



Frequently Asked Questions

Consultation on changes to the Disability Standards for Education 2005

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What are Australia’s disability discrimination laws?

The *Disability Discrimination Act 1992* (DDA) is a law that applies to everyone in Australia. It protects people from discrimination because of disability.

All children with disability in Australia are protected by the DDA when they go to any early childhood education and care (ECEC) service. This includes long day care centres, family day care services, outside school hours care centres, kindergartens and preschools.

The *Disability Standards for Education 2005* (the Standards) are a set of laws that come under the DDA. They clarify the DDA obligations of education providers. The Standards explain the rights of students with disability and what providers must do to support students.

Kindergartens and preschools are covered by the Standards. The Standards do not currently cover ECEC services and providers.

More information and resources on disability laws are available on the Department of Education’s website at www.education.gov.au/disability-standards-education-2005

What changes are in the *Disability Standards for Education Amendment Standards 2025*?

The *Disability Standards for Education Amendment Standards 2025* (the draft Amendment Standards) will change the Standards to include most early childhood education and care (ECEC) services and providers.

The draft Amendment Standards will also make other minor or technical changes, including updating the name of the Australian Human Rights Commission and using gender-neutral language like ‘the student’ instead of ‘his or her’.

Why are we proposing to make these changes?

Including early ECEC services in the Standards will help to make it clearer and easier for ECEC services to understand what they must do to support children with disability under the *Disability Discrimination Act 1992*. This change to the Standards has been suggested by the sector for some time.

- In both the 2010 and 2015 review of the Standards, stakeholders suggested that ECEC be included in the Standards.
- The Productivity Commission’s Inquiry Report – A path to universal early childhood education and care - recommended the Australian Government amend as soon as possible the Standards to cover the ECEC sector
- Australia’s Disability Strategy Early Childhood Targeted Action Plan includes the extension of the Standards to include ECEC.

For early childhood education and care services

Which ECEC services are included in the amendments?

Services must meet **at least one** of the conditions in the draft definition of an educational early childhood service to be included under the Standards. Services may meet more than one condition.

The conditions are ECEC services approved under the *A New Tax System (Family Assistance) (Administration) Act 1999* (Child Care Subsidy approved providers) and/or ECEC services which are required by a state or territory law to follow an approved learning framework will be included in the Standards. This includes National Quality Framework services such as long day care, family day care, education and care in the year before school and outside school hours care services.

A list of service types that will be included or not included if the changes are made to the Standards is provided below. These lists seek to clarify which care types may or may not be covered by this definition. This material should however only be considered as general guidance, as the applicability of the Standards will depend on characteristics of the individual ECEC service.

You should not rely only on the information in the consultation paper and the FAQs to determine how the law currently applies or how the proposed changes would apply to you. Please seek professional legal advice if you need it.

ECEC service types which are covered by amendments

ECEC service types that can administer the Child Care Subsidy (CCS) are included under the draft Amendment Standards as they fall under the *A New Tax System (Family Assistance) (Administration) Act 1999* (CCS approved providers) or provide an approved learning framework. For example:

- Centre Based Day Care
 - Centre Based Day Care is typically provided in centres approved by regulators to provide quality early childhood education and care.
- Family Day Care
 - Family Day Care is a type of child care usually provided in the home of an educator.
- Outside School Hours Care
 - Outside School Hours Care provides care before and after school hours and during school vacations for children who normally attend school.
- In Home Care
 - In Home Care is a flexible form of early childhood education and care where an educator provides care in the child's home. It is restricted to families who can't access other forms of early childhood education.

NOTE: Depending on which state or territory a service is located in and the laws under which they are approved or registered, other services may meet at least one of the required conditions for the definition in the draft Amendment Standards.

If you are not sure whether your service is covered by the Amendment, please seek independent legal advice. You should not rely only on the information in the FAQs or consultation paper to determine how the law currently applies or how the proposed changes would apply to you. We encourage you to seek professional legal advice if you need it.

Which ECEC services are not covered by amendments?

