



Australian Government

Department of Education, Employment
and Workplace Relations

REPORT ON THE REVIEW OF DISABILITY STANDARDS FOR EDUCATION 2005

June 2012

ISBN: 978-0-642-78531-2



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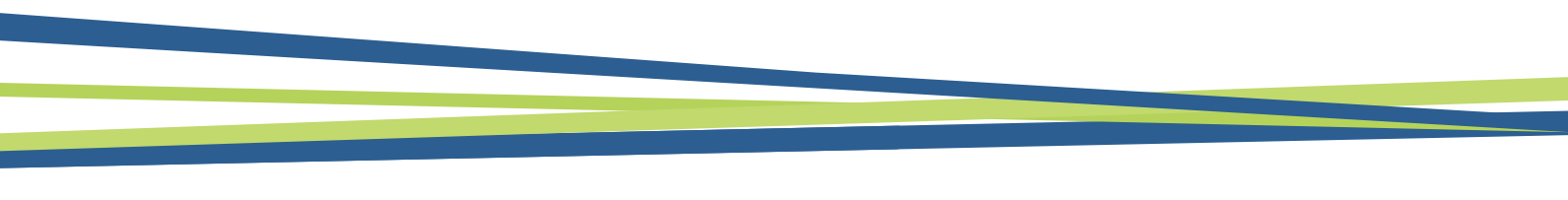


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**Department of Education, Employment
and Workplace Relations**

**REPORT ON THE
REVIEW OF DISABILITY STANDARDS
FOR EDUCATION 2005**

June 2012



Foreword

The Disability Standards for Education (the Standards) came into effect in August 2005. The Standards were designed to clarify the rights of students with disability to access and participate in education and training, and give education providers more guidance on how they can meet their obligations under the *Disability Discrimination Act 1992* (DDA).

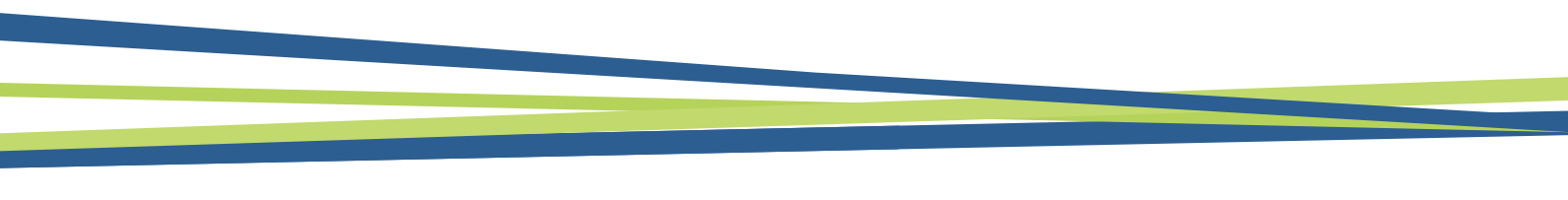
In December 2010, the Australian Government began the first five-year review of the Standards. The Minister for School Education, Early Childhood and Youth, the Minister for Tertiary Education, Skills, Science and Research and the Attorney-General, released a discussion paper in February 2011 inviting submissions to the review from all interested people. They received 200 submissions.

A Disability Standards for Education Review Team was established in the Department of Education, Employment and Workplace Relations. The review team held meetings with key stakeholders in all Australian capital cities during February and March 2011. The review team would like to thank the organisations and individuals who took the time to attend stakeholders meetings and provide submissions.

This report, drafted by the review team, presents the outcomes of the consultation and submission process and outlines the key findings against the terms of reference for the review.

Based on the findings, the review team proposes a set of recommendations for the early childhood, schools and tertiary education sectors. The review team is pleased to submit this report to the Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth, the Attorney-General and the Minister for Early Childhood and Child Care for consideration.

Disability Standards for Education Review Team
Department of Education, Employment and Workplace Relations
June 2012



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Glossary of terms and acronyms

AGD	Commonwealth Attorney-General's Department.
ACARA	Australian Curriculum, Assessment and Reporting Authority
ADCET	Australian Disability Clearinghouse for Education and Training
DEEWR	Commonwealth Department of Education, Employment and Workplace Relations.
Direct discrimination	Direct discrimination means treating a person with disability less favourably in similar circumstances than a person without disability.
DDA	<i>Disability Discrimination Act 1992</i> (Commonwealth).
Disability	The definition of disability under the DDA includes physical, intellectual, psychiatric, sensory, neurological, and learning disabilities, as well as physical disfigurements, and the presence of disease-causing organisms in the body. The definition includes past, present and future disabilities as well as imputed disabilities and covers behaviour that is a symptom or manifestation of the disability.
Education provider	An education provider is an educational authority or an educational institution or an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers.
Harassment	Harassment is an action that is reasonably likely to humiliate, offend, intimidate or distress a person. This could include insensitive comments, photographs, and inappropriate body language.
Indirect discrimination	Indirect discrimination occurs when a person with disability is expected to comply with a requirement or condition, but because of their disability does not or is not able to comply. The requirement or condition must also be likely to have the effect of disadvantaging persons with disability in a way which is not reasonable (section 6 DDA).
Measures for compliance	Measures an education provider may implement to meet the requirements of the Standards.
NAPLAN	National Assessment Program – Literacy and Numeracy
RTO	Registered Training Organisation
TAFE	Technical and Further Education
VET	Vocational Education and Training
Universal design	Universal design is defined as being the design of products and environments to be used by all people to the greatest extent possible without the need for adaptation or specialised design.

Executive summary

This report presents the findings and recommendations of the first five-year review of the Disability Standards for Education 2005. The review team received 200 submissions and met with some 150 stakeholders including students with disability, community and advocacy organisations, education providers, state and territory authorities, antidiscrimination boards and the Australian Human Rights Commission. The outcomes from these meetings and submission process are discussed in the themes and issues section, which in turn informs the key findings and recommendations, presented in the final section of the report.

Overall the review found that the Disability Standards for Education 2005 provide a good framework for promoting the requirement for students with disability to be able to access and participate in education on the same basis as all other students. However, the effectiveness of the Standards has been undermined by problems with:

- how the Standards have been applied in practice
- the clarity of some key terms in the Standards
- interpretation of the Standards and adherence to requirements.

A summary of the key issues raised by users and providers of education during the consultation process is as follows:

Awareness

- General awareness across education sectors, users and providers and the general community about the Standards is considered low.
- There is a lack of targeted information addressing issues relating to each level of education as well as information for the general community about disability, discrimination and the rights of students with disability to access education.
- Information about the Standards is not easy to access and is dispersed across a number of relevant websites.

Clarity and definitions

- Key terms such as 'consultation' and 'reasonable adjustment' are unclear and this impacts on the effectiveness of the Standards.
- There is confusion about the coverage of Registered Training Organisations under the Standards.
- Child care providers increasingly offer preschool programs, yet they are not covered by the Standards.
- There are no user-friendly, sector-specific guidelines which provide examples of terms such as 'reasonable adjustment', 'unjustifiable hardship' and 'consultation' and this affects the application of the Standards.

Access and participation

- There are examples of students with disability being unable to access and participate in education on the same basis as other students and where the intent of the Standards is not being met in practice.
- There is limited accessible practical advice and training on implementing the Standards for educators about identifying individual needs, developing individual education plans and providing appropriate support to achieve learning outcomes.
- There is limited access to qualified professionals and limited ongoing professional development in inclusive education.

Discrimination and inclusion

- The Standards do not have enough focus on measures for promoting greater inclusion and removing subtle and indirect discrimination.
- The obligations and requirements under the Standards are not backed up by strong accountability frameworks.

Complaints, accountability and compliance

- The complaints process is complex and parents, associates and students are reluctant to make a complaint. There are no clear pathways through the complaints process and there are limited options available if conciliation fails. The complaints process is not considered accessible to parents, associates and students with disability.
- There is no accurate way to identify systemic barriers to access and participation across the education sectors.
- There are few consequences for education providers that breach the Standards or fail to act on complaints.
- The lack of accountability for compliance with the Standards is a significant impediment to their overall effectiveness.

Contemporary education context

- There is increasing emphasis on transitions of students with disability between education sectors. Students with disability should have opportunities to progress through education and achieve individual learning outcomes.
- Information and advice is needed for users and providers on incorporating emerging technologies such as universal design¹, into existing education practice. There is a lack of consistency in the implementation of new technologies across the education sector and between institutions.

Resources

- Stakeholders consider that the resourcing available to meet the needs of students with disability is inadequate and this compromises the effectiveness of the Standards. It was argued that additional resources would assist students with disability to participate in education, provide professional development for educators and improve access to support services.
- All education sectors reported an increase in participation rates of students with disability. This is a positive development, but as a result, stakeholders are concerned that available resources are being stretched further to meet the needs of an increasing number of students.

¹ Universal design is defined as being the design of products and environments to be used by all people to the greatest extent possible without the need for adaptation or specialised design. http://www.ncsu.edu/www/ncsu/design/sod5/cud/about_ud/about_ud.htm

Key findings and recommendations

As summarised in the themes and issues section, a range of issues were raised during the review process. Stakeholders urged the Australian Government to consider the issues relating to the form, operation and application of the Standards raised during the consultation process.

The majority of issues raised by stakeholders could be addressed through awareness-raising, amendments and additions to the Standards, and by providing further guidance on the Standards.

Consultation undertaken as part of the review also highlighted a set of issues that affect the way the Standards have been implemented or operate in practice, and have a direct impact on the effectiveness of the Standards. The review team has recommended that these issues be referred to relevant policy and program areas in government for follow up.

Based on the issues identified by stakeholders, the review recommends that the Australian Government consider the following:

Recommendations for raising awareness

1. The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with state and territory education ministers for early childhood and child care, schools, tertiary education and skills, develop a range of targeted information resources for education users and providers to promote awareness of the Standards including:
 - a. User-specific information including information on developing advocacy and negotiation skills.
 - b. Information specific to early childhood, schools, tertiary and registered training organisations.
 - c. Handouts outlining user and provider rights and responsibilities, to be included in all enrolment kits for each level of education and given to parents, associates and students on enrolment.
 - d. A disability and education website to make accessible online information on implementing the Standards.
2. The Australian Human Rights Commission, in consultation with the Attorney-General and the Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, undertake an awareness-raising campaign about the *Disability Discrimination Act 1992* and subordinate legislation including the Disability Standards for Education 2005.

Recommendations to improve clarity

3. The Attorney-General, in consultation with the Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, revise the Standards to include child care providers and to clarify that Registered Training Organisations are covered by the Standards.
4. The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with the Attorney-General, develop user-friendly, sector-specific guidance materials in appropriate formats, which include practical examples to support consistent interpretation and application of the terms 'reasonable adjustment', 'unjustifiable hardship', 'consultation' and 'on the same basis'.

Recommendations to address access, participation, discrimination and inclusion

5. The Attorney-General, in consultation with the Federal Minister for School Education, Early Childhood and Youth revise the Standards to include a requirement to develop individual education plans for students in schools. Individual education plans should include advice on the barriers that students with disability face in learning and how students with disability can be supported to overcome these barriers.
6. The Attorney-General, in consultation with the Federal Minister for Tertiary Education, Skills, Science and Research revise the Standards to include a requirement to implement an agreed support plan for students with disability in the tertiary sector. The plan should set out the student's rights and responsibilities, the provider's responsibilities, any adjustments that have been agreed to, and mechanisms for review and support.
7. The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care develop sector specific materials for education providers that are easily accessible in an online format and take the form of good practice guides on:
 - a. Developing individual education plans in schools or disability support plans in the tertiary sector.
 - b. Inclusive education practice, information about the learning impacts of specific disabilities and practical advice on adjusting teaching modes, assessment and curriculum design and adaptation.
 - c. Addressing indirect discrimination, bullying, harassment and victimisation experienced by students with disability.
 - d. Managing challenging behaviour, student safety and the use of restrictive practices with students with disability.
 - e. Strategies for meeting the needs of students with disability who have complex and multiple needs.

Recommendations relating to complaints, accountability and compliance

8. As part of the initiative to consolidate Commonwealth anti-discrimination laws, the Attorney-General's Department consider issues raised during the review concerning:
 - a. compliance and investigation of systemic breaches.
 - b. the complaints process and development of a range of alternative dispute resolution options including mediation and arbitration.
9. The Attorney-General, in consultation with the Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, revise the Standards to establish clear requirements for compliance with each part of the Standards.
10. The Attorney-General, in consultation with the Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care and state and territory education ministers, investigate options for compliance reporting against the Standards for education providers.

Recommendations relating to contemporary education practice

11. The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with state and territory education ministers, ensure that individual education plans (Recommendation 5) are used to assist in transitions between early childhood education, primary, secondary and tertiary sectors and ensure that students with disability are given options on the same basis as all other students.
12. The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care consider whether the Standards are reflected appropriately in national policy and regulatory frameworks for each education sector including:
 - a. National Quality Framework for Early Childhood Education & Care
 - b. National Assessment Program – Literacy and Numeracy (NAPLAN)
 - c. VET Quality Framework
 - d. National Professional Standards for Teachers and Principals
 - e. Higher Education Standards Framework.
13. The Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth, and the Minister for Early Childhood and Child Care ensure that practice guides on the Standards take greater account of technological advances and reflect the current and emerging technologies being used in all education sectors.

Recommendation to address related issues

14. The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with state and territory education ministers, identify ways to address the following issues raised during the review which impact on the effectiveness of the Standards:
 - a. Promotion of inclusive education practice and investigation of ways to recognise inclusion in contemporary policy initiatives, such as the *My School* website and funding guidelines.
 - b. The continuation, by all levels of government, of work towards achieving nationally consistent data on school students with disability as soon as possible.
 - c. Allocating resources to implement the Standards across all education sectors.
 - d. Appropriate training of support staff to meet core competencies.

1. Introduction

1.1 Background to the Standards

The Disability Standards for Education were developed in response to the identification of education as a priority area for the production of Standards under the *Disability Discrimination Act 1992* (DDA). After a decade of consultation with education, training and disability groups and the Human Rights and Equal Opportunity Commission (now called the Australian Human Rights Commission), the Standards came into effect in August 2005. The Standards were designed to clarify the rights of students with disability to access and participate in education and training, and give education providers more guidance on how they can meet their obligations under the DDA. The introduction of the Standards was also intended to raise awareness of the barriers frequently encountered by people with disability in the area of education. The Standards are part of the Australian Government's ongoing commitment to overcome discrimination experienced by people with disability.

Under the Standards, education providers have a positive obligation to make changes to reasonably accommodate the needs of a student with disability. When assessing whether an adjustment is reasonable, the education provider is required to consider the interests of all parties affected, including the student with disability, staff and other students, as well as their own interests. The education provider is also required to consult with the student or their associate to identify and make an adjustment appropriate to the student's disability.

The Standards do not require changes to be made if doing so would impose unjustifiable hardship on the education provider concerned. The exception of unjustifiable hardship does not apply to harassment or victimisation, which is dealt with in Part 8 of the Standards. All relevant circumstances are to be taken into account when assessing unjustifiable hardship. These circumstances include any benefit or detriment to any persons concerned, the disability of the person concerned, and the financial circumstances of the education provider.

The Standards are subordinate legislation made under the DDA and are designed to clarify obligations under the DDA. State laws and the DDA operate concurrently in the area of education and the introduction of the Standards does not affect the continued application of state law. The Standards set out the obligations of education providers in relation to non-discrimination against students with disability in five key areas: enrolment; participation; curriculum development, accreditation and delivery; student support services; and the elimination of harassment and victimisation. All education providers are bound by the Standards including preschools, schools in the public and private sectors, higher education providers, vocational education and training providers and providers of adult and community education.

1.2 About the review of the Standards

The Standards seek to ensure that students with disability are able to access and participate in education on the same basis as students without disability. A primary objective of the Standards is to clarify the rights and responsibilities in relation to students with disability in education and training.

