



Australian Government

Attorney-General's Department

Department of Education,  
Science and Training

# Disability Standards for Education 2005

plus Guidance Notes



**Making education and training accessible to students with disability**

# **Disability Standards for Education 2005**

plus Guidance Notes

---

ISBN 0 642 77630 X  
0 642 77631 8 (online)

© Commonwealth of Australia 2006

This work is copyright. It may be reproduced in whole or in part for study or training purposes subject to the inclusion of an acknowledgment of the source and no commercial usage or sale. Reproduction for purposes other than those indicated above, requires the prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>.

# Ministers' Foreword

## to The Disability Standards for Education

The Australian Government considers that all people with disability have the right to participate as fully as possible in community life and is committed to increasing fair access to education and training for all groups. Increasing access to education is one of our goals for Australia's future.

The Disability Standards for Education (the Education Standards) were formulated by the Attorney-General under the *Disability Discrimination Act 1992* (DDA). The Education Standards provide a framework to ensure that students with disability are able to access and participate in education on the same basis as other students. The Education Standards do this by providing clarity and specificity for education and training providers and for students with disability.

Work on developing the Education Standards began in 1995 and was led by the Attorney-General's Department and the Department of Employment, Education and Training. A primary objective was to create disability standards that would make rights and responsibilities in education and training easier to understand.

The development of the Education Standards was a collaborative effort involving the Human Rights and Equal Opportunity Commission, representatives from State and Territory Governments, stakeholder groups within the disability sector and education and training sector, including non-Government education and training providers and universities. This process has demonstrated the Australian Government's ongoing commitment to overcoming discrimination against people with disability.

The Education Standards came into effect on 18 August 2005. The DDA makes it unlawful to contravene a disability standard, and compliance with a disability standard is taken to be compliance with the DDA.

The Education Standards set out a process to be followed, to ensure that students with disability are provided with opportunities to realise their potential through participating in education and training on the same basis as other students.

The Education Standards apply to government and non-government providers in all education sectors, pre-school, school, vocational education and training, higher education and adult and community education, as well as to organisations whose purpose it is to develop and accredit curricula and courses.

An education provider is required to make any decisions about admission, enrolment or participation on the basis that reasonable adjustments will be made where necessary so that the student with disability is treated on the same basis as a student without the disability. However, a provider is required only to make a 'reasonable adjustment'. An adjustment is not mandatory if it would cause 'unjustifiable hardship' to the provider.

The Education Standards are accompanied by plain English Guidance Notes, which provide additional explanatory material to assist education providers to understand their obligations, and the students their entitlements, under the Education Standards.

We thank the individuals, groups, Government and non-Government organisations and agencies who contributed to the development of the Standards.

To facilitate the implementation of, and compliance with the Standards, we are pleased to provide you with the Education Standards and accompanying Guidance Notes in this publication. The Australian Government will contribute to the development of professional development materials for education institutions to support the implementation of the Education Standards.



The Hon Philip Ruddock MP  
Attorney-General



The Hon Julie Bishop MP  
Minister for Education,  
Science and Training

# Contents

<b>Disability Standards for Education 2005</b>	<b>1</b>
<b>Disability Standards for Education 2005, Guidance Notes</b>	<b>41</b>





## **Disability Standards for Education 2005**

I, PHILIP MAXWELL RUDDOCK, Attorney-General, formulate these Standards under paragraph 31 (1) (b) of the *Disability Discrimination Act 1992*.

Dated 17 March 2005

PHILIP RUDDOCK  
Attorney-General

---





# Contents

	Introduction.....	5
<b>Part 1</b>	<b>Preliminary</b>	
1.1	Name of Standards.....	7
1.2	Commencement .....	7
1.3	Objects.....	7
1.4	Definitions .....	7
1.5	Who must comply with the Standards.....	9
1.6	Construction of Standards.....	10
<b>Part 2</b>	<b>Meaning of important terms</b>	
2.1	Education providers.....	11
2.2	Meaning of <i>on the same basis</i> .....	11
<b>Part 3</b>	<b>Making reasonable adjustments</b>	
3.1	Application of Part .....	13
3.2	Meaning of <i>student</i> .....	13
3.3	Adjustments.....	13
3.4	Reasonable adjustments .....	14
3.5	Consulting the student.....	15
3.6	Deciding on an adjustment to be made.....	15
3.7	Adjustments to be provided in reasonable time .....	15
3.8	Relation to premises standards .....	16
<b>Part 4</b>	<b>Standards for enrolment</b>	
4.1	Application of Part .....	17
4.2	Enrolment standards.....	17
4.3	Measures for compliance with standards.....	18
<b>Part 5</b>	<b>Standards for participation</b>	
5.1	Application of Part .....	19
5.2	Participation standards.....	19
5.3	Measures for compliance with standards.....	20

<b>Part 6</b>	<b>Standards for curriculum development, accreditation and delivery</b>	
6.1	Application of Part .....	23
6.2	Standards for curriculum development and accreditation and delivery.....	23
6.3	Measures for compliance with standards.....	24
<b>Part 7</b>	<b>Standards for student support services</b>	
7.1	Application of Part .....	27
7.2	Standards for support services .....	27
7.3	Measures for compliance with standards.....	29
<b>Part 8</b>	<b>Standards for harassment and victimisation</b>	
8.1	Meaning of <i>harassment</i> .....	31
8.2	Application of Part .....	31
8.3	Standards for eliminating harassment and victimisation .....	32
8.4	Harassment and victimisation provisions of the Act continue to apply .....	32
8.5	Measures for compliance with standards.....	33
<b>Part 9</b>	<b>Treatment of a person who has an associate with a disability</b>	
9.1	Act continues to apply in relation to person who has associate with a disability .....	35
<b>Part 10</b>	<b>Exceptions</b>	
10.1	Exceptions .....	37
10.2	Unjustifiable hardship .....	37
10.3	Acts done under statutory authority .....	38
10.4	Protection of public health.....	38
10.5	Special measures .....	38
<b>Part 11</b>	<b>Review</b>	
11.1	Timetable for review.....	39

# Introduction

These Standards are formulated by the Commonwealth Attorney-General under the Commonwealth *Disability Discrimination Act 1992* (the **Act**).

The Act seeks to eliminate, as far as possible, discrimination against people with disabilities. Under section 22 of the Act, it is unlawful for an educational authority to discriminate against a person on the ground of the person's disability or a disability of any associates of that person. Section 31 of the Act enables the Attorney-General to formulate disability standards in relation to a range of areas, including the education of persons with a disability.

The Standards are subordinate legislation and are subject to the objects of the Act. They clarify and elaborate the legal obligations in relation to education.

Under section 32 of the Act, it is unlawful for a person to contravene a disability standard. A complaint about an alleged contravention can be made to the Human Rights and Equal Opportunity Commission. Section 34 of the Act provides that, if a person acts in accordance with a disability standard, Part 2 of the Act does not apply to the person's action or, in other words, the person's action complies with the Act and is not made unlawful by it.

## How the standards operate

The standards set out in Parts 4 to 8 of the Standards specify how education and training are to be made accessible to students with disabilities. They cover the following areas:

- enrolment;
- participation;
- curriculum development, accreditation and delivery;

- student support services; and
- elimination of harassment and victimisation.

