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This submission has been endorsed by:

QIDAN
Queensland Independent Disability Advocacy Network

qai Queensland Advocacy for Inclusion

10th February 2026

Department of Education
Australian Government
GPO Box 9880
Canberra ACT 2601

By email: FirstNationsEducationPolicy@education.gov.au

Good morning,

Re: First Nations Education Policy Discussion Paper Consultation

Thank you for the opportunity to provide comments on the Australian Government Department of Education Consultation on the First Nations Education Policy Discussion Paper (**Discussion Paper**). In this submission, we have addressed, in detail, our concerns relating to, and corresponding recommendations for addressing, the overuse of school suspensions, exclusions and cancellations of enrolment against Aboriginal and Torres Strait Islander children, children with disability and children in out-of-home care in government schools. We consider this to be of fundamental importance to any Policy design with respect to improving educational outcomes for Aboriginal and Torres Strait Islander children. We have also addressed the four General Consultation Questions posed in the Discussion Paper.

We note that this submission has been endorsed by the Queensland Independent Disability Advocacy Network (**QIDAN**) and Queensland Advocacy for Inclusion (**QAI**). Accordingly, their logos have been applied to this submission.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander

peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Comments on Consultation

Our recommendations

We strongly recommend the following in the context of the Policy and any policies being created to improve outcomes for First Nations children:

1. Full implementation of recommendation 7.7 of the Disability Royal Commission (DRC) across all state and territories, i.e., establishing within respective departments of education inclusive education units and First Nations expertise to allow educational authorities to take actions required to improve access to inclusive and culturally appropriate education for First Nations students with disability.
2. Full implementation of Recommendation 7.2 of the DRC across all states and territories, including taking measures to prevent the inappropriate use of exclusionary discipline against students with disability.
3. It be made unlawful for an education institution to discriminate against a student on the grounds of their disability by suspending or excluding them from schooling.
4. Where any policies, procedures and implementation strategies are created that will impact/affect Aboriginal and Torres Strait Islander children, they must be led by and co-designed with Aboriginal and Torres Strait Islander peoples consistent

with the government's commitments under the National Agreement on Closing the Gap.

5. The success of the Policy, along with any procedure and implementation thereof, must be measured by Aboriginal and Torres Strait Islander children and families, given they are the ones that would be affected.
6. The Policy be anchored, along with any procedure and implementation thereof, in existing Closing the Gap structures/frameworks given the direct connection with Closing the Gap targets relating to education and better life outcomes for children and young people.
7. Community-controlled organisations be adequately funded, long-term, to provide relevant supports for children in schools that have been identified as needing, or expressed that they need, additional support.
8. The schools be properly resourced, in the long-term, to ensure that children with disability have adjustments made to address their individual needs consistent with their right to a quality education without discrimination.

Keeping children in schools and the overuse of exclusionary discipline in Queensland state schools

*For the purposes of this part of the submission, the term 'student disciplinary absences' (**SDAs**) refers to long and short-term suspensions, exclusions and cancellation of a student's enrolment at Queensland state schools.*

Children who are engaged in school have better life outcomes.

Yet despite this, Aboriginal and Torres Strait Islander children, children with disability and/or children in out-of-home care receive the majority of SDAs issued in Queensland state schools.

<u>The data</u>

In the Queensland jurisdiction:

- data obtained through the Right to Information process revealed that **between 2015-2019, Aboriginal and/or Torres Strait Islander students received**

approximately one quarter of all recorded SDAs, despite only representing 10.6% of all Queensland full-time state school enrolments in August 2020[1];

- data tabled to the Queensland Parliament in 2022 showed that for the **year of 2021, Aboriginal and Torres Strait Islander students in Queensland state schools accounted for more than a quarter of all SDAs**, with Aboriginal and Torres Strait Islander students accounting for between 25% and 29% of the total student number in each category of SDA (i.e., short suspension; long suspension; exclusion; and cancellation of enrolment), despite Aboriginal and Torres Strait Islander students representing 10.9% of all Queensland state school enrolments that year[2];
- in a recent report prepared by the Queensland Family and Child Commission (**QFCC**) relating to SDAs, data over the 2018 to 2023 time period showed that:
    - Aboriginal and Torres Strait Islander state school students received SDAs at twice the rate of all students;
    - students living in care received SDAs at more than three times the rate of all students; and
    - 33% of Aboriginal and Torres Strait Islander students who live with disability and were living in out-of-home care received an SDA[3];
- data recently released by the Queensland government shows that **in Term 2 of 2025**, despite making up approximately 25% of the state school student cohort, **students with disability constituted 64% of suspended students**[4].