In 2010 the Minister for School Education Early Childhood and Youth, in consultation with the Attorney-General, began the first five-year review of the effectiveness of the Standards in achieving their objectives. The review was undertaken by the Department of Education, Employment and Workplace Relations (DEEWR) in collaboration with the Attorney-General's Department (AGD).

Terms of Reference

In reviewing the effectiveness of the Standards, the review will consider whether the Standards:

1. Have provided clarity and specificity for education and training providers and for students with disability and their families in relation to their rights and requirements under the *Disability Discrimination Act 1992*.
2. Have assisted people with disability to access and participate in education and training opportunities on the same basis as those without disability.
3. Have assisted to eliminate discrimination (including harassment and victimisation) of people with disability in education and training.
4. Have promoted recognition and acceptance in the community of the principle that people with disability have the same fundamental rights as the rest of the community.
5. Are compatible with Australia's current education and training system.

Approach

The review team adopted a qualitative approach, focused on feedback from a range of stakeholders to determine whether the Standards have been effective against the terms of reference of the review.

The approach involved the following steps:

- Release of an issues paper to promote discussion.
- A set of qualitative structured questions seeking feedback on the effectiveness of the Standards.
- Focused discussions with key stakeholders in each state and territory based on the issues and questions identified in the discussion paper.
- Analysis of complaints made in relation to the Standards and discussions with state and territory anti-discrimination boards and the Australian Human Rights Commission.
- A desktop scan of measures implemented by governments following enactment of the Standards.
- Analysis of written submissions and roundtable discussions by theme to inform the findings and recommendations of the review.

Submissions

Submissions were the primary means of providing information to the review. In February 2011, a wide range of people and organisations were invited to send submissions to the review on the effectiveness of the Standards in practice and whether any changes were necessary. The submission process closed in April 2011. A total of two hundred submissions were received from education users and providers including students, carers and family members of people with disability, advocates, peak and community organisations, schools, universities and Vocational Education and Training (VET) providers.

Stakeholder discussions

The review team held roundtable discussions in all state and territory capitals during February and March 2011 to seek advice from key stakeholders on the effectiveness of the Standards.

Nearly 150 people attended the roundtable discussions, representing a wide range of interests and approximately 80 organisations, including:

- people with disability
- state and territory education departments
- independent and catholic schools and Catholic Education Offices
- parents, associates, friends and citizens representatives
- teacher and student unions
- principals' associations
- higher education providers
- discrimination legal services and centres
- non-government disability and community organisations
- user and provider peak bodies.

The review team also met with the National People with Disabilities and Carer Council, the Australian Human Rights Commission and state and territory anti-discrimination boards.

2. Themes and issues

This section reports on the range of issues raised during the stakeholder meetings and submission process. The issues raised in this section reflect the views and perceptions of users and providers of education as reported to the review.

The review was told that overall the Standards have had a positive impact in raising awareness of the educational needs of students with disability from preschool through to non-compulsory adult education. However, an overriding message from the consultation process was that, although the Standards generally provide a good framework, they need to be implemented more effectively. The key issues emerging from the discussions and the submission process have been grouped under the following themes:

- awareness
- clarity and definitions
- access and participation
- discrimination and inclusion
- complaints, accountability and compliance
- contemporary education context
- resources

2.1 Awareness

Background

One of the objectives of the Standards is 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 (Standards Part 1.3).

In releasing the Standards, the Australian Government sought to raise public awareness about the barriers frequently encountered by people with disability in education. A key issue for the review is whether the Standards have promoted recognition and acceptance in the community of the principle that people with disability have the same fundamental rights to education as those without disability. The review team sought feedback on whether more work is needed to raise awareness and the most effective ways to promote recognition of the rights of students with disability.

Issues

The overwhelming feedback from the roundtable discussions and submissions was that there needs to be much greater awareness about the Standards. Users and providers did not have detailed knowledge or understanding of the Standards and how they operate.

The consultation process highlighted that levels of awareness of the Standards amongst education providers was patchy. The review heard that: education providers have little understanding of what the Standards mean; principals may be aware of the Standards but not teachers; disability support officers in the tertiary sector often have to educate teachers/lecturers on the Standards; and there is a lack of recognition of the Standards by some Registered Training Organisations.

The lack of consistent awareness was reflected across the sectors, with some VET providers indicating that references to the Standards in disability action plans have declined.

Awareness of the Standards within the higher education sector is also limited. Submissions indicated that in universities, there has been an inconsistent and sometimes inadequate understanding and/or implementation of the Standards. A perception among providers was that the Standards are understood by a finite section of the community, consisting largely of consumers and providers on whom they directly impact.

A number of submissions emphasised the role of the Standards as an instrument for raising awareness and promoting the rights of students with disability. From the submissions received, the Standards were generally seen as an enabling factor for students with disability to access higher education.

The main impact of the introduction of the Standards was as a catalyst for further enhancement of accessibility, particularly in the teaching and learning area. The Standards provided a vehicle for staff awareness and continued improvement in the accessibility of courses.

– Higher education provider submission

Awareness raising

The review heard that some steps had been taken to improve awareness of the Standards. For example, resources and guides have been produced by various organisations about the Standards and the needs of people with disability. A number of state governments have also provided information and guidance for education providers (see References).

However, the majority of submissions argued that there needs to be a focus on awareness raising. This includes awareness about the Standards as well as measures to improve understanding of disability, discrimination and the impacts of disability on learning. The submissions made a number of suggestions for increasing awareness of the Standards in the community. These included: activities focused on informing the whole community about the purpose of the *Disability Discrimination Act* and the Standards; and the introduction of an awareness and training program on the Standards for school communities to improve knowledge amongst all parents, not just those who have children with disability.

Our school community members have found that when awareness and understanding of disability and familiarity with students with disabilities have increased, the amount of discrimination experienced by our students has decreased.

– School provider submission

Another suggestion was for awareness training focusing on implementation and compliance with the Standards, rights and responsibilities of providers and students with disability, and how to support students to access inclusive education.

The review also received feedback on how to improve awareness of the Standards amongst education providers and other professionals. There was support for a review of pre-service teacher education to enhance graduate teacher understanding of the application of the Standards to early childhood and school settings. It was suggested this could include the introduction of a compulsory subject on inclusion of students with disability. Submissions also recommended that a comprehensive and sustainable professional learning program be developed by the Australian Government to support the understanding and application of the Standards.

Training courses for teachers and trainers should include information about the Standards, and compulsory subjects that cover the provision of a differentiated curriculum, and inclusion of students with a wide range of special needs.

– School provider submission

Targeted information

A key issue raised throughout the consultation process was the need for practical and targeted information on the Standards. This includes short and simple information for students, parents and the general community, and good practice guides for education providers, in particular teachers and lecturers.

Suggestions for the types of information needed include:

- Pamphlets and other communication products for families of students with and without disability explaining the DDA and the benefits of an inclusive society and education community.
- Support resources, particularly for teachers and lecturers, to significantly improve the application of the Standards in an educational environment and address the lack of understanding of the barriers faced by students with disability.
- Information about the effects of different types of disability on learning to assist educators in making adjustments.
- Supporting documents which outline the roles, responsibilities and obligations of providers to support students, as well as more information for parents, carers and students with disability on enrolment.
- Supporting documents and guidelines which provide examples of best practice for reasonable adjustment and consultation agreements for each education sector.
- Information for young people with a disability about assistance available to help them succeed in education.

In addition, there was a range of advice from advocacy organisations on types of issues and support that may affect students with different disabilities. It was argued that access to information about disabilities and the types of support available would assist educators to work with the students to develop effective strategies for learning. The suggestions included information about:

- The impact of specific disabilities on learning such as Acquired Brain Injury and Autism Spectrum Disorder.
- The best way to use multimedia resources so that students who are deaf and hearing impaired are not disadvantaged or excluded, including advice on accessing captioned multimedia materials and links to organisations and related material to aid teacher planning and implementation.

The review heard that tools to provide clarity on the implementation of Standards in various situations would be helpful for education providers. Provider information on the Standards could include consultation, skill development in negotiation, case studies on collaborative planning processes and balancing the interests of all parties affected, as prescribed by the Standards.

Accessible information

The review heard that although there were awareness raising activities when the Standards were first introduced, it has been more difficult to access the Standards and Guidance Notes in recent years. Stakeholders suggested that the Standards should be available on the websites of key peak organisations like the Australian Council of State School Organisations, Australian Parents Council, Australian Federation of Disability Organisations as well as via direct links to the Standards on the Attorney-General's Department and Australian Human Rights Commission websites.

Further, it was suggested that accessible versions of the Standards be developed with the aim of providing training and awareness and encouraging a culture of excellence to support their implementation. The Disability Services Commission in Western Australian provides an example of how information could be made more accessible by:

- using clear and concise language
- using appropriate font style and size
- providing information in alternative formats
- providing audio loops

- using Auslan sign language interpreters
- captioning videos
- designing accessible websites
- displaying information in an accessible location.

(From Disability Services Commission WA 2011 <http://www.disability.wa.gov.au/aud/accessinfo.html>)

A number of submissions argued that information about the Standards should be provided at enrolment. Information about obligations and responsibilities at enrolment could assist students participating in education at a non-compulsory level. Information should also be provided when a student acquires a disability.

Submissions from the higher education sector argued that awareness-raising about the Standards are most successful when information is accessible and appropriately targeted to different audiences. In particular, the Australian Human Rights Commission, DEEWR, Australian Disability Clearinghouse for Education and Training (ADCET), and DDA websites were seen as useful sources of information about the Standards. The Tertiary Education Disability Network, the Australian Tertiary Education Network on Disability and the National Disability Coordination Officer Program were also highlighted as having a positive impact on disability-related issues in higher education.

Some higher education providers argued for a minimum training requirement to be implemented, either in pre-service training or upon employment at a university, to further increase awareness of disability policy and legislation within the sector. In terms of raising awareness amongst students, it was suggested that information brochures on student and provider rights and responsibilities be developed and disseminated to students, advocates and/or parents upon enrolment.

Summary

The review heard that there is a need for greater awareness across education sectors, users and providers and the general community about the Standards. There is also a need for targeted information addressing particular issues raised in the consultation process. Stakeholders suggested that the information needs to be accessible and located on a central website but also available through other relevant websites.

2.2 Clarity and definitions

Background

One of the aims of the Standards is to provide clarity and guidance about the rights of students under the DDA. The Standards do this by specifying how education and training services are to be made accessible to students with disability at all stages of the education and training process. The Standards also explain the meaning of the following important terms:

- On the same basis
- Consultation
- Reasonable adjustment
- Unjustifiable hardship.

There are also measures for compliance included in the Standards, which provide examples of what can be done to comply with the requirements of the Standards.

In addition to the information contained in the Standards and Guidance Notes, other resources have been developed to assist people with disability and education and training providers to understand the provisions of the Standards. This includes guides developed by a number of states and territories to assist education providers in implementing the Standards. The Australian Human Rights Commission has a range of resources in relation to the DDA and the related Standards and Guidelines.

The review sought feedback on whether there is sufficient clarity and guidance about the requirements under the Standards and if not, what type of information is needed to help users and providers of education and training understand their rights and obligations.

Issues

The Standards have been a useful tool for us to help providers understand their obligations under the DDA. The Standards are often referred to during discussions between schools and specialist teachers as a reminder to school personnel about their obligations.

– School provider submission

In general the Disability Standards for Education plus Guidance Notes have been of immense assistance in recognising our obligations under the DDA, identifying reasonable adjustments and instituting policies and procedures to assist students. They have also provided guidance in determining the level of support which is generally reasonable and a defence against unreasonable demands by either the student or the provider.

– VET provider submission

The review heard that although the Standards have provided some clarity for education and training providers and students, not all students, parents and users are aware of their rights or have the same understanding of the Standards.

A number of concerns were raised about the overall clarity of the Standards. Some submissions noted that the language of the Standards is not 'user friendly', particularly the use of legal terminology.

In our experience, the Standards are confusing, repetitive and are directed to processes rather than outcomes. Our clients are often confused as to what constitutes consultation, participation or adjustments.

– Advocacy organisation submission

It was suggested that plain English and easy English versions would make the Standards more accessible. Clarity would be improved by using terminology that is easy to read and understand and the use of pictorial symbols in easy English versions of the Standards.

Education providers argued that the Standards need to acknowledge different stages of learning as well as the different processes involved in consultation with adult students. Submissions noted that the 'voice of the student' is silent in the Standards, particularly for the older student who may have different opinions on their needs to those identified by their parents, and for adult students.

Many submissions raised concerns about the lack of examples in current information relating to the implementation of the Standards in tertiary education settings; and the lack of information available for parents and students on the transition to tertiary education and training. VET providers called for more examples illustrating the implementation of the Standards in tertiary education settings, as well as information for parents and students on the transition to tertiary education and training (VET provider submissions).

Key terms

The review heard that there are a number of areas that require greater clarity in the Standards and a number of terms that need to be explained and discussed in terms of implementation. In particular, information is sought on: consultation; reasonable adjustment; unjustifiable hardship; and guidelines targeted to different education sectors (e.g. schools, higher education and VET). The key issues identified for clarification are summarised below.

Definition of disability

Differences in interpretation of disability across and between jurisdictions were raised as a major concern. The feedback was that there should be a more consistent approach taken throughout Australia on the eligibility criteria for students with a disability to be identified as needing additional support.

Significant inconsistencies in school funding policies and financial arrangements between the states and territories have led to variations in access and quality of education for students with disabilities. Differing eligibility criteria make it very difficult for parents/carers when they move between states and find that the special educational needs of their child which had been recognised and attracted funding in one jurisdiction are not recognised in another.

– Education sector submission

The development of a national agreement on the definition of disability is urgently needed to ensure all identifiable cohorts of students are fully included and to overcome differing interpretations of target groups and levels of provision, which is at odds with the obligations in the Standards.

– Education sector submission

A number of providers argued that there is uncertainty about whether the state or the Commonwealth definitions of disability should apply in particular circumstances. Across the tertiary sector in particular, providers were concerned that definitions can be more or less prescriptive between jurisdictions. It was also suggested that the information about disability should be made available to students upon enrolment. For example, the inclusion of mental health conditions under the Standards is not well understood by students and providers (VET provider submission).

Submissions noted that in other countries (such as the UK, USA and Canada), the education legislation which supports disability discrimination legislation includes reference to specific learning disabilities. It was suggested that Australia should do likewise, with specific learning disability, such as dyslexia, being referenced in the Standards (Advocacy organisation submission).

Reasonable adjustment

There were a range of suggestions about improving the understanding and implementation of reasonable adjustment. Some feedback from the consultation process indicated that there is too much flexibility in interpretation and the Standards do not adequately explain what is deemed acceptable in terms of adjustments. There was broad agreement that there needs to be more information about what is considered 'reasonable' for adjustments and who decides whether or not the action taken is sufficient. Clarification was sought by both users and providers of education.

School providers indicated that there are often differences between the expectations of parents and the type of support the school can actually provide. The review also highlighted that there was a lack of certainty about how education providers should interpret the Standards and who the final arbiter on decisions was. Education users and providers argued that best practice criteria-based guides on adjustments could provide greater clarity about what is reasonable. These guides should include examples of best practice in making adjustments to help educators determine 'how and what' to do.

Clearer guidelines would be helpful in preventing a "near enough is good enough" approach which merely gives the impression that an adjustment is being made, without actually providing *effective* access.

– Advocacy organisation submission

Problems have arisen when parents and caregivers fail to disclose the full details about their child's condition, needs or co-existing issues such as violent or aggressive behaviour. This is also a significant issue for schools that accept students directly from their enrolment in an attached Early Learning Centre, as the full extent of the child's disability may not yet be known. As a result of lack of disclosure by parents about the full extent of the child's needs, school staff discover they are unable to deliver the education program or support services to the student.