The Part for each area includes a statement of the *rights*, or entitlements, of students with disabilities in relation to education and training, consistent with the rights of the rest of the community. The statements of rights are included to assist people to understand, and comply with, the standards set out in the obligation provisions.

The Parts then describe the legal *obligations*, or responsibilities, of educational authorities, institutions and other education providers. These are the standards with which education providers must comply.

The Parts then describe *measures* that, if implemented, will be evidence of compliance with the legal obligation. The measures are examples of compliant actions and are performance based. However, the measures may not cover the needs of all students with disabilities, or all educational levels and contexts, and full compliance with the Standards may require additional or alternative actions. Further, compliance with the measures is not required if the legal obligation can be met in other ways.

Parts 4 to 8 of the Standards deal with the students with disabilities themselves; Part 9 provides that the provisions of the Act continue to govern the treatment of persons who have associates with a disability.

Part 10 of the Standards sets out exceptions to the legal obligations set out in Parts 4 to 8 of the Standards.

Part 11 of the Standards provides for 5 yearly reviews.

The Standards are accompanied by Guidance Notes which are intended to assist in interpreting them.

## Part 1

# Preliminary

### 1.1 Name of Standards

These Standards are the *Disability Standards for Education 2005*.

### 1.2 Commencement

These Standards take effect on the day on which the requirements of subsection 31 (3) or (4) of the *Disability Discrimination Act 1992* are first complied with.

### 1.3 Objects

The objects of these Standards are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the area of education and training; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law in the area of education and training as the rest of the community; and
- (c) 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.

*Note* These are also generally the objects of the Act in relation to education (see section 3 of the Act).

### 1.4 Definitions

In these Standards, unless the contrary intention appears:

**Act** means the *Disability Discrimination Act 1992*.

**adjustment** has the meaning given by section 3.3.

**discrimination** has a meaning corresponding to the meaning of **discriminate**.

**education provider** has the meaning given by section 2.1.

**harassment** has the meaning given by section 8.1.

**prospective student**, for an educational institution, means a person who approaches the institution about seeking admission to, or applying for enrolment in, the institution.

**reasonable**, in relation to an adjustment, has the meaning given by section 3.4.

**student** means a person enrolled in an educational institution.

**victimisation** has the meaning given by section 42 of the Act.

*Note* The definitions of terms in the Act apply to the Standard, under the *Acts Interpretation Act 1901*. These definitions include the following:

**associate**, in relation to a person, includes:

- (a) a spouse of the person; and
- (b) another person who is living with the person on a genuine domestic basis; and
- (c) a relative of the person; and
- (d) a carer of the person; and
- (e) another person who is in a business, sporting or recreational relationship with the person.

**disability**, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future; or
- (k) is imputed to a person.

**discriminate** has the meaning given by sections 5 to 9 of the Act.

**educational authority** means a body or person administering an educational institution.

**educational institution** means a school, college, university or other institution at which education or training is provided.

## 1.5 Who must comply with the Standards

These Standards apply to education providers, subject to section 12 of the Act, and have effect as if they were limited application provisions under that section.

*Note 1* Education providers, bound by the Standards, include the following:

- (a) preschools, including kindergartens (but not child-care providers);
- (b) schools in the public sector;
- (c) schools registered through school registration authorities in the private sector;
- (d) post-compulsory education and training authorities and providers, including:
  - (i) State or Territory Training Authorities; and
  - (ii) public providers that deliver education and training; and
  - (iii) private training providers, including business colleges, enterprises and commercial training businesses; and
  - (iv) community-based not-for-profit providers; and
  - (v) industry skill centres; and
  - (vi) Registered Training Organisations and group training providers that have satisfied the national criteria for provision of services and have been registered by a State or Territory training authority;
- (e) higher education providers, including:
  - (i) universities, that is, self-accrediting higher education institutions, established under State, Territory or Commonwealth legislation; and
  - (ii) any other organisations that offer higher education level courses and are accredited or approved under the relevant State or Territory legislation;
- (f) providers of adult and community education;
- (g) bodies whose purpose is the development and accreditation of curricula, training packages or courses used by education authorities, institutions or providers, including:
  - (i) authorities that accredit school education; and
  - (ii) organisations that endorse training packages within the Australian Qualifications Framework; and
  - (iii) authorities that accredit courses; and
  - (iv) State and Territory recognition agencies.



*Note 2* An education provider is responsible for defining the purposes and outcomes of the educational services it provides. These responsibilities are set out in legislation, regulations, published rules and guidelines that determine curricula, courses, training packages, accreditation and assessment.

*Note 3* The Standards apply to education providers delivering education and training through a range of modes including in-class tuition, distance education, flexible delivery, computer-assisted learning, on-line delivery, part-time study for post-compulsory students and the various combinations of these modes, and on-the-job training.

## **1.6 Construction of Standards**

- (1) These Standards are intended to be within the power conferred by the Act, and are to be construed accordingly.
- (2) A provision that, despite subsection (1), cannot be construed as being entirely within the power conferred by the Act has effect to the extent that it is within that power.

## Part 2

# Meaning of important terms

### 2.1 Education providers

For these Standards, an **education provider** is:

- (a) an educational authority; or
- (b) an educational institution; or
- (c) an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers.

### 2.2 Meaning of on the same basis

- (1) A person with a disability is able to seek admission to, or apply for enrolment in, an institution **on the same basis** as a prospective student without a disability if the person has opportunities and choices in admission or enrolment that are comparable with those offered to other prospective students without disabilities.

*Note* This subsection is relevant to subsection 4.2 (1).

- (2) An education provider treats a prospective student with a disability **on the same basis** as a prospective student without a disability if the provider makes any decisions about admission or enrolment on the basis that reasonable adjustments will be provided in accordance with section 5.2.

*Note 1* This subsection is relevant to subsection 4.2 (2).

*Note 2* An education provider that:

- (a) refuses a prospective student with a disability a place in the institution, or in the particular course or program applied for by the prospective student, on the ground that the student would be able to enrol in another institution, or in a course or program at another institution; and
- (b) does not refuse students without disabilities places on the same ground;

does not treat a prospective student on the same basis as a prospective student without a disability.

- (3) A person with a disability is able to participate in courses or programs provided by an educational institution, and use the facilities and services provided by it, **on the same basis** as a student without a disability if the person has opportunities and choices in the courses or programs and in the use of the facilities and services that are comparable with those offered to other students without disabilities.

*Note 1* This subsection is relevant to subsections 5.2 (1), 6.2 (1) and 7.2 (1).

*Note 2* In some cases, students with disabilities will not be able to participate on the same basis as other students if all students are treated in the same way, or if all students with disabilities are treated in the same way.

## Part 3

# Making reasonable adjustments

### 3.1 Application of Part

This Part sets out how a reasonable adjustment is to be identified for the purposes of paragraphs 4.2 (3) (c), 5.2 (2) (c), 6.2 (2) (c), 7.2 (5) (c) or 7.2 (6) (c).

