

Darwin Community Legal Service submission to the Inquiry into the purpose, intent and adequacy of the Disability Support Pension.

17 September 2021



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Darwin Community Legal Service operates on Larrakia country. We acknowledge the Larrakia people as the Traditional Owners of the Darwin region and pay our respects to Larrakia elders past and present. We are committed to a positive future for the Aboriginal community.

Darwin Community Legal Service would like to thank:

The Community of Ramingining – East Arnhem Land,
The people of the Northern Territory,
Clients of Darwin Community Legal Service.

for sharing their stories with us.

Committee Secretary

Senate Community Affairs References Committee

By email: community.affairs.sen@aph.gov.au

24 September 2021

Dear Committee Secretary,

Darwin Community Legal Service submission to the Inquiry into the purpose, intent and adequacy of the Disability Support Pension.

This inquiry affects the lives of thousands of people in the Northern Territory, their families, carers and communities. We look to the inquiry to strongly contribute to ways forward in the light of the failure of the Disability Support Pension ('DSP') in the NT.

Legal and administrative frameworks for DSP do not reflect relevant principles. They are of step with conceptual and operational approaches to disability embedded in federal law and advanced by Government in health and education.

It is telling that none of the principles which applies to the National Disability Insurance Scheme ('NDIS') apply to the DSP.

It is also telling that principles of co-design, empowerment, inclusion and wellbeing are absent.

The DSP does not reflect engagement with the lives of Aboriginal people in the NT or elsewhere in Australia. Additionally, the DSP regime has no sense of place or distance.

There is a profound mismatch between the current top-down, legalistic approach, operating on a regulatory mentality of ineligibility on the one hand and issues of health and wellbeing on the other.

We make this submission to paint the picture of the DSP disaster in the NT and what needs to be done.

We would like to express our encouragement to Committee members to think big in identifying ways to overcome the problems with the current DSP system.

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About DCLS

Established 30 years ago by volunteers, DCLS is a free, confidential, multi-disciplinary, community legal service. DCLS provides legal assistance, support and advocacy to help people ensure their rights. Some of our services are focused on Darwin or the Top End, and some are Territory wide. DCLS has about 30 staff, over 60 volunteers and extensive networks within the NT and nationally.

We work especially with people who are vulnerable or marginalised and aim to promote awareness and understanding. We collaborate for change that promotes fairness and justice.

People who need or are receiving DSP are highly represented in all areas of DCLS service provision, and so are carers, family and friends.

Our Seniors and Disability Rights Service works extensively with people who need support to apply for DSP because the criteria and processes often require combined socio-medical-legal effort.

DCLS work includes:

- Seniors and Disability Rights Service ('SDRS') - support, advocacy, and empowerment by, with and for seniors and people with a disability – especially Top End but NT wide.
- Special projects including Older Person Abuse and NDIS appeals.
- General Legal Service ('GLS') - information, referral, legal advice and representation in areas of civil law affecting basic rights - Darwin, Palmerston and surrounds, and NT wide where appropriate resources available.
- Tenants' Advice Service ('TAS') - information, referral, legal advice, legal help including representation for tenants - NT wide.
- Collaborative community legal education, projects, organising and advocacy for reforms which promotes rights, justice and inclusion

DCLS is a member of the NT Council of Social Service, the NT Older Persons Advocacy Network, the NT Community Legal Services Network, the Disability Advocacy Network Australia and the NT Collaborative Legal Assistance Planning Forum. DCLS is also a member of Economic Justice Australia, the peak organisation for community legal centres providing specialist advice regarding social security issues and rights.

Terms of reference

We note that the Committee's Terms of Reference for this inquiry are as per below. We have emphasised the points that this submission comments on.

"The purpose, intent, and adequacy of the Disability Support Pension, with specific reference to:

- a. **The purpose of the DSP.**
- b. **The DSP eligibility criteria, assessment, and determination, including the need for health assessments and medical evidence and the right to review and appeal.**
- c. **The impact of geography, age, and other characteristics on the number of people receiving the DSP.**
- d. **The impact of the DSP on a disabled person's ability to find long term, sustainable and appropriate, employment within the open labour market.**
- e. **The capacity of the DSP to support persons with disabilities, chronic conditions, and ill health, including its capacity to facilitate and support labour market participation where appropriate.**
- f. Discrimination within the labour market and its impact on employment, unemployment, and underemployment of persons with disabilities and their support networks.
- g. **The adequacy of the DSP and whether it allows people to maintain an acceptable standard of living in line with community expectations.**
- h. The appropriateness of current arrangements for supporting disabled people experiencing insecure employment, inconsistent employment, precarious hours in the workforce; and inequitable workplace practices.
- i. **The economic benefits of improved income support payments and supports for persons with disabilities, their immediate households and broader support services and networks.**
- j. The relative merits of alternative investments in other programs to improve the standard of living of persons with disabilities; and
- k. **any related matters."**¹

¹ Parliament of Australia, '[Terms of Reference](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/DisabilitySupportPensio/Terms_of_Reference)', *Purpose, Intent and Adequacy of the Disability Support Pension*' (Web Page, 2021)
<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/DisabilitySupportPensio/Terms_of_Reference>.

Overview of this submission

The Disability Support Pension (DSP) is an ineffective, damaging, and misaligned scheme.

The current system creates barriers for applicants throughout the claim process. It is demeaning and damaging to applicants, their families, health practitioners, Centrelink staff and the broader Australian community. These problems are amplified in the Northern Territory, due to our geographic and demographic make-up. People in the remotest parts of the Northern Territory face a lack of services, lack of support for the community, and culturally inappropriate assessments that are shaming Aboriginal and Torres Strait Islander applicants.

The current DSP process wastes the limited and in-demand clinical time of Australia's health practitioners, resulting in untold wasted hours associated with each application. Further financial drain occurs when a claim is rejected, and appealed, draining the time and resources of the Administrative Appeals Tribunal and community legal practitioners.

The DSP and the bottlenecks that have been injected in the system, specifically the Welfare to Work changes in 2005, the changes to the Impairment Tables in 2011 and the introduction of the Government Contracted Medical Assessments in 2014-2015, waste resources. They prevent people from accessing a pension that was originally designed to help them live productive and safe lives.