– School provider submission

Higher education providers expressed uncertainty about the degree to which they were expected to make provisions for accessible materials and assistive technologies. It was suggested that the imperative to make adjustments be made clearer, 'particularly as the human resource and cost implications of making such provisions often contribute to some resistance within institutions' (Higher education provider submission).

Further, the need for greater clarity about the rights and responsibilities of both students and providers was highlighted. It was suggested that a section outlining the rights of the provider and responsibilities of the student be included in the Standards.

The review also heard that context is important in determining the level of adjustment needed. For example:

... a relatively homogenous group of students in class who don't themselves have a great diversity of learning needs, differs from a class where there is a diversity of behavioural/emotional problems. To ensure that the student with disability is able to participate to the level envisaged in the Standards, very small class sizes may be necessary in particular contexts and this needs to be properly considered in terms of staffing costs.

– Schools sector submission

There were a number of concerns raised during the consultation process about implementation of reasonable adjustment including:

- A lack of recognition of the right to adjustment being an ongoing process and the need for more information about what constitutes reasonable adjustment.
- The timeliness of adjustments. For example, there are often lengthy delays (sometimes one to two years) in receiving equipment to assist with access to education.
- The nature of evidence that is required to prove a disability or the adjustments required and who pays for it. For example, some education providers have questioned and not followed medical practitioners' reports, resulting in uncertainty for students with disability and their parents.
- How to reconcile the needs of the individual with resourcing costs in order to make the necessary adjustments that would meet obligations under the Standards.
- How to ensure that providers take into account the interests of everyone affected in the determination of whether an adjustment is reasonable.
- The lack of clear descriptions for implementation of reasonable adjustment and unjustifiable hardship and the use of unjustifiable hardship as the basis for refusing an adjustment.
- The need for greater clarity in relation to reasonable adjustment and the inherent requirements of a course in the tertiary education sector.

Unjustifiable hardship

The review was told that in practice the concept of unjustifiable hardship is often used as a reason for not making an adjustment. Although education providers may be welcoming and supportive of students with disability enrolling and participating in education and training, there is a tendency for providers to cite unjustifiable hardship in terms of the financial costs of making the adjustments required for a particular student. The rationale and justification for making some adjustments and not others is not always clear or transparent. 'There should be clarification of the obligations of education providers in relation to adjustments and unjustifiable hardship' (Advocacy organisation submission). Providers stated that they need to be fully aware of their obligations and the potential costs of meeting these obligations.

The range of interpretations across and between sectors of what constitutes 'unjustifiable hardship' was also cited as a complicating factor. The concept of unjustifiable hardship is particularly problematic in the VET sector as a consequence of the number and diversity of VET providers (VET sector submission).

It was suggested that education providers be required to demonstrate that adjustments have been made and that they are reasonable given the needs of the student and the resources available to the provider. This would offer greater protection for students with disability who might otherwise have to negotiate and argue for their needs to be met.

Consultation

The review was told that opportunities to access education and training would be improved by protocols for consultation that:

- Provide a stronger emphasis on the obligations of education providers to consult with the student, their associate and/or family to determine the student's needs and type of assistance required.
- Emphasise the importance of ongoing consultation with the family and/or associate about how best to meet the needs of the student with disability, particularly in the early school years.
- Encourage direct engagement during the consultation process with older and mature aged students as appropriate.
- Recognise the need for direct engagement in the first instance, where appropriate, with students at tertiary level.

Many higher education providers were unclear about the expectations of the consultation process. Some providers commented that there is a general lack of willingness by students and/or their associates to engage with providers in determining adjustments. They identified a need for greater clarity and accountability to be incorporated into the Standards in relation to the consultation process.

The consultation provisions should include consultation with external parties (such as allied health therapists) where their expertise directly relates to the assessment of and/or recommendations for reasonable adjustments for a student with a disability. For example, modifications to an education provider's physical facilities/space rely on other external agencies to provide the expertise and recommendations to meet the student's needs; i.e. occupational therapy assessments and reports.

– Advocacy organisation submission

Issues requiring clarification

The submissions to the review consistently argued that there are a range of concepts in the Standards that require clarification.

On the same basis

Some submissions argued that 'on the same basis' needs discussion as it is sometimes taken to mean all students are provided with the same resources, the same setting and a teacher with the same professional qualification. There were concerns that this assumption undermines the value of specialist knowledge and specialist teachers. There was support for guidance about implementing 'on the same basis' and what should happen in practice. This could promote a better understanding of the fact that *equitable* is different from *the same*.

The Standards use the term 'on the same basis' as the yardstick by which to judge a behaviour or practice in the educational context as discriminatory. This can lead to confusion and create an unrealistic expectation that education providers should treat students with and without disability in exactly the same way.

– Education provider submission

The Standards would be clarified and strengthened if adjustments and special measures were judged by the extent to which they achieved 'substantive equality', ie the adjustments and special measures must enable students with disability to achieve equality of opportunity. This clarifies the spirit of the DDA indicating that discrimination is not mitigated by treating all students the same way.

– Advocacy organisation submission

Further, it was suggested that the term, 'on the same basis', is 'inherently discriminatory' and should be amended to something which indicates a 'strong commitment to civil, economic, social, cultural and inherent human rights for people with disability' (Higher education provider submission).

Levels of support/types of assistance

Users and providers identified the need for examples of reasonable adjustments that have been made in relation to a range of disabilities and in different sectors. 'There should be greater recognition within the Standards that children in a variety of education settings will require different types and levels of support' (Education sector submission). For example, it would be useful to have a consistent set of criteria for determining what is reasonable in terms of assistive technology, for inclusion of deaf students in the classroom (Advocacy organisation submission).

Curriculum

Providers argued that the obligations relating to curriculum development need greater clarity and prominence within the Standards. Part 8 of the Standards clearly sets out obligations for education providers in relation to the elimination of harassment and victimisation of students with disability. However, it does not make clear the importance of ensuring courses and programs do not discriminate unfairly against students with disability, in terms of delivery, content or language.

Links with other legislation

The review heard that links between the Education Standards, other Standards (e.g. Access to Premises and Transport Standards) and legislation (e.g. *Work Health and Safety Act 2011*), as well as the definitions contained in each, need to be clarified. There was also a call to explain the difference between state and territory legislation and eligibility criteria for funding of students with disability. For example the definition of disability in the Standards is broad, compared to the categorical eligibility criteria for state funding.

There were also concerns about differences between government and non-government schools in terms of how the needs of students with disability are addressed. There is a tension for providers between what they have to do to meet students' needs and what is required under the legislation. Users identified that not all students who are covered by the Standards satisfy the eligibility for state funding.

Inherent course requirements

The tertiary education sector argued for greater clarity about the interaction of the Standards with inherent course requirements. Within both the higher education and VET sectors there is confusion about inherent course requirements versus professional or trade registration board requirements and how to balance these with reasonable adjustments. The review heard that some academic/teaching staff consider themselves 'gatekeepers' for their professions and as such believe they have a 'duty of care' to ensure only competent students are permitted to seek registration (Higher Education submission). In particular, it was noted that there is confusion between sections 3.4 and 6.2 of the Standards, i.e. between maintaining academic requirements and designing a course or program to ensure that students with disability are able to participate without discrimination.

In order to ensure clarity and consistency at a national level, and across all providers of the same courses and training packages, stakeholders argued that the tertiary sector should be required to develop and publish inherent course requirements, rather than leaving decisions about appropriateness to the discretion of individual providers.

Training

In relation to VET, some submissions noted that there is a general lack of understanding about whether Registered Training Organisations (RTOs) are covered by the Standards. It was recommended that the Standards clearly indicate that RTOs are required to comply with the Standards.

Personal Care

Another concern was the confusion over the provision of personal care for students with disability. The review was told that:

... the general consensus has been that this is not a service provided by a post secondary education provider and therefore while we are happy to 'enable' this to happen, it is not a requirement for the training provider to provide it because it is not their core business. This is a significant issue for the Technical and Further Education (TAFE) sector in particular and TAFE institutes would appreciate some clarification on this issue.

– VET provider submission

Summary

The review heard that amendments and clarification of key terms are needed to improve the effectiveness of the Standards. There was support among stakeholders for the development of accessible, user friendly, sector-specific guidelines. It was also argued that there should be more examples to support consistent interpretation of the terms 'reasonable adjustment', 'unjustifiable hardship' and 'consultation'.

A number of submissions suggested revisions to the Standards to improve their clarity and effectiveness. A full list of these suggestions is included at **Appendix A**.

2.3 Access and participation

Background

The purpose of the Standards is to give students with disability the right to access and participate in education and training on the same basis as students without disability. The Standards include provisions for enrolment, participation, curriculum and support services. Students with disability are entitled to these rights 'on the same basis' as students without disability. This includes the right to comparable access, services and facilities, and the right to participate in education and training without discrimination.

The Standards also set out the obligations of education providers. Education providers are required to take reasonable steps to ensure that students with disability are provided with opportunities to realise their individual potential through their participation in education and training on the same basis as students without disability, and that they are not subject to discrimination.

Under the Standards, education providers have three main types of obligations: they must consult, make reasonable adjustments, and eliminate harassment and victimisation.

Feedback was sought on whether there is sufficient information about the rights of students to access and participate in education and training, and how well the rights operate in practice. This means that people who use or are responsible for implementing the Standards fully understand what is reasonable and what is required.

Issues

The education of all students should be valued. My own son has thrived with the opportunity to attend school with his friends, to learn and have a range of experiences regardless of the challenges he faces which we tag as disabilities.

– Parent/carer submission

Overall, many schools and tertiary education providers appear to be making appropriate efforts to make the reasonable adjustments necessary to enable a student with hearing loss (i.e. one who is deaf, or has a hearing impairment) to participate on an equal basis with their fellow students.

– Advocacy organisation submission

Notwithstanding some positive developments, there are examples where students with disability have been unable to access and participate in education. Many submissions from users of education show that this has occurred in relation to enrolment, participation, curriculum and support. A clear message arising from both the submissions and roundtable discussions was that there is a considerable way to go before students are able to access and participate in education on the same basis as other students. Some submissions argued that little has changed since the Standards were introduced. In contrast, education providers generally believed that the Standards provide clear guidance on what is required, with many indicating that they do their best to meet their obligations under the Standards. The following section covers the range of views expressed in relation to each sector.

Schools

Concerns were raised by parents of students with disability and advocates in relation to access and participation in schools. Advocacy organisations provided numerous examples that highlight problems with implementation of the Standards in the school system. Even though it is clearly contrary to the requirements of the Standards, some schools refuse enrolment of students with disability. In some cases, schools argue that there is a cap on the number of students with learning disability who can be supported.

Many parents are told by staff at mainstream schools that special schools are a better option for their child. For vulnerable parents, this is rejection. The message can be “we don’t want to take your child, but will enrol him if you insist”, or “we can only take him for the number of hours per day for which he is funded” or “we are not suitable and will not enrol him”. Excuses given for the latter can be “we are not trained”, or “we can’t guarantee your child’s safety”. It is a very determined and brave parent who chooses to enrol their child under such circumstances.

– Advocate submission

Work was never modified to accommodate his needs. Every individual education plan was negative and never had anything positive to say. All we heard of was how the teachers couldn’t cope with other children in the class as well. School camp attendance was discouraged and we were told if he did attend then we would have to attend as well.

– Advocacy organisation submission

A mother was advised that her 6-year-old son would need to stay in the prep class for 3 consecutive years at the non government school he was attending. She was told that he would not get anything out of the educational program that was being provided for the children in Grades 1 & 2. It was also stated that he was a distraction to other students’ learning time.

– Advocacy organisation submission

Recently a family reported that in a meeting with their son’s inclusion support coordinator they were told that their son had no option but to go to a special school for his secondary education as he would not continue to be supported in a mainstream setting.

– Advocacy organisation submission

A mother was recently discussing with a secondary school the additional supports required for her son who would be commencing Year 7 the following year. The school were hesitant to meet until the outcome of a funding application was known. The school believed that the level of funding obtained would dictate what responsibilities they had in relation to the provision of specific or additional educational supports and strategies.

– Advocacy organisation submission

Some submissions suggested that access to information about both mainstream and special school settings should be readily available from each jurisdiction to enable parents to make informed choices about their child’s education. This would address the perception that the current Standards are heavily biased towards mainstream schools as the only option, rather than focusing on parental choice. It was argued that the Standards should emphasise the right to choose to enrol a child in the program, not just in the location, of choice.

Some submissions argued that the focus of the Standards should be on learning outcomes as well as access to education and the Standards need to make it clear that educational outcomes and achievement are essential for students with disability. It was suggested that the introduction of person-centred planning for all students living with disability would allow parents to work with teachers and principals as a family unit, to support their child's education (Advocacy organisation submission). Advocates argued that person-centred planning would also provide opportunities for teachers to develop an understanding of students living with disability and empower students, families and teachers to work towards a shared goal.

It was also suggested that individual education plans should be developed for each student with disability and that teachers be provided with the skills and resources to develop flexible classroom environments.

Access to co-curricula activities

Advocates and parents were concerned that provisions made to accommodate students with disability often result in the child being excluded from non-classroom activities such as being denied the opportunity to attend school excursions and camps (Advocacy organisation submission). The review heard that adjustments are not always made for extracurricular activities such as sports and camps. Inclusion of students with disability in excursions and camps is often a source of tension between parents/students with disability and schools. It was argued that students with disability should be encouraged to participate in all aspects of the learning experience, and where possible, adjustments need to facilitate this participation. As these activities form an important part of the curriculum, students with disability are further disadvantaged if they are unable to participate.

The review was told that often students with disability are not offered the opportunity for work experience placements. It was suggested that it is unclear whether participation in student societies at university or work experience at school is deemed to be participation in education for the purpose of the Standards. Therefore, guidance is sought on the definition of curriculum and co-curricula activities.

Access to support services

There were a number of issues raised in relation to student support services. This included the need for assessment, consultation about the types of support and resources available and the standard of support given.

The review was told that early intervention and formal assessment programs help to identify the types of support children may need to transition into school and between year levels. Early intervention programs can assist parents to understand their rights and negotiate agreements with providers to ensure the ongoing needs of students with disability are met. Some submissions noted that agreement about support should be updated on a routine basis and an independent third party should be involved in all consultations to ensure that agreements reached satisfy all parties involved, i.e. parents, associates, teachers and principals.

There is insufficient consultation with families about appropriate and acceptable support services. Generally families are told what the school can provide and they are expected to take that or leave it. Support services are not student-centred; they are bureaucratically system-centred. If parents want to propose a different solution that would be more effective, the response is "if we do that for one, we would have to do it for all; if one student is allowed to do that and others aren't where is the justice?"

– Advocacy organisation submission

Advocates argued that the Standards should be more explicit about the rights of children and students with disability to have appropriate access to qualified professionals, such as speech therapists (Advocacy organisation submission). Education providers noted that access to appropriate support services and qualified staff can be particularly difficult for rural and remote students (Education sector submission).

Further, there are difficulties in determining what services students need. The review heard that there is often disparity between medical and educational opinions about what is best for the student. This can cause practical difficulties for both parents and teachers. For example, parents are given advice from a paediatrician

or other specialists who may issue a certificate stating what the child needs, for example access to a paraprofessional for 90 per cent of in-class time. It was the view of schools that, although well-intentioned, these specialists are unlikely to understand the education requirements of the child. It was suggested that medical certificates should describe the functional requirements of the student, not the types of educational support to be provided.

Professional development

Access to professional development was a widespread concern: 'it often seems that the most vulnerable students are being taught by the least trained and experienced staff' (Advocacy organisation submission).

In the schooling sector many educators, both school and non-school based, including managers and staff in state, regional and district offices, are unaware of the Standards and their practical implications. There is an urgent need for training/professional development for all educators in all areas, including refresher courses with updated information available on a regular basis for all employees. This would assist in ensuring that information from the Standards is incorporated into system and site planning and training priorities.

