



Australian Government  
Department of Education, Employment  
and Workplace Relations

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## Review of Disability Standards for Education 2005

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Discussion Paper  
December 2010



## Foreword

The Disability Standards for Education (the Standards) came into effect in August 2005. The Standards are part of the Australian Government's ongoing commitment to overcoming discrimination against people with disability.

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*. The introduction of the Standards was also intended to raise public awareness of the barriers frequently encountered by people with disability in the area of education.

As it is now five years since the Standards came into effect, the Government must conduct a review into the effectiveness of the Standards. The Government would like to hear from a range of people about how the Standards have worked in practice, whether they have achieved their objectives and whether any amendments might be required to ensure their ongoing effectiveness.

The review of the Standards represents an important part of ensuring an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens.

I encourage people with an interest in increasing the education and training opportunities for people with disability to make a submission to the review.

A handwritten signature in black ink, appearing to read 'Peter Garrett', with a long, sweeping underline that extends to the right.

**Peter Garrett**

Minister for School Education, Early Childhood and Youth



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## Glossary of terms

AGD	Commonwealth Attorney-General's Department.
AHRC	Australian Human Rights Commission.
Consultation	When deciding what to include in an educational course and how to teach it, an education provider should consult with each student with a disability doing the course and consider their needs. Where possible the student and education providers should work together to find adjustments and solutions to help the student access and participate in education and training.
DEEWR	Commonwealth Department of Education, Employment, and Workplace Relations.
Direct discrimination	<b>Direct discrimination</b> 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 <b>disability</b> 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.
Disability Standards	Disability Standards for Education 2005.
Discrimination	<b>Disability discrimination</b> occurs when people with disability are treated less fairly than people without disability. Discrimination can be either direct or indirect.
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.
Educational institution	<b>Educational institution</b> means a school, college, university or other institution at which education or training is provided.
Harassment	<b>Harassment</b> 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	<b>Indirect discrimination</b> occurs when a person with disability is expected to comply with a requirement or condition, however 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 Disability Discrimination Act).

Measures for compliance	Measures an education provider may implement to meet the requirements of the Standards.
Obligations	Responsibilities of educational authorities, institutions and other education providers to ensure students with disability are treated on the same basis as students without disability.
On the same basis	The concept of 'on the same basis' is fundamental to the operation of the requirement of a provider not to discriminate against students with disabilities. <b>On the same basis</b> means that a student with disability has opportunities and choices, which are comparable with those offered to students without disability in relation to admission or enrolment in an institution; and participation in courses or programs and use of facilities and services.
Participation	Participation refers to the way a student engages with the learning activities. An education provider must take reasonable steps to ensure that the student is able to participate in the courses or programs provided by the educational institution, and use the facilities and services provided by it on the same basis as a student without disability and without experiencing discrimination.
Provider	Provider refers to teachers and staff of education and training facilities and services.
Reasonable adjustment	An adjustment is a measure or action taken to assist a student with disability to participate in education and training on the same basis as other students. An adjustment is <b>reasonable</b> if it achieves this purpose while taking into account the student's learning needs and balancing the interests of all parties affected, including those of the student with the disability, the education provider, staff and other students.
Student / prospective student	<b>Student</b> means a person enrolled in an educational institution. For an educational institution, <b>prospective student</b> means a person who approaches the institution about seeking admission to, or applying for enrolment in the institution.
Unjustifiable hardship	The Disability Discrimination Act does not define 'unjustifiable hardship'. In determining whether ' <b>unjustifiable hardship</b> ' applies, all relevant circumstances of the particular case must be taken into account, including: the nature of the benefit or detriment to all persons concerned, the disability of the person and the financial circumstances of the provider.
User	User means people with disability, their family, carers, friends and advocates.
Victimisation	<b>Victimisation</b> occurs when someone has been treated unfairly for complaining or assisting others to complain about an incident of discrimination or harassment.

## About this paper

The purpose of this paper is to promote discussion and consideration of the issues for the review of the Disability Standards for Education 2005 (the Standards). The paper also outlines the scope of the review and sets out some key questions to be addressed in determining whether the Standards have been effective in achieving their objectives.

The paper is structured as follows:

- Outline of the review and submission process
- Overview of the Standards and the legislative framework
- Discussion of the parts of the Standards and questions relating to the review Terms of Reference
- References and useful resources
- Copies of submission questions (available online).

## About the review

The Standards came into effect on 18 August 2005. The Standards seek to ensure that students with disability are able to access and participate in education on the same basis as other students. A primary objective of introducing the Standards was to make rights and responsibilities in education and training easier to understand.

The Minister for Education, in consultation with the Attorney-General, is required to commence a review of the effectiveness of the Standards in achieving their objectives, within five years of their taking effect.

