



Women
With
Disabilities
Australia
(WWDA)



About Us

Consultation Paper on 'Support for Students Policy' requirements

September 2023

Joint Submission in Response to the 'Support for Students Policy' Consultation Paper

About ALSA: The Australian Law Students' Association ('**ALSA**') is a national not-for-profit organisation which acts as the peak representative body for law students in Australia. ALSA is the voice of 40 student organisations and over 40,000 students nationwide, acting in the interests of law students through advocacy, education, skills development and thought leadership.

About NUS: The National Union of Students ('**NUS**') represents over a million post-school students and is hence the peak body within Australia's higher education sector. Established on the principles of student unionism, the NUS works in the interests of students to advocate for quality of education, academic freedom, inclusive education, equity, social security, health and welfare.

About CYDA: Children and Young People with Disability Australia ('**CYDA**') is a peak body and not-for-profit community organisation, representing the rights and interests of young people with disability (aged 0-25) in Australia.

About All Means All: All Means All is a nationwide network of people and organisations working together to implement an inclusive education system, advocating for the right of every Australian student to access an inclusive education.

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About Down Syndrome Australia: A national body, Down Syndrome Australia consists of State and Territory associations which provide support, information, and resources to people with Down Syndrome and their families across Australia.

About WWDA: Women With Disabilities Australia (‘WWDA’) is a peak body and a national Disabled People’s Organisation (‘DPO’), representing the rights and interests of women, girls, and feminine-identifying and non-binary people with disabilities in Australia.

Language:

The author chose to use a mix of person-first language (e.g. ‘*person with disability*’ / ‘*person with ADHD*’ / ‘*person with ASD*’) and identity-first language (e.g. ‘*Disabled person*’ / ‘*ADHDer*’ / ‘*Autistic person*’) throughout this written paper to reflect author preference and the diversity of preference in the disability community so as to acknowledge lived experience & neurodiversity.

Authors:

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Background:

We welcome the opportunity to consult on and provide a submission to the Department of Education’s [Support for Students Policy Consultation Paper](#). Disabled students and elected student representatives, including those responsible for the disability portfolio, were consulted in the preparation of this submission.

All the collaborators on this submission agree with the need for a duty on higher education providers to have a policy that supports students at risk of failing their qualification. However, Australian education institutions are not retaining or attracting as many d/Disabled students as compared to overseas. Currently, only 17% of d/Disabled Australians over 20 years old have a bachelor’s degree as compared to 35% of non-disabled Australians. In the United Kingdom, 24.9% of people with disabilities from the ages of 21-64 had a degree compared to 42.7%.

For particular disabilities, the statistics are more disturbing. According to the bipartisan report of the Senate Select Committee on Autism, autistic students in higher education have distressing concerns about discrimination: 25% of autistic students who commence tertiary education withdraw from their degree prior to completion, with more than a third of students declining to disclose their autism to their university. Moreover, 66% of autistic people without intellectual disability have Lived Experience of suicidal ideation.

To properly support this demographic to succeed, there must be targeted mechanisms built into the Guidelines and the legislation delegated to the Department of Education, Skills and

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Employment. These are our recommendations for improving this policy to better the educational outcomes of d/Disabled students.

We recognise and thank emphatically d/Disabled students with lived experience for their input, including their consent for the anonymised inclusion of direct quotes. We acknowledge the individual and collective expertise of those with a living or lived experience of mental ill-health and recovery. We believe that all young people — including students with disability — have a right to inclusive education, without undue burden.

TW: Ableism, sexual assault and sexual harassment (**‘SASH’**), and suicide.

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Consultation Paper – Consultation Questions:

I. Are there features of the Code that could also be applied to domestic student support and included in the Guidelines?

1. We note that D/disabled students are experiencing — at disproportionately higher rates than their non-disabled counterparts — sexual assault and sexual harassment (‘SASH’), to which many universities have responded in a manner which the landmark Senate inquiry described as ‘inadequate but are, in some cases, outright damaging and deeply troubling’.¹
2. The Disability Royal Commission enumerates — in a 2021 report — not only that people with disabilities are at 2.2 times the risk of sexual violence in comparison to people without disability but also that young women with disability (18-29 years) are twice as likely to report experiencing sexual violence than young women without disability.² Men with disability are also noted to be at 2.6 times the risk of experiencing sexual violence.³ Despite the increased prevalence of sexual violence experienced by young people with disability, inertia in recognising that disabled students, particularly those also from CALD

¹ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Current and proposed sexual consent laws in Australia* (2023) [5.92].

² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Nature and extent of violence, abuse, neglect and exploitation against people with disability in Australia* (Research Report Project 8, March 2021) 9-10.

³ Ibid.

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and First Nations backgrounds,⁴ are more likely to be sexually assaulted than non-disabled students persists within the higher education sector.

- 3.
4. Despite these findings, TEQSA in its own compliance report notes that it does not ‘verify the validity or investigate individual allegations’ and neglects to acknowledge the concurrent findings from the Disability Royal Commission.⁵ Although TEQSA is the regulatory agency for higher education, it has demonstrated relative inaction with regards to the sexual violence experienced by disabled students and the lack of current disability action plans to address these issues: neither TEQSA nor the majority of universities have, as of July 2022, current Disability Action Plans.⁶
5. Similarly, the websites for neither ASQA nor the Australian Qualifications Framework (‘AQF’), which governs the national systems of qualification within Australia’s education sector, feature current Disability Action Plans or disability-informed (and accessible) assistance such as materials in Easy Read formats.⁷ In fact, the lack of oversight and accountability towards universities regarding matters of accessibility and SASH — and

⁴ Australian Human Rights Commission, *Change the Course: National Report on Sexual Assault and Sexual Harassment on campus* (Report, August 2017).

⁵ Tertiary Education Quality and Standards Agency, *TEQSA Compliance Report 2021* (Report, March 22).

⁶ See, eg, ‘Register of Disability Discrimination Act Action Plans’, *Australian Human Rights Commission* (Web Page, 17 July 2022) <<https://humanrights.gov.au/our-work/disability-rights/register-disability-discrimination-act-action-plans>>.

See also ‘Disability action plan’, *Tertiary Education Quality and Standards Agency* (Web Page, 2 July 2019) <<https://www.teqsa.gov.au/latest-news/publications/disability-action-plan>>.

⁷ See ‘Where can I get further help?’, *Australian Qualifications Framework* (Web Page, 17 July 2022)

<<https://www.aqf.edu.au/help-qualifications/where-can-i-get-further-help>>. See also ‘Providing quality training and assessment services to students with disabilities’, *Australian Skills Quality Authority* (Web Page, 12 May 2016)

<<https://www.asqa.gov.au/resources/fact-sheets/providing-quality-training-and-assessment-services-to-students-with-disabilities>>. Cf ‘Easy Read’, *Australian Government Style Manual* (Web Page, 6 September 2021)

<<https://www.stylemanual.gov.au/content-types/easy-read>>.

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student welfare as a whole — are contributing to students experiencing revictimisation when they attempt to submit complaints.⁸

6. As the landmark Senate Inquiry notes, it is a ‘searing indictment of Australia’s university sector and the regulator, the Tertiary Education Quality and Standards Agency... that the process of making complaints and how universities and the regulator deal with such complaints is causing great trauma to the victims of sexual violence’. In fact, the lack of recourse of victim-survivors, especially D/disabled victim-survivors, reflects in the inability of domestic students to submit a complaint to the Commonwealth Ombudsman.⁹
7. We reiterate that victim-survivors of SASH suffer higher course failure and non-attendance rates due to the trauma they face.¹⁰ Rape culture and structural ableism are co-constitutive, and one cannot be addressed without also addressing the other.¹¹ Therefore, we note — as raised by the National Tertiary Education Union (‘NTEU’) — the need to integrate into the Guidelines additional protections which would protect

⁸ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Current and proposed sexual consent laws in Australia* (2023) [5.105].

⁹ See generally NTEU, Submission to the Australian Department of Education, *Support for Students Policy: Guidelines Consultation* (15 September 2023) 2-3

https://www.education.gov.au/system/files/2023-09/27%20NTEU%20Response_to_Support_for_Students_Consultation_Paper_2023_Redacted.pdf.

¹⁰ Taylor Molstad, Justin Weinhardt, & Rihannon Jones. ‘Sexual assault as a contributor to academic outcomes in university: A systematic review’ (2023) 24(1) *Trauma, Violence, & Abuse* 218.

¹¹ See generally AW Shim, ‘Disability & Higher Education in Australia’ (Research Report, the Australian Law Students Association, the Australian Medical Students Association, and the National Union of Students, 14 November 2022) <https://allmeansall.org.au/means-joins-peak-student-bodies-advocacy-organisations-calling-systemic-reforms-disability-higher-education-australia>.