– Education provider submission

It was suggested that the reference in the Guidance Notes to access to ongoing professional development in inclusive education be strengthened. It was also recommended that reference to this should be included in the Standards document, not just the Guidance Notes, to place a stronger focus on the requirement for education and training institutions to commit to ongoing professional development in inclusive education for all staff:

... teachers and the parents and/or carers of children with disability want a stronger focus on educational staff having access to ongoing professional development in inclusive education. Inclusive education is a wide-ranging field of study that looks at the types and causes of direct and indirect discrimination that various students, including those with disability, may encounter. This aspect of inclusive education is one way that educators can be challenged to reflect on the way their own attitudes and lack of knowledge may, inadvertently, contribute to discrimination.

– Advocacy organisation submission

Another aspect of inclusive education relates more specifically to the nature of particular disabilities and focuses on the latest research on teaching skills and methods available to best support students with disability. The educational knowledge and skills required for teaching students with disability is not a static body of knowledge and will develop and improve over time as new research is available. Therefore, teachers need to have access to the most current information through ongoing professional development.

– Advocacy organisation submission

Another suggestion from stakeholders was to review and update teacher role descriptions to include reference to the requirements of the Standards. This would give schools greater accountability when recruiting new staff to ensure that they have knowledge of, and will diligently apply, the Standards.

The review heard that ongoing professional development of education and training staff should be run in collaboration with the special education departments in tertiary institutions. This would mean that best practice developments from research for supporting students with disability in education could be incorporated into current practice for teaching staff.

– Advocacy organisation submission

Staff require access to specific professional development support based on the identified student's needs, access to specialist staff, time and assistance with frameworks for individual education plans, skills and resources for the development of flexible classroom environments and reduced administrative tasks. "It is a challenge ensuring special needs students can participate as much as possible with their cohorts, yet still have their individual learning needs met".

– Education sector submission

There was support for the Standards to include a requirement that education providers, such as the relevant state and territory authorities, provide mandatory professional development for all employees. Professional development should ensure that providers are familiar with the Standards and the relevant compliance and implementation measures required under the Standards. Expert leadership, additional resources and designated leadership positions are needed to ensure that the objectives of the Standards are met (Education provider submission).

Qualifications of teachers and paraprofessionals

Advocates were concerned that the Standards do not provide enough clarity about the competencies of professionals providing access and support services to students. 'Well intentioned assistance is not a substitute for specialist knowledge and expertise' (Education provider submission). A number of submissions argued that there are not enough trained teachers and paraprofessionals to ensure that education is provided to all students on the same basis. Conversely, there are cases where teachers may be able to work with their students but are not supported by the school to do so. Lack of time and resources were identified as constraints on meeting the needs of students with disability.

There was a concern that teachers are not well equipped to deal with the challenges associated with students who have complex needs. The review heard that this is increasingly leading to the use of restrictive practices such as the unplanned use of medications, physical, mechanical and social restraints. However, 'there are no clear Standards and guidelines about the use of restrictive practices – there is no clear statement about restrictive practices being ... the last option after all other proactive strategies and adaptations have been made' (Advocacy organisation submission).

Many students are being suspended as a result of lack of appropriate support. Following suspension they return to an environment in which no further adjustments have been made. Difficulties remain attributed to the individual and are often labelled "challenging behaviour" when the problem remains the learning environment.

– Advocacy organisation submission

Another issue relates to the roles of teachers and paraprofessionals in supporting students with disability. The review heard that existing teacher-training arrangements do not adequately equip student teachers with the knowledge and skills to teach students with disability in mainstream schools. Additional training could help teachers understand various disabilities and how these impact on learning ability and how to set realistic learning goals for students with disability. It was also argued that 'additional resources must be made available by each provider to ensure adequate training and professional development of support staff to ensure that they meet agreed national Standards' (Advocacy organisation submission).

There is considerable variation in the skills, knowledge and qualifications of teachers' aides and paraprofessionals. The review heard that the role of teachers' aides varies according to student need and may involve assisting classroom teachers by teaching students with disability. There were concerns that there is no benchmarking of training for teacher aides and that the standard of training does not provide staff/teachers with sufficient information to develop tailored learning programs and build effective working relationships with staff and parents. The shortage of trained staff is particularly acute in rural and regional areas. The review was also told that this issue is exacerbated by the decline in the availability of special education courses for teacher training in Australian universities.

In summary the factors that enhance the educational opportunities of students with disability in schools that were raised in Submissions are:

Quality teaching

- Changes in requirements for the accreditation of teacher education programs to ensure graduates have the requisite competence for teaching mixed ability classes.
- The availability of specialist support in all schools to assist teachers to adjust teaching, learning and assessment processes.
- Provision of ongoing professional development for teachers.
- The implementation of competency standards in relation to teaching mixed ability classes.

Inclusive curricula

- The development of a national inclusive curriculum framework.

Educational culture

- Recognition and promotion of the importance of diversity and meeting the learning needs of all students.

Equitable funding

- Increased funding levels and portability between education systems and across education sectors.

Student support

- Increased systemic and school capacity to meet the learning needs of all students.

Environment

- Not all schools are accessible for students with disability and in some instances these buildings need to be upgraded.

Extract from advocacy organisation submission

Vocational Education and Training (VET)

Some TAFE providers stated that the numbers of students with disability successfully completing VET courses demonstrates that the Standards have had a positive impact in this sector.

Many TAFE institutions have implemented strategies to meet the requirements of the Standards. For example, in South Australia the following strategies have been implemented:

- appointment of specific disability practitioners
- updating Disability Action Plans
- development of an online Disability Access Plan tool for all students with disability
- staff development in disability awareness, specific disability areas, flexible delivery, understanding reasonable adjustments and inherent course requirements
- development of specific resources for staff and students
- provision of alternate formats, adaptive technologies, interpreting and transcription services
- learning support and adjustments to teaching and assessment practices.
– VET sector submission.

However, it was also noted in submissions that students with disability are under-represented in the VET sector and have limited opportunities for employment after education and training.

- Within the VET sector people with disability are the least proportionally represented of all the equity groups. Their course completion rates are significantly lower than people without disability (68.9% compared to 78.5%) and they are more likely to be studying at a Certificate I or II or lower level, than other students.
– Advocacy organisation submission²

2 Submission refers to National VET Disability Advisory Taskforce Final Report and Recommendations 2008

A number of suggestions were made to better meet the needs of students with disability and improve their access to, and participation in, the tertiary sector. For example, there needs to be flexibility in communication for services such as enrolment queries, and access to student services staff for tertiary level students. Rather than relying on telephone, alternative communication options could include access to video-calling conversations (supporting lip reading) for students who are deaf or face-to-face meetings (Advocacy organisation submission).

Advocacy organisations also called for improved access to assistive technologies to improve learning outcomes and suggested that the Standards should refer to the 'effectiveness' of training provided.

Finally, it was argued that there needs to be a positive strategy to ensure that people with disability are included in tertiary education:

... people with disability should be regarded as a cohort worthy of strategic prioritisation in equity planning with education providers having a positive duty to increase tertiary participation rates. This should be promoted through the use of financial incentives, similar to Abstudy for Indigenous Australians.
– Advocacy organisation submission

Higher education

Submissions noted that under the Standards education providers must consult with a student with disability and/or their associate about whether the disability will affect the student's ability to participate in the course in which they are enrolled, including their use of associated facilities and services. A number of issues were highlighted in relation to the consultation process and the evidence needed for determining and/or substantiating particular adjustments for students with disability.

The majority of higher education submissions suggested that in order to ensure greater accountability of all parties involved, the Standards incorporate a formal mechanism for compliance in relation to consultation with students and making adjustments. This could take the form of a formal signed agreement that sets out student's rights, the provider's responsibilities and the agreed adjustments and mechanisms for review and support.

There was also feedback that greater clarity is needed about the evidence to be provided in the consultation process for education providers to determine appropriate adjustments for students.

For education providers to be able to determine supports that are fair and reasonable it is recommended that the Standards be clarified to ensure that where it is required, objective material is provided by students or can be sought by education providers, to underpin a fair consultation process, leading to an appropriate decision to support a student.
– Higher education provider submission

A university had a student with a hearing loss who was "entitled to a note taker". Each term they would send a note out to the students taking the same course as this student and ask if someone would be a note taker. If no-one volunteered the student didn't get a note taker! This is a far cry from equity of access!
– Advocacy organisation submission

Higher education providers noted that there is disparity between institutions in the levels of assistance provided to students with the same disability. One suggestion was for the revised Standards to be targeted to senior management across the sector to promote more equitable support in relation to teaching modes and administrative practices. Although the 'measures for compliance within the Standards' (section 6.2) were considered useful in understanding minimum requirements for curriculum development and delivery, it was suggested that the Standards include greater responsibility for institutions, curriculum developers and accreditation bodies to take active measures to remove systemic barriers to participation, rather than only focussing on adjustments (Higher education provider submission).

Summary

Although it was acknowledged during the consultation process that some progress has been made, the review heard examples of students with disability being unable to access and participate in education on the same basis as other students. It was suggested that practical advice and training on how to meet the requirements of the Standards would help educators. The suggested focus of this training would be on identifying individual needs and providing appropriate supports to achieve learning outcomes.

2.4 Discrimination and inclusion

Background

The Standards require that education providers develop and implement strategies and programs to prevent harassment and victimisation of people with disability. Harassment and victimisation of students with disability is unlawful and education providers must take all reasonable steps to prevent this from happening.

Education providers should also take steps to raise awareness of disability issues amongst staff. The review heard that attitude is one of the main barriers to non-discriminatory access to education and training for people with disability. To counter any inherent discrimination in the provision of education and training, it was recommended that staff induction and professional development programs should include information on disability awareness and rights and the obligations of education and training providers under the Standards.

The Guidance Notes suggest that disability awareness training can assist staff in their interaction with students with disability. Through disability awareness training, staff can develop a better understanding of how disability affects an individual and how best to assist the student to access and participate in education and training. Ongoing professional and pre-service training can also assist staff in meeting their obligations under the Standards (Section 7 Guidance Notes).

Issues

Schools

In spite of the intent of the Standards, some submissions reported that ongoing discrimination and a lack of awareness across all areas in education continues to be an extremely significant area of concern for students with disability and their families. Many families reported that, through their education experiences, their children are subjected to: limited opportunities; low expectations; exclusion; bullying; discrimination; assault and violation of human rights.

Every promise of support and modification has yet to be delivered.
My son was never given the opportunity to reach his full potential.
My child is clearly not quite as entitled to education as the kid next door.
Sometimes the hardest thing about disability is expecting support but ending up with yet another time consuming fight.
I don't have anything good to say about our son's education except it gave the family "free child care".
– Advocacy organisation submission

The review also heard that education providers are also genuinely concerned that they are unable to meet the needs of children with disability due to the lack of funding, inadequately trained teachers and limited support provided by education authorities.

There are many mixed campus schools with excessive enrolments that are bursting at the seams. This puts a big strain on staffing, resources and facilities.
– School sector submission

The review was told that people with a disability still regularly face discrimination in education and training and still have to fight to have their basic rights met. Students and parents indicated that they do not have the energy, resources or capacity to keep having this battle from preschool through to adulthood. Both users and providers reported that this can lead to reluctance to disclose learning disability.

Despite the ongoing attempts to encourage people to identify and seek support for their learning needs based on confirmed disabilities, there remains a level of stigmatism which discourages individuals from identifying their needs. The younger the student, the more likely the family will be to seek support but as a student matures, the less likely they are to seek assistance. Part of this is a social/ peer relationship issue, but there are also examples of students who have negative experiences upon which to base their decision.

– **Advocacy organisation submission**

My daughter has experienced a wide range of discrimination over her school life. Excursions were often planned with no thought to accessibility of venues or even transport needs. She has been asked not to use the toilet whilst on excursions. Family members were asked to attend camps to assist with care and had to pay full cost to attend for the privilege.

– **Parent/Carer submission**

Disclosure of disability is a matter of choice. However, if education providers are not aware of the effects of disability on learning ability, students with disability can miss out on receiving adequate support and assistance to achieve their educational goals.

Education providers also expressed concerned that they were not advised of a student's disability on enrolment. This may be because students with disability and/or their parents fear that they will be refused access to an education setting because of their disability.

Submissions from users and advocacy groups supported the concept of awareness-raising about disability discrimination with the broader community as well as information targeted to different settings. Greater understanding of these issues would assist in addressing discriminatory attitudes and make it easier for students with disability to talk about their needs. This was considered particularly important in the school setting where examples of conflict between children's parents were reported. For example, class members' parents have raised concerns that assistance for children with disability constitutes 'preferential treatment' and has the effect of disadvantaging the level of support given to their children. The situation is exacerbated when resources are limited and the rights of students with disability are not well understood. In this context, the concept of inclusive education practice to meet the needs of all students was seen as a way to reduce conflict.

Inclusive education

The review heard that subtle social discrimination still occurs. It was recommended that this needs to be addressed in an inclusive curriculum by schools that value diversity. To support tolerance in schools, it was suggested that awareness-raising activities be extended to the broader community. This would help to promote a greater understanding about the rights of students with disability and also the rationale for adopting inclusive education practices.

There was considerable support for the concept of inclusive education from education users as well as providers. However, some providers were concerned that inclusion in mainstream education may not be the best option for some students with multiple and complex disabilities. Therefore, it was argued that students with disability and/or their parents should have a choice in the types of education that will best meet the needs of their child.

It is the delivery of national consistent definitions and consistent and appropriate funding for special needs education, along with future planning for specialist teacher education and employment of specialist support aides, that will deliver Australia's intended goals of enabling people with disabilities to fulfil their potential as equal citizens.

– **Education sector submission**

Professional training and development

Advocates argued that parents are not given the tools to take issues further and deal with discrimination and harassment. Parents and students need to be well versed in advocacy skills to use the Standards. As children with disability are not always able to articulate needs and difficulties, schools need to be proactive in identifying issues and involving parents. Without a program of continuous training for principals and teachers about the Standards and the provision of information to parents this will not occur.

Schools often consider children who display challenging behaviour in the context of safety frameworks. This leads to risk management for the school and suspension and exclusion for the student. An emphasis on a human rights, disability and ethics framework would lead to responses that are proactive, planned and adapted, with the risks for the child acknowledged and addressed.

– Advocacy organisation submission

It was suggested that the Standards place a stronger focus on the requirement for education and training institutions to commit to ongoing professional development in inclusive education for all staff. This includes the importance of establishing and maintaining positive relationships and effective communication between parents and/or carers and educational personnel.

The Standards are not able to be readily accessed, read or understood. When they are used in adverse circumstances they naturally become less effective and schools are more ad-hoc and inconsistent in their process of implementing them. It is less an issue of the Standards themselves, but rather how they are used. The Standards need to be integrated more effectively with education practice.

– Advocacy organisation submission

The following factors were identified as enabling students with disability to access and participate in education and training opportunities:

- the education provider understands their obligations and is committed and ***adequately resourced*** to make the required adjustments for the student to fully participate
- education providers who understand the student's needs, have staff with the right attitudes and values who are trained in supporting students with additional needs
- sufficient support and resources are available (e.g. paraprofessional time, access to allied health therapists, financial ability to make building modifications, access to assistive technology etc.)
- development of a student culture of 'inclusion'.

– Advocacy organisation submission

Vocational Education and Training

The review was told that TAFE providers have implemented frameworks and Standards to ensure that students with disability are not discriminated against. It was noted in the submissions that many providers believe the conciliation settlements agreed between providers and students work well. Submissions suggested that inclusive education teaching methods should be enshrined in the Standards and Guidance Notes to ensure that students with disability participate in education on the same basis as other students.

However, there were concerns that the Standards provide a framework that is deficit- or complaints-based, rather than a positive, strengths-based framework.

A 'rights' based approach is inherently limited as a means of eliminating discrimination and increasing access and participation within education and training for people with disability. Future reform of the Standards requires a new approach, namely a policy backed 'integration' approach as reflected in the National VET Equity Advisory Council's 'Equity Blueprint'. This calls for joined up initiatives across a number of areas such as improved service delivery, removal of infrastructure barriers, raising of personal and community expectations and engaging employers industry.