The review will determine whether the Standards are effective and whether they continue to be the most efficient mechanism for achieving the objectives of the *Disability Discrimination Act 1992* (DDA). The Terms of Reference for the review are based on the

requirements of the Guidance Notes and objectives of the Standards (see below).

The review is being undertaken by the Department of Education, Employment and Workplace Relations (DEEWR) in collaboration with the Attorney-General's Department (AGD). Information about the review will be posted on the DEEWR website at [www.deewr.gov.au](http://www.deewr.gov.au) and the AGD website at [www.ag.gov.au](http://www.ag.gov.au).

Submissions are the primary means of providing information to the review. The process for submissions is outlined below. We will also meet with key stakeholders during the course of the review.

### 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.



## Submission process

We are inviting submissions from a wide range of people and organisations to determine how effective the Standards are in practice and whether any changes are necessary. People with disability, carers, disability organisations, education and training providers and other interested parties are invited to make a submission to this review.

To make a submission please use the submission forms available online at [www.deewr.gov.au](http://www.deewr.gov.au). Using the structured questions (see pages 25–27) will ensure that the review process captures information against the Terms of Reference. The questions have been grouped into provider and user categories so that we can identify the needs of different groups using the Standards.

Submissions may address one or more of the questions. There is space on the submission form for other comments to allow individuals and organisations to provide any feedback on the Standards that has not been covered under the questions. Submissions will be treated as confidential and will not be made publicly available. Permission will be sought if we wish to quote from your submission.

Completed submission forms should be emailed to [standardsreview@deewr.gov.au](mailto:standardsreview@deewr.gov.au) or faxed to 02 6121 3363.

**Submissions can be made until 5pm on Thursday 31 March 2011.**

## About the Standards

The Standards clarify the obligations of education and training providers, and the rights of people with disability, under the DDA. The Standards were developed in consultation with education, training and disability groups and the Human Rights and Equal Opportunity Commission (now called the Australian Human Rights Commission).

The Standards are subordinate legislation made under the DDA and are designed to clarify and elaborate obligations under the DDA. State laws and the DDA operate concurrently in the area of education. The introduction of the Standards does not affect the continued application of State law.

Guidance Notes to the Standards were issued at the same time as the Standards. The Notes are designed to assist people to understand the scope and practical application of the Standards. However, they are not part of the Standards, nor are they a substitute for the Standards. The Guidance Notes provide additional explanatory material including background information and comments to assist in interpreting and complying with the Standards.

The Standards and Guidance Notes are available online at [www.ag.gov.au/disabilitydiscrimination](http://www.ag.gov.au/disabilitydiscrimination)

### What the Standards do

The Standards cover the following areas:

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

Each part sets out the:

- rights of students with disability in relation to education and training to help people understand what is fair and reasonable under the Standards
- the legal obligations or responsibilities of education providers
- measures that may be implemented to comply with the requirements of the Standards.

The provisions are summarised below in Table 1.

**Table 1: Overview of Rights and Requirements under the Standards**

Rights	Requirements
<b>Enrolment</b>	
<p>Right to seek admission and enrol on the same basis as prospective students without disability including the right to reasonable adjustments.</p>	<ul style="list-style-type: none"> <li>■ Take reasonable steps to ensure that the enrolment process is accessible.</li> <li>■ Consider students with disability in the same way as students without disability when deciding to offer a place.</li> <li>■ Consult with the prospective students or their associates about the effect of the disability on their ability to seek enrolment; and any reasonable adjustments necessary.</li> </ul>
<b>Participation</b>	
<p>Right to access courses and programs; use services and facilities; and have reasonable adjustments, to ensure students with disability are able to participate in education and training on the same basis as students without disability.</p>	<ul style="list-style-type: none"> <li>■ Take reasonable steps to ensure participation.</li> <li>■ Consult with the student or their associate about the effect of the disability on their ability to participate.</li> <li>■ Make a reasonable adjustment if necessary.</li> <li>■ Repeating this process over time as necessary.</li> </ul>
<b>Curriculum development, accreditation and delivery</b>	
<p>Right to participate in courses and relevant supplementary programs that are designed to develop their skills, knowledge and understanding, on the same basis as students without disability and to have reasonable adjustments to ensure they are able to participate in education and training.</p>	<ul style="list-style-type: none"> <li>■ Enable students with disability to participate in learning experiences (including assessment and certification).</li> <li>■ Consult with the student or their associate.</li> <li>■ Take into consideration whether the disability affects the students ability to participate in the learning experiences.</li> </ul>
<b>Student support services</b>	
<p>Right to access student support services provided by education institutions, on the same basis as students without disability. Students with disability also have the right to specialised services needed for them to participate in the educational activities for which they are enrolled.</p>	<ul style="list-style-type: none"> <li>■ Ensure that students with disability are able to use general support services.</li> <li>■ Ensure that students have access to specialised support services.</li> <li>■ Facilitate the provision of specialised support services.</li> </ul>

