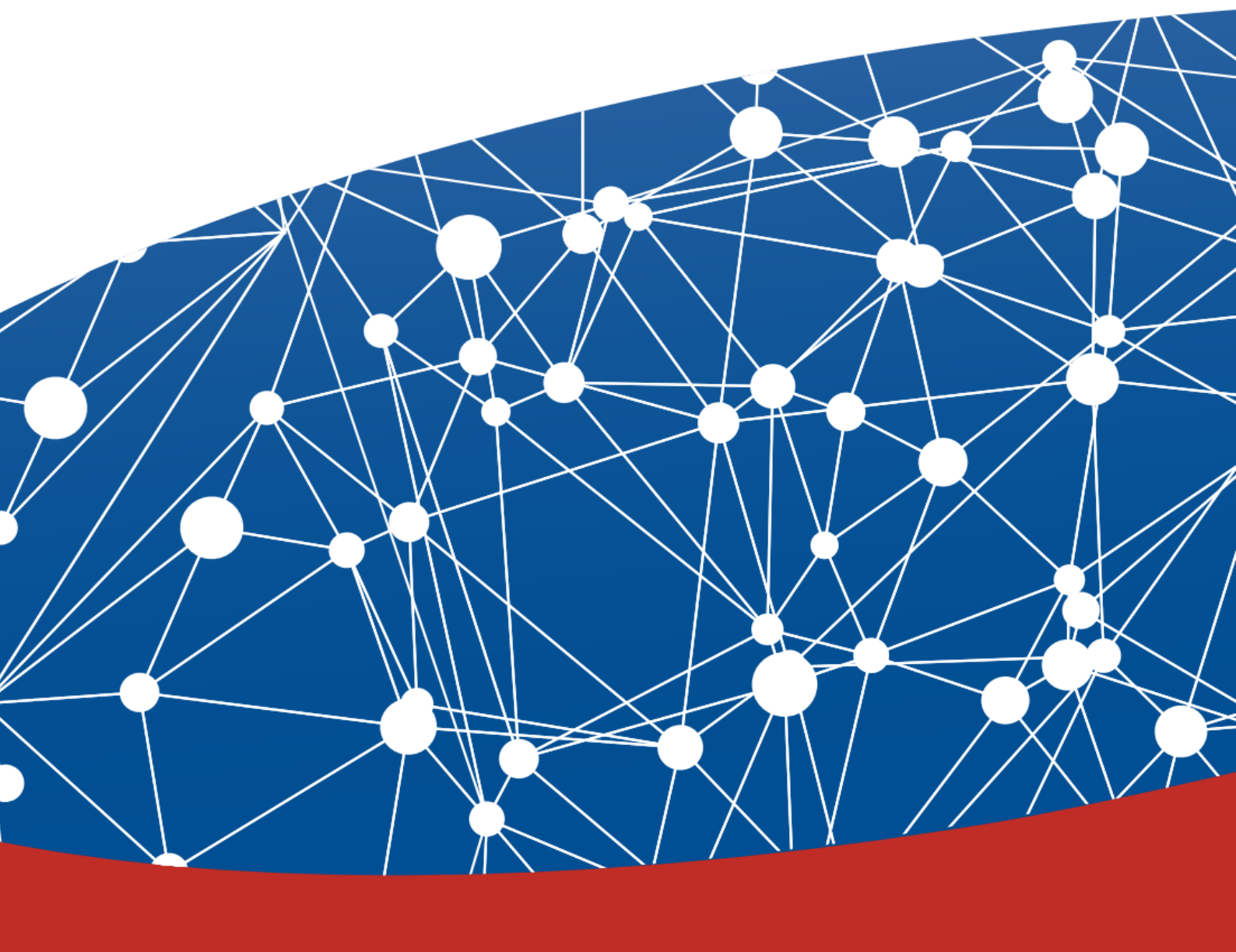




National Disability Coordination Officer Program

AN AUSTRALIAN GOVERNMENT INITIATIVE

National Disability Coordination Officer Program
Submission into the 2020 Review of the Disability
Standards for Education (2005)