– VET provider submission

The review heard that within the tertiary sector, there is a culture of minimum compliance. It was also heard that the Standards are not adequately incorporated into existing regulatory frameworks. This is in stark contrast to the externally-audited and certified Disability Services Standards where consumer input continues to drive service improvements (Advocacy organisation submission).

Higher Education

Discrimination policies and complaints

To protect students from discrimination at the institutional level, many institutions have Disability Action Plans which have clear policies on equal opportunity, codes of conduct for students and staff, discrimination, learning and teaching, information access, the physical environment and disability disclosure. Professional development and training activities have also been implemented at a number of institutions to ensure that teaching and non-teaching staff are aware of their responsibilities and rights, and the rights of students under the Standards. Although direct discrimination was not cited as a common problem in universities, a number of submissions argued that the Standards need to be strengthened to deal with indirect discrimination in higher education.

Many universities have formal grievance policies and processes that apply when there is a concern that the rights of a student with a disability may have been breached. The approach to dispute resolution at the university level varies between institutions. For example, the University of Western Australia has a grievance policy available on the internet and there is an appeals process for students who are dissatisfied with a university decision. The University of Canberra has a Student Grievance Resolution Policy and a Student Equity and Access Office that provides advice and support to students regarding grievances; while the University of New England provides equity advisers to deal with complaints.

Some higher education providers conduct disability awareness training during induction or offer such education and training on an annual basis, to ensure that staff are aware of their rights and responsibilities under the DDA. However, often training is not provided during induction and if it is provided, it is generally not mandatory to attend. The review was told that awareness by university staff is a major factor affecting provider compliance with the Standards.

Actions taken by providers include: improved enrolment processes through adoption of online administration processes; implementation of universal design in classrooms through systems such as *Blackboard* and *Illuminate Live* virtual classroom; undertaking needs assessments and implementing access plans; and the recording of lectures.

While the number of complaints relating to discrimination of students with disability at university is relatively low, submissions suggest that discrimination still occurs. Feedback was that institutional-level complaints of discrimination have largely been for indirect, rather than direct, discrimination. Examples of these complaints include untimely provision of alternate format study materials, non-compliance with web standards for students with disability, and a lack of available staff for consultation with students regarding adjustment arrangements.

According to a number of submissions, issues of discrimination also arose where work placements formed part of the inherent requirements of a course. Frequently, students who undertake work placements were required to disclose their disability before commencing. This has meant that many students have been discriminated against on the basis of disability (Higher education provider submission). Accordingly, it was recommended that the Standards include clarification of the responsibilities of providers to inform registration bodies and other relevant organisations of issues related to a student's fitness to practice both during their study and after graduation in professional-related qualifications.

Inclusive practices and universal design

The Standards have been praised as 'giving weight to the principles and promotion of universal design'. However, compliance with Part 6 of the Standards (curriculum development, accreditation and delivery), particularly the development and implementation of inclusive educational practices, was highlighted as an area of major concern (Higher education provider submission). Providers indicated that, since the introduction of the Standards, only a small proportion of universities have implemented universal design policies for teaching and learning, and the development and delivery of course curricula. This was attributed to a general lack of awareness concerning legal obligations and a resistance to applying these approaches to teaching and the development of course curricula. To enable greater accessibility across and between institutions by all students (with or without a disability), it was suggested that the government impose obligations on providers to implement universal design practices for curriculum development, teaching and learning.

Summary

The review was told that measures for promoting greater inclusion and removing subtle and indirect discrimination are needed to improve the effectiveness of the Standards. There was a clear message that the obligations and requirements under the Standards need to be strengthened to improve accountability and reduce discrimination.

Stakeholders suggested that inclusive education teaching methods should be enshrined in the Standards and Guidance Notes to ensure that students with disability are able to participate in education on the same basis as other students. It was also suggested that the Standards need to be strengthened to deal with indirect discrimination. A summary of the suggestions relating to inclusion and discrimination is included at [Appendix A](#).

2.5 Complaints, accountability and compliance

Background

Under section 32 of the *Disability Discrimination Act 1992* (DDA), it is unlawful for a person to contravene a Disability Standard. An aggrieved person or someone on their behalf can make a complaint to the Australian Human Rights Commission about non-compliance with the DDA. This includes complaints about non-compliance with a Disability Standard. If conciliation by the Commission is unsuccessful, an aggrieved person may commence legal proceedings in the Federal Court or Federal Magistrates Court.

Since 2005, approximately seven per cent of complaints made under the DDA relate to disability discrimination in the area of education (Australian Human Rights Commission 2011).

In addition, most states and territories have Equal Opportunity legislation. People who wish to lodge a complaint about discrimination can choose to complain under the Commonwealth's *Australian Human Rights Commission Act 1986* or relevant state/territory legislation.

Issues

Submissions argued that measures for accountability and compliance, and reporting and monitoring of complaints in the Standards, need to be improved. One Advocacy organisation submission stated that 'the effectiveness of the Standards is reduced by the lack of funding, resources and enforceable compliance.'

Users argued that there has been very little cultural change as a result of the Standards. The general perception of user groups was that education providers were not held accountable for implementing the Standards. In contrast, many education providers believe that the Standards have brought about greater awareness and understanding of the rights of students with disability. Providers indicated that the Standards had also increased awareness and understanding of the responsibilities and obligations of education providers to students with disability, however there are still some of the barriers to meeting them.

Complaints process

The review was told that the structure of the complaints process means that some people, parents in particular, are reluctant to make a complaint to the relevant authority due to time, energy and financial constraints, as well as fear of potential adverse impacts on the student with disability. It was also considered that the nature of the complaints system and its reliance on individuals to pursue complaints has made systemic change difficult. The outcomes of many grievances are suppressed as part of settlement, making it difficult for advocates and other legal bodies to use these cases as precedents.

The review heard that there are difficulties with complaints relating to access and participation in schools:

The complaint process is often hampered by inappropriately long time considerations. The parents are already stressed if the situation has led to a complaint process being undertaken and there should be a ruling as to what is an acceptable and timely resolution for the sake of the child, the parents and the school. The complaint process also needs greater articulation and clarification for parents. Simply telling them that they can make a complaint without supporting them as to how, and with whom and what they need to know and do is unhelpful, and indeed sometimes it is detrimental to them accessing their rights in a respectful manner.

– Advocacy organisation submission

While there is evidence that the introduction of conciliation has improved the process for handling complaints under the DDA, the process to be undertaken if conciliation is unsuccessful remains very long and expensive (VET provider submission). The review was told that a reliance on the complaints process can often lead to poorer educational outcomes for students with disability. Having to take issues to the Federal court is often considered prohibitive in terms of cost and the associated stress and time commitments can have adverse consequences for the student's education.

The complaints process was not considered accessible for a number of reasons. Firstly, it was deemed to place the onus on the complainant. Considering that complaints often eventuate when the situation has become untenable, complainants worry that the aggrieved will face further victimisation if they choose to pursue a formal complaint. Secondly, it was argued that negotiations increasingly involve the state bureaucracy rather than teachers and principals at the local level; this can make the process more complicated for the complainant. Thirdly, the review heard that most complaints can take 12-18 months to progress. The lack of timeliness can mean that a student has missed a considerable portion of the school year. At worst, by the time an issue is resolved it is too late for students to catch up. It is usually only when parties are at crisis point, positions are entrenched and communication has broken down that complaints are taken to state anti-discrimination boards or the Australian Human Rights Commission. If conciliation fails, the complainant is required to make a fresh application to the Federal Court. This process is considered complex and potentially costly for complainants. There was significant support for the Standards to specify a complaints process that is more accessible to parents and students with disability.

It was suggested that clear guidelines be developed under the Standards to articulate effective complaints pathways to parents, associates and students. It is not clear whether there is any intermediate step between a complaint made to the provider and a complaint made to the Australian Human Rights Commission. Currently, before any action can be taken in relation to appealing a provider's decision, a complaint must be lodged with the Commission. While there have been many cases where the complaints process has led to positive outcomes, it was more often seen as a barrier to preventing discrimination. There was support for giving the Commission the authority to take action where there are breaches of Standards without a student or parent having to take the action as a mechanism to strengthen the onus on education providers to prevent discrimination. This could be similar to the 'own motion' role of the Ombudsman.³

3 The Ombudsman can conduct an investigation as a result of a complaint to the office or on his own motion.
<http://www.ombudsman.gov.au/>

The review was told that a more effective complaints process could have educative value in improving understanding of the principles of the DDA and promoting systemic change. A number of submissions argued that there is no publicly available data on complaints in state education departments and no reporting requirements under the Standards. It was recommended that there should be accountability, transparency and access to useful data such as numbers of students with disability and numbers of complaints by type and sector.

Accountability

A significant concern from advocates and users of education was that there is no immediate consequence for education providers who do not comply with the Standards unless a complaint is lodged. Submissions argued for processes and penalties to be introduced to address non-compliance with the Standards. Submissions also suggested that the Departments of Education should be required to ensure that all schools comply with the standards, to record and publish complaints relating to non-compliance, and to ensure that individual schools that do not comply are called to account.

It was argued that all education jurisdictions should be accountable for ensuring that all new initiatives and systems are inclusive of all students, especially students with severe and complex needs:

While there are national/state and school accountabilities for the learning of students who sit above the Foundation or Early Stage One level of education, there is no equivalent National/State and School accountability for the learning of this small percentage of students who sit below the threshold. Consequently students with severe learning disabilities are relegated to students who do not learn or do not matter.

– School provider submission

It was also suggested that a regulatory body was needed to oversee the development of individual education plans. There was a concern that, within the school sector, individual education plans are prepared by teachers and the parents have little or no say in either their construction or the assessment of their success or suitability for the individual child (School sector submission).

Monitoring and compliance

One of the most significant reasons that the Standards are not meeting their aims is that the onus of monitoring and enforcing them relies on the student with a disability....We need something like an education information service and ombudsman service to pursue complaints for parents and students with disability.

– Advocacy organisation submission

There were clear concerns from advocates, users and some peak bodies about the lack of monitoring on the impact of the Standards. It was argued that a monitoring and reporting mechanism for implementation of the Standards should be established. Accountability needs to be increased at the provider level with implementation of the Standards driven by governments to ensure they are implemented at every educational institution. There were a number of suggestions for improving compliance and monitoring of implementation of the Standards.

It was suggested that compliance measures should be implemented by state and territory education authorities to determine the impact of the Standards on the ground.

Departments of Education have a responsibility to monitor compliance with the Standards. Departments of Education should be required to ensure that all schools comply with the Standards, to record and publish complaints relating to non compliance, to ensure that individual schools that do not comply are called to account. Departments of Education should be asked to report on compliance with the Standards.

– Advocate submission

The review was told that changing the focus of the Standards from complaints to compliance would provide a mechanism for systemic change to ensure students with disability are treated on the same basis as other students. Improving the availability of data on compliance would also support systemic change.

The submissions highlighted the need for the compliance measures in the Standards to be enforced in a manner similar to Occupational Health and Safety legislation. It was argued that:

The current suggested measures of compliance should be converted to more definitive and accountable key performance indicators to ensure compliance of education providers' ... whilst the measures for compliance contained in each of the parts of the Standards are reasonable and helpful, their status as suggestions rather than requirements for providers undermines their effectiveness in supporting the Standards.

– Tertiary sector submission

The review was told that strong, enforceable compliance measures would be especially helpful in the VET sector. It was considered that the effectiveness of the Standards in protecting the rights of students and ensuring providers meet their obligations in the VET sector is compromised by the:

... established culture of minimum compliance and large number of providers operating on a commercial basis, the lack of prescription in the measures and the lack of an effective mechanism for monitoring and enforcing provider compliance.

– Tertiary sector submission

Independent intermediary role

There was significant support amongst users and advocates for an alternative enforcement mechanism to ensure compliance with the Standards. In addition to the problems with the complaints process noted above, stakeholders argued that the current arrangements do not address systemic discrimination. Therefore there was support for establishing an independent arbiter or a separate enforcement agency to work with providers to ensure the requirements of the Standards are met.

There is a need for an easier, solution-focused process for parents and individuals to make a complaint with support of an independent body if there is a breach of the Disability Standards for Education.

– Advocacy organisation submission

It was suggested that a more effective process:

... would see a complaint as an opportunity to discover new ways of working rather than a nuisance that needs a defensive response. One way to achieve this is to have an independent body which parents can access through the school, and which the school can also access as a resource, to assist with mediation and awareness raising in relation to the Standards. An independent body could also assist with determining appropriate adjustments to accommodate students with disability in the school of their choice.

– Advocacy organisation submission

There were a number of submissions that recommended the establishment of a national independent intermediary role such as an Ombudsman to:

raise awareness amongst education providers about their specific obligations under the Standards; mediate to ensure that there is no negative impact on the student/family in the consultation process; and if necessary, assist with a complaint to the Australian Human Rights Commission. ...There should also be the capacity to use a 'show cause' power to ask an education authority why action should not be started for breach of the Standards.

– Advocacy organisation submissions

It was also suggested that an independent body could improve accountability, through oversight of reasonable adjustments and unjustifiable hardship, and audits of education providers to assess compliance with the Standards. An independent review body could also assist in addressing issues relating to equal access to education and training at a systemic level and reduce the need for students with disability to proceed with a formal complaint (Advocacy organisation submission).

Finally, it was argued that an independent body or person could be responsible for a system of centralised reporting of conciliated and monitoring implementation of the Standards. An independent body could contribute to assessing whether Australia's obligations as a signatory State Party of the United Nations Convention on the Rights of People with Disability are being upheld.

Measures of compliance at the institutional level

There is great variation in measures for compliance implemented across the education sector to meet the needs of students with disability. For example, concerns were raised about both under- and over-servicing of students with disability in order to meet compliance requirements. Under-servicing was criticised for creating barriers to access and participation for current and prospective students with disability and undermining their capacity to engage as learners. On the other hand, some providers indicated that the tendency to 'over-service due to a fear of non compliance or litigation ...leads to a welfare approach as opposed to an approach which builds independence' (Higher education submission). Over-servicing was also criticised for setting up unrealistic expectations for students with disability wishing to enter the workforce.

From the feedback received, there was overwhelming consensus that the 'measures for compliance' section in each part of the Standards should be contextualised for each level of education (e.g. early childhood, schools, tertiary). It was also recommended that, in order to ensure greater levels of comparability across the higher education sector, requirements be developed and clearly articulated in each of the Standards for: enrolment; participation; curriculum development, accreditation and delivery; student support services; and preventing harassment and victimisation.

Interaction with other legislation

The interaction of the Standards with other legislation, such as Occupational Health and Safety, Copyright and Privacy legislation was cited as an area of concern. Providers indicated that it was often difficult to determine when and how to apply the Standards in relation to other legislation, including state-level legislation. It was recommended that greater emphasis be placed on the fact that the Standards do not operate in isolation. It was also suggested that the extent to which Commonwealth legislation takes precedence over state legislation be made clear.

Accountability and monitoring

Many providers criticised the inherent lack of accountability for compliance contained in the Standards. In the feedback received, it was stated that the consequences of not complying 'do not encourage providers to pro-actively achieve the Standards' (Higher education submission).

To further increase accountability for providers, it was recommended that an annual reporting requirement, with associated penalties for non-compliance, be adopted. It was felt that reporting requirements would encourage greater consistency and compliance with the Standards across the higher education sector (Higher education submission).

Summary

There was a very clear view from the consultation process that the lack of accountability for compliance with the Standards is a significant impediment to their overall effectiveness. It was argued by stakeholders that a lack of accountability combined with the complexity of the complaints process, results in few consequences for providers who breach the Standards and/or fail to act on complaints. Stakeholders also argued that there is no accurate way to identify systemic barriers to access and participation across the education sectors.