The DSP does not result in outcomes that support people with a disability, does not support increasing community access and participation, and does not support the business community to engage people with disabilities in their workforce.

The merit of investigating a new scheme is not only evident but also demanded.

This submission is based on DCLS's work with individuals, carers, families, communities and numerous networks in the NT relating to disability support and advocacy, including DSP.

The submission is framed by three key considerations which encapsulate why the DSP is failing in the NT and principles for moving forward. The key considerations are the duty of care, cost-effectiveness, and integrity. We use these three considerations as our guide when considering the four areas of reform. We express the core issues to reform the regime as four 'P's:

- Purpose
- Place
- Payment
- Participation

Recommendations

The recommendations contained in the submission are:

1. That the DSP regime be urgently and comprehensively reformed in line with these directions.
2. To add, a legislated statement of purposes should be introduced to frame and support DSP by expressing human rights obligations and intentions purposes about wellbeing, rights, and inclusion.
3. Account for functional limitations experienced by applicants from areas where advancements in technology are not yet implemented. Functional assessments are poorly suited by thoroughly researching and developing culturally appropriate and safe functional assessment tools developed and designed with direct input from Aboriginal and Torres Strait Islander communities.
4. All applications, assessments, and subsequent documents to include language that encompasses groups such as Aboriginal and Torres Strait Islander people and the activities commonly carried out in remote daily life.
5. Ongoing, comprehensive consultation with people living in remote communities.
6. DSP should be culturally safe and appropriate for Aboriginal and Torres Strait Islander people.
7. Payments should begin on an application being accepted before any other Social Services initiated assessments.
8. As proposed in ACOSS's submission to this inquiry, establish a Disability and Chronic Illness security income support payment to recognise the additional costs of disability.
9. Permanently remove the cap on working hours and introduce a means-tested supplement to incentivise work rather than penalise it.
10. Cease the practice of cancelling disability support pension payments to people in custody and forcing them to re-apply post correctional rehabilitation, magnifying risks of recidivism and worsening health outcomes post-release.
11. Permanently scrap the Impairment tables and The Job Capacity Assessments in favour of utilising modern impairment measurements approved and endorsed by qualified, knowledgeable treating teams.
12. Reduce the size of the paper application.
13. Introduce a replacement for the treating doctor report (TDR) with a Treating Team Report (TTR) as the primary component of DSP claims, with filling and filing claimable under Medicare (specific Item number).
14. Expand the list of responsible practitioners who can submit qualifying evidence to include:
 - a. Remote Area Nurses
 - b. Non-clinical psychologists
 - c. Social Workers
 - d. Mental Health Social Workers
 - e. Mental Health Peer Support Workers

- f. AOD Case Managers
 - g. Remote area police and community police officers
 - h. Remote area shire officers
 - i. Land council rangers
 - j. Remote area Traditional Owners
 - k. Remote area school principals and teachers.
15. Amend section 94 of the Social Security Act to abolish the DSP program of support requirement.
16. Functional impairment is to be measured by how limited someone is by their impairment in performing daily activities that are normal or important for them, including community and culturally relevant activities.

1. Purpose

1.1 Legislating within the social model of disability

Legislation and processes relating to DSP must respect, protect, and fulfil human rights. The federal government is morally and legally required to observe duties of care towards individuals and groups in society. The Government must avoid causing harm in criteria and processes to deliver social security entitlements to persons with disability who are unable to work continuing. The system should be based on articulated principles which reflect care and integrity. These changes should be brought through into the purposes and criteria for income and other supports in social security. We recommend that this purpose is integral to a redesign of the DSP process. A human rights-based design of the process should be integrated and legislated in the Social Security Act, and the DSP Claim processes reconsidered to reflect this commitment.

When a disability is incurred or discovered, it is impacting on a person's life then. A person with disability is entitled to full and equal enjoyment of all human rights and fundamental freedoms. The DSP needs to ensure access for people with a disability to society and move away from the medical model of disability. In order to achieve this the system and processes that make up the DSP pathway need to be reconsidered with these purposes at the centre. The Disability Support Pension is based in the Social Security Act 1991 (**the Social Security Act**). Eligibility for making a successful DSP claim is set out in section 94 of the Act. A person must meet three requirements to be eligible for the DSP;

- A physical, intellectual or psychiatric impairment;
- An impairment rating of 20 points or more under the Impairment Tables;²
- A continuing inability to work or is participating in a supported wage system.

A person must submit a DSP claim and attach evidence that they meet the requirements above to be successful. They are assessed both on the permanency of their impairment, as well as by a Job Capacity Assessor (JCA). At any point in this process, their claim can be refused. DSP processes are often experienced as inhumane, degrading, humiliating, and stigmatizing by applicants and by recipients. Government policy must reflect good character, including being kind, gentle, responsive, and flexible. The DSP claim journey should leave a person feeling respected, cared for, enabled, and empowered.

A better DSP claim process will reduce the harm currently being inflicted on a person making a claim. Reducing or losing work and not having access to money compounds health issues, causing more significant impairments requiring more resources to fix. Looking at the purpose of a disability support payment through a human rights and person-centred lens supports a radical re-thinking of the application process. As it currently exists, the focus on a person's needs and medical history and the adversarial nature of applying for a payment is a burden

² Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011.

on the applicant. The adversarial nature of applying for payment is played out in oppositional processes with mistrust, adverse inferences and non-facilitation designed in.

We recommend that redesign of the DSP instead has the social model of disability at its core, where we recognise that it is a person's impairments, which can create functional limitations for a person, as well as barriers to social, political and economic inclusion that make up a person's disability. Approaches to 'disability' have been changing rapidly in Australia over recent years.

1.2 Human rights obligations

As mentioned above the Objects and General Principles in the *National Disability Insurance Scheme Act 2013* ('**NDIS Act**') which provides a commitment to purposeful scheme can be used as a guide for the Social Security Act.³

The **CRPD** speaks to the full and effective participation and inclusion in society for people with disability (Article 3).⁴ This can be achieved by the DSP constituting a living income, so each person receiving DSP can live their life with as much independence and participation in society as possible. It also means that a person should be supported when accessing potential employment or voluntary work and economic participation without facing unnecessary risks that their livelihood could be affected. When it comes to work and employment the CRPD calls on parties to promote employment opportunities [...] and returning to employment (Article 27). The current DSP model disincentives people re-entering employment as the risk of losing payments looms over people who are exploring potentially gaining employment again.