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vulnerable cohorts of students, including the precepts from *Standard 1*, *Standard 6*, and *Standard 10* of the National Code.¹²

8. Moreover, the inclusion of these precepts must also be not only trauma-informed, accessible, and anti-ableist but also congruent with the recommendations of the Senate Inquiry into Consent, which excoriates the inaction from universities and the sector regulator in responding appropriately to welfare concerns experienced by university students — including D/disabled students.¹³ Students with disability, including those who are victim-survivors of SASH, discrimination, and violence, must be allowed to submit complaints, and those complaints must effectuate consequences for noncompliance.¹⁴
9. Moreover, we note that the National Code for Overseas Students itself should be reviewed with a disability lens, as the aforementioned Standards may be insufficiently disability-inclusive, especially in light of the higher rates of discrimination and social

¹² See generally NTEU, Submission to the Australian Department of Education, *Support for Students Policy: Guidelines Consultation* (15 September 2023) 2-3

<[https://www.education.gov.au/system/files/2023-09/27%20NTEU%20Response to Support for Students Consultation Paper 2023 Redacted.pdf](https://www.education.gov.au/system/files/2023-09/27%20NTEU%20Response%20to%20Support%20for%20Students%20Consultation%20Paper%202023%20Redacted.pdf)>.

¹³ See, eg, AW Shim, ‘Disability & Higher Education in Australia’ (Research Report, the Australian Law Students Association, the Australian Medical Students Association, and the National Union of Students, 14 November 2022) <<https://allmeansall.org.au/means-joins-peak-student-bodies-advocacy-organisations-calling-systemic-reforms-disability-higher-education-australia>>; Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Current and proposed sexual consent laws in Australia* (2023) [5.89]-[5.122]; Michelle M Ralston, Submission to the Australian Department of Education, *2020 Review of the Disability Standards for Education 2005* (12 March 2021) 7-8 <<https://www.dese.gov.au/system/files/documents/submission-file/2021-02/Submission%20-%20Ralston%2C%20Michelle.pdf>>..

¹⁴ Department of Education, Skills and Employment, *Final Report of the 2020 Review of the Disability Standards for Education 2005* (Final Report, March 2021) 47. See also also Ilias Bantekas, ‘Article 7 Children With Disabilities’, in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press, 2018) 198; Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Current and proposed sexual consent laws in Australia* (2023) [5.114]-[5.118].

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exclusion experienced by CALD people with disability and students with disability in general.¹⁵

Key change:

- i. Implement — for domestic students — precepts from *Standard 1*, *Standard 6*, and *Standard 10* of the National Code for Overseas Students.
- ii. Review both the implementation of the above Standards and the National Code itself from a disability-inclusive lens that is also trauma-informed and inclusive of the recommendations from the [Senate Inquiry into Current and Proposed Sexual Consent Laws in Australia](#).

¹⁵ See generally ADCET, Submission to the Australian Department of Education, *Support for Students Policy: Guidelines Consultation* (15 September 2023) 9-11 <https://www.education.gov.au/system/files/2023-09/16%20Submission_for_Support_for_Students_Legislation_15_Sept_FINAL_Redacted.pdf>. See also Doris Testa and Ronnie Egan, 'Finding voice: The higher education experiences of students from diverse backgrounds' (2014) 19(3) *Teaching in Higher Education* 229, 230.

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Consultation Paper – Consultation Questions:

II. How do we ensure that the Code and the new arrangements work together effectively?

1. Structural ableism — and structural inequity at large — is allowed to flourish within higher education insofar as many educational providers have neither undertaken critical disability training and anti-ableist training nor invested in training to develop a 'disability consciousness' among higher education staff,¹⁶ despite the articulated shortcomings of current disability competence training.
2. Although resources such as the National Disability Coordination Officer ('NDCO') Program have existed, they are inadequately funded and implemented,¹⁷ further exacerbated by the lack of a Disability Education Commissioner and a Student Voice on Student Experience to enforce and monitor the implementation of the *Disability Students for Education 2005* (Cth) and disability policies to destigmatise disability.¹⁸ At significant rates, hidden disability and concomitant stigma are negatively impacting disabled students'

¹⁶ See especially Adrienne Doebrich, Marion Quirici, & Christopher Lunsford, 'COVID-19's Impact on the Practice of Pediatric Rehabilitation Medicine: Insights and Recommendations' (2020) 13(3) *Journal of Pediatric Rehabilitation Medicine* 393, 393-401. See also Damian Mellifont et al, 'The ableism elephant in the academy: a study examining academia as informed by Australian scholars with lived experience' 34(7-8) *Disability & Society* 1180, 1184-1190.