Rights	Requirements
<b>Harassment and victimisation</b>	
<p>Right to education and training in an environment that is free from discrimination caused by harassment and victimisation on the basis of their disability.</p>	<ul style="list-style-type: none"> <li>■ Implement strategies to prevent harassment or victimisation.</li> <li>■ Take reasonable steps to ensure that staff and students are informed about their obligation not to harass or victimise students with disability.</li> <li>■ Take appropriate action if harassment or victimisation occurs.</li> <li>■ Ensure complaint mechanisms are available to students.</li> </ul>

### Who must comply with the Standards?

If a person or body complies with the Standards they are not liable under the relevant provisions of the DDA. All education providers are bound by the Standards including:

- preschools and kindergartens
- public and private schools
- public education and training places, such as TAFE
- private education and training places, such as private business colleges
- universities
- organisations that prepare or run training and education programs.

### What happens if there is a breach?

Under section 32 of the 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 (AHRC) about non-compliance with the DDA. This includes complaints about non-compliance with a Disability Standard. If conciliation by the AHRC 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.

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 the relevant state/territory legislation.

## Providing clarity

### What the Standards say

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

On the same basis means that a student with disability must have opportunities and choices, which are comparable with those offered to students without disability. This applies to: admission or enrolment in an institution; participation in courses or programs; and use of facilities and services.

#### Consultation

When deciding what to include in an educational course and how to teach it, an education provider should consult with each student with disability doing the course, or an associate of the student, about the effect of the disability on their ability to seek enrolment, and any reasonable adjustments necessary. Where possible the student, or their associate, and the education provider should work together to find adjustments and solutions to help the student access and participate in education and training.

#### Reasonable adjustment

Under the Standards, education providers have a positive obligation to make reasonable adjustments to 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, the education provider, staff and other students. The education provider is required to consult

with the student or their carer to identify and make an adjustment appropriate to the student's disability.

#### Unjustifiable hardship

The Standards do not require changes to be made if this would impose unjustifiable hardship on the education provider. All relevant circumstances are to be taken into account when assessing unjustifiable hardship including:

- benefit or detriment to any persons concerned
- disability of the person
- financial circumstances of the education provider.

However, the exception of unjustifiable hardship does not apply to harassment or victimisation.

#### Measures for compliance

The measures provide examples of what can be done to comply with the requirements of the Standards. The measures may not cover the needs of all students with disabilities, or all educational contexts. In these circumstances compliance with the Standards may require additional or alternative actions.

#### What does this mean in practice?

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.

A number of States and Territories have developed guides to assist education providers in implementing the Standards. For example, the South Australian Government's Guidelines 'On the same basis' provide practical advice to education staff on implementing the Standards.

### **On the same basis— Implementing the Disability Discrimination Act Standards for Education (2007)**

The South Australian Department of Education and Children's Services developed this resource to help education staff implement the Standards. The handbook can be used by:

- groups to discuss the material and work through the learning activities
- individuals as a reference to understand the meaning of the Standards and get ideas and strategies for implementing them
- institutions for teaching educators and service providers about providing inclusive learning environments.

The resource is available online from [www.decs.sa.gov.au](http://www.decs.sa.gov.au).

The Quality Strategy for Disability Employment Services toolkit is an online resource that includes:

- important aspects of the Quality Strategy
- step-by-step guide on certification under the Quality Assurance system
- Disability Services Standards, Evidence Guidelines and self-assessment worksheets
- a tool for rating performance against each Standard
- case studies, resources and internal audit worksheets for each Standard
- a description of the different complaints handling mechanisms available to job seekers/workers/ service recipients and service providers
- useful contact details and links to further resources.

[www.fahcsia.gov.au](http://www.fahcsia.gov.au)

DEEWR established a website to help users understand the Standards ([www.ddaedustandards.info](http://www.ddaedustandards.info)).

The Australian Human Rights Commission has a range of resources in relation to the Disability Discrimination Act and the related Standards and Guidelines. These are available at their website at [www.ahrc.gov.au](http://www.ahrc.gov.au).

There are other examples of the types of online resources that could be useful for understanding Standards.

### **What do you think?**

The Standards cover a range of providers and circumstances. Whilst the Standards include advice on the processes to be followed there is some discretion on how the Standards apply and how they are interpreted. Therefore there may be areas that require clarification or more information. There may also be provisions in the Standards that have worked well in practice and others that have not worked in particular circumstances.