The Declaration on the Rights of Indigenous Peoples ('**DRIP**'), as endorsed by Australia, provides more guidance on ensuring human rights specially for our Aboriginal and Torres Strait Islander Communities.⁵

In summary, the purposes of DSP to be stated in the legislation, should include:

- acknowledgment of Australia's obligations under the Convention on the Rights of Persons with Disabilities ('**CRPD**') and other international instruments, for which s3-s5 of the NDIS Act is a guide,⁶
- acknowledgement Australia's endorsement of the Declaration on the Rights of Indigenous Peoples ('**DRIP**'),
- fostering the wellbeing, rights, and inclusion of people with a disability including living a full life and promoting independence and social and economic inclusion, and

³ The Objects and General Principles in the NDIS Act are attached to this submission. See Attachment B.

⁴ The Convention on the Rights of Persons with Disabilities, CRPD

⁵ '**Article 1** Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. **Article 2** Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.' United Nations Declaration on the Rights of Indigenous Peoples, DRIP.

⁶ The Objects and General Principles in the NDIS Act are attached to this submission. See Attachment B.

- emphasising full inclusion of people living in regional, rural and remote areas.

The addition of a statement of purposes would help orient how DSP is understood and implemented. For example, currently the process of applying for the DSP and the POS requirements are not an inherently dignified experience. A shift in ensuring that the application process is not a barrier to people gaining access to payments they are entitled to is needed. This should include ensuring that people are not demeaned or adversely affected by the application process itself.

1.3 Deficit approach vs strength-based approach

Redesigning the DSP process in line with the social model of disability would create a shift to a strengths-based approach. Whereas the current process is adversarial and harmful, a strength-based approach would empower a person, rather than focus on their impairments and be suspicious of intentions.

Table 1

DSP – current deficit approach	DSP – strengths-based approach
<ul style="list-style-type: none"> • No positive expression of purposes • No reference to human rights • No articulated objectives about how DSP will help • Does not project objectives dignity, respect, wellbeing and inclusion. • Rates people by their medical limitations • Is vigilant about the possibility of medical improvement and treats this as an opportunity to terminate DSP 	<ul style="list-style-type: none"> • Be framed by positive expression of purposes which reflect human rights standards • Articulate objectives of how DSP will help • Promote wellbeing, inclusion access to opportunities and empowerment • Appreciates people’s capacities • Is receptive to adapting supports in positives

1.4 Cost-shifting

The regime is based on a harsh version of economic rationalism to push back against care, humanity and treating people with dignity and respect. Whereas a concern for financial sustainability is valid for government expenditure, when it relates to the DSP these costs are not averted, but shifted onto other sectors and community members. Cost-containment is fictitious. This is because unmet needs are a cost and have cost consequences. DSP is an inadequate support from the moment a person tries to make a claim onwards. Where the DSP system in itself does not pre-empt or cover the real cost, others shoulder the burden. As we will elaborate below it is often the communities and families of people with disability that end up facing the costs. As people who require DSP are often highly vulnerable, the effect is a dramatic misalignment.

Cost-containment via DSP is currently achieved by:

- Warehousing people with permanent disabilities who are unable to work on lower paid social security payments, especially JobSeeker with or without suspension of JobSearch and other requirements,
- Overwhelming other social security payments with people with permanent disabilities who are unable to work but who are also unable to move onto DSP,
- Forcing other services, sectors, programs and systems to use resources to try to fill the gaps created by DSP policy, and
- Requiring individuals, families and communities to absorb and manage the cost.

Real cost-containment and cost-effectiveness could be achieved by:

- Targeting funding to enable entitlements and achieve maximum positive benefits for the intended recipient group/s,
- Introducing key measures of cost effectiveness, which should be:
 - how quickly and directly positive eligibility outcomes are achieved,
 - the ratio of overhead costs to income and related support delivered to the intended recipients, and the extent to which expenditure advances the wellbeing and empowerment of the intended recipients,
- Utilizing social models which place positive outcomes for people in need at the centre of the federal Government approach to economic management regarding DSP.

Case study 1

Aaron lives in the NT and has worked all his life in low paying work. He is unable to work due to chronic health conditions. He is receiving JobSeeker with participation requirements suspended due to his health. He is gathering medical evidence to apply for DSP. Advocates estimate the DSP claim process will take between 6 to 12 months. If he is unsuccessful the first time, he would expect to remain on JobSeeker with mutual obligation requirements still suspended while his health deteriorates, and a further application is made for DSP. Aaron has received assistance from emergency relief programs and family members who have given him food and some funds. His partner is applying for Carer Payment, which she is likely to receive even though Aaron is receiving JobSeeker rather than DSP at this stage.

1.4.1 Cost shifting onto the health system

The current DSP claim process puts an undue pressure on the health system by creating a significant time and cost burden. From the first General Practitioner (GP) appointment to an application being submitted, at minimum eight hours of clinical review and treatment have

occurred.⁷ Eight hours per application across 100,000 applications a year⁸ is a cost the health care system cannot and should not bear. Add to that any follow up with the treating team, or need for more evidence, more appointments or tribunal appeals that can blow out hours spent on an application from these average figures.

Especially jarring is that paired with this undue burden of hours GPs are expected to commit to DSP claims, their expert opinions are often questioned in the next steps of the process. The introduction of the Government-contracted Doctor Disability Medical Assessment in 2014-2015 disenfranchises the treating team and applicant by ignoring diagnoses, prognoses, and treatment plans and again tying up health resources. Doctors and specialists do these assessments as part of the work of treating patients. Having their treatment plans submitted to Centrelink and it then coming under supervision from less experienced and less-informed doctors makes little operational sense.

Case study 2

A DCLS advocate assisted Amy with her JCA interview as part of the DSP application, as Amy had been previously unsuccessful in DSP applications. During the interview the JCA assessor did not record answers as given and changed answers to reflect a different conversation. Amy's application was rejected. Amy and the advocate made a complaint to a complaints officer. The complaints officer reviewed evidence submitted, JCA assessments, DCLS notes and organise a medical assessment. This medical assessment was carried out. The claim was approved, and Amy received some backpay. Amy remarked many times that it felt personal to be treated this way by Centrelink staff, and that the process and her treatment by Centrelink had impacted her self-worth.