¹⁷ Michelle M Ralston, 'Translating the *Disability Standards for Education 2005* Into Practice' (Doctoral Thesis, University of Newcastle, 2022) 306.

¹⁸ Paul Koshy et al, 'Discussion Paper on the 2020 Review of the *Disability Standards for Education 2005*' (Research Fellowship Final Report, National Centre for Student Equity in Higher Education, 25 September 2022)

<https://www.ncsehe.edu.au/wp-content/uploads/2020/09/NCSEHE_Discussion-Paper_DSE-Review_FINAL_23092020-FINAL.pdf>.

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interactions with peer and teaching staff,¹⁹ reflecting the 'historically ableist culture of universities'.²⁰

3. Therefore, we reiterate the aforementioned calls for adequately funding accountability mechanisms,²¹ as well as allowing domestic students to submit complaints to the Commonwealth Ombudsman, to enable both independent oversight and intersectional expertise.²²

Key changes:

¹⁹ Miriam Edwards et. al., 'Academic accommodations for university students living with disability and the potential of universal design to address their needs' (2022) (January) *Higher Education* 1-21, 14.

²⁰ Ibid 4. See also Nicole Brown and Karen Ramlackhan, 'Exploring experiences of ableism in academia: a constructivist inquiry' (2022) 83 *Higher Education* 1225-1239.

²¹ See, eg, AW Shim, 'Disability & Higher Education in Australia' (Research Report, the Australian Law Students Association, the Australian Medical Students Association, and the National Union of Students, 14 November 2022) <<https://allmeansall.org.au/means-joins-peak-student-bodies-advocacy-organisations-calling-systemic-reforms-disability-higher-education-australia>>; Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Current and proposed sexual consent laws in Australia* (2023) [5.89]-[5.122]; Michelle M Ralston, Submission to the Australian Department of Education, *2020 Review of the Disability Standards for Education 2005* (12 March 2021) 7-8 <<https://www.dese.gov.au/system/files/documents/submission-file/2021-02/Submission%20-%20Ralston%2C%20Michelle.pdf>>..

²² See generally ADCET, Submission to the Australian Department of Education, *Support for Students Policy: Guidelines Consultation* (15 September 2023) 9-11

<https://www.education.gov.au/system/files/2023-09/16%20Submission_for_Support_for_Students_Legislation_15_Sept_FINAL_Redacted.pdf>. See also AW Shim, 'Disability & Higher Education in Australia' (Research Report, the Australian Law Students Association, the Australian Medical Students Association, and the National Union of Students, 14 November 2022) <<https://allmeansall.org.au/means-joins-peak-student-bodies-advocacy-organisations-calling-systemic-reforms-disability-higher-education-australia>>; NTEU, Submission to the Australian Department of Education, *Support for Students Policy: Guidelines Consultation* (15 September 2023) 2-3 <https://www.education.gov.au/system/files/2023-09/27%20NTEU%20Response_to_Support_for_Students_Consultation_Paper_2023_Redacted.pdf>.

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-
- i. Implement Recommendations 1, 2, 3 of the [NCSEHE Discussion Paper on the Disability Standards for Education 2005](#), including the recommendation for the establishment of a Disability Education Commissioner in order to actualise accountability for the implementation of the *Disability Discrimination Act 1992 (Cth)* and *Disability Standards for Education 2005 (Cth)* within higher education.
 - ii. Implement all relevant recommendations from the [2022 ALSA-AMSA-NUS Research Report](#), including **Recommendation 3.5** which recommends a government inquiry, ideally led by a Disability Education Commissioner, into the implementation and adequacy of current disability programs — such as the NDCO Program and HE DSP — within the higher education sector.
 - iii. Allow this body to issue remedies such as fines or deregistration of a tertiary provider or limited exclusions of individuals from tertiary administration or teaching.

With all of these recommendations, the higher education sector can become the equitable and accessible industry as envisioned by the Guidelines.