Submission: Disability Standards for Education (2005)

Commissioned by: Department of Education, Skills and Employment

Date: 25 September 2020

Contributors: National Disability Coordination Officers:

Jessica Buhne, Region 1 – Sydney, NSW

Lloyd Gris, Region 2 – New England, NSW

Devan Nathan, Region 3 – Northern Sydney, NSW

Jacqui Lentini, Region 4 – South West Sydney, NSW

Kay Dean, Region 6 – Hunter/Central Coast, NSW

Cynthia Fitzpatrick, Region 7 – North Coast, NSW

Audrey Housbey, Region 9 – Western NSW

Tracy Hetherington, Region 10 – ACT and Riverina

Amii Demanuele, Region 13 – Eastern Melbourne, VIC

Pam Anderson, Region 16 – Western Victoria

Theresa Madson, Region 18 – South East Queensland and Brisbane, QLD

Ben Hugo, Region 19 – South East Queensland and Gold Coast, QLD

Gary Kerridge, Region 24 – South and South East South Australia, SA

Isabel Osana-Gatty, Region 25 – Central and Northern South Australia, SA

Kirsty Runciman, Region 27 – Perth, WA

Please Note: The following submission represents the views of the contributors and does not necessarily reflect the views of the Australian Government, Department of Education, Skills and Employment.

2020 Review of the Disability Standards for Education (2005)

Contents

NDCO Program Overview	4
Introduction	4
Awareness Raising	5
Clarity, Understanding and Capability	7
Complaints	8
Accountability and Compliance	10
Recommendations	11

NDCO Program Overview

The Australian Government Department of Education, Skills and Employment funds the National Disability Coordination Officer (NDCO) Program. There are 31 NDCOs across Australia who work strategically to drive change so that people with disability have equitable opportunity to access, participate and achieve their goals in tertiary education and subsequent employment.

For more information on the NDCO Program visit <http://bit.ly/NDCOProgram>

Introduction

This NDCO submission to the 2020 Review of the Disability Standards for Education 2005 (The Standards) refers to the broad themes that were identified in the 2010 and 2015 Reviews:

- Awareness Raising
- Clarity, Understanding and Capability
- Complaints
- Accountability and Compliance.

During August 2020 the NDCO Program surveyed 131 people with disability, disability practitioners, families and supporters to better understand the knowledge, awareness, capability and compliance with The Standards. This submission draws on the collective expertise of the contributors and feedback sought from stakeholders across Australia through the NDCO Stakeholder Survey. The NDCO Stakeholder Survey is included as an additional document with this submission.

Awareness Raising

Final reports of the 2010 and 2015 reviews of The Standards revealed a lack of awareness and knowledge of The Standards by the general population. This lack of awareness was substantiated through the NDCO Stakeholder Survey where 31% of respondents indicated that they were unaware of where to access The Standards, and many were still unsure of their purpose:

“I am very aware of the general disability service standards but not education specific standards”

“Have little knowledge about the standards”

“To be honest I have never even heard of them before”

“I have minimal understanding”

The NDCO Program acknowledges the effort that has been applied to building awareness of The Standards across different stakeholder groups. However, these campaigns have failed to bring about the systemic change that is necessary to ensure that the Australian education system upholds the right of every person with disability to access education and training opportunities on the same basis as students without disability.

While many resources have been developed to build awareness of The Standards, the onus remains on the individual to have knowledge that they are in place, and where to access them. This has led to a system where students with disability are often unaware of their rights, limiting access to an equitable education. A divide grows between those willing and able to advocate for themselves and those who are not.