Our clients often experience adverse health consequences from the assessment process, including the nature and length of the process, the criteria and how they are treated. People can experience increased anxiety, depression, desperation, loss of self-confidence and other effects which also exacerbate other health conditions. This is not only harmful for the person involved, but also puts more pressure on the health system. While these problems are

⁷ With initial GP appointment, follow-up, referral to a specialist, specialist appointment, specialist follow-up appointments, specialist treatments and follow-ups as described by Centrelink, the cumulative hours of work to get to the point of making a claim is generally 8 hours. Australian Government, Services Australia, '[Fully diagnosed treated and stabilised](https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/who-can-get-it/medical-rules/general-medical-rules/fully-diagnosed-treated-and-stabilised)' *Disability Support Pension* (Web Page, 12 March 2021) <<https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/who-can-get-it/medical-rules/general-medical-rules/fully-diagnosed-treated-and-stabilised>> .

⁸ Australian Government, Services Australia, [Services Australia Annual Report 2019-20](#) (Report, 1 October 2020) 7.

endemic to the current DSP system,⁹ the effects in the NT are compounded by the nature and extent of socio-economic disadvantage and intersectional disadvantage.

Case study 3

Carl has several serious health conditions, which involve medications with serious side effects. He first applied for DSP in 2013, when he received his primary diagnosis. He was rejected on the reasoning that his diagnosis was too recent and had not been stabilised. He applied a second time in 2015, following a car accident that may have been caused by a stroke. He was rejected on the reasoning that his injuries were not deemed permanent, despite supporting letters from doctors arguing the contrary. Carl applied a third time in 2019. He was rejected on the reasoning that there were not ongoing health concerns, as deemed by a JCA. Carl had successfully made NDIS access at this point,

In 2020 Carl made a fourth application, with advocacy assistance. He was finally successful and now receives DSP.

Recommendation (1): That the DSP regime be urgently and comprehensively reformed in line with these directions.

Recommendation (2): To add, a legislated statement of purposes should be introduced to frame and support DSP by expressing human rights obligations and intentions purposes about wellbeing, rights, and inclusion.

2. Place

2.1 Remote realities in the Northern Territory

While all people and communities are affected by the shortfalls of the DSP process, the effects are disproportionately grave for Aboriginal people, especially in remote communities. This is especially apparent in the NT, as we have a large Aboriginal community, many of whom live in remote or very remote communities. Aboriginal people and people in remote communities in the NT are discriminated against by the DSP regime which fails to manage cultural and locational circumstances. This is reflected in the statistics relating to DSP uptake, see Table 1.

⁹ Luke Henriques-Gomes, '[Some 130 people died of a terminal illness before Centrelink granted Disability Support Pension](https://www.theguardian.com/australia-news/2021/may/20/some-130-people-died-of-a-terminal-illness-before-centrelink-granted-disability-support-pension)' *The Guardian* (online, 20 May 2021) < <https://www.theguardian.com/australia-news/2021/may/20/some-130-people-died-of-a-terminal-illness-before-centrelink-granted-disability-support-pension>>.

Table 2¹⁰

NT	Australia
<ul style="list-style-type: none"> • 3.3 per cent of population are recipients of the DSP • 68 per cent of DSP recipients identify as Indigenous Australian • 64 per cent of DSP recipients live outside cities • 76.32 per cent of DSP recipients not partnered 	<ul style="list-style-type: none"> • 2.9 per cent of population are recipients of the DSP • 7.2 per cent of DSP recipients identify as Indigenous Australian • 41.7 per cent of DSP recipients live outside cities • 78.8 per cent of DSP recipients not partnered

In writing this submission we administered a field study in a remote community in East Arnhem land. It is attached to this submission.¹¹ While the concerns noted in the study are not a comprehensive summary of remote NT’s experience with accessing the DSP, they are presented with the intention to inform and provoke meaningful change so that people with a disability who live in remote areas can have their eligibility for the DSP fairly assessed. The responses we received to the field study are indicative of larger problems faced across remote communities in Australia. We have highlighted some of the key observations here.

Making an initial DSP claim is good illustration of the higher burden a person living in a remote community faces compared to a person living in an urban setting. Even in cases of congenital, severe, and total permanent disability a person in a remote community faces a high time cost and lack of accessibility to the necessary evidence for a claim. Accessing any service in remote parts of the Northern Territory is in many instances impractical. Residents of remote communities incur significant out-of-pocket costs for travel into and accommodation in town when appointments cannot be held in the community or via telehealth.¹² It becomes impossible when a local health clinic has no permanent doctors, permanent staff based in the community, or service officers dedicated to assisting people access Centrelink services. Functional assessments typically used for diagnoses and assessing the level of impairment are often ill suited to Aboriginal and Torres Strait Islander applicants and do not provide an accurate representation of their disability. There is a myriad of other complications, including unreliable telecommunications, language barriers (someone may speak English as a second or third language, or not at all).

¹⁰ Department of Social Services Payment Demographic Data (June 2021): <https://data.gov.au/data/dataset/dss-payment-demographic-data>

¹¹ See Attachment A: *DSP Submission - Remote Communities Field Survey*

¹² See Attachment A: *DSP Submission - Remote Communities Field Survey*

Case study 4

Brian lives at an outstation in remote NT. Brian has a physical and intellectual disability, and relies on his Aunty, Maeve, for meals, accommodation, and constant supervision. Maeve went to the Centrelink Office to ask about payments for Brian, and she was directed to speak to a Centrelink Officer over the phone. After the call Maeve was still unsure how to apply for payments. A while later Maeve brought Brian to the medical clinic because he had injured himself at home. At the clinic Maeve told the nurse she found it hard to care for Brian and asked about Centrelink. The nurse told Maeve that Brian should be eligible for DSP payments, but he would have to see a specialist first as he did not have any official diagnoses. 2 months later, an OT visited the community, and performed a full-functional assessment on Brian. Nurses assisted Maeve to make an application for the DSP with the resulting report. When advocates visited the community, they were approached by Maeve who asked for assistance to call Centrelink as she hadn't heard the outcome of the application. Brian's application had been unsuccessful weeks prior on the basis that the functional impact of Brian's impairments was *mild*. Brian is still not a recipient of the DSP.