As described in the 2025 QFCC Report, 'Include Me, Don't Exclude Me', at page 6:

> *The data, provided by the Queensland Department of Education (the department), highlights the disproportionate use of SDAs in Queensland and raises questions about the effect of SDAs on the future of these children, who may already be experiencing discrimination and disadvantage. It also underscores the need to recognise both the compounding effects of intersectionality, and the extent of collaboration needed from agencies supporting families.*[5]

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[1] Department of Education and Training (November 2020) State school enrolments, 2016-20; https://qed.qld.gov.au/our-publications/reports/statistics/Documents/enrolments-summary.pdf.

[2] https://www.abc.net.au/news/2022-05-03/indigenous-students-queensland-disciplinary-absence/101032724; https://qed.qld.gov.au/our-publications/reports/statistics/Documents/enrolments-summary.pdf

[3] Queensland Family and Child Commission, 'Include me, don't exclude me' (2025), p 6.

[4] Queensland Parliament, Question on Notice No. 103, Asked on 26 August 2025.

[5] Note 3, p 6.

The overrepresentation of Aboriginal and Torres Strait Islander children, children with disability and children in out-of-home care within the cohort of children that receive SDAs reflects deep systemic inequities within Australia's education system and this has significant long-term consequences. For Aboriginal and Torres Strait Islander children, in particular, exclusionary discipline echoes broader patterns of institutional discrimination and undermines national commitments under the National Agreement on Closing the Gap including, notably, to improve educational outcomes for children. Fundamentally, they do not address the underlying issues or root causes of relevant behaviour. For children with disability, high rates of suspensions and exclusions point to failures in inclusive education, reasonable adjustments and resourcing, resulting in scenarios where children are met with a punitive response for behaviours attributed to their disability. Children in out-of-home care, who often come from a background of instability and for whom trauma might be prevalent, are penalised for having needs that schools are not willing or able to meet.

Intersectional disadvantage and barriers to education

Intersectionality, in this context, refers to the way in which different aspects of a child's identity, such as disability, race, and being in out-of-home care, can overlap and interact to intensify barriers to education. As outlined earlier, the data clearly shows that children who experience intersectionality are at a much higher risk of receiving SDAs. Many young people that we represent experience intersectional disadvantage and might fall into two, if not three, of these categories (First Nations, living with disability; and in out-of-home care). This places them at an even higher risk of receiving an SDA.

The impact of SDAs on children, families and the State

SDAs have far-reaching and compounding impacts on children, families and the government at both State/Territory and Commonwealth levels.

For children, being suspended or excluded from school disrupts learning, making it harder to catch up academically, it fractures peer relationships and erodes their sense that school is a safe and supportive place, often accelerating disengagement rather than addressing underlying issues. For families, having a child be the subject of an SDA naturally places stresses and worries on the family. Additionally, when a child is suspended, parents and carers are called by the school to come and pick up the child. This is regardless of whether they are working or in a position to drop everything and pick the child up. As we have heard both anecdotally and in evidence given in the current Queensland government Commission of Inquiry into Child Safety (in particular,

the Cairns public hearings), some parents and carers have lost employment altogether due to having to leave too many times to have to pick up a suspended child. For families in rural and remote areas, where there might be less if any viable alternative local schooling options, parents might be forced to drive up to an hour or more to take their excluded child to an alternative school (this being all the more difficult if the family has other children that are still enrolled at the school from which their child was excluded).

We note that in 2024, Queensland Advocacy for Inclusion (**QAI**) commissioned Ernst and Young to do an economic analysis on the economic impact of suspensions and exclusions for students with disability which found that SDAs:

(a) cost the State of Queensland approximately $20M to $24M annually in school resources (in managing suspensions);
(b) cost $14M in lost income per year for families and parents who miss work; and
(c) cost $5.5 to $10M in Youth Justice system costs per year for young people pushed out of education.[6]

It goes without saying that the costs would be even higher when broadening the lens to include Aboriginal and Torres Strait Islander children more broadly (noting that children with disability will include both Indigenous and non-Indigenous children) and children in out-of-home care.

From a Commonwealth perspective, heavy reliance upon SDAs as a means of dealing with marginalised children has significant economic and social costs including an increased demand on support services in the short and long term, and the long-term fiscal impact of poorer educational outcomes, such as, reduced workforce participation. There is also the increased risk of the child having contact with the youth justice system and the potential for such to be entrenched into adulthood.