Stakeholders suggested government consider the following issues relating to complaints, accountability and compliance:

- Specify a more accessible complaints process for parents, associates and students with disability under the Standards.
- Give the Australian Human Rights Commission the authority to act where there are breaches of Standards without a student, associate or parent having to take the action.
- Introduce processes to address non-compliance with the Standards.
- Contextualise the measures for compliance section in each part of the Standards for each level of education (e.g. early childhood, schools, tertiary) and identify requirements in each of the Standards for: enrolment; participation; curriculum development, accreditation and delivery; student support services; and preventing harassment and victimisation.
- Clarify the interaction of the Standards with other legislation, such as Occupational Health and Safety, Copyright, and Privacy legislation and state legislation.
- Include an annual reporting requirement, to monitor compliance with the Standards.

2.6 Contemporary education context and practice

Background

The Guidance Notes state that the five-year review should consider whether *“the Standards continue to be compatible with contemporary practices in education and training”* (2005: paragraph [10]).

The review sought feedback on:

- the impact of technological change on enrolment processes, learning options, online and blended course delivery, reasonable adjustment options and cyber-bullying
- whether the types of education and training providers listed in Part 1.5 of the Standards who must comply needs to be updated.

Issues

Early intervention

Both users and providers suggested that early intervention needs greater recognition and funding. For example, there can be long waiting periods in some states for families to gain a diagnosis for some medical conditions, such as autism spectrum disorder. Delays in diagnosis and the funding process can result in students missing out on opportunities for early intervention which could assist in improving educational outcomes.

Another concern was that specific learning disabilities, such as dyslexia, are not systematically recognised in state education systems in Australia. Many students and their parents are not aware they have the disability. Students with these disabilities are likely to need support to enable participation.

Early intervention (birth to school age) is not covered in the Standards but should be. Early intervention is often seen as a health or allied health issue. For deaf students it is also an education issue. Some educational institutions provide early intervention programs but this is not consistent, most do not generally see early intervention as part of their brief, they see their responsibilities as starting at pre-school age – but this is too late for deaf students.

– Advocacy organisation submission

Users felt that the importance of early intervention is not recognised by the Standards and that greater emphasis could be placed on formal assessment programs, with more resources allocated in order to reduce waiting periods. They saw this as especially relevant in the contemporary context where many child care providers are offering educational programs.

Early childhood

The review was told that there is a great deal of confusion in early childhood settings that provide both child care and part-time preschool programs. Providers are bound by the Standards for the duration of preschool programs, but not during periods when child care programs are in place. It was argued that all providers of early childhood programs should be bound by the Disability Standards for Education 2005. It was suggested that changes in the early childhood sector through the National Quality Framework for Early Childhood Education and Care provide an opportunity for this to be implemented. (Education provider submission)

Submissions argued that the inclusion of 'child-care' providers in the Standards would allow for greater consistency between 'child-care' providers and pre-schools. This would also provide for coverage of all providers at each level of education. If the Standards were amended there would need to be a concerted effort to inform all early childhood education providers of their obligations.

Special and mainstream schools

The review heard that since the introduction of the Standards, there has been a broadening of the range of students with disability in mainstream schools and an overall change in students attending special schools.

Students who now enrol in special schools generally have higher medical needs and more complex and significant challenging and injurious behaviours directed at themselves, other students and/or staff. Some students who would have previously attended Special Schools are now accessing a variety of settings from mainstream with support to Support Classes in mainstream schools.

– School provider submission

However, there were concerns about whether the trend towards mainstream settings is the best way to meet the support needs of all students with disability. Some providers argued that the idea that all staff across all settings are able to meet the needs of all students ignores the specialist knowledge and skills required to assist some students to learn. The lack of specialist training and resources in mainstream schools means that some students with disability have access to 'locational or social inclusion rather than educational inclusion' (Education provider submission).

Further, it was suggested that:

Special schools are now seen as a second-rate option for the education of students with disability rather than acknowledging the high quality of educational programs and teaching expertise (and sometimes facilities) available in these settings. When a parent apologises for selecting a special school as the school of choice for their child, one wonders at the 'value-lost' from rigorous implementation of the Standards for all children. All parents have a right to feel they have made the best choice in education for their child".

– School provider submission

The review was also told that the distance education sector has noticed a significant increase in the 'social and emotional' needs of new student enrolments – for example students with Asperger's Syndrome. Stakeholders reported that this was a consequence of students with disability not receiving appropriate support at other schools. However, distance education was set up to meet the needs of geographically isolated students and is not necessarily best placed to meet the needs of students with disability.

National curriculum, assessment and reporting

There were significant concerns raised about the move towards a national curriculum and the challenges this may pose for students with disability. Some users and providers felt that the current national curriculum does not meet the needs of any student who is outside 'the norm', such as gifted and talented students or students with disability. Depending on the type and severity of the disability, some students may struggle to meet the basic curriculum competencies. This may set these students up for failure. Parents and advocates argued that systems for ranking students can have an adverse impact on students with disability, in that while a student may be progressing, they may never reach the same level as their peers. There was also concern that the Australian Curriculum, Assessment and Reporting Authority (ACARA) had failed to take account of the needs of students with disability in curriculum documents (Education provider submission).

The impact of the National Assessment Program – Literacy and Numeracy (NAPLAN) testing on students with disability was raised during the consultation process. Advocates felt that the NAPLAN tests had the effect of excluding and devaluing students with disability as these students may not be able to perform as well as their peers. The review heard that schools encouraged parents of students with disability to keep their child at home on the day NAPLAN testing was to take place. The review heard that some students and parents sometimes perceived additional support provided to students with disability as ‘cheating’.

Further, advocates argued that the reporting of NAPLAN results on the *My School* website should seek to include students with disability. It was suggested that the *My School* website could note the proportion of students with disability along with other identified groups attending each school. Information about students with disability on the website could help parents to know:

- whether the school has a special education program (SEP)
- what is the staffing of the SEP
- how many children are enrolled in the SEP
- funding per SEP student.
 - Submission from parent of student with disability

Transitions in education

It was suggested that the Standards should reflect the contemporary focus on transitions between different education stages. The review heard that in-school programs and transition programs did not always adequately prepare students for post school education. For example, students with disability wishing to pursue VET learning options did not always have access to VET-based courses in school. Similarly, students with disability wishing to pursue higher education were not always supported to make this transition smoothly. In addition, movement between schools and between levels of education can mean that resources and support need to be renegotiated at each transition point. This means that personal histories have to be told numerous times and new medical evidence and assessments provided. Mandatory individual education plans could be used to assist in making this process easier.

Work experience and placements

A number of submissions noted that the Standards do not adequately support equal access for students with disability in the context of workplace-based delivery of VET, or work placements for school and tertiary students. In order to ensure the relevance and effectiveness of the Standards to meet the contemporary education context, it was suggested there could be greater integration of the Standards in VET regulatory frameworks.

Higher education

The majority of submissions indicated that, since the introduction of the Standards, there has been a substantial growth in the use of e-learning environments. Although this can assist in making educational practice more inclusive and presents opportunities for students with disability, inconsistent access to technology is problematic. The majority of submissions indicated that the Standards do not reflect the current technologies being used within universities and need to be updated to take greater account of technological advances. Overall, providers were of the view that the Standards have assisted in bringing about a cultural change in attitudes toward students with disability and acceptance of a more ‘learner-centred’ approach to education. However, these practices need to be reinforced as the Standards continue to promote adjustment, rather than universal design.

Students with mental illness

Over the past five years, there has been a higher incidence of students with mental illness presenting at student services within universities. A number of providers highlighted that the Standards have the effect of covering students with mental illness but do not make this explicit. To ensure students with mental illness are adequately supported and aware of their rights, it was suggested that the Standards clearly state that students with mental illness are covered by the DDA.

International students

While many universities are aware of their obligation under the DDA to provide support and reasonable adjustments to international students with disability, where necessary, the Standards have been criticised for the lack of guidance provided in relation to international students. It was recommended that the Standards clarify coverage of all students with disability, regardless of their enrolment status.

Summary

From the issues raised it is clear that there have been a number of changes in contemporary education policy and practice across all levels that are impacting on the application and operation of the Standards. A range of suggestions were made to the review about addressing these issues including proposed amendments to the Standards as well as the provision of guidance and assistance for education providers.

The review heard that guidance should reflect the contemporary focus on transitions between education stages and be updated to reflect the current technologies being used within universities and take greater account of technological advances.

Stakeholders suggested government consider the following issues relating to the contemporary education context:

- As part of the National Quality Framework, ensure all child-care providers that are now covered by the *Education and Care Services National Law Act 2010* are included in the list of education providers bound by the Standards.
- Amend the Standards to clearly state that students with mental illness are covered by the *Disability Discrimination Act 1992*.
- Clarify the coverage of all students with disability including international students, regardless of their enrolment status under the Standards.
- Make individual learning plans a requirement under the Standards across all sectors to assist with transitions in education.

2.7 Resources

Background

The Standards indicate that when assessing whether a particular adjustment for a student is reasonable, providers must consider a range of factors including the costs and benefits of making the adjustment.

An education provider is not required to make adjustments if this would result in unjustifiable hardship. A claim of unjustifiable hardship should take into account all the financial and other resources (such as infrastructure and access to trained staff) that are reasonably available for the purpose of making any necessary adjustments for the student, and the impact of those adjustments on the provider's capacity to provide high quality education to all students while remaining financially viable.

The provider should consider all costs and benefits, both direct and indirect, that are likely to result for the provider, the student and any associates of the student, and any other persons in the learning or wider community, including:

- costs associated with additional staffing, the provision of special resources or modification of the curriculum
- costs resulting from the student's participation in the learning environment, including any adverse impact on learning and social outcomes for the student, other students and teachers
- benefits deriving from the student's participation in the learning environment, including positive learning and social outcomes for the student, other students and teachers, and any financial incentives, such as subsidies or grants, available to the provider as a result of the student's participation. (Disability Standards for Education Guidance Notes pp 47-48).

Issues

Schools

Funding and resourcing were raised as issues at every consultation and in the majority of submissions. Both user and provider representatives argued that there is not enough funding to effectively accommodate the needs of students with disability, even when there is a commitment to do so.

Without consistent and appropriate funding mechanisms, support for students with special needs in terms of enrolment, participation, curriculum development, student support services and the elimination of harassment and victimisation, will always be difficult to achieve, regardless of the quality and clarity of Disability Standards and Guidance Notes.

– Education sector submission

...students with disability enrolling in a state school, do not automatically receive the support that their diagnosis requires nor the resources the school needs to make the adjustment. Whilst the Standards suggest that appropriate support is a right, the reality is that the high levels aspired to in the Standards, are not matched by high levels of resourcing from government.

– Education sector submission

There were a range of concerns raised about the lack of resources to adequately meet the needs of students with disability, including the following:

- Schools argued that they do not have the necessary resources to accommodate students with complex needs and that adequate financial resources need to be allocated to educational institutions to make reasonable adjustments.
- There is a perception amongst education authorities that if a request by parent exceeds allocated funding then this constitutes 'unjustifiable hardship' and excuses the school from making the required adjustments.
- Advocacy organisations provided examples of funding models that are not based on needs and are often fixed and inflexible.
- It was argued that funding should assist teachers, schools, universities and VET providers to keep up to date with new technologies to assist students and make the most appropriate adjustments.

Access to appropriate skills

The review heard that since the introduction of the DDA, the number of students with disability participating in mainstream settings has increased. As a consequence, this has generated a demand for facilities, staff and expertise.

The review heard that as a result of the broad acceptance of inclusion policies, there is now an expectation that classroom teachers and other educators will develop skills in areas that were once the domain of specialists. There were concerns that this has the potential to undermine the specialised skills, knowledge and experience required to meet the needs of students with disability. The review heard that at present, approximately 10 per cent of teachers have received training in teaching methodologies for students with disability or learning difficulties.

While the obligations outlined in the Standards are clear, it is difficult, if not impossible, to see how they can be achieved when many teachers are teaching classes of up to 30 (in some cases more) students while also dealing with students with disabilities and mental health problems (which are frequently combined with learning difficulties or intellectual disability). The provision of some supplementary funding for a few hours of support barely begins to address the real problems facing schools, teachers and students.

– Education provider submission

Other concerns about funding arrangements related to the lack of transparency about funding decisions and allocations by state governments.

It is difficult to advocate for more funding if there is a lack of information about how much money has been allocated. National resources would create momentum and assist with implementation of the Standards.

– **Advocacy organisation submission**

Submissions argued that national consistency in defining students with disability could assist in providing more equitable access to targeted funding. A number of submissions acknowledged the current 'National Trial of the Model for Identifying Students with Disabilities'. However, there were concerns that the trial is limited to national data collection and avoids consideration of eligibility criteria for funding. One submission argued that the trial would be more effective if it also considered eligibility criteria to achieve an equitable distribution of targeted funding across states and sectors (Education sector submission).

Funding eligibility

State and territory funding eligibility criteria affect the type of support students can access. There were significant concerns from advocates about the funding allocation mechanisms used by state/territory education departments. Advocates argued that inconsistency between states and territories in levels of support is inequitable. There was support for a 'national classification of learning disability so that it does not matter which state or territory you reside, your child will receive the same level of support and assistance in the classroom' (Parent of student with disability submission).

Parents argued for regular reviews with teachers and principals to discuss the best ways to spend any special funding made available to the school to assist with the education of students with disability. Parents stated that they do not know whether funding had been made available or how the funding was being spent for their child.

Another significant concern was that funding allocations are inequitable between schools, with non-government and special schools receiving different funding to mainstream government schools. For example:

Ironically, it is the students in Special Schools, especially those schools catering for students with multiple and complex learning needs who are increasingly being excluded from access to programs only available in mainstream settings. In NSW, students in Special Schools cannot access Reading Recovery, National Partnerships: Literacy Numeracy, Speech Therapy in Schools Program, Best Start, Student Learning Assistance Program.

– **School sector submission**

It was suggested that there are insufficient funds overall to meet the needs of all students with disability, especially those with more severe disabilities. It was also felt that already inadequate resources were being stretched as a result of increases in enrolment of students with disability (Education sector submission).

Alternative funding approaches

Some advocacy groups argued that the introduction of individualised (self directed) funding for students with disability would allow students and their parents and guardians to identify the support that is most appropriate to meet the education needs of the student. It was argued that individualised funding would also provide parents with the opportunity to arrange and administer the most appropriate professional support arrangements for their child in consultation with the school.

In order to improve implementation of the Standards in schools, it was suggested that education consultancy support services (similar to that offered by the Down Syndrome Society of SA or Scope in Victoria⁴) should be available.

4 Scope is a not-for-profit organisation providing disability services throughout Victoria to children and adults with physical and multiple disabilities. Regional representatives assist clients by talking about the best supports and services available in their communities (<http://www.scopevic.org.au> website accessed 19/10/11).

These services could negotiate the arrangements to support participation, access to student support services and access to curriculum. In primary schools this could include in-service training for all school staff and extra-curricular teachers, observing, advising and modelling appropriate support strategies and learning methodologies and assisting families to connect to existing agencies for additional support. Education consultants could also participate as a member of the Negotiated Curriculum Plan. For secondary education the consultants can provide advice and support on curriculum modification, peer awareness programs, sexuality and human relationships programs, friendships, SACE, post school options and work experience.

– Advocacy organisation submission

Tertiary education

The review heard that increasing student numbers and static financial resourcing has put a strain on disability support units in universities. Since the introduction of the Standards, the number of students with disability seeking support in higher education has increased. Although the number of students identifying as having a disability has also increased, providers stated that the actual number of students with disability being supported is far greater. Providers raised concerns about under-identification of disability, particularly as funding is based on those students that identify as having a disability upon enrolment. A number of submissions indicated that, whilst there has been greater acceptance of the inclusion of students with a disability, there continues to be some reluctance for students with disability and mental illness to identify disability when commencing at university.

Further concerns were raised in relation to the increasing complexity of needs of students enrolling at university, the lack of support for students with mental illness and the static nature of funding, through the Disability Support Program, to support these students.