We are interested in feedback on whether there is sufficient information and guidance about the requirements under the Standards. There may also be a need for information in different formats or checklists or practice guides to help users understand their rights and obligations.



## Questions for users and providers

### Providing clarity

Are the Standards easy to understand or are there parts that require clarification?

- Is the format of the Standards useful for understanding rights and requirements under each of the Standards?
- Are the terms used in the Standards clear to users and providers?
- Are there any parts of the Standards that need additional explanation or details of where to find additional information?

## Rights

### What the Standards say

The main aim 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. This means having the same educational opportunities and choices as all other students. This includes the right to comparable access, services and facilities, and the right to participate in education and training without discrimination.

The Standards include provisions for enrolment, participation, curriculum and support services, to give prospective students with disability the right to:

- enrol in an educational institution and participate in the courses or programs, and to use services and facilities, provided by an educational institution, (Standards part 4)
- participate in educational courses or programs that are designed to develop their skills, knowledge and understanding, including relevant supplementary programs (Standards parts 5 & 6)
- access student support services provided by educational authorities and institutions, including access to specialised services needed for them to participate in the educational activities for which they are enrolled (Standards part 7).

Students with disability are entitled to these rights *on the same basis* as other students. The concept of *on the same basis* is fundamental to ensuring that students with disability are not discriminated against in accessing and participating in education and training. A student with disability has been treated on the same basis if they have opportunities and choices which are comparable with those offered to students without disability.

### Exam procedure adjusted

A university student complained that he had not been offered alternative times for sitting exams which he needed because of physical and psychological injuries as a result of a motor vehicle accident. The complaint was settled with an agreement to work with the student to make alternative arrangements for future examinations and assessments.

*AHRC conciliated outcomes 2009*

### Adjustments for learning disorder

A mother complained that her son's school had not taken appropriate steps to accommodate her son's auditory processing difficulty. The matter was settled with an agreement to meet and develop an individual education plan with the input of a speech pathologist, and to review the plan within 4 months.

*AHRC conciliated outcomes 2006*

## What does this mean in practice?

Students with disability should be able to enrol in a course of an education provider on the same basis as students without disability.

The education provider must take reasonable steps that will make enrolment accessible.

This may include:

- providing information about the enrolment process which can be easily understood
- providing information that will assist students to select a course or subjects.

Students have a right to use the equipment and services of an education provider and participate in the curriculum on the same basis as students without disability.

The provider must make reasonable adjustments. This may involve:

- including activities in which the student with disability can participate
- providing something else to do if an activity is too difficult, which is still relevant to the study
- providing additional learning support
- providing equipment and/or resources at the educational institution e.g. handrails, ramps, lifts, raised toilet seats, or other physical access to services, which allow students to attend classes and other necessary educational activities while they are away from home.

Students with disability should be able to participate in all elements of the course.

The education provider may need to make reasonable adjustments that:

- ensure the student can understand and access the learning material and assessment processes
- ensure the educator teaches the student in a way that meets their needs
- provide material in a format that the student is able to read eg large print, Braille etc

- make it possible for students with disability to participate in excursions or field trips
- ensure the student can be tested to measure what they have learned.

Students with disability have a right to use any applicable support services of the education provider. If a student needs help from extra outside services, the education provider should see that these needs are met. Types of extra services may include: special teachers, interpreters, note-takers and equipment. Access to portable computers and extra time to undergo assessments, tests and examinations may also be allowed.

Students with disability have a right to education without people humiliating, offending, intimidating or distressing them.

The education provider must make sure students can learn in an environment that is free from harassment or victimisation. An education provider must take reasonable steps to ensure that all students and teachers are informed that this behaviour is not acceptable. There must also be an opportunity for students with disability to make a complaint if they have been harassed or victimised.

### **Bullying of students with disability**

A mother complained that her son who has a vision impairment had been bullied in relation to his use of assistive equipment for reading. She also stated that the school did not act quickly or fully to respond to the complaint leading him to change schools. The matter was settled when the school agreed to review its anti-bullying policy and include specific provisions on bullying of students with disability. The school also agreed to conduct disability awareness training including obligations of staff under the DDA and the Standards, waive outstanding fees and pay compensation.

*AHRC conciliated outcomes 2006*

### **What do you think?**

In your opinion do the Standards provide sufficient information about the rights of students to access and participate in education and training? This includes how well the rights work in practice. Each part of the Standards should be clear and concise. This means that people who use, or are responsible for implementing the Standards, know what is reasonable and required.

Where parts or provisions are not clear we are also interested in what sources of information are useful and what kind of additional information is required. This includes any information required in relation to the provisions of the DDA and eliminating discrimination.