<u>A child's disengagement from school increasing the risk of becoming in contact with the youth justice system and the opportunity for early intervention and prevention at school</u>

Schools are uniquely placed to act as a critical early intervention and prevention setting for children at risk of receiving SDAs, given their daily contact with children and capacity to identify emerging needs before behaviours escalate. When schools adopt

[6] Queensland Advocacy for Inclusion, 'A Right to Learn – Economic cost of suspensions for students with disability' (20 April 2024), available at < https://qai.org.au/wp-content/uploads/2024/07/Economic-cost-of-suspensions-for-students-with-disability-full-documentation.pdf>.

inclusive, trauma-informed and culturally responsive approaches, they can address the underlying drivers of behaviour, such as unmet learning needs, disability, trauma, family instability, a need to strengthen spiritual wellbeing/identity, etc. rather than responding through exclusion. Early access to learning support, reasonable adjustments, wellbeing services and strong partnerships with families and community-controlled organisations to provide essential support services can have a transformative impact on the outcomes for a child. By intervening early and consistently, schools can reduce reliance on suspension and exclusion, maintain a child's connection to education and interrupt pathways that too often lead from disengagement at school to involvement with the youth justice system.

We again refer to the 2025 QFCC Report, 'Include Me, Don't Exclude Me', which relevantly states at page 6:

> *We know, for example, that children's continued engagement with education is a powerful early intervention strategy to prevent or reduce future contact with the justice system, and that at least 55 per cent of children in youth detention in Queensland were not engaged in education, training or employment prior to their detention.*
>
> *A review of pre-sentence reports for 100 children at risk of detention, conducted by the Queensland Family and Child Commission in 2022, revealed that 94 per cent had been disengaged from school.*
>
> *In May 2025, the Minister for Youth Justice advised parliament that 72 per cent of the 222 children on dual orders with both the youth justice and child protection systems, had been previously suspended or excluded from school.*[7]

There needs to be strong leadership at the Commonwealth level to drive: a nationally consistent, rights-based approach to inclusive learning; an embedded trauma-informed practice within schools; a fundamental requirement for schools to partner with the families of high-risk children to address take positive steps to try and address unmet needs of the child and link the child to supports including externally provided supports delivered by community-controlled organisations and/or support people from community; transparency and accountability relating to the use of exclusionary discipline; and a requirement that legislation, policies and practices reflect that suspensions must be a measure only of last resort. In the absence of this, children

[7] Note 3, p 6.

within the high-risk group will continue to be pushed out of education and into lifelong cycles of marginalisation.

National Agreement on Closing the Gap

Participation and engagement of Aboriginal and Torres Strait Islander children in schooling is directly correlated to the following Closing the Gap targets:

- Target 5 - Students achieve their full learning potential
  By 2031, increase the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining year 12 or equivalent qualification to 96 per cent).

- Target 6 – Students reach their full potential through further education pathways
  By 2031, increase the proportion of Aboriginal and Torres Strait Islander people aged 25-34 years who have completed a tertiary qualification (Certificate III and above) to 70 per cent).

Participation in education is also a pre-requisite for, or at minimum interrelated to, many other Closing the Gap targets including obtaining employment after schooling/education, securing housing and reducing overrepresentation of Aboriginal and Torres Strait Islander individuals in the criminal justice system.

We are heartened to see - as has been expressed in the Discussion Paper - that the First Nations Education Policy is being developed in partnership with relevant First Nations Peak organisations including the National Aboriginal and Torres Strait Islander Education Corporation (**NATSIEC**), SNAICC – National Voice of our Children (**SNAICC**), the National Aboriginal and Torres Strait Islander Principals Association (**NATSIPA**), the National Indigenous Youth Education Coalition (**NIYEC**), and the National Aboriginal & Torres Strait Islander Higher Education Consortium (**NATSIHEC**) along with state and territory governments, the non-government education sector, education providers, unions and professional associations, and that there will be 'particular emphasis' 'on the contributions and perspectives of First Nations stakeholders' (p4, Discussion Paper).

It is imperative that, consistent with:

(a) the stipulated outcomes in the National Agreement on Closing the Gap (see outcomes (a) - Shared Decision-Making; and (b) Building the Community-Controlled Sector); and

(b) the importance of ensuring the self-determination and cultural agency of Aboriginal and Torres Strait Islander peoples, as enshrined in the National Agreement on Closing the Gap,

any solutions, policies, strategies and implementation thereof to address the overrepresentation of Aboriginal and Torres Strait Islander children, children with disability and children in out-of-home care in the cohort of children receiving SDAs in state and territory schools are led by and co-designed with the Aboriginal and Torres Strait Islander community.