University providers expressed concern that the current funding model, implemented through the Disability Support Program, is not commensurate with the increasing cost and number of students with disability participating in higher education and does not fund universities for costs incurred by international students. Some providers recommended that the Disability Support Program be resourced in line with the Bradley Review recommendations and restructured to more effectively target the real costs associated with the provision of disability support services in the university context (Higher education submissions). There were also concerns from those universities that are not eligible for Disability Support Program funding (Table B providers⁵) about their capacity to accommodate students with disability without government assistance.

The Disability Support Program assists providers with the costs of domestic students with disability. Provider obligations under the Standards extend to all students with disability, including international students. Universities argued that increases in the number of international students with disability enrolling and participating in higher education place further strain on their financial resources.

The review also heard that cost and resourcing is a serious issue for smaller providers in the VET sector.

Universal design

There was general consensus among providers that the Standards have had a positive impact on universities. In particular, the Standards were credited with having:

...an impact on the degree to which institutions have understood the necessity to resource specialised services, invest in equipment and modify infrastructure to ensure compliance.

– Higher education provider submission

5 Providers listed in Table B of the Higher Education Support Act 2003 are only eligible for some grants for particular purposes as outlined under Section 41-10.

Although a range of factors contributed to a stronger commitment to the principles of universal design, providers indicated that:

it would be reasonable to assume that the sector would not have invested as heavily in specialised services for students with disability without the introduction of the Standards.

– Higher education provider submission

Despite the increase in investment by universities in inclusive educational practices, there continues to be concerns about the quality and timeliness associated with the implementation and delivery of appropriate educational adjustments and resources. For example, transcription of print materials, access to assistive technology, access to web-based materials and physical access were highlighted as areas where large disparities exist between and within universities. It was suggested that requirements for educational resources be prescribed within the Standards in order to reduce discrepancies within and between institutions (Higher education provider submissions).

It was suggested that guidance materials with relevant links and useful references be developed to assist those using the Standards. In particular, providers highlighted the usefulness of the Australian Disability Clearinghouse for Education and Training (ADCET)⁶ and the Australian Human Rights Commission websites. Many providers indicated that ADCET, the Commission, and National Disability Coordination Officers (NDCOs) are particularly useful and valuable resources.

Summary

Education users and providers argued that resource constraints were an impediment to the implementation of the Standards and to the levels of support and types of adjustments provided to students with disability. There were also concerns about the availability of appropriately qualified staff and the adequacy of resources to support students with complex needs in line with the Standards.

6 Refer www.adcet.edu.au

3. Findings and recommendations

In this section, the issues raised during the consultation process are consolidated into the key findings and recommendations of the review. As summarised in the previous section, there were a range of issues raised in the consultation and submission process. These issues can be addressed by amendments and additions to the Standards and awareness raising and guidance materials.

There is another set of issues that affect the way the Standards have been implemented or operate in practice. These issues are affected by policy and program arrangements across education sectors and jurisdictions.

The review team identified 14 recommendations to be addressed through amendment to, guidance on and awareness of the Standards and a set of related issues to be referred to relevant policy and program areas across education sectors to identify ways to address the concerns raised during the consultation process about the implementation of the Standards.

3.1 Awareness

Since their inception in 2005, the Standards have provided clarity and elaboration of the legal obligations under *the Disability Discrimination Act 1992* in relation to education and training. However, the effectiveness of the Standards has been somewhat undermined by a lack of awareness of them and the need for greater clarification of key terms relating to the implementation of the Standards. There are also some gaps to be addressed and additional information needed to effectively apply the rights and requirements in the Standards.

It is clear from the consultation process that the level of awareness is patchy, with some education providers and organisations well aware of the Standards and others indicating that the Standards are not well understood. Therefore, the review finds that there is a need for greater awareness-raising efforts and practical information about the Standards and how they can be implemented. This applies across all levels of education as well as the broader community. There were a number of suggestions about how awareness could be improved including the types of information and accessibility of information. It was suggested that the Standards should be available in alternative formats with information easily accessible from one website; as well as links from peak organisations.

Based on the issues identified by stakeholders, the review recommends that Government consider the following 2 recommendations to raise awareness about the Standards.

Recommendations for raising awareness

Recommendation 1

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with state and territory education ministers for early childhood and child care, schools, tertiary education and skills, develop a range of targeted information resources for education users and providers to promote awareness of the Standards including:

- a. User-specific information including information on developing advocacy and negotiation skills.
- b. Information specific to early childhood, schools, tertiary and registered training organisations.
- c. Handouts outlining user and provider rights and responsibilities, to be included in all enrolment kits for each level of education and given to parents, associates and students on enrolment.
- d. A disability and education website to make accessible online information on implementing the Standards.

Recommendation 2

The Australian Human Rights Commission, in consultation with the Attorney-General and the Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, undertake an awareness-raising campaign about the *Disability Discrimination Act 1992* and subordinate legislation including the Disability Standards for Education 2005.

3.2 Clarity

Although a large number of education providers said that the Standards provide a clear outline of the rights and requirements for students with disability to access education, there is a need for practical information on implementation. This includes clarification about how to apply terms such as 'on the same basis', 'reasonable adjustment', 'unjustifiable hardship', and 'consultation'. The issues are as follows:

On the same basis

Users and providers suggest that this term needs further discussion as it is sometimes taken to mean everyone gets the same things, same place and same teacher. This is inconsistent with the notion of reasonable adjustment, i.e. ensuring students with disability can achieve their learning aspirations and potential. It can also undermine the value of specialist knowledge and specialist teachers. Guidance about 'how on the same basis' can be implemented and what should happen in practice will promote a better understanding of the fact that the definition of *equitable* is different from *the same*.

Reasonable adjustment

Clarification of the term 'reasonable' was sought by both users and providers. The majority of submissions indicated that more clarity was needed in relation to the limits of what is *reasonable* and for balancing the interests of all parties in determining adjustments. Sector-specific examples of best practice reasonable adjustments would assist providers in meeting the needs of students.

Unjustifiable hardship

There is a perception that the concept of 'unjustifiable hardship' for education providers can be used as a reason for not making adjustments for students. The decision-making process and the rationale for making particular adjustments instead of others are not always clear to many parents of students with disability. Greater clarity around the term could offer better protection for students with disability and more certainty for education providers.

Consultation

Opportunities to access education and training would be improved by strengthening the protocols for consultation. Clearer guidelines on the expectations of consultation in each education sector would be useful for both education users and providers.

There is support for a single, accessible, authoritative, plain-English version of the Standards. This should be supported by information and examples for each education sector to make the Standards clearer.

There was feedback that the Standards should be simplified and rewritten to reduce repetition, use plainer English and address identified gaps. Gaps include: coverage of child care providers; clarification of the role of parents and carers as opposed to 'associates'; and reference to the UN Convention on the Rights of Persons with Disabilities, in particular the concept of 'substantive equality'. A summary of suggestions is at Appendix A.

In the tertiary sector a number of issues need to be addressed. Firstly, specific reference to the coverage of Registered Training Organisations and work-based training organisations is needed. Inclusion of training

in the title would clearly identify that the Standards apply to the VET sector. Secondly, guidance is needed on the relationship between the Standards and inherent course requirements either in the Standards or in sector-specific guides. Thirdly, the responsibilities of tertiary students to let providers know about their needs should be clearly articulated. Finally, the term 'associate' needs to be reviewed to clarify that associates cannot make decisions for students in the post-compulsory tertiary sector without their consent.

Based on the issues identified by stakeholders, the review recommends that Government consider the following 2 recommendations to improve the clarity of the Standards.

Recommendations to improve clarity

Recommendation 3

The Attorney-General, in consultation with the Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, revise the Standards to include child care providers and to clarify that Registered Training Organisations are covered by the Standards.

Recommendation 4

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with the Attorney-General, develop user-friendly, sector-specific guidance materials in appropriate formats, which include practical examples to support consistent interpretation and application of the terms 'reasonable adjustment', 'unjustifiable hardship', 'consultation' and 'on the same basis'.

3.3 Access and participation

Overall, the review found that the Standards have assisted people to access and participate in education to varying degrees. Some education providers and peak education bodies stated that they use the Standards to improve disability action plans and to educate their staff about students with disability. In particular, the explicit requirement that students with disability are entitled to education on the same basis as all students was cited as a driving force for action and change.

However, more needs to be done to secure equality for students with disability to access and participate in education on the same basis as students without disability. As argued at the roundtable meetings: 'the Standards provide a good framework – they just need to be implemented effectively'. Specific issues relating to access and participation for each sector are discussed below.

Schools

Examples were provided during the consultation process of difficulties faced by parents, carers and students with disability in accessing schools. This includes a perceived disparity in resources between government and non-government schools, and lack of choice for parents, families unable to enrol siblings at the same school, or to travel long distances to access schools that offered appropriate supports. Some families were reluctant to disclose their child's disability on enrolment for fear they would be refused a place in the school or discouraged from proceeding with enrolment.

With an increasing number of students with disability attending mainstream settings, schools were concerned about the ability to provide appropriate support to students with disability and access to resources to do so. Other concerns were the availability of appropriately qualified staff; and the adjustment of teacher workloads to allow teachers to provide additional support to students with disability in their classes.

Advocacy organisations provided examples where the requirements of the Standards were not being met. In addition to improvements in the complaints, monitoring and compliance process (see Recommendations 9-11 below), there are a number of ways that access to, and participation in education for students with disability can be improved:

- Greater awareness of the rights and responsibilities under the Standards for parents, students and education providers can assist in the consultation process.
- Practical and accessible information and resources for teachers can assist them to provide support to students with disability. This includes access to information about particular disability supports and examples of what works.
- Greater support and adequate resources can be provided to schools to ensure they can provide reasonable adjustments for all students with disability (the issue of resources is discussed below).

The development of individual education plans to meet individual student's needs, and access to support, are critical factors to enabling the participation of students with disability in schools.

In terms of participation, a number of issues were raised. For education providers there are difficulties in determining when an adjustment is reasonable and meeting the expectations of parents and students. There are often problems in negotiating between professions – health specialists can provide a medical assessment but do not necessarily have expertise in educational needs. There are concerns about the competencies of some professionals providing access and support services to students. There are also concerns about the adequacy of training and skills of support staff, such as teachers' aides, and the gaps in access to specialist skills, such as Auslan interpreters.

For parents and students with disability, reaching agreement with schools about reasonable adjustment is often problematic. There were examples of students with disability being excluded from co-curricula activities such as sports, camps and excursions. Consultation about adjustments was often limited and one-sided – a 'take it or leave it' approach. In some cases, parents were not consulted until issues became critical, resulting in suspension or exclusion of students with disability. A number of submissions reported that students with disability may only be offered part day/part week attendance as a result of inadequate resources or limited access to support staff.

For students with complex needs these problems were exacerbated. Some providers argued that special schools are equipped to address complex needs but are unable to access some of the programs and supports available to mainstream schools. Similarly, some non-government schools are good at including students with disability but feel they do not receive the same resources as government schools. There were concerns that, while mainstream schools can meet the social and locational needs of students with disability, they were not always equipped to meet educational needs due to lack of specialist training. Families are, therefore, faced with difficult decisions about which school best meets the needs of their child, and are then required to negotiate support with the school through the enrolment process.

Across provider and user groups there were concerns that developments in the national education context, that is, national curriculum, national assessment and national reporting on the *My School* website, fail to take into account the needs of students with disability, particularly in mainstream school settings. Some users and providers feel that the current national curriculum does not meet the needs of any student who is outside 'the norm', such as gifted and talented students or students with disability. These are discussed below under the headings 'Discrimination and inclusion' and 'Contemporary policy context and education practice'.

Given the often divergent views about participation, a number of changes need to be considered. There was considerable support for individual education plans to be a requirement under the Standards as a way of ensuring that students with disability can participate in education on the same basis. Guidance on the format of the plans and the process for developing them should be provided to users and providers. This would allow parents, students and schools to work out and agree on how student's education needs will be met. Individual education plans can also be used to monitor the effectiveness of interventions for students with

disability. According to the Australian Council for Educational Research (2011), state education authorities can implement processes to monitor the quality of individual education plans and track the individual assessment of progress against the plans.

There is a need for more comprehensive training, professional development and access to support to assist all teachers to meet the needs of students with disability. This includes training to ensure the competencies of teacher aides and other specialist support staff. Finally, there is a need for improvements in allocation of resources and accountability for implementation.

Tertiary Sector

Levels of participation and access to appropriate support and assistance for students with disability across the VET sector are varied.

TAFE institutes have implemented a range of measures including strategies to support students with disability through the use of disability action plans, and have used the Standards for professional development and training. However, the review heard that the Standards do not adequately support access for students with disability in the context of workplace-based delivery of VET, or work placements for institution-based students.

From the consultation process it is clear that the coverage of Registered Training Organisations is an area that needs to be improved. A concerted effort across awareness, training and practice is required to ensure that Registered Training Organisations comply with the Standards.

Similarly, universities have implemented a range of measures to give effect to the Standards. It was reported that the numbers of students with disability attending university has increased significantly over the last decade. It was also noted that improvements in the processes of consultation and reasonable adjustment could increase participation of students with disability in higher education.

3.4 Discrimination and inclusion

A number of positive steps have been taken by education providers to implement the Standards and to eliminate discrimination against people with disability in education. This includes adoption of inclusive education policies and using the Standards to educate staff and the community about disability. However, a consistent message throughout the review is that more needs to be done to assist students with disability to access and participate in education. As noted above, exclusion, lack of choice and lack of understanding continue to be issues for students with disability. Bullying (including cyber-bullying), indirect discrimination and the lack of awareness of educators and other students and/or their families about the rights of students with disability were also highlighted as issues of ongoing concern. There is a need for more information on harassment, victimisation and bullying, as well as examples of, and practical support for, how these can be mitigated in the education sector.

Some advocacy organisations argued that the Standards have largely failed to reduce discrimination against students with disability and that education providers often failed to meet their obligations. There was support from these organisations for the Standards to be more prescriptive and include measures for accountability and penalties for non-compliance. There was also considerable support for a systematic process for monitoring complaints about discrimination as well as independent advocates being able to raise issues of discrimination on behalf of students with disability. These suggestions are discussed below under accountability and compliance.

The Standards sought to promote recognition and acceptance. This has recently been understood in terms of inclusion in education. There were a number of suggestions for improving inclusion and reducing discrimination against students with disability. Greater community awareness about the rights of students with disability and discrimination could promote greater recognition and acceptance. Leadership and policies supporting inclusion are important in creating an inclusive education culture.

Submissions noted that inclusion is most successful when there is commitment, resources and knowledge to support inclusive practice. It was also argued that consistent assessment and eligibility criteria for accessing special needs education and specialist support are important to inclusive practice.

Based on the issues identified by stakeholders, the review recommends that Government consider the following 3 recommendations to address access, participation discrimination and inclusion.

Recommendations to address access, participation, discrimination and inclusion

Recommendation 5

The Attorney-General, in consultation with the Federal Minister for School Education, Early Childhood and Youth revise the Standards to include a requirement to develop individual education plans for students in schools. Individual education plans should include advice on the barriers that students with disability face in learning and how students with disability can be supported to overcome these barriers.

Recommendation 6

The Attorney-General, in consultation with the Federal Minister for Tertiary Education, Skills, Science and Research revise the Standards to include a requirement to implement an agreed support plan for students with disability in the tertiary sector. The plan should set out the student's rights and responsibilities, the provider's responsibilities, any adjustments that have been agreed to, and mechanisms for review and support.

Recommendation 7

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care develop sector specific materials for education providers that are easily accessible in an online format and take the form of good practice guides on:

- a. Developing individual education plans in schools or disability support plans in the tertiary sector.
- b. Inclusive education practice, information about the learning impacts of specific disabilities and practical advice on adjusting teaching modes, assessment and curriculum design and adaptation.
- c. Addressing indirect discrimination, bullying, harassment and victimisation experienced by students with disability.
- d. Managing challenging behaviour, student safety and the use of restrictive practices with students with disability.
- e. Strategies for meeting the needs of students with disability who have complex and multiple needs.