## **Questions for users**

### **Rights under the Standards**

Are you aware of your rights to enrol, access support and participate in education and training?

- Are you aware that these rights are protected under the Disability Standards for Education 2005?
- Where did you find out about the Standards?

### **Access to education and training opportunities**

Have you or a person you know with disability, experienced difficulties enrolling in an educational institution or participating in educational activities on the same basis as people without disability? If so, why do you think this occurred?

- Please describe any instances where the Standards have enabled someone with disability to access education and training opportunities.
- Are the provisions for consultation and reasonable adjustment clear and adequate?

### **Eliminating discrimination**

Describe any instances where the introduction of the Standards played a part in eliminating discrimination experienced by a person with disability in an educational setting?

- How could the Standards be improved to help prevent a person with disability from experiencing discrimination, harassment or victimisation in an educational setting? If possible please provide an example.

## Obligations

### What the Standards say

The Standards define an education provider as: an educational authority, institution or an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers. This includes preschools, schools, vocational education and training and higher education, as well as adult education training providers (Standards part 1.5).

The Standards require education providers 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
- eliminate harassment and victimisation.

### Consultation

Education providers must consult in order to understand the impact of a student's disability and to determine whether any adjustments or changes are needed to assist the student.

Although the Standards do not specify what is required for consultation, the process could include:

- talking with the student and their family members or carers, to get ideas about the type of assistance that is needed
- discussing ways to overcome the barriers and the adjustments that could be made by the education provider and whether these adjustments are reasonable
- providing any relevant medical and therapist reports that help to explain the disability and the needs and supports that can help

- providing written advice about the issues discussed during the consultation and the decisions made; including specifying a date for notifying the student about what adjustments will or will not be made
- meeting regularly to make sure all is going well and change supports if needed and keeping records of these meetings.

The obligation to consult continues for the whole time that the student is involved with the education provider.

### Reasonable adjustments

The Standards set out a process whereby education providers can meet the obligation to make reasonable adjustments where necessary.

An adjustment is a measure or action taken to assist a student with disability to participate in education and training on the same basis as other students. An adjustment is reasonable if it achieves this purpose while taking into account the student's learning needs and balancing the interests of all parties affected, including those of the student with disability, the education provider, staff and other students.

The process of consultation outlined above is an integral part of ensuring that providers are meeting their obligations in relation to reasonable adjustments.

Education providers are required only to make reasonable adjustments. It is not unlawful for an education provider to fail to comply with the Standards if compliance would impose unjustifiable hardship. Exceptions from the legal obligations in the Standards are set out in Part 10. In cases where a provider decides that an exception applies, it is the responsibility of the provider to demonstrate how the exception operates.

### Accommodating learning disability in TAFE

The mother of a young man with a learning disability complained that he had been refused enrolment in a TAFE program and advised that adjustments to accommodate his disability would not be provided. The complaint was settled when the educational authority agreed to enrol the young man and develop a reasonable adjustment plan.

*AHRC conciliated outcomes 2007*

### Eliminating discrimination

The Standards require that education providers develop and implement strategies and programs to prevent harassment and victimisation of people with disability. Harassment in this case means an action taken in relation to people with disability that is reasonably likely to humiliate, offend, intimidate or distress the person. Harassment and victimisation of students with disability is unlawful and education providers must take all reasonable steps to prevent this from happening.

An education provider must take reasonable steps to ensure that staff and students are informed about:

- the obligation not to harass or victimise students with disability, or students who have associates with disability
- the appropriate action to be taken if harassment or victimisation occurs
- complaint mechanisms available to a student who is harassed or victimised in relation to a disability of the student or of an associate of the student.

An education provider that has no strategy or program to prevent or remove harassment and victimisation, simply because it was not aware that these were occurring, is not likely to be able to establish a defence under the Standards or the DDA. Unjustifiable hardship is not available as a defence where a provider fails to comply with the Standards for harassment and victimisation.

Where an education provider contracts other individuals or organisations as agents to provide education services, the education provider must undertake reasonable precautions and exercise due diligence to ensure that the agent does not discriminate against people with disability.

**Direct discrimination** occurs when a person is treated less favourably in similar circumstances than a person without disability.

**Indirect discrimination** occurs when a requirement is the same for all people but unfairly disadvantages a person because they have a disability.

**Harassment** is an action that is reasonably likely to humiliate, offend, intimidate or distress a person. This could include: insensitive comments, inappropriate pictures or messages and body language.

**Victimisation** occurs when someone has been treated unfairly for complaining or helping others to complain about an incident of discrimination or harassment.