ATSILS' joint-advocacy through the 'A Right to Learn' Campaign

For over 3 years, ATSILS has been engaged in targeted advocacy in partnership with Queensland Advocacy for Inclusion (**QAI**), PeakCare, Youth Advocacy Centre (**YAC**) and Youth Affairs Network Qld (**YANQ**), calling for the Queensland Government to make changes to address the overrepresentation of children with disability, Aboriginal and Torres Strait Islander children and children in out-of-home care in the cohort of children receiving SDAs in Queensland state schools via our joint-campaign entitled "A Right to Learn"[8]. Where there has been opportunity to raise these issues at the Commonwealth level, we have done so.

Consistent with the long-standing advocacy of the Campaign, we are of the view that:

- every student deserves the right to learn in an inclusive environment;
- students with disability, Aboriginal and Torres Strait Islander children and children in out-of-home care should be able to access quality education at all stages of life, from childcare and school to tertiary education;
- suspensions and exclusions to be used only as a last resort; and
- students with disability should be learning alongside their peers, not separated from them.

Over the years we have advocated for reform of the legislative framework in Queensland that regulates SDAs on the basis that it currently lacks rigour in the decision-making framework, lacks transparency and accountability and does not sufficiently involve the child, family and support persons in the process. We have also called for better resourcing for teachers so that they might be better equipped to deliver inclusive education.

[8] https://www.arighttolearn.com.au.

At the Commonwealth level, we recently lodged a submission to the 2025 Disability Discrimination Act (**DDA**) Review, conducted by the Commonwealth Attorney-General's Office, strongly recommending that:

(a) section 22(2)(b) of the DDA be amended to explicitly cover 'suspension and exclusion' as well as expulsions;
(b) consideration be given to protecting against all exclusionary practices for students with disability; and
(c) the DDA and associated Disability Standards for Education be amended to require education authorities to avoid the use of exclusionary discipline unless it is necessary as a last resort to avert serious harm to the student, other students, or staff.

With respect to exceptions or limits on when the exclusion is unlawful, we support Disability Royal Commission (**DRC**) Recommendation 7.2, i.e., that exclusionary discipline on students with disability should be avoided unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff.

In our submission, we strongly recommended that the revised DDA should state that before using exclusionary discipline on students with disability, educational authorities should be required to:

(a) consult with the student with disability and their supports;
(b) consider all available and appropriate alternative adjustments, measures or actions;
(c) consider the impact of exclusionary discipline on the best interests of the student and their right to education; and
(d) consider the student's disability, needs and age, and the particular effects of exclusionary discipline for young children.

We also recommended that provisions should also be made to ensure:

(a) a duty on principals to report the repeated use of exclusionary discipline involving a student with disability to an escalation point within educational authorities for independent case management;
(b) a robust review or appeals process for with supports for students with disability and their families or carers;
(c) students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline;
(d) students with disability are supported to re-engage in education post exclusion;
(e) the creation and retention of documentation describing consultation and consideration; and
(f) the student is provided with reasons for the decision to use exclusionary discipline.

Additionally, we submitted that the DDA should not seek to adopt a model relating to exclusionary discipline from any other states or territories. Instead, we recommended that DRC Recommendation 7.2 be implemented.

Responses to Discussion Paper questions

1. What changes within education settings (e.g. schools, early learning centres, universities, and other formal and informal learning environments) would have the greatest positive impact on the experiences and outcomes of First Nations learners?

   We refer to our earlier comments in this submission which include a number of measures which consider are relevant to this question, given the impact of the overuse of SDAs on Aboriginal and Torres Strait islander learners.

   Additionally, we strongly recommend that the government consult with:

   - Aboriginal and Torres Strait islander children and families along with relevant peak bodies and community-controlled organisations that support children and families to hear their voices regarding what is needed to have the greatest positive impact on the experiences and outcomes of Aboriginal and Torres Strait Islander students;
   - Independent schools, such as, Hymba Yumba Independent School[9] and The Murri School[10], given their specialised expertise; and
   - Flexi Schools[11].

   We also draw your attention to the following QFCC Reports which contain the voices of young people on their aspirations relating to the education system and in the context of SDAs:

   - 2025 - 'Include Me, Don't Exclude Me – The experiences of children and young people who have been suspended or excluded from Queensland state schools.'[12]; and

[9] https://hyis.qld.edu.au/.
[10] https://murrischool.qld.edu.au/.
[11] https://www.flexi.edu.au/about-us/.
[12] Queensland Family & Child Commission, 'Include me, don't exclude me – The experiences of children and young people who have been suspended or excluded from Queensland state schools' (2025), available at <https://www.qfcc.qld.gov.au/include-me-dont-exclude-me>.

- 2024 – 'Listening and Learning – Aboriginal and Torres Strait Islander children, young people and their families' aspirations within education Queensland'[13].

