



2020 Review of the Disability Standards for Education 2005

Discussion paper

Introduction

The purpose of this discussion paper is to support the Australian Government's consultations for the 2020 Review (Review) of the *Disability Standards for Education 2005* (the Standards). In this paper, we explain what the Standards are and what they do, the purpose of the Review, what previous reviews told us, and how you can get involved. The paper also includes discussion questions to help us learn about your views and experiences.

Access and participation in education supports people with disability to participate fully in society and maximise their opportunities. **Positive education experiences have a profound impact on an individual's future** and can lead to further study, employment and a rewarding life.

In the 2018 ABS Survey of Disability, Ageing and Carers (SDAC), 4 per cent of 0-4 year olds, 10 per cent of 5-19 year olds and 13 per cent of 15-64 year olds were reported as having a disability. Overall in 2018, people with disability made up 17.7 per cent of the Australian population which equates to more than 4.3 million people.

Further, in 2019, **nearly one in five (19.9 per cent) school students** across Australia received an adjustment due to disability according to the Nationally Consistent Collection of Data on School Students with Disability (NCCD).

Role of the *Disability Standards for Education 2005*

The Standards came into effect on 18 August 2005. They seek to ensure that students with disability can **access and participate in education on the same basis as students without disability**.

The Standards are subordinate legislation to the *Disability Discrimination Act 1992* (the DDA); this means they sit under the Act. Under the DDA, it is **unlawful to discriminate against a person because of a disability**. The DDA protects people with disability against discrimination in many areas of public life, including education.

Under Part 2 Division 2 of the DDA, **the Attorney-General may make Disability Standards** to specify rights and responsibilities about equal access and opportunity for people with a disability in **more detail than the DDA** itself provides.

The following Standards have been made under the DDA:

- *Disability Standards for Accessible Public Transport 2002*
- *Disability Standards for Education 2005*
- *Disability (Access to Premises – Buildings) Standards 2010*.

If a person acts in accordance with the Standards, they comply with the DDA. An **education provider must comply with the Standards** or it will be acting unlawfully.

Purpose of the *Disability Standards for Education 2005*

The purpose of the Standards is to clarify the education provisions of the DDA. They are intended to **make it easier to understand the rights and obligations** under the DDA.

The Standards cover:

- **enrolment**
- **participation**
- **curriculum development, accreditation and delivery**
- **student support services**
- **elimination of harassment and victimisation.**

Each part of the Standards sets out:

- the **rights of students with disability** (including prospective students) in relation to education and training to help people understand what is fair and reasonable under the Standards
- the **legal obligations or responsibilities of education providers**
- the **measures of compliance** that are examples of what can be done to meet the requirements of each part of the Standards.

Education providers covered by the Standards include preschools (including kindergartens), government and private schools, Technical and Further Education (TAFE) providers and other vocational education and training (VET) providers, adult education providers and higher education institutions.

Obligations for reasonable adjustment

The Standards provide detail about an education provider's **obligation to make reasonable adjustments** to assist a student with disability to participate in education on the same basis as students without disability. There is no obligation to make an unreasonable adjustment.

Education providers must **consult with students and their family members or carers about reasonable adjustments**. They should also take into account the interests of affected people such as staff and other students, and ensure the integrity of the course or education program and its assessment is maintained.

The Standards also clarify circumstances where an education provider is exempted from making a reasonable adjustment where it would impose an **unjustifiable hardship** on them. The exemption does not apply to addressing harassment and victimisation.

Making a complaint

If a person believes an education provider is not complying with the Standards, they have **the right to make a complaint to the Australian Human Rights Commission (AHRC)** about disability discrimination. The AHRC will try to resolve the situation through a conciliation process.

If the AHRC conciliation is unsuccessful, **an aggrieved person may commence legal proceedings** in the Federal Court of Australia or the Federal Circuit Court.

The 2010 and 2015 Reviews

The 2010 Review found the Standards were a good framework for promoting access and participation in education but there were a number of issues identified that were seen to weaken the effectiveness of the Standards. The 2015 Review found that whilst there has been significant improvement in the accessibility and use of the Standards since 2010, it was evident that further effort and support tools were still required.