Another crucial shortfall is cultural safety. Cultural concerns are not able to be followed (for example female applicants being reviewed by male doctors, or vice versa, and applicants feeling 'Shame' discussing their disabilities with anyone at all). The 'disability' label has negative connotations for indigenous populations and the name of the DSP may dissuade people with a disability from applying in the first place.¹³

For some applicants the system seems designed to prevent them from accessing it.¹⁴ This results in a further displacement of costs onto remote communities and onto Aboriginal people and families, especially in remote communities. These intersections of extreme levels of disadvantage work against federal policy aimed at Closing the Gap.

¹³ See Attachment A: *DSP Submission - Remote Communities Field Survey*

¹⁴ Emma Myers, '[Highly educated, but underestimated: How disability employment services fail tertiary qualified individuals](https://www.abc.net.au/news/2021-06-14/highly-educated-but-underestimated/100149076)', ABC News (online, 11 June 2021) <<https://www.abc.net.au/news/2021-06-14/highly-educated-but-underestimated/100149076>>.

2.2 Ceasing DSP in custody

Another place related barrier exists for people who are placed in custody. Currently the DSP payments are suspended when a person enters custody. If this suspension lasts longer than two years the DSP payment is cancelled, and person will have to reapply on release. This practice magnifies risks of recidivism and worsening health outcomes post release. When a person has made a successful DSP claim, it has been accepted that they have permanent disability. This permanency is not affected by any time in custody, and there is no logic to cancelling a payment dependent on a person's disability because they happen to spend time incarcerated. This is another example of the burden placed on a person with disability to continuously prove their disability in order to receive necessary supports.

Case study 5

David accessed the DSP successfully at age 18, on his mental health conditions. He has had repeated admissions to mental health inpatient units, and 12 suicide attempts between the ages of 10 and 30. On his successful DSP claim Centrelink noted that David's mental health conditions are longstanding and are considered permanent. David's DSP was cancelled following four years in custody. Since release, he has made four new DSP claim applications, all unsuccessful. David has reported low self-worth and there are concerns for his safety.

Recommendation (3): Account for functional limitations experienced by applicants from areas where advancements in technology are not yet implemented. Functional assessments are poorly suited by thoroughly researching and developing culturally appropriate and safe functional assessment tools developed and designed with direct input from Aboriginal and Torres Strait Islander communities.

Recommendation (4): All applications, assessments, and subsequent documents to include language that encompasses groups such as Aboriginal and Torres Strait Islander people and the activities commonly carried out in remote daily life.

Recommendation (5): Ongoing, comprehensive consultation with people living in remote communities ensures equal ease of access to appropriate social protection.

Recommendation (6): DSP should be culturally safe and appropriate for Aboriginal and Torres Strait Islander people

3. Payment

3.1 Payment levels

A person with disability is more likely to live in poverty. ACOSS estimated that: ‘The rate of poverty among adults with a disability is 17% (29% when the 60% of median income poverty line is used). The rate of poverty is higher (19% and 34% respectively) among adults with a core activity limitation.’¹⁵ This problem is twofold. The DSP does not adequately cover the hidden costs of having a disability. These hidden costs can consist of renting, purchasing, and modifying specific accommodation, medical expenditure, extra utilities for the operation of equipment, or special vehicles for transport.^{16,17} The other factor is that the DSP does not create real employment prospects, as we will expand on in section 4.

DSP rates are too low and should be raised. Additional work is required to develop models that enable payment rates to be related to the cost of the supports required by the individual. We welcome independent research and estimates to determine a fair rate.

3.2 Delay in payments starting

Economic stress on a person with disability is exacerbated by payments taking far too long to begin, resulting in worse social outcomes that cost more resources to resolve. These outcomes can consist of becoming disabled, losing income, losing housing, debts, stress, or worsening health.¹⁸

Improving the initial claim process means that a person does not lose time chasing evidence, appealing decisions, and awaiting their claim result. Whereas in a small amount of cases backpay can mitigate the harmful effects of the delay, the confusing and confounding process practically means that many end up submitting not one but several claims and lose their entitlement to backpay.

¹⁵ Davidson, P., Saunders, P., Bradbury, B. and Wong, M. (2018), Poverty in Australia, 2018. ACOSS/UNSW Poverty and Inequality Partnership Report No. 2, Sydney: ACOSS, p58.

¹⁶ Social Services Legislation Amendment (Strengthening Income Support) Bill 2021 Senate Community Affairs Committee 5 March 2021 Available at: <https://www.acoss.org.au/wp-content/uploads/2021/03/Strengthening-Income-Support-Bill-2021.pdf>

¹⁷ Vu, B., Khanam, R., Rahman, M. et al. The costs of disability in Australia: a hybrid panel-data examination. Health Econ Rev 10, 6 (2020). <https://doi.org/10.1186/s13561-020-00264-1> - This figure varies considerably according to the severity of the disability, ranging from 19% for people without work-related limitations to 102% for people with severe limitations. further, the average cost of disability in the long-run is higher and it is 63% of the adult-equivalent disposable income.

¹⁸ Luke Henrique-Gomes, ‘Australia’s \$1bn disability employment service criticised over poor outcomes and reduced employment’, The Guardian (online, 31 March 2021) <<https://www.theguardian.com/australia-news/2021/mar/31/australias-disability-employment-down-3-in-past-decade-as-service-scheme-criticised-for-poor-outcomes>>.

Case study 6

DCLS assisted Betty with her DSP claim. Betty has several serious mental health conditions. Betty had made three applications to DSP prior to engaging DCLS. All three applications were rejected on the reasoning that mental health conditions of similar prognosis generally resolve most issues by the age of 28. The first application Betty made was more than 10 years away from the age of 28. Betty's mental health conditions continued to deteriorate and prevented her from self-advocating on many occasions. DCLS assistance commenced after Betty attempted suicide, causing physical injury. With DCLS' assistance the application went to JCA stage, leading to an immediate medical assessment (which was not carried out due to health concerns), and DSP was granted.

Recommendation (7): Payments should begin on an application being accepted before any other Social Services initiated assessments.