Submissions to previous reviews have been punctuated with discussions to ensure that all students with disability, their supporters and educators are aware of the right to access education on the same basis as any other student. The lack of knowledge in how to achieve this is proof that awareness is yet to be realised. Students with disability and their families living in metropolitan areas may be more aware of The Standards and be much more confident in advocating for their rights as they have additional access to, and support from advocacy groups and their resources. Tertiary students may also have more support to utilise The Standards through access to disability advisers employed by their university.

However, The Standards are often inaccessible to families living in regional or remote areas, or from Aboriginal and Torres Strait Islander communities or culturally diverse communities, without the availability of specific resources and advocacy support.

Previous submissions have also highlighted the need for a campaign to promote awareness of The Standards and increase understanding of:

- their purpose
- how to access them, and

- the complaints process when The Standards are not being upheld.

It is also noted that awareness campaigns have led to a seasonal effect with efforts of informing stakeholders being applied post regular reviews. Knowledge and effort then sit with individuals who inevitably move on, taking that initiative away once they leave.

Any future work in building awareness of The Standards must be driven by the goal to create systematic and enduring change. The Standards must become the guiding directive in the educational experience of every student living with disability needing support to meet their education goals in Australian education institutions.

In order to achieve this, it is imperative that we move away from the current 'marketing' style approach that encourages stakeholders to 'opt in' to The Standards and resulting supports. Systemic change must be driven by the insistence that ALL students are informed of their rights under The Standards and ALL educators and education institutions be mandated to ensure that The Standards are upheld. The Standards must be built into the everyday processes of the education sector through building awareness and knowledge of how to apply The Standards into daily processes; this will ensure that change will be systemic and enduring.

Clarity, Understanding and Capability

Most surveyed stakeholders indicated they are aware of the purpose of The Standards to provide structure and guidance to allow access to reasonable adjustments and individualised tailored support for students with disability. The Standards attempt to clarify the obligations of education providers to ensure equitable access and the appropriate modifications to accommodate the needs of a student. However a lesser number of stakeholders disclosed they had little knowledge of reasonable adjustments and were more aware of the National Standards for Disability Services, and a smaller number of stakeholders shared they had no knowledge of reasonable adjustments at all.

Despite stakeholders reporting they have a good theoretical understanding of reasonable adjustments, and knowing there are many ways to apply them, there seems to be a disconnect in applying adjustments in practice and the application in real education settings are vague and unclear. While it is known, making modifications to the curriculum and providing tools to support students with disability increases inclusiveness in the education setting, some education providers are unaware of the extent of the adjustments that could be made.

“The term 'reasonable adjustment' is a little vague and so wide in application depending on the context. More concrete examples or case scenarios would help.”

Unfortunately, it is perceived that reasonable adjustments can diminish the quality of the education experience. Quite often educators use their limited knowledge of reasonable adjustments as an excuse to not provide adequate support and subsequently applying adjustments is placed in the “too hard basket”. It was also expressed that many students have experienced tokenistic inclusion which resulted in ‘loopholes’ that allowed exclusion. If we were to extrapolate these findings on a bigger scale, it is very likely the result will indicate a similar trend.

While some people have a thorough understanding of the term reasonable adjustment, they lack the knowledge and understanding regarding the term unjustifiable hardship. There is a misconception that the two terms are interchangeable and have the same meaning. The NDCO Stakeholder Survey also revealed that many people believe unjustifiable hardship refers to the individual person with disability and were unaware it applied to the education/training provider.

“unjustifiable hardship is the where I maybe struggling with things that aren't related to my studies but do impact me being in classroom or on campus.”

Often unjustifiable hardship is an exception for education/training providers to not make reasonable adjustment on basis of cost, and the impact on provider and others is too great or puts others at risk. The survey results are indicative that further clarification of terms such as reasonable adjustments and unjustifiable hardship is needed.

Complaints

The NDCO Stakeholder Survey indicates that the understanding of the complaints process is very low with the overall understanding of the process on a scale of 1 to 5 rated at 2.8. Further, 85% of people had not engaged with the complaints process or assisted a person with a disability engage with the complaints process, and only 13 people indicated that they had engaged in the complaints process.