Broad themes identified in the 2010 and 2015 Reviews of the Standards include:

- **awareness raising** – more could be done to ensure that the Standards had a user focus, were promoted widely, were accessible to all and were well understood
- **clarity, understanding and capability** – varying interpretation and application of terms such as ‘reasonable adjustment’ and ‘unjustifiable hardship’, and the need for greater support and guidance on best practice for educators
- **complaints** – the complaints mechanisms for the Standards, including negotiation and arbitration processes can be inaccessible, time consuming and hard for students and their families and carers
- **accountability and compliance** – reliance on complaints mechanisms to drive compliance with the Standards is ineffective and could be complemented with more proactive mechanisms.

Where similar themes are identified in the 2020 Review, we will look at the extent of progress made to address these areas since 2015, including significant national and state reforms to support students with disability.

We acknowledge some recommendations from the 2015 Review may not have been explicitly progressed. We will consider which remain relevant as part of the current Review, and which have been superseded.

2020 Review of the Standards

The **Federal Minister for Education is required to review the Standards every five years** in consultation with the Attorney-General.

The Review tests if the Standards are effective in achieving their objects, which are:

(a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the area of education and training; and

(b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law in the area of education and training as the rest of the community; and

(c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

Essentially, the Review asks whether the Standards are doing their job and, if not, how they could be improved.

Scope and focus of the 2020 Review

To understand whether the Standards are doing their job, we need to hear the everyday experiences of students, their families and carers, their education providers, their teachers and educators and their advocates.

We also need to talk to state and territory governments, education authorities, national agencies and regulators, and representatives of the non-government sector.

Using the knowledge and understanding we gain, we can then determine how well the Standards are working as the mechanism for interpreting the DDA for education and training provision.

Terms of reference for the 2020 Review

In considering the effectiveness of the Standards, the Review will consider the following:

1. Are the **rights, obligations and measures of compliance** set out in the Standards (and its Guidance Notes) **clear and appropriate**?
2. Do students, families and carers, educators, education providers and policy makers **know about, understand, apply and comply with** the rights, obligations and measures of compliance in the Standards?
3. In the 15 years since the Standards were developed, **have the Standards contributed towards students with disability being able to access education and training opportunities** on the same basis as students without disabilities?

Consultation for the Review will include a **focus on** the impact of the Standards on the **experiences of Aboriginal and Torres Strait Islander students with disability**.

In formulating recommendations, the **Review will focus on opportunities for national collaborative action between jurisdictions and agencies**, including action to strengthen the knowledge and capabilities of teachers and educators, and whether **any amendments to the Standards** should be made.

Scope of the Review

We recognise that there are broader discussions about the best way to provide education for students with disability, which have been aired in many reviews and inquiries, and continue to be explored through the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission). We acknowledge that there are strong views about issues like inclusive education and the existence of special schools or segregated settings, as well as funding for students with disability. It is important to note that some of these issues are outside the scope of this Review.

The **key question for this Review is whether, and to what extent, the Standards are making a positive difference** towards students with disability being able to access education and training opportunities on the same basis as students without disability. To answer that question we need your help.

How to get involved in the Review

We **welcome comments on any aspect of the Standards from anyone** who would like to make a contribution. This includes young people still in the education system right through to those who advocate for others – **we want to hear from as many people as possible.**

All contributions will build our understanding of your experiences and **help us to work out if changes need to be made to support the effectiveness of the Standards.**

We are particularly interested in hearing the **voices of young people** and knowing more about the **experiences of Aboriginal and Torres Strait Islander students** with disability and their families and carers.

Our public consultations will run from 16 July to 25 September 2020. We will offer you a range of ways to get involved and have your say. As dates for consultations are confirmed they will be advised on the [Consultation Hub](#) website.

At the website you can make your own written, video and audio submissions or complete a questionnaire. There will also be a variety of online consultation opportunities, which you can express your interest to be involved in.

The COVID-19 pandemic has meant that most consultation activities will be online, however we will undertake some face to face consultation with specific groups when and if that becomes possible.

To find out more, visit the [Consultation Hub](#) website or [sign up](#) to receive updates about the Review as more information becomes available.

Have your say

We **want to hear your views**. The following questions are things for you to think about to **help you provide your input to the Review**.