### 3.2 Meaning of student

For this Part:

**student** includes a prospective student.

### 3.3 Adjustments

For these Standards, each of the following is an **adjustment**:

- (a) a measure or action (or a group of measures or actions) taken by an education provider that has the effect of assisting a student with a disability:
  - (i) in relation to an admission or enrolment — to apply for the admission or enrolment; and
  - (ii) in relation to a course or program — to participate in the course or program; and
  - (iii) in relation to facilities or services — to use the facilities or services;  
on the same basis as a student without a disability, and includes an aid, a facility, or a service that the student requires because of his or her disability;
- (b) an adjustment mentioned in subsection 7.2 (4);
- (c) if a change is made to an adjustment mentioned in paragraph (a) or (b) — the adjustment as affected by the change.

### 3.4 Reasonable adjustments

- (1) For these Standards, an adjustment is **reasonable** in relation to a student with a disability if it balances the interests of all parties affected.

*Note* Judgements about what is reasonable for a particular student, or a group of students, with a particular disability may change over time.

- (2) In assessing whether a particular adjustment for a student is reasonable, regard should be had to all the relevant circumstances and interests, including the following:
  - (a) the student's disability;
  - (b) the views of the student or the student's associate, given under section 3.5;
  - (c) the effect of the adjustment on the student, including the effect on the student's:
    - (i) ability to achieve learning outcomes; and
    - (ii) ability to participate in courses or programs; and
    - (iii) independence;
  - (d) the effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students;
  - (e) the costs and benefits of making the adjustment.

*Note* A detailed assessment, which might include an independent expert assessment, may be required in order to determine what adjustments are necessary for a student. The type and extent of the adjustments may vary depending on the individual requirements of the student and other relevant circumstances. Multiple adjustments may be required and may include multiple activities. Adjustments may not be required for a student with a disability in some circumstances.

The Standards generally require providers to make reasonable adjustments where necessary. There is no requirement to make unreasonable adjustments. In addition, section 10.2 provides that it is not unlawful for an education provider to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on the provider. The concept of unreasonable adjustment is different to the concept of unjustifiable hardship on the provider. In determining whether an adjustment is reasonable the factors in subsection 3.4 (2) are considered, including any effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students, and the costs and benefits of making the adjustment. The specific concept of unjustifiable hardship is not considered. It is only when it has been determined that the adjustment is reasonable that it is necessary to go on and consider, if relevant, whether this would none-the-less impose the specific concept of unjustifiable hardship on the provider.

- (3) In assessing whether an adjustment to the course of the course or program in which the student is enrolled, or proposes to be enrolled, is reasonable, the provider is entitled to maintain the academic requirements of the course or program, and other requirements or components that are inherent in or essential to its nature.

*Note* In providing for students with disabilities, a provider may continue to ensure the integrity of its courses or programs and assessment requirements and processes, so that those on whom it confers an award can present themselves as having the appropriate knowledge, experience and expertise implicit in the holding of that particular award.

### **3.5 Consulting the student**

Before the education provider makes an adjustment for the student, the education provider must consult the student, or an associate of the student, about:

- (a) whether the adjustment is reasonable; and
- (b) the extent to which the adjustment would achieve the aim mentioned in paragraph 4.2 (3) (b), 5.2 (2) (b), 6.2 (2) (b), 7.2 (5) (b) or 7.2 (6) (b) in relation to the student; and
- (c) whether there is any other reasonable adjustment that would be less disruptive and intrusive and no less beneficial for the student.

### **3.6 Deciding on an adjustment to be made**

In deciding whether to make a particular reasonable adjustment for a student, the education provider must:

- (a) assess whether there is any other reasonable adjustment that would be less disruptive and intrusive and no less beneficial for the student; and
- (b) assess whether the adjustment may need to be changed over the period of a student's education or training.

### **3.7 Adjustments to be provided in reasonable time**

- (1) The education provider must take reasonable steps to ensure that any adjustment required to be made is made within a reasonable time.

- (2) Whether the time is reasonable depends, in particular, on whether and when the student, or his or her associate, has provided:
  - (a) in a timely way, any relevant information in the possession of the student or associate about how the disability affects the student in relation to education or training; and
  - (b) the student's or the associate's opinion about the matters mentioned in paragraphs 3.5 (a), (b) and (c).

*Note* The requirement for a provider to consult a student with a disability, or an associate of the student, about how the disability affects the student in relation to education or training is set out in paragraphs 4.2 (3) (a), 5.2 (2) (a), 6.2 (2) (a), 7.2 (5) (a) and 7.2 (6) (a).

### **3.8 Relation to premises standards**

- (1) These Standards do not affect the application of premises standards to building work undertaken as an adjustment or part of an adjustment.
- (2) If:
  - (a) these Standards require building work to be undertaken as an adjustment, or part of an adjustment; and
  - (b) premises standards apply to the building work;these Standards do not require the building work to meet specifications more onerous than those required by the premises standards.
- (3) In this section:

***premises standards*** means disability standards, formulated by the Attorney-General under section 31 of the Act, that deal, in whole or in part, with the access to or the use of any premises.

***building work*** includes the construction of a new building.



## Part 4

# Standards for enrolment

### 4.1 Application of Part

This Part applies in relation to:

- (a) an individual with a disability who is a prospective student for an educational institution; and
- (b) an education provider that is:
  - (i) the educational institution mentioned in paragraph (a); or
  - (ii) an educational authority that administers the educational institution.

#### *Rights given by this Part*

The effect of the following standards is to give prospective students with disabilities the right to enrol in an educational institution on the same basis as prospective students without disabilities, including the right to reasonable adjustments that are necessary to ensure that they are able to so enrol on the same basis as prospective students without disabilities.

### 4.2 Enrolment standards

- (1) The education provider must take reasonable steps to ensure that the prospective student is able to seek admission to, or apply for enrolment in, the institution on the same basis as a prospective student without a disability, and without experiencing discrimination.
- (2) The provider must ensure that, in making the decision whether or not to offer the prospective student a place in the institution, or in a particular course or program applied for by the prospective student, the prospective student is treated on the same basis as a prospective student without a disability, and without experiencing discrimination.
- (3) The provider must:
  - (a) consult the prospective student, or an associate of the prospective student, about whether the disability affects the prospective student's ability to seek admission to, or apply for enrolment in, the institution; and



- (b) in the light of the consultation, decide whether it is necessary to make an adjustment to ensure that the prospective student is able to seek admission to, or apply for enrolment in the institution, on the same basis as a prospective student without a disability; and
- (c) if:
  - (i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and
  - (ii) a reasonable adjustment can be identified in relation to that aim;make a reasonable adjustment for the student in accordance with Part 3.

- (4) For this section, the provider has taken reasonable steps to comply with subsection (1) if the provider has complied with subsection (3).

*Note* See Part 10 for exceptions to the legal obligations set out in the standards. These include a provision that it is not unlawful for a provider to fail to comply with a standard if, and to the extent that, compliance would impose unjustifiable hardship on the provider (section 10.2).

### **4.3 Measures for compliance with standards**

Measures that the education provider may implement to enable the prospective student to seek admission to, or apply for enrolment in, the institution on the same basis as a prospective student without a disability include measures ensuring that:

- (a) information about the enrolment processes:
  - (i) addresses the needs of students with disabilities; and
  - (ii) is accessible to the student and his or her associates; and
  - (iii) is made available in a range of formats depending on the resources and purposes of the provider and within a reasonable timeframe; and
- (b) enrolment procedures are designed so that the student, or an associate of the student, can complete them without undue difficulty; and
- (c) information about entry requirements, the choice of courses or programs, progression through those courses or programs and the educational settings for those courses or programs is accessible to the student and his or her associates in a way that enables the student, or associates, to make informed choices.