## What does this mean in practice?

The Standards cover all stages of a person's time in education and training, from the time they apply to enrol right up to the time they finish. The DDA makes it unlawful to discriminate against a person because of their disability. In practice this means that education providers should:

- ensure that students with disability have access to course or enrolment information and are able to ask questions about enrolling
- ensure that students and potential students with disability can access and use support services that will help them participate in education or training
- incorporate inclusive practice principles when developing course content, curriculum and assessment methods for all students including those with disability
- be aware that the Standards apply to situations where an education provider makes a decision to expel or suspend a student because of their disability
- have clear rules about preventing harassment and victimisation of students with disability. All staff and students should be trained about these rules and the rules should always be followed
- ensure that students with disability are able to make a complaint if they feel that they have been harassed or victimised. Complaints should be taken seriously and properly investigated and handled in such a way that the dignity and privacy of the student is respected ([www.ddaedustandards.info](http://www.ddaedustandards.info)).

### A place on stage

A mother complained that her daughter, who has a physical disability, could not participate in an arts project—a presentation of Balinese dancing—that involved all other members of her class. The complaint was settled when the school arranged tutoring to enable the girl to play Indonesian percussion music and accompany her classmates on stage.

*AHRC conciliated complaints 2008*

### Professional development

Education providers should also take steps to raise awareness of disability issues amongst staff. 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, staff induction and professional development programs should include disability awareness and rights and the obligations of education and training providers under the Standards.

Other components could include: the importance of instructional approaches that accommodate students' individual learning styles, tutoring to help clarify concepts, supportive relationships and encouraging learning environments. Specific strategies that may accommodate the needs of students with a learning disability include:

- additional times
- presentation of information in different formats
- use of tools and technology.

Such programs enable staff to provide assistance that is helpful, without being patronising in language, attitude or actions.

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).

### **Victorian Government Education Forum**

The Department of Education held a Disability Standards for Education professional learning forum on 16 May 2006. The forum was attended by a range of representatives from all education sectors including the Departments central and regional teams. All 80 participants heard the Commissioner for Human Rights and Commissioner Responsible for Disability Discrimination Graeme Innes, provide background to the development of the Education Standards.

The purpose of the professional learning forum was to skill a range of facilitators who would communicate the responsibilities and obligations of schools for all students with disability.

**[www.education.vic.gov.au](http://www.education.vic.gov.au)**

### **What do you think?**

We are interested in feedback from providers and users on how consultation, reasonable adjustment and unjustifiable hardship processes work in practice and whether there is sufficient guidance on these issues in the Standards. Whether the operation of the provisions relating to measures for compliance, reasonable adjustment and unjustifiable hardship are clear and effective is also important to the review.

There are a range of resources available to assist providers to meet the requirements under the Standards. There are also many practical examples of measures that have been taken. Users and providers are encouraged to provide feedback on experiences with implementing the standards including:

- provisions in the Standards that have worked well in practice and those that have not worked well in particular circumstances
- difficulties in applying and interpreting the Standards
- resources that have been useful
- whether there is a need for information in different formats or checklists or practice guides to help providers understand their rights and obligations.

## Questions for providers

### Requirements under the Standards

Are you aware of the requirements of education providers to enable students with disability to access and participate in education and training on the same basis as students without disability?

- Are you aware that these requirements form part of the Standards?
- How have the Standards assisted you in understanding the requirements of providers under the DDA?
- Where did you find out about the Standards and where would you access additional information?
- Are the Standards easy to understand or are there parts that require clarification?
- Are the measures for compliance contained in the each of the parts of the Standards reasonable and helpful in understanding the requirements of providers? Have they been effective?
- In what ways have you demonstrated compliance with the Standards?

### Access to education and training opportunities

Since the introduction of the Standards have any new processes relating to enrolment, participation and support services been introduced to ensure students with disability access education and training opportunities on the same basis as those without disability?

- Has the participation of students with disability changed at your institution following the introduction of the Standards in 2005? If so, in what way have the Standards contributed to the change?

- Has the process specified in the Standards assisted you to meet your requirements; particularly the provisions relating to reasonable adjustment and unjustifiable hardship?

### Eliminating discrimination

Has your institution taken any specific action to reduce the possibility of discrimination relating to students with disability following the introduction of the Standards 2005? If so, what actions?

- For example does your institution have grievance procedures in place for students who wish to lodge a complaint relating to discrimination, harassment or victimisation? Are the grievance procedures publicly available?
- Has your institution received complaints relating to the discrimination, harassment or victimisation of students with disability? If so, please describe.
- Has the number or nature of complaints changed since the introduction of the Standards?

## Recognition and acceptance

### What the Standards say

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).*

## What does this mean in practice?

In releasing the Standards the Government sought to raise public awareness about the barriers frequently encountered by people with disability in education. A range of 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).