You can answer the questions by making a submission, answering the questionnaire or contributing in other ways to the Review. The questions are simply a guide to help us understand your views and experiences relating to the different aspects of the Standards.

When providing a response, please let us know whether you are a student, parent or carer, educator (this includes teachers, trainers and assessors), advocate, an education provider, or other. Where appropriate, please also let us know which education sector your comments most relate to e.g. preschool, schooling, vocational education and training, university.

Questions for students and parents or carers

Tell us about your experiences accessing and participating in education.

- **Enrolment and access:** What has been your experience when accessing education? What was the process like to enrol in school or other education and were you happy with the outcome?
- **Participation:** Has your education provider/s made reasonable adjustments to ensure you or your child can participate in education? This includes participating in courses and programs, the curriculum, and using facilities. How did your education provider consult with you? Were you happy with the outcome?
- **Supporting students:** Have you or your child been appropriately supported during your / their education? This includes being able to access supports, including specialist resources.
- **Harassment or victimisation:** If you or your child experienced harassment or victimisation in an education setting, what happened? What steps did your / their education provider take to address this?
- **Compliance:** If you considered that an education provider was not meeting their obligations, how was it dealt with? Did you know how to make a complaint? What happened?
- **Transition:** Tell us about your or your child's experience in accessing education opportunities and being supported as they transitioned from one education sector to another e.g. from school to further education.
- **Aboriginal and Torres Strait Islander students with disability:** Tell us about your or your child's experiences accessing and participating in education.
- **Specific experiences:** Access and participation in education for students with disability may be affected by other circumstances such as age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, and culturally and linguistically diverse background. Tell us about how your circumstances affected your access and participation in education.
- **COVID-19:** Has COVID-19 impacted your or your child's experience in participating in education? Have your experiences ever been impacted by other major events, such as natural disasters?

We want to know what you think about the Standards

- Are you familiar with the Standards and what they are designed to do? If so, where did you find out about the Standards?
- Do you feel like you understand your or your child's rights when it comes to being able to access and participate in education?
- Can you tell us how the Standards have helped you to understand your or your child's rights?
- Do you think the Standards help students with disability to access and participate in education and training on the same basis as students without disability? Why, or why not?
- Do you think the Standards help Aboriginal and Torres Strait Islander students with disability to access and participate in education and training on the same basis as students without disability? Tell us why you think this.

This Review will help us to consider if we need to improve the Standards and how they are used and implemented. **We want to know how you think the Standards could be improved.**

- Do barriers still exist for students with disability wanting to access and participate in education and training? If so, how do you think the Standards could be improved to help address these barriers?
- Do the Standards need changing? If so, please let us know how you would change them and why.
- What should be done to improve awareness of the Standards?
- Would more or different support material help you to understand the Standards?
- Are you aware of the Guidance Notes for the Standards and do you find them useful? If not, why not?
- How could the Standards be improved to better support Aboriginal and Torres Strait Islander students with disability?

Questions for educators and providers of education and training

Tell us about your experiences with students with disability.

- Enrolment and access: What has been your experience with students with disability accessing education?
- Participation: Do you understand your obligations for making reasonable adjustments to ensure all students with disability can participate in education? This includes participating in courses and programs, the curriculum, and using facilities. Would you know how to consult with a student or parent / carer? If you have had experiences in making reasonable adjustments, tell us about this.
- Supporting students: How have you appropriately supported students with disability during their education? This includes the student being able to access supports, including specialist resources.
- Harassment or victimisation: Have you had a situation where one of your students with disability experienced harassment or victimisation? What steps did you take to address this?

- **Compliance:** Have any of your students or parents / carers said that you were not meeting your obligations? How did you address this?
- **Transition:** Tell us about your experience assisting a student with disability to transition from one education sector to another; for example, from school to further education.
- **Aboriginal and Torres Strait Islander students with disability:** Tell us about your experiences supporting Aboriginal and Torres Strait Islander students with disability. How did you help them to access and participate in education? How did you consult with them and their families and carers?
- **Specific experiences:** Access and participation in education for students with disability may be affected by other circumstances such as age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, and culturally and linguistically diverse background. If you have had students with disability who were affected by other circumstances, tell us about how you helped them to access and participate in education.
- **COVID-19:** Has COVID-19 impacted the experience of your students with disability in participating in education? Have their experiences ever been impacted by other major events, such as natural disasters?