In addition to the above, we strongly recommend:

- ensuring that State and Territory schools are equipped, including with respect to sufficient training and resourcing, to be able to identify children that have unmet needs/children at risk of receiving SDAs, promptly engage with the child, the child's parents and/or support persons, promptly link the child with support services support that would benefit the child and regularly check in with the child to ensure that progress is being made to address unmet needs (as a means of early intervention and prevention);
- employing more Aboriginal and Torres Strait Islander peoples in relevant leadership positions at schools to enable them to have the decision-making power to make or impact decisions that affect the experience of Aboriginal and Torres Strait Islander learners including how they might be better supported;
- employing more Aboriginal and Torres Strait Islander educators and/or cultural mentors;
- strengthening the training of non-Indigenous teachers to help better prepare them to teach diverse learners, including Aboriginal and Torres Strait Islander learners and learners with disability (e.g., strengthening skills to teach Aboriginal and Torres Strait Islander perspectives as part of their delivery of the Curriculum, strengthening skills with respect to supporting Aboriginal and Torres Strait Islander students for whom English is not their first language; etc.);
- ensuring that schools are sufficiently trained to understand their obligations to children with disability and their obligations to make reasonable adjustments to address a child's individual needs with respect to disability, as well as ensuring that schools are sufficiently resourced, long-term, to be able to make those adjustments; and
- building strong, genuine and ongoing partnerships with local place-based Aboriginal and Torres Strait Islander community-controlled organisations who can be linked in to provide essential supports for children that need this.

Finally, we offer you the following example of a school in Queensland that has made significant changes to better support Aboriginal and Torres Strait Islander

[13] Queensland Family & Child Commission, 'Listening and Learning – Aboriginal and Torres Strait Islander children, young people and their families' aspirations within education Queensland' (June 2024), available at <https://www.qfcc.qld.gov.au/education>.

children who have been suspended from schools, with remarkable success. We refer to **Cherbourg State School**, under the hands-on leadership of Principal, Mr Boyd McClean. Mr Mclean identified that there was too high a number of missed school days at the school due to school suspensions. The school implemented a range of strategies including offering its Buwu program (means Restart or Reset in Wakka Wakka language) which is a culturally responsive alternative education initiative designed to support students who might otherwise be suspended or excluded due to disciplinary issues. Rather than removing the students from learning entirely, Buwu keeps them engaged with the school curriculum while helping them develop positive behaviour strategies and stay connected to their education. Since the program's introduction, **disciplinary absence days at the school have fallen dramatically, from approximately 1000 lost days to approximately 33 days** – demonstrating its effectiveness in keeping students in learning and out of exclusionary settings. The excellent results of the Buwu program have resulted in targeted investment, with a dedicated $3M facility now funded through the Closing the Gap Priorities Fund to replace the current temporary 'shed' classroom and to embed Buwu more fully within the school environment.

2. Do you think the initial four focus areas identified by the department reflect the most important things that the Policy should address?

The focus areas are supported, however, in our view there needs to be a discrete focus to address the overrepresentation Aboriginal and Torres Strait Islander children within the cohort of children that receive SDAs in all jurisdictions in Australia for the reasons outlined in this submission.

3. What should be done to ensure the Policy creates long-lasting change?

We strongly recommend:

(a) full implementation of recommendations 7.2 and 7.7 of the DRC at all levels of government;

(b) amending the DDA, in the manner outlined in this submission, on the matter of the use of exclusionary discipline on school students;

(c) that where any policies, procedures and implementation strategies are created that will impact/affect Aboriginal and Torres Strait Islander children, they are co-designed with Aboriginal and Torres Strait Islander peoples consistent with the government's commitments under the National Agreement on Closing the Gap;

(d) that the success of the Policy, along with any procedure and implementation thereof, is measured by Aboriginal and Torres Strait Islander children and families, given they are the ones that would be affected;

(e) that the Policy, along with any procedure and implementation thereof, is strongly anchored in existing Closing the Gap structures/frameworks given the direct connection with Closing the Gap targets relating to education and better life outcomes for children and young people;

(f) that community-controlled organisations are adequately funded, long-term, to provide relevant supports for children in schools that have been identified as needing, or expressed that they need, additional support, whether that relates to children at risk of receiving SDAs or children that have unmet needs and would benefit from additional support;

(g) that schools are properly resourced, in the long-term, to ensure that children with disability have adjustments made to address their individual needs consistent with their right to a quality education without discrimination.

4. Anything else you want to share?

N/a.

We thank you for the opportunity to provide feedback on the Discussion Paper.

Yours faithfully,

Shane Duffy
Chief Executive Officer