### Extract from Creating Accessible Teaching and Support

Disability is not so much an attribute of the individual as of the social and physical environment in which he or she lives. The nature of the disability experienced by the individual can be moderated when environments and practices are designed to be inclusive. As Alison Davis, a person who has spina bifida, writes:

*If I lived in a society where being in a wheelchair was no more remarkable than wearing glasses, and if the community was completely accepting and accessible, my disability would be an inconvenience and not much more than that. It is society which handicaps me far more seriously and completely than the fact that I have spina bifida.*

Although there is little that staff in universities can do to change the facts of students' impairments, there is much scope for altering the environment so that it is less disabling. By implementing the strategies in this resource we can minimise the extent to which universities disable students.

**[www.adcet.edu.au](http://www.adcet.edu.au)**

website accessed 19/8/08

## What do you think?

A key issue is whether the Standards 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?

We are interested in 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.

## Questions for users and providers

### Awareness and recognition

Do you think the Standards have raised awareness and increased understanding of the issues affecting people with disability and their rights to access and participate in education and training?

- If so, can you provide examples?
- Are there issues that require more information or clarification so that there is greater awareness of the issues affecting people with disability in relation to education and training?

## Compatibility with current education system

### What the Standards say

Although the Standards were released only five years ago, they recognise that education practices will undoubtedly change over time. 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]).

### What does this mean in practice?

The review aims to examine the content of the Standards, determining whether the language, terms and descriptors used are still relevant to Australia’s current education and training system. Doing so will ensure that the Standards are effective in protecting and promoting the rights of students with disability.

### Types of providers

Part 1.5 of the Standards lists the types of education and training providers who must comply with the Standards. Changes in education practice and the emergence of new providers in adult and community education may require the list to be updated. For example some child care centres now provide early childhood education programs. This may require an amendment to the Standards.

### Concept of reasonable adjustment

Technological developments have increased the range of options available for providing assistance to people with disability. Part 3.4 of the Standards requires education providers to provide reasonable adjustments to assist students with disability. Judgements about what is reasonable for a particular student, or group of students, with a particular disability can change over time. We are interested in determining whether new technologies

available to education providers affect what is considered to be reasonable adjustment.

### Enrolment

New technologies have changed the processes for enrolment. We are interested in determining whether Part 4 of the Standards cover all methods with which students enrol in educational courses, participate in courses or programs and can make use of facilities and resources.

### Course development and delivery

Part 6 of the Standards gives students with disability the right to participate in educational courses or programs that develop their skills, knowledge and understanding, including relevant supplementary programs. In light of developments in teaching and learning practice across different education sectors over the last five years, we are reviewing whether the Standards are compatible with contemporary practice.

### Online and blended design and delivery of education programs

New types of education opportunities and delivery methods are being developed. These programs have the capacity to address emerging education needs related to demographic changes such as an ageing population and changing patterns of migration.

Community education, and other forms of education, can be delivered face to face, through distance learning supplemented with online learning and through full online delivery. Are the Standards meeting the rights of users and the needs of providers of these growing number of courses and emerging delivery mechanisms?



### **Harassment and victimisation**

Part 8 of the Standards requires that education providers exercise due diligence and take reasonable precautions to prevent discrimination against students with disability. The emergence of new forms of bullying, such as cyber bullying, mean that students may experience harassment and victimisation outside the school environment. We are interested in whether the Standards are able to take account of these new forms of harassment in the modern school environment.

### **What do you think?**

The effectiveness and efficiency of the Standards may be compromised by a failure to take into account developments in education practice over the last five years. We are interested in feedback on any changes in contemporary education that may require amendments to the Standards.

### **Compatibility with current education system**

#### **Questions for users**

Are there any current education or training issues that are not covered by the Standards but should be?

- Are you aware of any educational institutions that are not covered by the list in Part 1.5 of the Standards?

#### **Questions for providers**

Have there been any changes in education and training practice (including admission, enrolment, participation and curriculum delivery) that are not covered or compatible with the provisions in the Standards?

- Are there any issues about access, participation and educational provision not addressed in the current Standards that might be considered in the future?
- Are you aware of any educational institutions that are not covered by the list in Part 1.5 of the Standards?

## References

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## Submissions

For electronic copies of the submission forms visit: [www.deewr.gov.au](http://www.deewr.gov.au)

Submissions can be emailed to [standardsreview@deewr.gov.au](mailto:standardsreview@deewr.gov.au) or faxed to 02 6121 3363 until **5pm Thursday 31 March 2011**.

There are two sets of questions. One set of questions is targeted at 'users' and the other set is targeted at 'providers' of education and training.

You may answer all or some of the questions.