We want to know what you think about the Standards.

- Are you familiar with the Standards and what they are designed to do? If so, where did you find out about the Standards?
- Have you received training of any kind about the Standards? What did this involve?
- Do you understand your obligations when it comes to students with disability being able to access and participate in education? How have the Standards helped you to understand your obligations?
- Do you feel confident negotiating and implementing a reasonable adjustment? Do you know how to determine if this would result in unjustifiable hardship?
- Do you think the Standards help students with disability to access and participate in education and training on the same basis as students without disability? Why, or why not?
- Do you think the Standards help Aboriginal and Torres Strait Islander students with disability to access and participate in education and training on the same basis as students without disability? Tell us why you think this.

This Review will help us to consider if we need to improve the Standards and how they are used and implemented. **We want to know how you think the Standards could be improved.**

- How do you think the Standards could be improved to help overcome barriers for students with disability in accessing or participating in education?
- Do the Standards need changing? If so, please let us know how you would change them.
- What should be done to improve awareness of the Standards?
- Do you need more or different support to help you to understand and apply the Standards? What kind of support would be useful?

- Do you find the Guidance Notes for the Standards useful? If not, why not?
- What would you change to make the Standards work better for Aboriginal and Torres Strait Islander students with disability and their families and carers?

Early childhood education and care and the Standards

In an early childhood education and care context, the Standards currently apply to preschools and kindergartens, but specifically exclude child care providers.

Both the 2010 and 2015 Reviews found that there was some confusion in the early childhood education and care sector about expectations and responsibilities, and which early childhood and care providers are covered by the Standards. The Reviews recommended considering extending the application of the Standards to child care providers.

Officials from the Australian Government and state and territory governments have undertaken work to consider the impact and effects of a change to the Standards to extend them to child care. This includes the extent to which it would support greater clarity and understanding of rights and obligations under the DDA in respect to early childhood education and care settings.

Considerations around potential extension of the Standards to other early childhood education and care settings will be tested through this Review and its consultations. **A separate discussion paper will be published** in August seeking your experiences related to the Standards and the DDA in the early childhood education and care sector and your views on the way forward.

Accessibility

To help ensure people with disability are able to engage with the Review and share their insights and experiences, consultations will be accessible, including Easy Read documents, Auslan-English interpreters and captioning. Easy Read and other materials will be made available in advance to help people consider the information being provided and the questions being asked. The Review will consider people's preferences about how they want to share their experience. People can choose how they want to engage, including answering questions in their own time online or joining a discussion. We will do our best to ensure opportunities, including the length and time of consultations, accommodate people's specific needs and requests.

Public consultations will inform our advice to governments

Your input to the Review will provide insights into whether the Standards are meeting their stated objectives, and how they are working for students.

If we find that the Standards are not currently working well, or where particular areas of improvement could be made, we will make recommendations on what needs to change, how to change it, and in what timeframe changes should be implemented.

We will do this in partnership with state and territory governments, who we will work with closely and collaboratively to develop the final report and associated report recommendations. Our intention is to focus on opportunities for national collaborative action between the Australian Government, states and territories, and government and non-government education providers.

The Review report will be provided to the Federal Minister for Education in December 2020. The final report will be presented to all governments for their consideration in early 2021.

Making a submission

People and organisations are invited to make submissions on the [Consultation Hub](#) website.

Written, video and audio submissions in response to this discussion paper will be accepted. Written submissions are limited to 3000 words.

Only submissions that cannot be provided electronically may be provided in hard copy form, to the following address:

Disability Standards for Education Review Team
Disability Strategy Taskforce
GPO Box 9880
Canberra City ACT 2601

Contacts

For queries about the Review, including this paper, please contact the Department of Education, Skills and Employment at DisabilityStrategy@dese.gov.au.

For queries about how to get involved in the Review consultations, including support to register for a webinar or to complete the questionnaire, please contact The Social Deck at engage@thesocialdeck.com or on 0491 617 118.