Some ECEC service types would not be included under the Standards, as they do not meet at least one of the conditions in the definition of the draft Amendment Standards. Examples include:

- Informal care provided through personal arrangements.
- Services principally conducted to provide instruction in a particular activity (for example, a language class or ballet class).
- Services providing education and care to patients in a hospital.
- Disability services defined under state or territory law and early childhood intervention services for children with additional needs.
- Care provided under a child protection law of a participating jurisdiction.
- Education and care provided by a hotel or resort to children of short-term guests.
- Education and care that is provided on an ad hoc basis to children where the person who is responsible for the children is readily available at all times
- Education and care provided at a secondary school to a child of a student attending the school, where the parent retains responsibility for the child.
- Mobile services that are not CCS recipients and that do not deliver educational programs.
- Transition to school programs provided by a school to orient children to that school.

What does inclusion in the Standards mean for my service?

All ECEC providers and services must already follow the DDA and make reasonable adjustments for children with disability, this will continue. The Standards explain how the DDA works in an education context. Amending the Standards to include ECEC will make it clearer and easier for ECEC providers and services to understand their obligations to support children with disability.

ECEC providers and services must keep making reasonable adjustments so that children with disability can take part and access education on the same basis as children without disability. Reasonable adjustments may include changes to buildings or equipment or teaching strategies to support the child. Services must also still consult with parents, carers and guardians on adjustments to help children join in.

ECEC services will be required to follow all parts of the Standards achieved primarily through consultation with children with disability and their families, the making of reasonable adjustments and the elimination of harassment and victimisation.

Do ECEC services need to make reasonable adjustments?

ECEC providers are currently required to make reasonable adjustments under the DDA. The Standards set out information about how education providers can meet the obligation to make reasonable adjustments where necessary.

Under the Standards, all education providers must provide reasonable adjustments for students with disability, to enable access and participation in education on the same basis as students without disability unless the required changes to be made would impose unjustifiable hardship on the education provider. (Exceptions are set out in Part 10 of the Standards).

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. It can include aids, facilities or services that the student requires because of their disability.

More information is available at www.acecqa.gov.au/dda-information-sheet.

What is the cost of this change to my service?

ECEC providers and services are already expected to understand and apply the DDA. The Standards provide more details about what meeting the DDA looks like in education settings.

The Australian Children's Education & Care Quality Authority has developed a staff training package on the DDA which may be useful for training. The package can be found at <https://www.acecqa.gov.au/resources/disability-discrimination-act-1992-dda-resources>.

Training in the Standards could include the Disability Standards for Education 2005 for early childhood e-learning modules available at www.nccd.edu.au/professional-learning/disability-standards-education-early-childhood-prior-school.

When will the changes take effect?

Once the consultation is completed, the Australian Government will review the draft Amendment Standards and consider next steps and timing of any changes. We will make sure early childhood education and care services are advised of any changes being made.

ECEC providers should continue to ensure they are meeting their obligations under the DDA while changes to the Standards are considered.

I am a parent or caregiver of a child with disability

What does this change mean?

All ECEC and school age care services must meet their obligations under the *Disability Discrimination Act 1992* (DDA). This includes providing adjustments, and consulting with the family or caregiver of a child with disability about any adjustments, needed to support a child with disability to access and participate at their service.

The existing obligations will not change by including ECEC services in the Standards. Amendments to include ECEC services in the Standards will help services understand their obligations under the DDA, and help families, carers and guardians better understand the rights of a child with disability under the DDA.

What do I have to do?

Families do not need to do anything as part of these amendments. ECEC services should already be meeting their obligations under the *Disability Discrimination Act 1992* (DDA).

The Australian Government has released practical and easy-to-use resources to help families of children with disability understand and exercise their rights and advocate for their child. These resources were codesigned with young people with disability and their families with the help of Children and Young People with Disability Australia.

You can find these resources on the Department of Education's website at www.education.gov.au/disability-standards-education-2005/resources/advocating-your-child.

What is the cost to families of children with disability?

There are no costs to families due to the amendments.

The inclusion of ECEC in the Standards is intended to provide a clearer understanding of education providers existing obligations under the DDA, within the ECEC sector.