3.5 Complaints, accountability and compliance

As discussed in the introduction to this report, there has been no systematic monitoring of the effectiveness of the Standards. As such, it is difficult to quantify the impact of the Standards on access to education. The need for greater accountability was consistently raised by students with disability, families, associates and advocacy organisations and, to a lesser extent, by some education providers and peak bodies.

The review found that the overall effectiveness of the Standards has been compromised by problems with the complaints process and lack of accountability, monitoring and measures for compliance in implementing the Standards.

Complaints process

A number of problems were raised in submissions about the complaints-based nature of the Standards. Affected students, associates and parents are often reluctant to make complaints to the relevant authority due to factors of time, energy, financial constraint and fear of the potential adverse impact on students of the complaints process. Often complaints that reach the Australian Human Rights Commission are a last resort for the parents, associates and students involved. Where complaints are made, the outcomes are often suppressed as part of settlement agreements. It is therefore difficult for advocates and other legal bodies to use these cases as precedents. There is a lack of transparency about the number and nature of settlement agreements.

There were also concerns that some parents and users were unaware of how to pursue claims of discrimination and breaches of the Standards. There is a need for clearer advice on the steps involved in the process for making a complaint to state discrimination bodies and the Australian Human Rights Commission.

For those who were aware of their options, the financial cost of taking the complaint further was seen as a disincentive to pursue action. Due to the complexity of the process and the time commitment involved with making complaints, it was suggested that there needs to be alternative options for resolving disagreements – such as mediation and arbitration – before seeking recourse through the courts.

Currently, the authority to conciliate rests with the Commission. However, conciliation may not resolve the complaint. Therefore the next step is to take the complaint to the Federal court. The review heard that the court system is inaccessible to many complainants. It was recommended that the Commission (or an appropriate body) be given the authority to mediate and arbitrate to resolve complaints.

Monitoring and compliance

The nature of the complaints system and its reliance on individuals to pursue complaints means that there is little evidence of a reduction in the systemic barriers to education as a result of the Standards. Therefore there was considerable support amongst advocacy and user groups and some education providers for measures to improve accountability and compliance that would enable investigation of systemic breaches of the Standards.

There is no consolidated national measure to determine how well the Standards have been implemented. Whilst some information is available through the Australian Human Rights Commission and individual state-based anti-discrimination boards, data is not consistently collected at a national level. It was suggested that governments should implement measures to monitor provider compliance with the Standards. A move towards compliance rather than a reactive complaints-based model would include reporting and monitoring processes that would provide a mechanism for systemic change. One of the main reasons that there is no accurate picture of failures to comply with the Standards is that there is no compliance mechanism.

The current inadequacy of monitoring and reporting can be addressed by strengthening compliance measures and by developing benchmarks for compliance for each education sector. There was support for revised measures of compliance in the Standards so that they establish clear, auditable, prescriptive measures suitable for use in each education context. It was also suggested that penalties for non-compliance be considered to ensure education providers meet their obligations under the Standards. An annual system of reporting should be introduced to improve transparency and accountability for implementation of the Standards by education providers.

Based on the issues identified by stakeholders, the review recommends that Government consider the following 3 recommendations relating to complaints, accountability and compliance.

Recommendations relating to complaints, accountability and compliance

Recommendation 8

As part of the initiative to consolidate Commonwealth anti-discrimination laws, the Attorney-General's Department consider issues raised during the review concerning:

- a. compliance and investigation of systemic breaches.
- b. the complaints process and development of a range of alternative dispute resolution options including mediation and arbitration.

Recommendation 9

The Attorney-General, in consultation with the Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, revise the Standards to establish clear requirements for compliance with each part of the Standards.

Recommendation 10

The Attorney-General, in consultation with the Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care and state and territory education ministers, investigate options for compliance reporting against the Standards for education providers.

3.6 Contemporary education context

Early childhood

There have been changes in the early childhood sector with child care providers increasingly incorporating preschool programs into their services. Some stakeholders argued that almost all child care services now offer preschool programs. It was argued that there is confusion about whether child care is covered by the Standards and a lack of awareness about the provisions and obligations under the Standards. It was also reported that child care providers perform an important role in early intervention and identification of issues and needs of students with disability moving from an early childhood setting to a school setting. Although a relatively small number of early childhood providers participated in the consultation process, there was strong support for child care providers to be covered by the Standards and for awareness raising activities and guidance about the Standards to target this sector.

Schools

Users and providers argued that current National Assessment Program – Literacy and Numeracy (NAPLAN) testing, participation and exclusion practices are inconsistent with inclusive education practice. There were examples of students with disability being actively discouraged from participating in the testing as a result of concerns about overall student outcomes:

As schools have been expected to become competitive with each other and to market themselves, we have seen a reluctance to take on children with a whole range of special needs or disabilities, except where that child has very clear resources that accompany them and where there is an expectation that the child will not reduce the school's NAPLAN test scores. The narrowing of the way in which schools are valued and measures of efficiency and accountability have had the consequent impact on discouraging schools from taking on students who are seen to be problematic in a range of ways.

– School sector submission

Further, there were concerns that reporting on school performance on the *My School* website does not reflect the policy emphasis on social inclusion. It was suggested that *My School* should recognise schools that are good at inclusive practice and that this should attract positive recognition in national reporting.

It was argued that individual education plans and functional assessments should be the basis for assessing the educational outcomes for students with disability. The focus should be on the type of learning support needed to reach a level of education appropriate for each student rather than national benchmarks.

Transitions

There is increasing emphasis on transitions between education sectors and the impact this has on students with disability. The development of individual education plans can be used to assist in the transition process and identifying educational goals. Options for students with disability to transition through education sectors should be considered in the development of these plans. Guidance on developing plans should address the issue of transitions.

Policy and regulatory frameworks

In order to ensure the relevance and effectiveness of the Standards to meet the contemporary education context, it has been suggested that there should be greater specific reference to, and integration of, the Standards with current and future policy and regulatory frameworks. Current frameworks include but not limited to: the National Quality Framework for Early Childhood Education and Care; the National Assessment Program – Literacy and Numeracy (NAPLAN); the VET Quality framework; the National Professional Standards for School Teachers and Principals and the Tertiary Education Quality Standards.

Current and emerging technologies

A significant development is the move towards universal design, particularly in the tertiary sector. Universal design means the design of products and environments to be used by all people to the greatest extent possible without the need for adaptation or specialised design.

It was argued that the principles of universal design should be adopted across education sectors. Examples of universal design and inclusive education practice include: quality and timeliness associated with the implementation and delivery of appropriate educational adjustments and resourcing; transcription of print materials, access to assistive technology, access to web-based materials and physical access.

Based on feedback from stakeholders, the review found that the Standards do not reflect the increased opportunities for participation as a result of the current technologies being used by education providers. Guidance needs to be updated to take greater account of technological advances and to recognised principles of universal design.

Based on the issues identified by stakeholders, the review recommends that Government consider the following 3 recommendations relating to contemporary education practice.

Recommendations relating to contemporary education practice

Recommendation 11

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with state and territory education ministers, ensure that individual education plans (Recommendation 5) are used to assist in transitions between early childhood education, primary, secondary and tertiary sectors and ensure that students with disability are given options on the same basis as all other students.

Recommendation 12

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care consider whether the Standards are reflected appropriately in national policy and regulatory frameworks for each education sector including:

- a. National Quality Framework for Early Childhood Education & Care
- b. National Assessment Program – Literacy and Numeracy (NAPLAN)
- c. VET Quality Framework
- d. National Professional Standards for Teachers and Principals
- e. Higher Education Standards Framework.

Recommendation 13

The Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care ensure that practice guides on the Standards take greater account of technological advances and reflect the current and emerging technologies being used in all education sectors.

3.7 Resources

A consistent message, from users and providers across education sectors, was a perception that resources to meet the needs of students with disability and to implement the Standards are inadequate. The review heard concerns that the effectiveness of the Standards is somewhat compromised by a lack of resources.

Resources include funding allocations, professional development for educators and the provision of support services. Different funding eligibility criteria applied by state and territory governments also affects the type of support school students can access. All education sectors reported an increase in participation rates of students with disability, particularly in mainstream settings for schools and also in tertiary education.

Schools

There were a range of issues raised in submissions in relation to funding for students with disability in schools including:

- perceived inflexibility in funding arrangements
- differential access to support between schools and jurisdictions
- concerns from parents about how funding allocations to schools were used
- discrepancy between funding for government and non government schools and between mainstream and special schools.

Access and participation were directly linked to resources in terms of teacher capacity and support services available. Issues for users included: problems when families moved either to another school or interstate; requirements for regular and/or unnecessarily repetitious assessment of needs; lack of information about funding assessments; lack of consultation about the resources available for adjustments; and lack of information about funding allocated to and within schools to meet the needs of students with disability. Some users proposed that funding for support be attached to individuals so that when the student moves the funding moves with them.

Another concern was the lack of transparency about funding decisions and how funds for students with disability were allocated in the school setting. It was suggested that the consultation process would be improved if parents were advised of how funding decisions were determined.

A number of submissions referred to examples of part-day/part-week attendance by students with disability as a result of inadequate support. For example, it was reported that some students were only allowed to attend school when additional support staff were available.

For education providers, there was a general concern about the adequacy of resources available to implement the Standards, uncertainty about what is reasonable in terms of adjustments and how to meet the expectations of parents given the resource constraints faced by many schools. There were also concerns about the need for access to more information and specific information about disability. The review heard that there is a shortfall in appropriately trained support staff and professional development for teachers in meeting the needs of students with disability, particularly those with multiple and complex needs. While the valuable role of paraprofessionals/teachers' aides was acknowledged, there were concerns that teachers aides do not always have the necessary skills to meet the needs of students with disability. Therefore, submissions highlighted the need for appropriately trained paraprofessionals/teachers' aides and the need to address the shortage of skilled staff.

Some of the concerns of both users and providers can be addressed by clearer guidance on reasonable adjustment and the consultation process. The development of individual education plans for students with disability was also seen as a positive way to reach agreement between schools and families about what students need to meet learning outcomes.

Higher education

It was reported that universities have seen a significant increase in the participation of students with disability. The higher education sector argued that, in order to provide appropriate support to students with disability, a number of issues need to be addressed. It was argued that the current funding model is not commensurate with the increasing cost and number of students with disability participating in higher education. Given the level of complexity and increasing numbers of students with disability at university, providers argued that current resource allocations are insufficient and that additional resources should be made available.

Based on the issues identified by stakeholders, the review recommends that Government consider the following recommendation.

Recommendation to address related issues

Recommendation 14

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with state and territory education ministers, identify ways to address the following issues raised during the review which impact on the effectiveness of the Standards:

- a. Promotion of inclusive education practice and investigation of ways to recognise inclusion in contemporary policy initiatives, such as the *My School* website and funding guidelines.
- b. The continuation, by all levels of government, of work towards achieving nationally consistent data on school students with disability as soon as possible.
- c. Allocating resources to implement the Standards across all education sectors.
- d. Appropriate training of support staff to meet core competencies.

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Appendix A

Summary of Suggestions

The following suggestions were made in written submissions and roundtable discussions during the consultation.

Suggestions for revisions to the content of the Standards
Include within the Standards a requirement for all education providers to complete individual education plans or disability support plans for all students covered under the Standards that focus on learning outcomes.
Strengthen the reference in the Standards and the Guidance Notes to ongoing professional development (Section 8.5 (e)). This could include adding a new requirement that education providers and relevant state and territory authorities must provide professional development for all employees.
Incorporate a section in the Standards outlining the rights and responsibilities of students, their associates, and their parents and carers.
Amend the Standards to require tertiary institutions to publish detailed inherent requirements of every course they offer. This will allow students with a disability to select courses confident that they understand, and can reasonably expect to meet, the inherent requirements of that course
Amend the Standards to reflect the changes made to the <i>Disability Discrimination Act 1992</i> in 2008.
Clarify within the Standards the terms 'admission' and 'enrolment.' Currently, these terms are used interchangeably throughout the Standards; however, in practice they refer to different processes and are not interchangeable.
<p>Include requirements for educational providers to:</p> <ul style="list-style-type: none"> • have access to all relevant information when determining whether to make a particular adjustment, and • assess accurately whether a particular adjustment will provide the level of support necessary for the student to participate and achieve defined learning objectives. <p>Section 3.6 of the Standards</p>
Clarify the reference to 'costs and benefits' as being part of the assessment for reasonable adjustment in Section 3.4(2)(e) of the Standards.
Part 5 of the Standards (Participation) has a narrow focus as it only provides for 'participation in a program'. This Section could be reviewed and amended in order to be more consistent with the Measures for Compliance included at Section 5.3(d).
Amend the Standards to better reflect the language of the United Nations Convention on the Rights of People with Disability. This could include substituting the term 'substantive equality' for 'on the same basis as'.
Amend the Standard and the Guidance Notes to include child care providers.
Amend the title of the Standards, the text of the Standards and the Guidance Notes to clarify that Registered Training Organisations are covered by the Standards.

Suggestions for revisions to the clarity of the Standards

Revise the structure of the Standards to reduce repetition and provide clarity. For example:

- The Standards, Guidance Notes, and other notes within the Standards could be combined to simplify the overall picture, reduce the current repetition and provide greater clarity.
- The requirements in the Standards for participation, curriculum development, accreditation and delivery could be combined as the same broad principles apply to each.

The distinction between the Standards as obligations and the Measures of Compliance, as examples of how these obligations can be met, should be retained.

Use the Guidance Notes to strengthen the Standards and expand the range of Measures of Compliance. For example, the discussion about legal requirements (Guidance Notes page 48) could be incorporated into the introduction of the Standards to emphasise the distinction between obligations and Measures of Compliance.

Suggestions for changes to complaints, accountability and compliance

Amend relevant Commonwealth legislation to give the Australian Human Rights Commission the authority to take action where there are breaches of Standards without a student or parent having to take action.

Investigate and introduce into the Standards mechanisms to improve the effectiveness of the complaints process. These could include mechanisms to:

- a. oversee the determination of reasonable adjustments and unjustifiable hardship
- b. monitor and report on implementation of the Standards
- c. enable systemic breaches of the Standards to be identified and investigated
- d. provide guidance on the process for complaints and where to get help and options available if the consultation process fails
- e. provide a range of dispute resolution options including mediation, conciliation and arbitration, as an alternative to the courts.

Amend the Standards to incorporate formal mechanisms for compliance in relation to consultation with students and making adjustments.

Suggestions for further guidance

To assist with interpretation and application of the Standards, develop user-friendly, sector-specific guidelines in appropriate formats. These guidelines could provide clear and concise information about key concepts such as 'harassment' and 'bullying', and could also support consistent interpretation and application of key terms such as 'reasonable adjustment', 'unjustifiable hardship', 'consultation', and 'on the same basis.' These guidelines could include practical examples and case studies.

If guidelines are developed to assist with the interpretation and practical application of the 'on the same basis' requirement, these guidelines could promote the difference between 'equitable' and 'the same'.

To assist with application of the Standards develop guidance materials targeting registration bodies and professional bodies to ensure they are advised of the requirements of the DDA and the Standards.

To assist with interpretation and application of the Standards develop guidance materials for providers on implementing universal design practices in curriculum development, and teaching and learning.

Amend the Standards to include express mention of pathways and transition points to provide clarity for teachers and parents.

Amend the Standards to include a reference to the National Competency standards for specialist teachers of the deaf and hearing impaired in Australia (e.g. National Association of Australian Teachers of the deaf).

Amend the Standards to align the terminology and definitions used by the Standards with the new Safe Schools Framework to ensure consistency and transparency.

Amend the Standards and the Guidance Notes to clarify the nature of the evidence that should be provided during the consultation process to enable education providers to determine appropriate adjustments for students.