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Consultation Paper – Consultation Questions:

III. What other detail should be included in the Guidelines and why?

4. The Guidelines should include a requirement for universities and TAFEs to outline how they will implement Universal Design for Learning ('UDL') principles in their content delivery and course design.
5. Undergirded by its repudiation of a 'one-size-fits-all' approach, Universal Design ('UD') – specifically, Universal Design for Learning ('UDL') – is research-backed as a pedagogy and a curriculum framework, facilitating equitable access to education for all students – including disabled students and other students from diverse, minoritised backgrounds.²³ Indeed, the NCSEHE has previously recommended mandatory disability competency training and the implementation of UDL.²⁴ For disabled students, implementing UDL would ostensibly ensure that they can 'engage with the curriculum without having to seek adjustments'.²⁵
6. UDL would facilitate equitable access to education for all students – including disabled students and other students from diverse, minoritised backgrounds. As a paradigm, UDL

²³ See especially Lucy Mercer-Mapstone et al, 'Recommendations for equitable student support during disruptions to the higher education sector: Lessons from COVID-19' (Research Report, National Centre for Student Equity in Higher Education, 8 March 2022)

<https://www.ncsehe.edu.au/wp-content/uploads/2022/03/Mercer-Mapstone_USYD_Final.pdf>. See also Matthew Capp, 'The effectiveness of university design for learning: a meta-analysis of literature between 2013 and 2016' (2017) 21(8) *International Journal of Inclusive Education* 791.

²⁴ Tim Pitman, 'Supporting persons with disabilities to succeed in higher education' (Research Fellowship Final Report, National Centre for Student Equity in Higher Education, 8 March 2022)

<https://www.ncsehe.edu.au/wp-content/uploads/2022/03/Pitman_Curtin_EquityFellowship_FINAL.pdf>.

²⁵ Ibid 14.

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requires having multiple ways of representing information (eg through braille, transcripts), multiple ways of engaging students (eg. student support and accessible materials) and multiple ways of allowing students to express what they have learnt (eg. A range of assessment with no weighting of a single task over 50%).²⁶

7. The variable application of UDL across the higher education sector can constrict disabled students' access to optimal supports, regardless of the implementation of adjustments.²⁷ Because the intersection of attendance requirements and inaccessible built environments can stymie equitable access,²⁸ applying UDL principles to built environments,²⁹ as well as to curriculum reform, could decrease student dissatisfaction and systemic non-compliance with the *Disability Discrimination Act 1992* (Cth).³⁰ Furthermore, an open curriculum — an Arts curriculum, similar to that seen at Amherst College and Brown College,³¹ without distribution requirements and core curriculum — can increase student

²⁶ <https://www.cast.org/impact/universal-design-for-learning-udl>

²⁷ Tim Pitman, 'Supporting persons with disabilities to succeed in higher education' (Research Fellowship Final Report, National Centre for Student Equity in Higher Education, 8 March 2022)

<https://www.ncsehe.edu.au/wp-content/uploads/2022/03/Pitman_Curtin_EquityFellowship_FINAL.pdf>, 50.

²⁸ *Kinsela v Queensland University of Technology* [1997] HREOC No H97/4. Cf *Sluggett v Flinders University of South Australia* [2000] HREOC No H96/2.

²⁹ Juuso Henrik Nieminen and Henri Valtteri Pesonen, 'Taking universal design back to its roots: Perspectives on accessibility and identity in undergraduate mathematics' (2020) 10(1) *Education Sciences* 12.

³⁰ See especially Tim Pitman, 'Supporting persons with disabilities to succeed in higher education' (Research Fellowship Final Report, National Centre for Student Equity in Higher Education, 8 March 2022)

<https://www.ncsehe.edu.au/wp-content/uploads/2022/03/Pitman_Curtin_EquityFellowship_FINAL.pdf>, 57.

³¹ See, eg, Ira Magaziner and Elliot Maxwell, 'The Magaziner-Maxwell Report (Draft of a Working Paper for Education at Brown University): the seed of a curricular revolution at Brown' (Working Paper, First Open Jar Edition, Open Jar Foundation, October, 2011) <<https://library.brown.edu/libweb/papers/BrownCurriculum.pdf>>; Katherine Bergeron, 'Case study: A tradition of reform: The curriculum at Brown University' in Paul Blackmore & Camille B Kandiko (eds), *Strategic Curriculum Change in Universities* (Routledge, 2012) 32.

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engagement, particularly for disabled students from marginalised backgrounds, through curricular co-creation, pedagogical flexibility, and institutional accessibility.³²

8. Indeed, applying UD principles of increased accessibility, flexibility, and inclusivity — built upon co-design, co-production and co-creation, rather than mere consultation — can optimise engagement beyond tokenism,³³ regardless of accommodations and adjustments.