Recommendation (8): As proposed in ACOSS's submission to this inquiry, establish a Disability and Chronic Illness security income support payment to recognise the additional costs of disability.

Recommendation (9): Permanently remove the cap on working hours and introduce a means-tested supplement to incentivise work rather than penalise it.

Recommendation (10): Cease the practice of cancelling disability support pension payments to people in custody and forcing them to re-apply post correctional rehabilitation, magnifying risks of recidivism and worsening health outcomes post-release.

4. Participation

Due to the current DSP claim application process, a person who may have a chronic illness, or a complex health or disability situation and does not meet the 'fully treated' test gets stuck between JobSeeker and DSP. Such a person who is unable to work due to long term health issues are not able to move forward onto a social security payment which treats them with dignity. Instead of qualifying for a payment which will assist, they are often subject to expectations and conditions which are unresponsive to their circumstance. Effectively, this person gets stuck on JobSeeker with medical exemptions for their mutual obligations, instead of receiving DSP. The flow on effect of a person in this situation making a DSP claim, and then getting stuck on the POS requirements that they have not been able to fulfill while holding their exemptions, means that they inadvertently are disqualified from receiving the appropriate payment. As touched upon above the personal ramifications can consist of (mental) health problems, homelessness, and cost-shifting and pressure on families. The DSP criteria are increasing hopelessness, alienation, isolation, and desperation

The POS requirements are part of a larger problem. All issues with the DSP are exacerbated by the lack of real incentives support to join the labour market. Programs of Support are a meaningless, inefficient exercise that rarely if ever do anything useful in the space of providing a path to gainful, ongoing employment.^{19,20,21} It has been found that DES do not create labour force participation for 9 out of 10 participants.²² There is no sensitivity for a new DSP claimant who may have worked in a trade all their life, and then is penalised for not seamlessly transitioning to a new sector like administrative work.

Reducing payments to those lucky enough to have found an employer willing to engage them in flexible, suitable work only penalises finding work. The reduction in payments then places unnecessary stress on the employee, which generates health concerns, which impacts employment and employability.²³ The penalties that people with a disability incur looking for and finding work.

Instead of trying to fix a failing system, the government should consider the dignity of a person with disability, an abolish the POS requirements. A new, workable, method of increasing economic and social participation will need to be considered. This new model needs to be person centered, and sensitive to needs of DSP claimants.

Case study 7

Amelda is experiencing elder abuse at home. She is recovering from extensive invasive treatment for a chronic health condition, she is emaciated and fragile and there are no prospects of her working again. Her family are rejecting her because she has gone from being self-sufficient to needing help and support. She was placed on JobSeeker with participation requirements suspended due to her health. She is confused and stressed by the contact with her JobNetwork provider who made no social work / social support referrals. The JobNetwork provider did not tell Amelda about home care packages or about DSP.

¹⁹ Luke Henrique-Gomes, '[Australia's \\$1bn disability employment service criticised over poor outcomes and reduced employment](https://www.theguardian.com/australia-news/2021/mar/31/australias-disability-employment-down-3-in-past-decade-as-service-scheme-criticised-for-poor-outcomes)', The Guardian (online, 31 March 2021) <<https://www.theguardian.com/australia-news/2021/mar/31/australias-disability-employment-down-3-in-past-decade-as-service-scheme-criticised-for-poor-outcomes>>.

²⁰ Disabled People's Organisations Australia, '[Background](https://dpoa.org.au/factsheet-employment/)', Factsheet: Employment of Persons with Disability (Web Page, 9 March 2018) <<https://dpoa.org.au/factsheet-employment/>>.

²¹ Australian Federation of Disability Organisation (AFDO), '[Consumers front and centre: what consumers really think about disability employment services](#)' (National report, 10 October 2014).

²² El Gibbs, '[Disability employment reforms won't solve employment gap for people with disability](https://www.and.org.au/news.php/356/media-release-disability-employment-reforms-wont-solve-employment-gap-for-people-with-disability)' (Media Release, Australian Network on Disability, 9 July 2018) <<https://www.and.org.au/news.php/356/media-release-disability-employment-reforms-wont-solve-employment-gap-for-people-with-disability>>.

²³ Australian Government, Department of Health, '[Financial Stress and your health](https://www.healthdirect.gov.au/financial-stress)', *Health Direct* (Web Page, 2019) <<https://www.healthdirect.gov.au/financial-stress>>.

Recommendation (11): Permanently scrap the Impairment tables and The Job Capacity Assessments in favour of utilising modern impairment measurements approved and endorsed by qualified, knowledgeable treating teams.

Recommendation (12): Reduce the size of the paper application.

Recommendation (13): Introduce a replacement for the treating doctor report (TDR) with a Treating Team Report (TTR) as the primary component of DSP claims, with filling and filing claimable under Medicare (specific Item number).

Recommendation (14): Expand the list of responsible practitioners who can submit qualifying evidence to include:

- a. Remote Area Nurses
- b. Non-clinical psychologists
- c. Social Workers
- d. Mental Health Social Workers
- e. Mental Health Peer Support Workers
- f. AOD Case Managers
- g. Remote area police and community police officers
- h. Remote area shire officers
- i. Land council rangers
- j. Remote area Traditional Owners
- k. Remote area school principals and teachers

Recommendation (15): Amend section 94 of the Social Security Act to abolish the DSP program of support requirement.

Recommendation (16): Functional impairment is to be measured by how limited someone is by their impairment in performing daily activities that are normal or important for them, including community and culturally relevant activities.

5. Attachments

Attachment A: DCLS DSP Submission - Remote Communities Field Survey 2021

Attachment B: NDIS Act Objects and Purpose

Attachment A: Remote Communities Field Survey 2021

Title

How the DSP assessment processes, including the impairment tables, affect the accessibility of the DSP for people living in remote communities.

Objective

Can the impairment tables in their current form be applied to DSP applications from remote communities to provide a fair and equitable assessment process? If not, how can the current impairment tables be improved upon to ensure they are fair to DSP applicants living in remote communities?