The NDCO Stakeholder Survey also identified that people felt the complaints process was long and drawn out which meant a lot of education was missed, caused a lot of stress, was hard to understand, was often not satisfactorily resolved, and recommendations that may have come from conciliation were not implemented consistently.

“Would like to know how to make complaints and make the whole thing a lot clearer for parents”

In some instances information was provided on the complaints process to people that required it however no follow up occurred after this.

“Several instances where a complaint could have been warranted however the students chose not to proceed”

“I was supporting a person who was also doing a course with an RTO and the person disclosed me to me that the trainer was rude, unhelpful and made fun of him in front of the rest class. The person I was supporting did not wish to make a complaint despite my encouragement.”

13 of the respondents stated they had made a complaint however only 2 appeared satisfied with the outcome of their complaint. In one instance the impact of this process resulted in a complete withdrawal from current education, and an indication that the individual would not consider education again in the future due to the trauma caused by the education provider (humiliation and bullying).

54 people responded that they felt they should have made a complaint. A variety of reasons were provided as to why they did not:

- *Time constraints*
- *Work family commitments*
- *Feelings of powerlessness and the DDA having no impact*
- *Discrimination happened. But disabled person did not wish to cause trouble*
- *Didn't know how to engage the complaints process*
- *No training or information provided about discrimination and how to make a complaint*
- *Access should not have to rely on a complaint, it should be mandated*
- *Not feeling safe to complain*
- *Lack of emotional capacity to deal with the process*
- *Education providers actually discouraging people from making complaints*
- *No support to make the complaint*
- *Cuts in advocacy services*
- *Inadequate support and expertise*

The NDCO Stakeholder Survey suggests that very few people actually understand or are aware of the complaints process. This is shown by:

- Low rating on the scale of understanding (2.8)
- That 85% of respondents had not utilised the complaints process
- Only 13 of 132 (9%) people that responded to the overall survey indicated that they had engaged with the complaints process.

It is clear that the time required to resolve any complaint is long and drawn out. This means people with disability miss out on access to their education and is a disincentive to make a complaint. Indeed one indicated that as a result of their negative experience of The Standards and disability discrimination that they have withdrawn from education completely.

When conciliation happens, it appears education providers are sometimes inconsistent in implementing recommendations. If this occurs the only course of action is to complain again. There appears to be ineffective mechanisms to follow up resolved complaints and ensure agreements for access are actually followed.

Several people indicated that they were unaware of support and advocacy that might be available or where to access this support. There was a suggestion that when support was received that the organisation or person providing support lacked the knowledge or expertise to effectively assist in engaging with the complaints process.

There were a number of responders who indicated that they avoided the process due to concerns that the education provider would "punish" the student, or feelings that this had already occurred following a complaints process.

The need for the person with a disability or their associates to have to trigger The Standards into action by complaining causes a lot of stress and is unfair. The low number of people engaging with the process may indicate that the complaints process is ineffective and not protecting people with a disability. What this means is that The Standards need to be made stronger and obligations of providers need to be firmly documented and policed.

Accountability and Compliance

There is no consistent requirement for education providers to demonstrate compliance with The Standards outside of the legal framework of the Disability Discrimination Act. Breaches of The Standards are only identified when a student, their parent or an educator complains about a process or behaviour. It is impossible to determine how many individuals choose not to proceed with a complaint, however a variety of reasons as to why not has been provided on page 8 of this submission.

For educators who breach The Standards, but receive no complaints, there is no process for ensuring future compliance. Resolution of formal complaints usually occurs through confidential conciliation and this limits the contribution the complaints process makes to allow for systemic improvement over time due to no publicity or precedent setting.

"I have not seen or heard enough of the success that comes from making a genuine complaint and how this is applied nationally and consistently."