9. We believe that the proposed Guidelines currently require institutions to provide specific access to academic supports and have embedded academic advisors who can identify and respond to struggling students. Encouraging the adoption of learner-centred learning such as UDL is a simple extension of these principles as it responds to a reason for why d/Disabled students struggle to achieve their educational outcomes. The importance of learner-centred learning was acknowledged in the Interim Report of the Australian Universities Accords and should be regulated in these Guidelines.³⁴

Key change:

³² Asanda Ngoasheng et al, ‘Advancing democratic values in higher education through open curriculum co-creation’ in Lynn Quinn (ed), *Re-imagining Curriculum: Spaces for disruption* (SUN PReSS, 2019) 327. See also Tanya Lubicz-Nawrocka and John Owen, ‘Curriculum Co-creation in a Postdigital World: Advancing Networked Learning and Engagement’ (2022) 4(2) *Postdigital Science and Education* 793.

³³ Amanda Roberts et al, ‘“Standing up for my human rights”: a group’s journey beyond consultation towards co-production’ (2012) 40(4) *British Journal of Learning Disabilities* 292. See also Asam Latif et al, ‘Giving Voice to the Medically Under-Served: A Qualitative Co-Production Approach to Explore Patient Medicine Experiences and Improve Services to Marginalized Communities’ (2018) 6(1) *Pharmacy* 13.

³⁴ Australian Government, *Australian Universities Accord: Interim Report* (Report D23/2264421, 19/07/2023) 82.

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- i.* Include — in the Guidelines, under Institutional Level Requirements — an obligation for higher education institutions to report on their use of UDL in content delivery and course design.
 - ii.* Include — in the Guidelines, under Institutional Level Requirements — an obligation for higher education institutions to report on the uptake of disability awareness training amongst their educational and non-educational staff.

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Consultation Paper – Consultation Questions:

IV. Are the proposed individual student and institutional level requirements practical, and implementable? If not, how could they be improved?

10. The individual student and institutional level requirements are practical and implementable; however, the supplementary delegated legislation developed by the Department of Education must be more targeted to properly address the needs of struggling students with a disability.
11. Access to learning accommodations is important and crucial for educational access. In fact, the 2022 NCSEHE report confirms that not only disabled students but also international students face ‘particularly high barriers to learning’ during COVID-19, citing a lack of learning accommodations, support resources, and flexibility in scheduling classes.³⁵ Currently, a significant proportion of disabled students — on account of their institution’s failure to implement UDL — report very low levels of satisfaction with the support they receive.³⁶
12. The *Disability Standards for Education 2005* (Cth) — or ‘DSE’ — is delegated legislation that is developed by the Department of Education that has sought to support d/Disabled students throughout their educational journey. Under the *DSE*, the definition of a

³⁵ Lucy Mercer-Mapstone et al, ‘Recommendations for equitable student support during disruptions to the higher education sector: Lessons from COVID-19’ (Research Report, National Centre for Student Equity in Higher Education, 8 March 2022) <https://www.ncsehe.edu.au/wp-content/uploads/2022/03/Mercer-Mapstone_USYD_Final.pdf>, 14.

³⁶ Amanda Roberts et al, ‘Standing up for my human rights’: a group’s journey beyond consultation towards co-production’ (2012) 40(4) *British Journal of Learning Disabilities* 292. See also Asam Latif et al, ‘Giving Voice to the Medically Under-Served: A Qualitative Co-Production Approach to Explore Patient Medicine Experiences and Improve Services to Marginalized Communities’ (2018) 6(1) *Pharmacy* 13.

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‘reasonable adjustment’ is different from the definition under the *Disability Discrimination Act 1992* (Cth) — or *DDA*. Under the *DDA*, an adjustment is reasonable so long as it does not impose ‘unjustifiable hardship’ on the person making the adjustment. Under the *Standards*, an adjustment is reasonable if it balances the interests of all parties concerned, irrespective of the lack of consequences of non-compliance and the power imbalances.³⁷

13. This definition not only imposes a lower level of protection than its empowering Act, the *DDA*, but also imposes a test that is vague and more complicated to prove. To support at-risk students, like this policy aims to do, we must be making it easier for students to get adjustments.

Key Change:

- i. Change s 3.5 of the *Disability Standards for Education* in line with the *Disability Discrimination Act* definition contained in s 4.
- ii. Maintain the definition of ‘unjustifiable hardship’ as outlined in s 11 of the *Disability Discrimination Act* and ensure that this is the only metric for determining if an adjustment is reasonable.