Background

Ramingining is a remote community in the East Arnhem region of the NT. In 2016, the population of Ramingining was estimated to be 872, with 811 identified as Aboriginal or Torres Strait Islander. The community is accessible by four-wheel drive for a period during the dry season every year, however, is most commonly accessed by plane, with some goods arriving by barge. If a resident of Ramingining speaks English, it is at least their second language, if not 3rd, 4th or 5th. There is no dedicated disability service provider in Ramingining, however stakeholders such as the medical clinic, aged care centre, regional council, and school tend to take a no-wrong-door approach to supporting people with disabilities.

The following data is from the Australian Bureau of Statistics website - Disability, Ageing and Carers, Australia: Summary of Findings, 2018.

- Aboriginal and Torres Strait Islander people experience disability at a higher rate (24% of the surveyed population) than all of Australia (17.7%).
- 8.8% of Aboriginal and Torres Strait Islander people had a profound or severe limitation, compared with 5.7% of all Australians.
- The most commonly reported type of disability amongst Aboriginal and Torres Strait Islander people was physical (13.3%), where for all of Australia 23.2% named a mental or behavioural disorder as their main condition.
- Almost half of all Australians with a disability (47.8%) were employed, compared with 80.3% of people without disability but only one-third of Aboriginal and Torres Strait Islander people with a disability (33.1%) were employed, compared with 64.5% of Aboriginal and Torres Strait Islander people of the same age with no disability.
- 68.9% of Aboriginal and Torres Strait Islander people with a disability and 59.8% of all Australians with a disability needed assistance with at least one activity of daily life.
- 59.7% of all Australians with a disability had their needs fully met, but there is no reported data to reflect the percentage of Aboriginal and Torres Strait Islander people with a disability who had their needs fully met.

Scope, Method, and Limitations

Discussions with people with a disability, carers, service providers, medical staff, council staff, and teachers residing and/or working in Ramingining, NT. Information predominantly

gathered through one-on-one conversations over a four-day period from 15th to 18th June 2021. Based on anecdotal evidence provided by stakeholders who travel throughout the NT's remote areas, findings are likely to be relevant to people in other remote communities, however, every remote community has unique difficulties in accessing services. While the concerns below are not a comprehensive summary of remote NT's experience with accessing the DSP, they are presented with the intention to inform and provoke meaningful change so that people with a disability who live in remote areas can have their eligibility for the DSP fairly assessed.

As stated in the DSP Impairment Tables Review Issues Paper, the review "will focus on the functioning of the current Impairment Tables, in particular, consistency and relevant advances in medical technology and assessments". While noted, it was difficult to maintain this focus during discussions as the conversation nearly always came back to barriers that applicants come across long before reaching the impairment tables stage of the DSP application process.

In addition, for DSP-eligible people in remote communities, the last review of the impairment tables in 2011 hasn't been able to do what it set out to, which, as stated in the DSP Impairment Tables Review Issues Paper, was "ensuring DSP assessment processes accurately and effectively identify people with a capacity to work, and assist people with a profound disability or terminal illness to receive financial support". Also stated is that the impairment tables that resulted from the 2011 review "appear to be functioning as expected". For remote Australians with a disability, it is likely that further issues with the impairment tables would become apparent if initial barriers to identifying eligibility and accessing required services for diagnoses and comprehensive assessments were lifted.

General DSP Application Concerns

- Practical barriers:
 - Residents of remote communities incur significant out-of-pocket costs for travel into and accommodation in town when appointments can not be held in the community or via telehealth.
 - Treating doctors are often locums who visit a community briefly or stay for a short period and are difficult or impossible for the patient to contact again.
 - Visiting specialists are requested by the health clinic once there is a list of people for the specialist to see.
 - Inconsistency of providers entering remote communities results in low trust levels of visiting professionals.
 - There is no Centrelink Officer to service the community. In Ramingining there used to be one person who was from Ramingining and had the skills and knowledge to help with applications but she was the only staff member in the office and is no longer in the position, nor has it been filled.
 - As a general rule, people do not know what the DSP is. Even current recipients may not be aware of the DSP as access is often gained as a result of the advocacy efforts from nurses, care providers, and teachers who often step outside their job role to ensure vulnerable people in the community are supported.

- Functional assessments typically used for diagnoses and assessing the level of impairment are often ill suited to Aboriginal and Torres Strait Islander applicants and do not provide an accurate representation of their disability.
- Cultural barriers:
 - The indigenous population in remote communities require access to culturally appropriate services for the purpose of receiving a diagnosis or supporting evidence for their application. e.g. male applicants seek male professionals.
 - The 'disability' label has negative connotations for indigenous populations and the name of the DSP may dissuade people with a disability from applying in the first place.
 - Material items do not belong to the individual – an aid may exist for the person but they may only have access to it some of the time.
 - Lack of trust in white, especially government, professionals means that applicants may not be willing to tell their whole story in case it results in harm coming to them or their family.
 - Structured work days, appointments set to a time, a single person designated to a responsibility are not expectations that align with indigenous culture.
- Language barriers:
 - Indigenous applicants are likely to nod and say 'yes' to any question they don't understand.
 - Identifying the correct forms, fully understanding them, and filling them out effectively is not possible for someone with English as a second language and limited English literacy levels.
 - Services from Services Australia, and health professionals are only provided by English speakers. The application process and requirements of the applicant are difficult to relay to them. In return, the details of a disability and how it impacts someone's function are not able to be communicated effectively.

Parts of the Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011 that are of concern for applicants from remote communities:

- Part 2, Section 6, Subsection 7. In particular:
 - (a) treatment is not available at reasonably accessible locations
 - (d) treatment may not be able to be regularly undertaken or performed
 - (f) remote applicants have to leave their accommodation, family, community, and culture to receive treatment in town. This poses an increased risk of homelessness to the applicant and their dependents, increased risk of harm to dependents who must stay in the remote community without their caregiver, increased risk of harm to applicants who are likely to abuse substances available in town that are not usually available in their remote community.
- Part 2, Section 7, Subsection 2:

- An indigenous person asked to demonstrate abilities may feel that the request is inappropriate depending on who it comes from.
- Part 2, Section 9:
 - For indigenous applicants from remote communities, their aids are not available to them except for sometimes. Material items are not the possession of the individual and this does not exclude assistive technologies.
- Part 3:
 - Corroborating evidence is expensive and time-consuming to obtain for people in remote communities.
 - Work-related activities as interpreted from an Aboriginal or Torres Strait Islander perspective may not constitute European tasks associated with paid work as laid out in the impairment tables so much as a less measurable positive contribution to their community through traditional activities.
 - Only once (in the introduction to Table 9) is consideration given to the unique needs of Aboriginal or Torres Strait Islander applicants. For example, if someone's main carer is a family member who cannot talk to someone that the applicant usually would be able to for kinship reasons, this limits the applicant's ability to interact with others.
 - Language in tables is irrelevant to many people in remote communities. E.g. In Table 12, reference to the print in newspaper/magazine as a way of testing visual function. The physical function required for normal daily activities for applicants from remote communities may be above that used as a baseline for current impairment tables relating to physical functions such as vision, hearing, strength, dexterity etc.