## Part 5

# Standards for participation

### 5.1 Application of Part

This Part applies in relation to:

- (a) a student with a disability who is enrolled in an educational institution; and
- (b) an education provider that is:
  - (i) the educational institution mentioned in paragraph (a); or
  - (ii) an educational authority that administers the educational institution.

#### *Rights given by this Part*

The effect of the following standards is to give students with disabilities the right to participate in the courses or programs, and to use services and facilities, provided by an educational institution, on the same basis as students without disabilities, including the right to reasonable adjustments, where necessary, to ensure they are able to participate in education and training, on the same basis as students without disabilities.

### 5.2 Participation standards

- (1) The 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 a disability, and without experiencing discrimination.
- (2) The provider must:
  - (a) consult the student, or an associate of the student, about whether the disability affects the student's ability to participate in the courses or programs for which the student is enrolled and use the facilities or services provided by the provider; and
  - (b) in the light of the consultation, decide whether an adjustment is necessary 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 a disability; and

- (c) if:
  - (i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and
  - (ii) a reasonable adjustment can be identified in relation to that aim;

make a reasonable adjustment for the student in accordance with Part 3.

- (3) The provider must repeat the process set out in subsection (2) as necessary to allow for the changing needs of the student over time.
- (4) For this section, the provider has taken reasonable steps to comply with subsection (1) if the provider has complied with subsections (2) and (3).

*Note* See Part 10 for exceptions to the legal obligations set out in the standards. These include a provision that it is not unlawful for a provider to fail to comply with a standard if, and to the extent that, compliance would impose unjustifiable hardship on the provider (section 10.2).

### **5.3 Measures for compliance with standards**

Measures that the education provider may implement to enable the student to participate in the course or program for which the student is enrolled and use the facilities and services provided by it on the same basis as a student without a disability, include measures ensuring that:

- (a) the course or program activities are sufficiently flexible for the student to be able to participate in them; and
- (b) course or program requirements are reviewed, in the light of information provided by the student, or an associate of the student, to include activities in which the student is able to participate; and
- (c) appropriate programs necessary to enable participation by the student are negotiated, agreed and implemented; and
- (d) additional support is provided to the student where necessary, to assist him or her to achieve intended learning outcomes; and

- (e) where a course or program necessarily includes an activity in which the student cannot participate, the student is offered an activity that constitutes a reasonable substitute within the context of the overall aims of the course or program; and
- (f) any activities that are not conducted in classrooms, and associated extra-curricular activities or activities that are part of the broader educational program, are designed to include the student.



# Standards for curriculum development, accreditation and delivery

## 6.1 Application of Part

This Part applies if:

- (a) a course or program is designed by an education provider; and
- (b) (whether the course or program is offered to students by that provider, or by another) either:
  - (i) a student with a disability is undertaking the course or program; or
  - (ii) the provider has a reasonable expectation that students with disabilities may undertake the course or program.

### *Rights given by this Part*

The effect of the following standards is to give students with disabilities the right to participate in educational courses or programs that are designed to develop their skills, knowledge and understanding, including relevant supplementary programs, on the same basis as students without disabilities.

## 6.2 Standards for curriculum development and accreditation and delivery

- (1) The education provider must take reasonable steps to ensure that the course or program is designed in such a way that the student is, or any student with a disability is, able to participate in the learning experiences (including the assessment and certification requirements) of the course or program, and any relevant supplementary course or program, on the same basis as a student without a disability, and without experiencing discrimination.
- (2) If a student is enrolled in the course or program, the provider must:
  - (a) consult the student, or an associate of the student, about whether the disability affects the student's ability to participate in learning experiences of the course or program, or any relevant supplementary course or program; and
  - (b) in the light of that consultation, decide whether an adjustment is necessary to ensure that the student is able to participate

in those learning experiences on the same basis as a student without a disability who is enrolled in the course or program; and

- (c) if:
  - (i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and
  - (ii) a reasonable adjustment can be identified in relation to that aim;

make a reasonable adjustment for the student in accordance with Part 3.

- (3) The provider must repeat the process set out in subsection (2) as necessary to allow for the changing needs of the student over time.
- (4) For this section, in relation to a student enrolled in a course or program, the provider has taken reasonable steps to comply with subsection (1) if the provider has complied with subsections (2) and (3).

*Note* See Part 10 for exceptions to the legal obligations set out in the standards. These include a provision that it is not unlawful for a provider to fail to comply with a standard if, and to the extent that, compliance would impose unjustifiable hardship on the provider (section 10.2).

### **6.3 Measures for compliance with standards**

Measures that the education provider may implement to enable the student to participate in the learning experiences (including the assessment and certification requirements) of the course or program, and any relevant supplementary course or program, on the same basis as a student without a disability, include measures ensuring that:

- (a) the curriculum, teaching materials, and the assessment and certification requirements for the course or program are appropriate to the needs of the student and accessible to him or her; and
- (b) the course or program delivery modes and learning activities take account of intended educational outcomes and the learning capacities and needs of the student; and

- (c) the course or program study materials are made available in a format that is appropriate for the student and, where conversion of materials into alternative accessible formats is required, the student is not disadvantaged by the time taken for conversion; and
- (d) the teaching and delivery strategies for the course or program are adjusted to meet the learning needs of the student and address any disadvantage in the student's learning resulting from his or her disability, including through the provision of additional support, such as bridging or enabling courses, or the development of disability-specific skills; and
- (e) any activities that are not conducted in a classroom, such as field trips, industry site visits and work placements, or activities that are part of the broader course or educational program of which the course or program is a part, are designed to include the student; and
- (f) the assessment procedures and methodologies for the course or program are adapted to enable the student to demonstrate the knowledge, skills or competencies being assessed.





## Part 7

# Standards for student support services

### 7.1 Application of Part

This Part applies in relation to:

- (a) a student with a disability who is enrolled in an educational institution; and
- (b) an education provider that is:
  - (i) the educational institution mentioned in paragraph (a); or
  - (ii) an educational authority that administers the educational institution.

#### *Rights given by this Part*

The effect of the following standards is to give students with disabilities rights in relation to student support services provided by educational authorities and institutions, on the same basis as students without disabilities.

The standards also give students with disabilities rights in relation to specialised services needed for them to participate in the educational activities for which they are enrolled. These services include specialist expertise, personal educational support or support for personal and medical care, without which some students with disabilities would not be able to access education and training.

### 7.2 Standards for support services

- (1) The education provider must take reasonable steps to ensure that the student is able to use support services used by the students of the institution in general on the same basis as a student without a disability, and without experiencing discrimination.
- (2) If a specialised support service is necessary for the student to be able to participate in the activities for which he or she is enrolled, and is of a kind that is provided by the education provider, the provider must take reasonable steps to ensure that the student has access to the service (but may arrange for it to be provided by another person or agency).