³⁷ See, eg, AW Shim, ‘Disability & Higher Education in Australia’ (Research Report, the Australian Law Students Association, the Australian Medical Students Association, and the National Union of Students, 14 November 2022) <<https://allmeansall.org.au/means-joins-peak-student-bodies-advocacy-organisations-calling-systemic-reforms-disability-higher-education-australia>>; Ron McCallum, ‘The United Nations Convention on the Rights of Persons with Disabilities: An Assessment of Australia’s Level of Compliance’ (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 8 October 2020), 14.

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Consultation Paper – Consultation Questions:

V. Are there examples of best practice, reports and reviews that focus on supporting students to complete their studies, that could be drawn on for the Guidelines?

14. The Guidelines should have a method of being continually developed to ensure that it best supports students at risk.
15. The ideal example of how this can be done is the Regional Education Commissioner which ensures regional education at all levels is of high quality. With the defunding of the National Disability Coordination Officer (‘NDCO’) program, there needs to be a similar national body that manages the enrolment of students with disabilities to higher education but goes further in reducing the institutional barriers that make d/Disabled students fail to complete their education. The lessons learnt from the inefficiencies of the NDCO program is that national education must have a central network with a contactable, public figure who can independently scrutinise tertiary education providers’ enrolment and retention rates.

Key Changes:

- i. The Department of Education, Skills and Employment should develop a term of reference to empower a Disability Education Commissioner similar to the one created in 2021 for the [Regional Education Commissioner](#).

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- ii. Empower the Disability Education Commissioner to investigate whether the Guidelines, *DDA* and *DSE* are complied with and make recommendations to the Department of Education about developing education-related delegated legislation.
 - iii. Memorandum of understanding for consultation with the NUS Disabilities Officer to ensure communication between student representatives and higher education oversight bodies.

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Consultation Paper – Consultation Questions:

VI. What other reporting requirements need to be included to demonstrate compliance with the Support for students policy requirements?

16. An additional requirement that should be strongly considered is that providers report openly and transparently — available for public inspection — how they utilise funding associated with the [Higher Education Disability Support Program](#). Moreover, it must be a requirement — especially for the affluent universities — that providers register a [Disability Inclusion Action Plan with the AHRC](#).
17. A prima facie examination of the AHRC’s *Register of Disability Discrimination Act* Action Plans indicates that the majority of Table A provider universities — many of whom are Go8 universities — have not as of July 2022 maintained currently active registration, despite receiving Commonwealth funds from the Higher Education Disability Support Program (‘HE DSP’).
18. This implication raises significant concerns regarding the systemic neglect of disabled people and substantiates the urgent need for legislative reform. In fact, the inflexibility by higher education stakeholders, such as external accreditation bodies and educators themselves, are contributing to poor visibility of human rights obligations to disabled students — which demonstrate the failure of the *DSE* (and implementation thereof) as well as the need for legal accountability.³⁸

³⁸ See Department of Education, Skills and Employment, *Final Report of the 2020 Review of the Disability Standards for Education 2005* (Final Report, March 2021) 44-45.

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19. Universities, as well as the sector regulator, must also begin to report on the number of allegations of discrimination — including not only discrimination and vilification on the basis of disability but also sex discrimination and racial discrimination — in order to improve the intersection between the disability sector and the higher education sector.
20. Indeed, in both the disability sector and the education sector, support staff have been reported to lack knowledge of the intersection, while 'autistic students continue to fall through the cracks in the system'.³⁹
21. We strongly recommend implementing **a requirement for providers to begin reporting on the number of complaints & allegations that they receive regarding discrimination in general — as well as reporting the number of complaints received from D/disabled-identifying students in particular** — due to the pressing need for an intersectional approach towards policy & justice. Indeed, the options of legal recourse are limited for not only LGBTQIA+ people with disability but also all disabled people with intersectional identities (including disabled women) insofar as Australia has not amended anti-discrimination laws and complaints mechanisms to make complaints about intersectional forms of harassment, vilification, and discrimination.⁴⁰
22. For example, First Nations people with disability who experience discrimination that is co-constitutive of both racism and ableism cannot pursue legal redress on the basis of

³⁹ Senate Select Committee on Autism, Parliament of Australia, *Services, support and life outcomes for autistic Australians* (2022) [12.181] - [12.187].

⁴⁰ The Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Second and Third Combined Reports of Australia*, 22nd sess, UN Doc CRPD/C/AUS/CO/2-3, 15 October 2019 [12].