Complaints-based compliance frameworks disadvantages those who are less able to initiate and pursue a complaint. This includes Aboriginal and Torres Strait Islanders, culturally diverse community members, people with intellectual disability, and those from low socio-economic areas. The effectiveness of The Standards in these cases is driven by the knowledge and capacity of an advocate, or places the onus on people with disability to make a complaint.

"I am greatly disappointed that while my education was made accessible through tireless advocacy from my family, it was a hard battle, and that students who have come after me have not had the same level of access"

Conciliation processes generally lead to agreements that are confidential, and do not establish precedent or generate publicity. This contributes to a lack of knowledge on previous findings or cases that have used The Standards to meet education needs. Better access to this type of information would assist education providers in all sectors to be guided in moderating their own decision-making and actions. This would also assist people with disability and their supporters in recognising breaches of compliance, as well as better understand the process of making a complaint.

The Guidance Notes are a useful accompaniment to The Standards setting out explanatory notes to assist the reader to interpret and comply with The Standards. However the Guidance notes, whilst helpful, are still too high level with not enough practical examples. Further, the Guidance Notes require updating as they currently refer to the Human Rights and Equal Opportunity Commission which was renamed to the Australian Human Rights Commission in 2008. The Standards, along with the Guidance Notes needs to be clear, accessible and available in alternative formats to assist in the application and compliance of The Standards

Recommendations

1. An Awareness campaign on how to access and use The Standards to target a variety of stakeholders, for example social media campaigns and webinars including the following:
 - All students, regardless of identified disability, be provided with information about The Standards on commencement of each learning event and at key transition points. This would function on a similar basis to the Fair Work Information Statement, it would be the education institutions' responsibility to provide and discuss the statement with students and their carers.
 - Design and provision of mandatory posters to be displayed in all educational settings outlining the purpose of The Standards and where to access more information. This strategy has been successfully used by WorkSafe Victoria in their "If you are injured at work" poster campaign.
 - Short videos in Aboriginal and Torres Strait Islander languages and key multicultural languages. All posters need to use culturally appropriate images and be available in plain and Easy English.
2. The Australian Government to investigate how it can systemically embed information about The Standards within all of its portfolios to increase awareness generally, rather than just within the education system.
3. Obligate education institutes to provide a list of rights to enrolling students clearly articulating The Standards.
4. Recommendations 1 & 3 to be made compulsory in all education institutes and regular Government audits to ensure compliance failing which punitive measures be enforced.
5. Ensure there is strong governance led by people with disability that can continue to monitor and undertake audits to ensure that the whole of the institution is across what is expected and obligated to provide.
6. Develop a mandatory unit of competency on the access and use of The Standards which can be delivered as a standalone unit or as part of any university or vocational education and training component (qualification, skill set, other).
7. Develop a mandatory unit of competency on the access and use of The Standards as a part of teachers' Professional Development requirements in each State and Territory to maintain their registration.
8. Consideration of The Standards to be included specifically in the Certificate IV Training and Assessment in the same way that Literacy and Numeracy for Adults has been included.
9. Ensure that The Standards reinforce the need for Reasonable Adjustments to have a person centred approach.
10. Ensure application of Universal Design for Learning principles in the development of all curriculum, and provide compulsory training for all educators on Universal Design Principles.
11. Establish a national advocate or system of national advocates to assist students with disability to interpret The Standards and progress complaints with advocacy support if required.
12. Develop nationally consistent tools to enable education institutions to conduct 'self-audits' of their compliance with The Standards (Recommendation 6 from the 2015 Review)

13. Education providers to establish an internal framework to proactively monitor and strengthen compliance linked to Government funding.
14. Funding support be given to private providers so that they are able to fund reasonable adjustments in order to reduce the claim of unjustifiable hardship.
15. Update the Guidance Notes to include practical examples to assist in the application and compliance of The Standards, replace references of HREOC with AHRC, and develop alternative formats of the Guidance Notes, including Easy English and in multiple languages.