Reform Four of the National Agreement on Closing the Gap
- Data also must be collected and made available to all relevant stakeholders regarding the number of First Nations students who are suspended or excluded from WA schools.

Regular reporting on educational outcomes and satisfaction can help track progress and identify areas needing attention. Consistent data collection is essential for transparency and accountability. In 2021, the WA Education Department reported that only 60% of First Nations students met the national minimum standards in literacy,⁶² highlighting a need for targeted interventions and the importance of strong data collection.

Establishing Standards Aligned with the UNCRPD

FPDN's position is that it is imperative the WA government develop clear standards that all schools must meet. Adherence to international standards, such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), is crucial for ensuring that First Nations students with disabilities receive equitable educational opportunities. Article 24 of the UNCRPD states that individuals with disabilities have the right to inclusive education. Currently, many First Nations students with disabilities face barriers that contravene this right. These standards aligned with UNCRPD should include:

- Guidelines for inclusive teaching practices and reasonable accommodations tailored to individual needs.
- Regular assessments of school compliance with these standards to ensure that First Nations students with disabilities are fully included in the educational system.

Conducting Audits and Reporting on Benchmarks

Regular audits will ensure that schools are implementing effective strategies to support First Nations students with disabilities. These audits will provide insights into best practices and areas for improvement. A recent audit of regional schools found that only 45% had sufficient resources to support

⁶² Department of Education Western Australia, National Assessment Program Literacy and Numeracy (NAPLAN) Summary of Western Australian public school students' results 2021, viewed 2 October 2024 at <https://www.education.wa.edu.au/dl/z4m016g>



students with disabilities,⁶³ indicating a need for improvement. The WA government must implement periodic audits that:

- Assess schools against established benchmarks for inclusion and support services.
- Require schools to create action plans based on audit findings, with follow-up assessments to track progress.

Consultation with Disability Advocacy Groups

Engaging with disability advocacy groups ensures that the voices of First Nations students and their families are heard in policy-making processes. This can enhance accountability and responsiveness. First Nations advocacy groups (FPDN) have highlighted the need for more culturally relevant resources and support in schools, which has led to the development of tailored programs in some regions.

As part of the new SE Act, the WA government must establish formal consultation processes with advocacy groups to:

- Gather input on policy development, program effectiveness, and community needs.
- Ensure that feedback is integrated into decision-making and that advocacy groups have access to ongoing updates on progress and challenges

Ongoing Research for Best Practices

To ensure meaningful improvements in access and inclusion for First Nations students with disabilities, the WA government must adopt a comprehensive approach that includes robust data collection, community engagement, adherence to international standards, and continuous research into best practices. By doing so, they can create an educational environment where all students feel valued and supported, leading to better outcomes and a more equitable system.

Continuous research into evidence-based best practices can guide schools in effectively supporting First Nations students with disabilities, leading to improved educational outcomes.

Research has shown that culturally responsive teaching significantly enhances engagement and achievement for First Nations students, yet many schools still lack training in this area.

The WA government must invest in ongoing research initiatives that:

- Identify and disseminate best practices for inclusive education specific to First Nations students with disabilities.
- Collaborate with universities and research institutions to evaluate the effectiveness of programs and interventions designed to support these students.

We thank the Western Australian government and Department of Education for the opportunity to make this submission and welcomes discussion on any aspects if required.

⁶³ Western Australia Department of Education 2021, *Audit of Regional School Resources for Students with Disabilities*, WA Government, Perth.