## Questions for users of education and training

In order to provide context for your comments please indicate whether you are a:

- Student/prospective student
- Carer or family member of student with disability
- Advocate
- Peak/community organisation
- Other

You may answer all or some of the questions.

### Question 1 Providing clarity

Are the Standards easy to understand or are there parts that require clarification?

- Is the format of the Standards useful for understanding rights and requirements under each of the Standards?
- Are the terms used in the Standards clear to users and providers?
- Are there any parts of the Standards that need additional explanation or details of where to find additional information?

### Question 2 Rights under the Standards

Are you aware of your rights to enrol, access support and participate in education and training?

- Are you aware that these rights are protected under the Disability Standards for Education 2005?
- Where did you find out about the Standards?

### Question 3 Access to education and training opportunities

Have you or a person you know with disability, experienced difficulties enrolling in an educational institution or participating in educational activities on the same basis as people without disability? If so, why do you think this occurred?

- Please describe any instances where the Standards have enabled someone with disability to access education and training opportunities.
- Are the provisions for consultation and reasonable adjustment clear and adequate?

### Question 4 Eliminating discrimination

Describe any instances where the introduction of the Standards played a part in eliminating discrimination experienced by a person with disability in an educational setting?

- How could the Standards be improved to help prevent a person with disability from experiencing discrimination, harassment or victimisation in an educational setting? If possible please provide an example.

### Question 5 Awareness and recognition

Do you think the Standards have raised awareness and increased understanding of the issues affecting people with disability and their rights to access and participate in education and training?

- If so, can you provide examples?
- Are there issues that require more information or clarification so that there is greater awareness of the issues affecting people with disability in relation to education and training?

## Question 6

### Compatibility with current education system

Are there any current education or training issues that are not covered by the Standards but should be?

- Are you aware of any educational institutions that are not covered by the list in Part 1.5 of the Standards?

### Other comments

Is there anything else you would like to tell us about the Standards? For example are there any gaps that need to be addressed?

## Questions for providers of education and training

In order to provide context for your comments please indicate whether you are from:

- School
- VET
- University
- Private training provider
- Peak/community organisation
- Other

You may answer all or some of the questions.

### Question 1

#### Providing clarity

Are the Standards easy to understand or are there parts that require clarification?

- Is the format of the Standards useful for understanding rights and requirements under each of the Standards?
- Are the terms used in the Standards clear to users and providers?
- Are there any parts of the Standards that need additional explanation or details of where to find additional information?

### Question 2

#### Obligations under the Standards

Are you aware of the requirements of education providers to enable students with disability to access and participate in education and training on the same basis as students without disability?

- Are you aware that these requirements form part of the Standards?
- How have the Standards assisted you in understanding the requirements of providers under the DDA?
- Where did you find out about the Standards and where would you access additional information?
- Are the Standards easy to understand or are there parts that require clarification?
- Are the measures for compliance contained in each of the parts of the Standards reasonable and helpful in understanding the requirements of providers? Have they been effective?
- In what ways have you demonstrated compliance with the Standards?

### Question 3

#### Access to education and training opportunities

Since the introduction of the Standards have any new processes relating to enrolment, participation and support services been introduced to ensure students with disability access education and training opportunities on the same basis as those without disability?

- Has the participation of students with disability changed at your institution following the introduction of the Standards in 2005? If so, in what way have the Standards contributed to the change?

- Has the process specified in the Standards assisted you to meet your requirements; particularly the provisions relating to reasonable adjustment and unjustifiable hardship?

#### **Question 4** **Eliminating discrimination**

Has your institution taken any specific action to reduce the possibility of discrimination relating to students with disability following the introduction of the Standards in 2005? If so, what actions?

- For example does your institution have grievance procedures in place for students who wish to lodge a complaint relating to discrimination, harassment or victimisation? Are the grievance procedures publicly available?
- Has your institution received complaints relating to the discrimination, harassment or victimisation of students with disability? If so, please describe.
- Has the number or nature of complaints changed since the introduction of the Standards?

#### **Question 5** **Recognition and acceptance**

Do you think the Standards have raised awareness and increased understanding of the issues affecting people with disability and their rights to access and participate in education and training?

- If so, can you provide examples?
- Are there issues that require more information or clarification so that there is greater awareness of the issues affecting people with disability in relation to education and training?

#### **Question 6** **Compatibility with current education system**


Have there been any changes in education and training practice (including admission, enrolment, participation and curriculum delivery) that are not covered or compatible with the provisions in the Standards?

- Are there any issues about access, participation and educational provision not addressed in the current Standards that might be considered in the future?
- Are you aware of any educational institutions that are not covered by the list in Part 1.5 of the Standards?

#### **Other comments**

Is there anything else you would like to tell us about the Standards? For example are there any gaps that need to be addressed?





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