Desired Outcomes for the Review of the Impairment Tables

- Flexibility for applicants from remote communities to have corroborating evidence provided by alternative means, such as nurses who live in the community and are able to see an applicant on a number of occasions over a sufficient period of time.
- Room for interpretation within the tables to account for functional limitations experienced by applicants from areas where advancements in technology are not yet implemented and for whom functional assessments are poorly suited.
- Functional impairment to be measured by how limited someone is by their impairment in performing daily activities that are normal or important for them, including culturally relevant activities such as hunting and not solely the European understanding of 'work-related activities'.
- All tables to include language that encompasses groups such as Aboriginal and Torres Strait Islander people and the activities commonly carried out in remote daily life.
- Ongoing, comprehensive consultation with people living in remote communities to ensure they have equal ease of access to appropriate social protection.

Attachment B: NDIS Act Objects and Purpose

3 Objects of Act

- (1) The objects of this Act are to:
 - (a) in conjunction with other laws, give effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12); and
 - (b) provide for the National Disability Insurance Scheme in Australia; and
 - (c) support the independence and social and economic participation of people with disability; and
 - (d) provide reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch; and
 - (e) enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and
 - (f) facilitate the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and
 - (g) promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community; and
 - (ga) protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services provided under the National Disability Insurance Scheme; and
 - (h) raise community awareness of the issues that affect the social and economic participation of people with disability, and facilitate greater community inclusion of people with disability; and
 - (i) in conjunction with other laws, give effect to certain obligations that Australia has as a party to:
 - (i) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23); and
 - (ii) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5); and
 - (iii) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4); and

- (iv) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9); and
- (v) the International Convention on the Elimination of All Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40).

(2) These objects are to be achieved by:

- (a) providing the foundation for governments to work together to develop and implement the National Disability Insurance Scheme launch; and
- (b) adopting an insurance-based approach, informed by actuarial analysis, to the provision and funding of supports for people with disability; and
- (c) establishing a national regulatory framework for persons and entities who provide supports and services to people with disability, including certain supports and services provided outside the National Disability Insurance Scheme.

(3) In giving effect to the objects of the Act, regard is to be had to:

- (a) the progressive implementation of the National Disability Insurance Scheme; and
- (b) the need to ensure the financial sustainability of the National Disability Insurance Scheme; and
- (c) the broad context of disability reform provided for in:
 - (i) the National Disability Strategy 2010-2020 as endorsed by COAG on 13 February 2011; and
 - (ii) the *Carer Recognition Act 2010*; and
- (d) the provision of services by other agencies, Departments or organisations and the need for interaction between the provision of mainstream services and the provision of supports under the National Disability Insurance Scheme.

4 General principles guiding actions under this Act

- (1) People with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional and intellectual development.
- (2) People with disability should be supported to participate in and contribute to social and economic life to the extent of their ability.

- (3) People with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime.
- (4) People with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports.
- (5) People with disability should be supported to receive reasonable and necessary supports, including early intervention supports.
- (6) People with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from abuse, neglect and exploitation.
- (7) People with disability have the same right as other members of Australian society to pursue any grievance.
- (8) People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity.
- (9) People with disability should be supported in all their dealings and communications with the Agency and the Commission so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs.
- (10) People with disability should have their privacy and dignity respected.
- (11) Reasonable and necessary supports for people with disability should:
 - (a) support people with disability to pursue their goals and maximise their independence; and
 - (b) support people with disability to live independently and to be included in the community as fully participating citizens; and
 - (c) develop and support the capacity of people with disability to undertake activities that enable them to participate in the community and in employment.
- (12) The role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected.
- (13) The role of advocacy in representing the interests of people with disability is to be acknowledged and respected, recognising that advocacy supports people with disability by:
 - (a) promoting their independence and social and economic participation; and

- (b) promoting choice and control in the pursuit of their goals and the planning and delivery of their supports; and
 - (c) maximising independent lifestyles of people with disability and their full inclusion in the community.
- (14) People with disability should be supported to receive supports outside the National Disability Insurance Scheme, and be assisted to coordinate these supports with the supports provided under the National Disability Insurance Scheme.
- (15) Innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of supports to people with disability are to be promoted.
- (16) Positive personal and social development of people with disability, including children and young people, is to be promoted.
- (17) It is the intention of the Parliament that the Ministerial Council, the Minister, the Board, the CEO, the Commissioner and any other person or body is to perform functions and exercise powers under this Act in accordance with these principles, having regard to:
- (a) the progressive implementation of the National Disability Insurance Scheme; and
 - (b) the need to ensure the financial sustainability of the National Disability Insurance Scheme.

5 General principles guiding actions of people who may do acts or things on behalf of others

It is the intention of the Parliament that, if this Act requires or permits an act or thing to be done by or in relation to a person with disability by another person, the act or thing is to be done, so far as practicable, in accordance with both the general principles set out in section 4 and the following principles:

- (a) people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves;
- (b) people with disability should be encouraged to engage in the life of the community;
- (c) the judgements and decisions that people with disability would have made for themselves should be taken into account;
- (d) the cultural and linguistic circumstances, and the gender, of people with disability should be taken into account;

- (e) the supportive relationships, friendships and connections with others of people with disability should be recognised;
- (f) if the person with disability is a child—the best interests of the child are paramount, and full consideration should be given to the need to:
 - (i) protect the child from harm; and
 - (ii) promote the child’s development; and
 - (iii) strengthen, preserve and promote positive relationships between the child and the child’s parents, family members and other people who are significant in the life of the child.