- (3) If a specialised support service is necessary for the student to be able to participate in the activities for which he or she is enrolled, and is of a kind that is not provided by the provider, the provider must take reasonable steps to facilitate the provision of the service to the student by another person or agency.
- (4) Each of:
  - (a) the provision of access to specialised support services mentioned in subsection (2); and
  - (b) the facilitation by the provider of the provision of specialised support services mentioned in subsection (3);is an adjustment for the purposes of these Standards.
- (5) The provider must:
  - (a) consult the student, or an associate of the student, about whether the disability affects the student's ability to access support services used by the students of the institution; and
  - (b) in the light of that consultation, decide whether an adjustment is necessary to ensure that the student is able to access those support services on the same basis as a student without a disability; and
  - (c) if:
    - (i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and
    - (ii) a reasonable adjustment can be identified in relation to that aim;make a reasonable adjustment for the student in accordance with Part 3.
- (6) The provider must:
  - (a) consult the student, or an associate of the student, about the need for the student to have access to specialised support services that are provided by the provider or by other persons or agencies; and

- (b) in the light of that consultation, decide whether an adjustment of the kind mentioned in subsection (4) is necessary for the student to be able to participate in the activities for which he or she is enrolled; and
  - (c) if:
    - (i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and
    - (ii) a reasonable adjustment can be identified in relation to that aim;

make a reasonable adjustment for the student in accordance with Part 3.
- (7) The provider must repeat the processes set out in subsections (5) and (6) as necessary to allow for the changing needs of the student over time.
- (8) For this section:
- (a) the provider has taken reasonable steps to comply with subsection (1) if the provider has complied with subsection (5) and with subsection (7) as it relates to subsection (5); and
  - (b) the provider has taken reasonable steps to comply with subsections (2) and (3) if the provider has complied with subsection (6) and with subsection (7) as it relates to subsection (6).

*Note* See Part 10 for exceptions to the legal obligations set out in the standards. These include a provision that it is not unlawful for an education provider to fail to comply with a standard if, and to the extent that, compliance would impose unjustifiable hardship on the provider (section 10.2).

### **7.3 Measures for compliance with standards**

Measures that the education provider may implement to ensure that the student is able to access support services used by students in general, on the same basis as a student without a disability, and to ensure his or her access to specialised support services, include measures ensuring that:

- (a) staff of education providers are aware of the specialised services available for the student and are provided with

- information that enables them to assist the student to access the services that the student needs; and
- (b) the provision of specialised services for the student, where necessary, is facilitated, including through collaborative arrangements with specialised service providers; and
  - (c) any necessary specialised equipment is provided to support the student in participating in the course or program; and
  - (d) appropriately trained support staff, such as specialist teachers, interpreters, note-takers and teachers' aides, are made available to students with disabilities.

*Examples*

Examples of the specialised services mentioned in paragraph 7.3 (c) include services in health, personal care and therapy, and services provided by speech therapists, occupational therapists and physiotherapists.

Examples of the specialised equipment mentioned in paragraph 7.3 (d) include adaptive technology and assistive devices.

## Part 8

# Standards for harassment and victimisation

### 8.1 Meaning of *harassment*

For these Standards, *harassment*:

- (a) in relation to a person with a disability, includes an action taken in relation to the person's disability that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the person; and
- (b) in relation to a person who has an associate with a disability, includes an action taken in relation to the associate's disability that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the person or the associate.

*Note* Harassment in education or training is unlawful under sections 37 and 38 of the Act.

### 8.2 Application of Part

This Part applies in relation to an education provider that is:

- (a) an educational institution; or
- (b) an educational authority that administers the educational institution;

if either:

- (c) a student with a disability is enrolled in the educational institution; or
- (d) the provider has a reasonable expectation that a student with a disability may enrol in the educational institution.

#### ***Rights given by this Part***

The effect of the following standards is to require strategies and programs to support the right of students with disabilities to education or training in an environment that is free from discrimination caused by harassment or victimisation on the basis of their disability.

The standards also support the right of students who have associates with disabilities to an educational environment free from discrimination, harassment or victimisation in relation to those disabilities.

*Note* The exception set out in section 10.2, relating to compliance that imposes unjustifiable hardship on an education provider, does not apply to a requirement in this Part.

### **8.3 Standards for eliminating harassment and victimisation**

- (1) An education provider must develop and implement strategies and programs to prevent harassment or victimisation of a student with a disability, or a student who has an associate with a disability, in relation to the disability.
- (2) The provider must take reasonable steps to ensure that its staff and students are informed about:
  - (a) the obligation not to harass or victimise students with disabilities, or students who have associates with disabilities; and
  - (b) the appropriate action to be taken if harassment or victimisation occurs; and
  - (c) 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.

### **8.4 Harassment and victimisation provisions of the Act continue to apply**

For section 34 of the Act, an action that contravenes section 37, 38 or 42 of the Act is not an action in accordance with these Standards.

*Note* Section 37 of the Act makes it unlawful for a member of staff of an educational institution to harass a student or prospective student with a disability.

Section 38 of the Act makes it unlawful for a member of staff of an educational institution to harass a student or prospective student who has an associate with a disability.

Section 42 of the Act makes it an offence to victimise a person for acting to assert or support a right given by the Act.

## 8.5 Measures for compliance with standards

Measures that the education provider may implement to enable the student to participate in education and training in an environment free from harassment and victimisation include measures ensuring that:

- (a) the provider's policies, procedures and codes of conduct for its staff and students explicitly prohibit harassment and victimisation of students with disabilities, on the basis of disability, including:
  - (i) the need for individual strategies and adjustments for a student; and
  - (ii) the need to use such supports as a wheelchair, hearing aid, breathing support, an interpreter, a reader, an assistant or carer or a guide or hearing dog, or other appropriately trained animal; and
- (b) the policies, procedures and codes of conduct for staff and students explicitly prohibit harassment and victimisation of the associates of students with disabilities, on the basis of disability; and
- (c) the procedures for handling any cases or complaints of harassment and victimisation relating to disability are fair, transparent and accountable; and
- (d) the provider's students and staff are effectively informed and reminded, at appropriate intervals, of their rights and responsibilities in maintaining an environment free from harassment and victimisation on the basis of disability; and
- (e) the professional development programs offered to the provider's staff ensure that policies, procedures and codes of conduct, including matters of harassment and victimisation, are known and understood by staff, and that staff are trained to detect, and deal with, harassment in education and training settings; and
- (f) any cases or complaints of harassment or victimisation on the basis of disability are handled promptly and with due regard to the severity of the matter.





# Treatment of a person who has an associate with a disability

## 9.1 Act continues to apply in relation to person who has associate with a disability

For section 34 of the Act, an action that contravenes the provisions of section 22 of the Act in relation to a person who has an associate with a disability is not an action in accordance with these Standards.

*Note* The relevant provisions of section 22 of the Act provide that an educational authority must not discriminate against a person in admission to an education institution, or as a student, on the ground of a disability of any of the person's associates.



## Part 10

# Exceptions

### 10.1 Exceptions

- (1) These Standards do not render it unlawful for an education provider to fail to comply with a requirement of these Standards if section 10.2, 10.3, 10.4 or 10.5 applies.
- (2) If an exception is invoked, it is the responsibility of the provider to demonstrate that the exception operates.

### 10.2 Unjustifiable hardship

- (1) This section does not apply to a requirement in Part 8 of these Standards.
- (2) These Standards do not render it unlawful for an education provider to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on the provider.
- (3) The provider must comply with the Standards to the maximum extent not involving unjustifiable hardship.