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both racial discrimination and disability discrimination — and must only choose one.⁴¹ Until Australia’s anti-discrimination laws are reformed to redress systemic, intersectional and multiple forms of discrimination, disabled people — especially those with more complex needs — face multiple barriers to obtaining the support, services, and justice to which they are entitled.⁴²

23. Therefore, we recommend the following actions:

Key Changes:

- i. Require providers receiving HE DSP funding to register an active DIAP with the AHRC.
- ii. Require providers to record the number of complaints, as well as outcomes of complaints, that they receive regarding not only discrimination and vilification on the basis of disability but also sex discrimination and racial discrimination.
- iii. Require providers to record the number of complaints, as well as outcomes of complaints, that they receive from d/Disabled-identifying students & staff.

⁴¹ Ibid. See also Ilias Bantekas, ‘Article 7 Children With Disabilities’, in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press, 2018) 198.

⁴² Ron McCallum, ‘The United Nations Convention on the Rights of Persons with Disabilities: An Assessment of Australia’s Level of Compliance’ (n 7), 23-24. See also The Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Second and Third Combined Reports of Australia*, 22nd sess, UN Doc CRPD/C/AUS/CO/2-3, 15 October 2019 [12](b).

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Consultation Paper – Consultation Questions:

VII. Is there other information that should be reported, or that could be re-purposed, that would demonstrate compliance, and assist in monitoring and evaluating the outcomes of these Guidelines?

24. Please refer to the [Duty of Care submission to the Universities Accord](#) and the [2022 ALSA-AMSA-NUS Research Report](#) respectively. We recommend implementing all recommendations listed in the two submissions.

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VIII. What needs to be taken into account in the Department's approach to non-compliance? What practical considerations need to be taken into account in implementing the Guidelines?

25. We support the creation of a new civil penalty provision. However, it could more closely mirror the effective civil penalties provisions established in the *Corporations Act 2001* (Cth) under s 1317GA and s 206. The *Corporations Act* allows for individuals to be disqualified from managing a corporation.
26. As contributory factors to inequitable outcomes experienced by disabled students, inconsistent and inflexible approaches to policy, practice, and reasonable adjustments are prevalent in the higher education sector, with 'administrative processes' and 'attitudes of teaching staff' commonly cited as systemic barriers.⁴³ Attitudinal ableism is not only present but also enervating compliance in general.
27. The current system proposed by the Guidelines penalises an entire institution which can be an ineffective solution and risks the penalties actually being shouldered by the student body in cases of de-registration. Therefore, the civil penalty provision should allow for educators or administrative staff who severely breach the Supporting Students Policy to be disqualified from university or TAFE administration or teaching for a set period.

⁴³ Miriam Edwards et. al., 'Academic accommodations for university students living with disability and the potential of universal design to address their needs' (2022) (January) *Higher Education* 1-21, 14.

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28. We note that there must be an appropriate body that can implement these penalties.

TEQSA is not an appropriate regulator of student welfare concerns because they do not process individual complaints.⁴⁴ This blocks off a key avenue for holding universities and TAFEs accountable for failures to support students and places a vast amount of regulatory responsibility onto the Minister for Education or Department who are not resourced to address these systemic issues properly. To commit to supporting students requires a tribunal with expertise and appropriate resources that can assist students to navigate disputes between them and their academic institutions.

Key changes:

- i. Develop a Dispute Resolution Scheme similar to the New Zealand model that can resolve disputes between students and their higher education institutions including discrimination against students.
- ii. Allow this body to issue remedies such as fines or deregistration of a tertiary provider or limited exclusions of individuals from tertiary administration or teaching.

29. We the undersigned believe that the higher education, upon implementing all of these recommendations, can become the equitable and accessible industry as envisioned by the Guidelines.

⁴⁴ <https://www.teqsa.gov.au/about-us/contact-us/raising-complaint-or-concern>

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Conclusion

1. We the undersigned believe that the higher education, upon implementing all of these recommendations, can become the equitable and accessible industry as envisioned by the Guidelines.
2. Thank you for the opportunity to contribute to and consult on this significant piece of policy. We trust that the insights and recommendations presented in this submission, based on expertise and academic research, will inform the development of policies and practices that prioritise the well-being and success of vulnerable staff & students within the higher education sector, especially D/disabled people.
3. We commend the current consultations and recommend further consultations with young stakeholders, in order to best ensure that their experiences and perspectives are reflected within higher education service design. We welcome further opportunity to discuss our recommendations, including that for a whole-of-government approach that would improve the higher sector’s interface with D/disabled stakeholders.

[END]

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