*Note* Section 11 of the Act provides that, for the purposes of the Act, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
- (b) the effect of the disability of a person concerned; and
- (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship; and
- (d) in the case of the provision of services, or the making available of facilities — an action plan given to the Commission under section 64 of the Act.

The application of unjustifiable hardship should take account of the scope and objects of the Act and the Standards, particularly the object of removing discrimination as far as possible, and of the rights and interests of all relevant parties. In determining whether the exception of unjustifiable hardship can be relied on, all relevant circumstances of the particular case are to be taken into account.

The Standards generally require providers to make reasonable adjustments where necessary. In determining whether an adjustment is reasonable the factors in subsection 3.4 (2) are considered, including any effect of the adjustment on anyone else affected, including the education provider, staff and other students, and the costs and benefits of making the adjustment. There will be possible adjustments which are not reasonable. There is no requirement on providers to make unreasonable adjustments. The concept of unreasonable adjustment is different to the concept of unjustifiable hardship on the provider in section 10.2. Where the obligation to make a reasonable adjustment none-the-less imposes unjustifiable hardship on the provider, section 10.2 will operate. The concepts of reasonable adjustment and unjustifiable hardship seek to provide a balance between the interests of providers and others, and the interests of students with disabilities.

### **10.3 Acts done under statutory authority**

These Standards do not render unlawful anything done in the circumstances described in section 47 of the Act.

### **10.4 Protection of public health**

These Standards do not render it unlawful for an education provider to isolate, or discriminate against, a student with a disability if the disability is an infectious disease or other condition and it is reasonably necessary to so isolate or discriminate to protect the health and welfare of the student with a disability or the health and welfare of others.

### **10.5 Special measures**

(1) These Standards do not render it unlawful for an education provider to provide special measures (including specialised units or institutions) intended specifically for the benefit of students with disabilities.

(2) In this section:

***special measure*** means an act mentioned in section 45 of the Act.

*Note* Special measures are intended specifically for the benefit of students with disabilities, and can take the form of programs or initiatives that afford students with disabilities, or with a particular disability, benefits, grants, programs, goods, or access to facilities, services or opportunities to meet their special needs in relation to education and training. However, providing specialised support services will not necessarily be sufficient to eliminate discrimination.

## Part 11

# Review

### 11.1 Timetable for review

The Minister for Education, Science and Training, in consultation with the Attorney-General, must:

- (a) within 5 years after the commencement of these Standards, conduct a review of the effectiveness of these Standards in achieving their objects, including a consideration of whether any amendments are desirable; and
- (b) conduct further reviews to be completed at intervals of not more than 5 years.



# Disability Standards for Education 2005

## Guidance Notes

### 1. Purpose of Guidance Notes

The *Disability Standards for Education (2005)* (the Standards) are formulated under the *Disability Discrimination Act 1992* (DDA). The primary purpose of the Standards is to clarify, and make more explicit, the obligations of education and training service providers under the DDA and the rights of people with disabilities in relation to education and training.

The Standards include introductory information to assist the reader in interpreting the Standards. Notes are also included in each part of the Standards with a view to assisting the reader in the same way.

The Guidance Notes, set out below, seek to provide additional explanatory material, including background information and comment, to assist the reader in interpreting and complying with the Standards. The Notes are intended to enhance understanding of the scope and practical application of the Standards, in much the same way that an Explanatory Memorandum can assist in the interpretation of an Act of Parliament.

### 2. Application of the Standards

(Standards, section 1.4)

Section 1.4 of the Standards provides a list of education providers bound by the Standards. The effect of section 1.4 of the Standards is that, subject to Section 12 of the DDA (which deals with the application of the Act and applies to the Standards), the Standards apply in relation to the provision of education and training to persons with disabilities by:

- (a) the Commonwealth; or
- (b) a State; or
- (c) a Territory; or
- (d) a public authority of the Commonwealth; or
- (e) a public authority of a State or Territory; or
- (f) organisations in the private sector.



### **3. Rights of students with disabilities**

(Standards, Parts 4 to 8)

Parts 4 to 8 of the Standards set out the standards that education providers must comply with to achieve the objects of the DDA in relation to the provision of education and training. Each of these parts deals with different aspects of education and training.

Part 4 deals with enrolment, Part 5 with participation, Part 6 with curriculum development, accreditation and delivery and Part 7 student support services. Part 8 requires providers to develop and implement strategies and programs to prevent harassment and victimisation.

The note at the foot of the Application provision for each of the Parts sets out the effect of the Part in terms of the rights of students with disabilities.

The Standards are intended to give students with disabilities the same rights as other students. The Standards are based on the position that all students, including students with disabilities, should be treated with dignity and enjoy the benefits of education and training in an educationally supportive environment that values and encourages participation by all students, including students with disabilities. To achieve this, the effect of the Standards is to give students and prospective students with disabilities the right to education and training opportunities on the same basis as students without disabilities. This includes the right to comparable access, services and facilities, and the right to participate in education and training unimpeded by discrimination, including on the basis of stereotyped beliefs about the abilities and choices of students with disabilities.

### **4. Standards for enrolment, participation, curriculum and support services**

(Standards, sections 4.2, 5.2, 6.2, and 7.2)

The Standards apply to education providers in relation to the provision of their education and training services. Sections 4.2(1),(2), 5.2(1), 6.2(1), and 7.2(1),(2) require education providers to take reasonable steps to ensure that students with disabilities are provided with opportunities to realise their individual potential through their participation in education and training on the same

basis as students without disabilities, and that they are not subject to discrimination (the concept of ‘on the same basis’ is discussed below in part 4.1).

The Standards set out a process whereby education providers can meet this obligation (sections 4.2(3), 5.2(2), 6.2(2), and 7.2(5), (6); there is no process for section 4.2(2), which relates simply to decisions to offer enrolment). This includes an obligation to make reasonable adjustments where necessary to ensure that students with disabilities are able to participate in education and training on the same basis as students without disabilities (the concept of reasonable adjustment is discussed below in part 4.2).

The process includes:

- consultation with the student;
- consideration of whether an adjustment is necessary;
- if an adjustment is necessary, identification of a reasonable adjustment;
- making the reasonable adjustment.

If the provider complies with this process, then they have complied with the Standards, and they cannot be said to have discriminated (sections 4.2(4), 5.2(4), 6.2(4), and 7.2(8)).

However, education providers are required only to make reasonable adjustments. They are also exempted from making adjustments that would impose unjustifiable hardship on them. 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.

## **4.1 Meaning of ‘on the same basis’**

(Standards, section 2.2)

The concept of on the same basis is used in relation to the basic requirement of the Standards in sections 4.2(1),(2), 5.2(1), 6.2(1), and 7.2(1),(2). This concept is fundamental to the operation of the requirement of a provider not to discriminate against students with disabilities. An education provider treats a student with a disability on the same basis as a student without the disability if the student

has opportunities and choices, which are comparable with those offered to students without disabilities, in relation to:

- admission or enrolment in an institution; and
- participation in courses or programs and use of facilities and services.

A provider is required to make any decisions about admission and enrolment on the basis that reasonable adjustments will be made where necessary so that the student with a disability is provided with opportunities and choices that are comparable with those available to students without disabilities (section 2.2(2)).

## **4.2 Making reasonable adjustments**

(Standards, Part 3)

Education providers are required to provide reasonable adjustments (sections 4.2(3), 5.2(2), 6.2(2), and 7.2(5), (6)), and can meet their general obligations under the Standards by doing so (sections 4.2(4), 5.2(4), 6.2(4), and 7.2(8)).

An adjustment is a measure or action taken to assist a student with a 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 the disability, the education provider, staff and other students.

The need for an adjustment and the nature of an adjustment should be determined in consultation with the student or their associate (sections 4.2(3)(a), 5.2(2)(a), 6.2(2)(a), and 7.2(5)(a), (6)(a), and 3.5). This might include consultation on whether there is any other adjustment that would be no less beneficial for the student but less disruptive and intrusive for others.

In providing reasonable adjustments for a student with a disability, it is good practice for an education provider to ensure that the processes for seeking an adjustment are accessible and transparent. In deciding on a reasonable adjustment, it may be necessary to seek professional expertise. This might include a detailed assessment by an independent expert of the nature of the student's disability and the adjustment(s) that is (are) appropriate

for the student. It is good practice for an education provider to ensure that there are review mechanisms in place to deal with any grievances arising from differences in the student's preferred reasonable adjustment and the adjustment recommended by professional experts.

In assessing whether a particular adjustment is reasonable for the student with a disability, the education provider should take into account:

- the nature of the student's disability;
- the information provided by, or on behalf of, the student about how the disability affects the student's ability to participate;
- views of the student, or an associate of the student, about whether a proposed adjustment is reasonable and will enable the student with a disability to access and participate in education and training opportunities on the same basis as students without disabilities;
- information provided by, or on behalf of, the student about his or her preferred adjustments;
- the effect of the proposed adjustment on the student, including the student's ability to participate in courses or programmes and achieve learning outcomes;
- the effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students; and
- the costs and benefits of making the adjustment (sections 3.4(2), 4.2(3)(a), 5.2(2)(a), 6.2(2)(a), 7.2(5)(a), and 7.2(6)(a)).

In making a reasonable adjustment, the provider should ensure that the integrity of the course or program and assessment requirements and processes are maintained (section 3.4(3)).

The education provider should act upon information about an adjustment in a timely way that optimises the student's participation in education or training (section 3.7).

Clause 3.4.2 of the Standards makes it clear that the interests of the student are a very significant consideration in identifying an appropriate and reasonable adjustment. This is made explicit by the requirement to have regard to the student's disability and the

effect of the adjustment on the student, and the costs and benefits including those accruing to the student. If in a particular situation the school could show that a student would be better off in another available school which had the adjustments required by the student, then this would clearly be a factor in determining whether any significant adjustment at the school would be reasonable.

In meeting its obligations to provide reasonable adjustments, an education provider may provide an alternative adjustment to the student's preferred form of adjustment, if the alternative is effective in achieving the desired purpose.

As noted, there is no requirement to make unreasonable adjustments. Once an adjustment is considered reasonable in the circumstances, balancing the interests of all parties affected, the next step is to consider whether it would nonetheless impose unjustifiable hardship on the education provider (see section 4.4 below).

### **4.3 Obtaining disability information** (Standards, section 3.7)

When considering an adjustment for a student with a disability, a provider is entitled to information about the student's disability and individual requirements if that information is directed towards:

- providing the adjustment, including assessing the nature and extent of the adjustment needed and assessing the provider's capacity to provide the adjustment; and
- an assessment that is intended to clarify the student's ability to comply with any non-discriminatory requirements of a course or training program.

Any confidential information provided to education providers for the purposes of making adjustments should not be disclosed except for the purposes of the adjustment or in accordance with a lawful requirement.

## 4.4 Unjustifiable hardship

(Standards, Part 10)

Under section 10.2 of the Standards, it is not unlawful for an education provider to fail to comply with a requirement of the Standards if, and to the extent that, compliance would impose unjustifiable hardship on the provider. Unjustifiable hardship has a meaning in accordance with Section 11 of the DDA. However, the exception of unjustifiable hardship does not apply to Part 8, the Standards for harassment and victimisation.

In determining whether unjustifiable hardship applies, within the meaning of Section 11, in relation to an adjustment for a student with a disability, it is good practice for an education provider to:

- take into account information about the nature of the student's disability, his or her preferred adjustment, any adjustments that have been provided previously and any recommended or alternative adjustments. This information may be provided by the student, an associate of the student or independent experts (or a combination of those persons);
- ensure that timely information is available to the student, or an associate of the student about the processes for determining whether the proposed adjustment would cause unjustifiable hardship to the provider; and
- ensure that these processes maintain the dignity, respect, privacy and confidentiality of the student and the associates of the student, consistent with the rights of the rest of the community.

Where a claim of unjustifiable hardship is made, an education provider should take into account all the financial and other resources that are reasonably available for the purpose of making any necessary adjustments for the student, and the impact of those adjustments on the provider's capacity to provide education of high quality to all students while remaining financially viable. The provider should consider all costs and benefits both direct and indirect that are likely to result for the provider, the student and any associates of the student, and any other persons in the learning or wider community, including:



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

If the provider decides to rely on unjustifiable hardship, it is good practice for the provider to ensure that a notice stating the decision and the reasons for the decision is given to the student, or an associate of the student, as soon as practicable after the decision is made.

#### **4.5 Treatment of a person who has an associate with a disability**

(Standards, Part 9)

Under section 22 of the DDA, an educational institution or an authority must not discriminate against a person on the basis of a disability of any of the person's associates. The Standards generally do not deal with this type of discrimination. Part 9 of the Standards provides that the provisions of the Act continue to apply to this type of discrimination.

### **5. Legal implications of the Standards**

The Standards are enacted under Section 31 of the DDA and form subordinate legislation of the DDA. If a person acts in accordance with the Standards, they comply with the DDA. An education provider must comply with the Standards or it will be acting unlawfully. A breach of the Standards will generate a right of complaint to the Human Rights and Equal Opportunity Commission (HREOC) under the relevant provisions of the DDA and the *Human Rights and Equal Opportunity Commission Act 1986* (the HREOC Act).

The *obligations*, set out in Parts 4 to 8 of the *standards*, are the legal standards with which education and training providers must comply. The *measures* accompanying each statement of obligation provide examples of actions that providers may take to ensure compliance with their legal obligations. Providers are not obliged to comply with the measures. In general, compliance with some or all of the measures may be relevant to a defence against a complaint.

There are some areas in which discrimination may arise in the education context that are not covered by the Standards. However, this does not mean that education providers are not obliged to attempt to eliminate discrimination in such areas, if those areas or issues are covered by the DDA. For example, employment of people with disabilities by education providers is not covered by these Standards, but it is covered by the employment provisions of the DDA.

Section 3.8 of the Standards deals with the alignment of the Disability Standards for Education with any standards made in relation to access to or the use of any premises that may be formulated by the Attorney-General under Section 31 of the DDA. If no Access to Premises Standards are in place, then Disability Standards for Education will apply to any adjustments that education providers are required to make in relation to access to premises.

Nothing in the Standards should prevent or limit education providers from developing measures that extend beyond the requirements of the Standards. Education providers are encouraged to provide, or organise for the provision of, support services or other measures designed to provide students with disabilities with education on the same basis as students without disability.

The Standards operate within the context of other relevant Federal and State or Territory legislation, which includes anti-discrimination, education, building, planning and occupational health and safety laws.



## **6. Ensuring Compliance**

Compliance with the Standards is the responsibility of providers. Enforcement is achieved through HREOC, the Federal Court or the Federal Magistrates Court.

A new procedure for handling complaints of unlawful discrimination under the DDA and the HREOC Act was implemented in April 2000. It aims to resolve complaints quickly and inexpensively by way of conciliation in the first instance. If a student with a disability or a student's associate (the complainant) believes that a provider is failing to comply with the Standards, a complaint about unlawful discrimination can be made to HREOC. Complaints may also be made to HREOC on a representative basis. The President of HREOC is responsible for inquiring into the complaint.

A complainant can apply to the Federal Court or the Federal Magistrates Court seeking an interim injunction to maintain the status quo that existed immediately before a complaint was lodged or to maintain the rights of any affected person. Such an application can be made at anytime after a complaint is lodged with the Commission and allows for fast access to a binding process in order to maintain the status quo or the rights of the complainant or respondent while conciliation is attempted.

After an initial inquiry, the President or the President's delegate must decide whether to attempt conciliation or to terminate the complaint. A complaint that is settled by way of conciliation is implemented by both parties agreeing to abide by the terms of the agreement.

Where the parties are not willing to conciliate or conciliation is unsuccessful, HREOC can no longer deal with the complaint and the parties will be issued with a termination notice. The President may terminate a complaint for a number of reasons, which are set out in Part IIB of the HREOC Act (including that unlawful discrimination has not occurred, the complaint was lodged more than 12 months after the unlawful discrimination took place, the complaint is trivial or vexatious, or that there is no reasonable prospect of the matter being settled by conciliation).

On receiving a termination notice, the complainant can apply to the Federal Court or the Federal Magistrates Court to have the complaint heard and determined. Both courts encourage parties

to resolve their disputes in appropriate cases through counselling, mediation or other alternative dispute resolution methods. Both courts are able to make a wide range of orders if they are satisfied that there has been unlawful discrimination (including an order requiring the payment of damages or an order requiring the performance of a reasonable act). A respondent to a complaint is required to comply with any order of the court.

Any discrimination issues not covered by the Standards remain subject to the provisions of the DDA. For a fuller understanding of the obligations and processes involved, interested parties should consult the DDA and the HREOC Act.

Education providers can also establish their own alternative grievance or complaint resolution procedures. Such alternative procedures may assist in resolving disputes at an early stage without the need for recourse to legislative dispute resolution procedures. However, such procedures would rely on the cooperation of all parties involved to resolve and abide by the terms of any settlement. An agreed settlement would not be legally binding upon the parties and the alternative mechanism would not prevent a party from seeking to lodge a complaint under the HREOC Act (as this right is preserved by legislation).

## **7. Professional development and awareness raising**

Good practice requires education providers to ensure that their staff are proficient in interacting with students in ways which do not discriminate against people with disabilities.

Attitude is one of the main barriers to non-discriminatory access to education and training for people with disabilities. To counter any inherent discrimination in the provision of education and training, it is recommended that staff induction and professional development programmes include components on disability awareness and rights and on the obligations of education and training providers under the Standards. Such programmes should enable staff to provide assistance that is helpful, for example during enrolment, without being patronising in language, attitude or actions.

It is further recommended that timely, relevant and ongoing professional development is provided to staff, to ensure they are equipped with the knowledge, skills and understanding to

enable students with disabilities to participate in the full range of educational programmes or services, on the same basis and to the same extent as students without disabilities.

## **8. Due Diligence and Reasonable Precautions**

### **8.1 Liability for acts by employees or agents**

Under Section 123 of the DDA, an education provider is liable for unlawful conduct by the provider's employees or agents unless the provider can establish that it took reasonable precautions and exercised due diligence to avoid the unlawful conduct. This includes instances where employees or agents of a provider fail to comply with the Standards. In such cases, the education provider bears the onus of demonstrating that reasonable precautions had been taken and due diligence has been exercised.

The DDA does not define **due diligence** or **reasonable precautions**. The meaning of these terms will be determined by the courts in relation to individual complaints. In one case involving a similar defence under the *Sex Discrimination Act 1984*, the Federal Court implied that it would be necessary for an employer to show that effective policies with respect to non-discrimination against people with disabilities are in place and that the employer was active in trying to avoid discriminatory behaviour.

### **8.2 Discrimination by agents**

Education providers sometimes arrange for delivery of educational services by contract with other individuals or organisations, rather than providing services directly. In these cases the service provider may be considered to be an agent of the education provider, in which case the education provider may be liable under Section 123 for discrimination in the course of service provision by the agent unless reasonable precautions have been taken and due diligence exercised by the education provider. Part 7 of the Standards sets out standards for support services.

Reasonable precautions and due diligence in this context may include prompt and effective action being taken by the education provider in response to any indications that the service provider is not complying with the DDA or the Standards.

Where reasonably available, auditing or reporting mechanisms and the establishment or promotion of consumer grievance procedures may also be required and should be considered to ensure that the Standards and the DDA are being complied with.

### 8.3 Discrimination by staff

A single model of reasonable precautions and due diligence to prevent discrimination by employees or agents cannot be prescribed for all education providers. However, the following elements of an effective strategy should be considered by providers:

- making all relevant staff aware of the need to avoid discrimination. This might include issuing a formal policy statement on compliance with the DDA and the Standards and more direct advice to staff;
- taking reasonable measures to ensure that staff have sufficient information and expertise concerning non-discriminatory methods of service delivery. This may include the provision of formal training;
- establishing or using and promoting existing complaint procedures in relation to discrimination;
- ensuring that complaints are properly and effectively dealt with; and
- implementing other reasonably available monitoring strategies, additional to complaint mechanisms, including internal monitoring through supervisory and management responsibilities and external monitoring through customer reference groups.

## 9. Harassment and victimisation (Part 8)

The Standards require education providers to have strategies and programs to prevent harassment and victimisation of persons with a disability (section 8.3). Harassment means an action taken in relation to a persons disability that is reasonably likely to humiliate, offend, intimidate or distress the person (section 8.1). The strategies and program must extend to students with an associate who has

a disability (such as a relative or carer). An education provider is required to ensure that staff and students are aware of the obligation not to harass or victimise students with disabilities or students who have associates with disabilities. The Standards require the education provider to take reasonable steps to ensure that staff and students are aware of appropriate actions to be taken if harassment or victimisation occurs.

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. Similarly, the exception of unjustifiable hardship is not available as a defence where a provider fails to comply with the Standards for Harassment and Victimisation.

## **10. Review of the Standards**

Part 11 of the Standards provides for a review of the Standards every five years to determine whether the Standards continue to be effective and remain the most efficient mechanism for achieving the objects of the DDA.

The review will determine:

- whether discrimination has been removed, as far as possible, according to the requirements for compliance with the DDA;
- whether the Standards continue to be compatible with contemporary practices in education and training; and
- if any amendments are required to ensure the effectiveness of the Standards including those to ensure the Standards are compatible with contemporary practices in education and training.