

Terms of Reference for the 2020 Review of the DSE (2005)

1. Are the rights, obligations and measures for compliance set out in the Standards (and its Guidance Notes) clear and appropriate?

As part of my PhD studies at the University of Newcastle, I have conducted a discourse analysis of the DSE (2005). Several inconsistencies and discrepancies within the DSE (2005) became evident from my discourse analysis of the DSE, and many of these are supported and acknowledged in the two Reports on the Reviews of the DSE (*Review Reports*) (DEEWR, 2012; URBIS, 2015). The findings of this discourse analysis and previous *Review Reports*, when considered in the light of the Guidance Notes and Explanatory Statement, have found that the legislature:

- has *not* removed discrimination, as far as possible;
- does *not* continue to be “compatible with contemporary practice in education and training” (Guidance Notes, p. 10); and,
- amendments *are* “desirable” (DSE11.1(a); Guidance Notes).

How the standards could be improved: What needs to change, how to change it, timeframe.

In this submission, 77 amendments to the legislation are proposed, with a view to improving consistency, understanding, implementation and compliance. As there have been no amendments at all in the 15 year history of the DSE (2005) the suggested timeframe is for the amendments to be legislated within 12 months of the 2020 Review Reports and receipt of the Government Response.

Inconsistency , Discrepancy, Need for Clarity	Amendment What needs to change, how to change it, timeframe
<p>Revise the structure of the DSE to improve clarity Most people are not aware that there are <i>three</i> documents to read when interpreting the DSE. The current 2020 Review of the DSE does not refer to the Explanatory Statement issued by the Attorney General. This has led to lack of consistency in understanding, application and compliance with the DSE.</p>	<p>1. Combine the Introduction to the DSE, Guidance Notes and Explanatory Statement into the one document (the DSE) so that all necessary information is conveyed. This will reduce current repetition, provide greater clarity and simplify the process of interpretation (DEEWR, 2012).</p> <p>E.g. The distinction between obligation and measures, explained in the Guidance Notes, could be merged into the introduction of the DSE legislature (DEEWR, 2012).</p> <p>If they must remain separate, the introduction in the Legislation should refer to the Guidance notes and where to find them. At a minimum, the Guidance Notes and Explanatory notes should be combined.</p>
<p>Australian Human Rights Commission (AHRC) The Introduction to the DSE refers to the ‘Human Rights and Equal Opportunity Commission’ (HREOC). This is now called the Australian Human Rights Commission (AHRC).</p>	<p>DSE Introduction 2. Replace ‘Human Rights and Equal Opportunity Commission’ (HREOC) with Australian Human Rights Commission (AHRC).</p>

<p>Intent of the DSE</p> <p>The legislation is often interpreted within a restricted view of discrimination law. However, two of the three objectives refer to equal rights, rather than discrimination. Thus, the intent of the DSE (2005) is not simply to eliminate discrimination. The strong emphasis within the objects and content of the DSE (2005) establishes a clear intent to ensure the right to <i>education for all</i> (UNESCO, 1990). The intent of the DSE (2005) is to prescribe minimal standards for required action by education providers to enact the human right to participate in education for persons with disability (Attorney General, 2005; Guidance notes, 2006).</p> <p>In addition to preventing discrimination, harassment and victimisation on the grounds of disability, the intended outcome of DSE (2005) is the provision of adjustments that ensure students with disability have choices, opportunities and learning experiences (DSE 6.6(2)(b)) <i>on the same basis</i> as a student without a disability (DSE 4.2(3)(b), 5.2(2)(b), 6.2(2)(b), 7.2(5)(b), 7.2(6)(b)) so they can participate in education and training (DSE 2.2), achieve learning outcomes (DSE 3.4(2)(c), 6.3(b)) and achieve independence (DSE 1.3(b), 3.4(2)(c)). These goals are not widely understood as it takes in-depth analysis to detect.</p>	<p>DSE 1.3 Objects of the legislature and Guidance Notes need to state more clearly that the intent of the DSE (2005) is:</p> <ol style="list-style-type: none"> 3. <i>DSE 1.3(d) to prescribe minimal standards for required action by education providers to enact the human right to participate in education for persons with disability.</i> 4. <i>DSE 1.3(e) the provision of adjustments that ensure student/s with disability have choices, opportunities and learning experiences on the same basis as a student without disability so they can participate in education and training, achieve learning outcomes and achieve independence.</i>
<p>‘person with disability’ and ‘student with disability’</p> <p>The DDA and DSE both use the plural form ‘persons with disabilities’ (e.g. DSE 1.3). UNESCO (2017, Education and Disability Fact Sheet No. 40) uses the term persons with disability.</p> <p>The phrase using the plural form ‘person with disabilities’ assumes that all people with disability have more than one disability. This is incorrect. The term ‘person (or persons) with disability’, or ‘student/s with disability’ more aptly describes the experience of the person and is aligned to international conventions.</p> <p>Similarly, the phrase ‘person with a disability’ suggests that the person has one disability, but some people have more than one disability. The use of the determinant ‘a’ seems to exclude them.</p>	<p>5. DSE 1.3 and throughout the legislature, and the DDA</p> <p>Replace ‘persons with disabilities’ and ‘student with disabilities’ with the internationally accepted terminology of <i>‘person/s with disability’</i> and <i>‘student/s with disability’</i>.</p>



<p>Equity and equality</p> <p>The DSE, Explanatory Statement and Guidance Notes refer to ‘equality’ twice. Many users make the assumption that the DSE therefore requires providers to treat everyone <i>the same</i>. The use of the term equality is creating confusion and, at times, being used to justify discrimination.</p> <p>Mulholland (2017) noted that the meaning of ‘on the same basis’ is a point of confusion for education providers, as it implies equality rather than equity. Duncan et al. (2020) concluded that education providers and families need to understand that, “‘same” is not to be interpreted as meaning identical or equal when, in fact, students with disability will often need non-identical treatment to ensure their equitable access to education’ (p. 10).</p>	<p>DSE 1.3(b), DSE 2.2 A clearer statement clarifying the meaning of ‘equality before the law’ in terms of the equitable provision of modifications (adjustments) to enable participation of all students in education, is needed. Suggested wording:</p> <p>6. <i>In contrast to the concept of equality where all people are treated in exactly the same way, equity recognises the need to take into account individual differences so that all people can access equal opportunities. Equity requires beneficial treatment for some people so that they can experience the same human rights as everyone else.</i></p> <p>7. The explanation in DSE 2.2(3) <i>Note 2</i> needs to be stated with the Objects in DSE 1.3. <i>Ensuring equal rights may necessitate treating students with disability differently to their peers without disability, so that they can participate.</i></p> <p>8. <i>DSE 2.2 On the same basis is not to be interpreted as meaning identical or equal. Students with disability will often need non-identical treatment to ensure their equitable access to education.</i></p>
<p>Correction of definition of ‘educational authority’ and duties of ‘organisations’</p> <p>The definition of Education provider in DSE 2.1 is</p> <p>(a) an educational authority; or</p> <p>(b) an educational institution; or</p> <p>(c) an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers.</p> <p>This seems to distinguish separate roles for educational authorities and educational organisations. In Australia, it is the role of the educational <i>authority</i> to undertake the duties ascribed within the DSE to educational <i>organisations</i>. For example, the Australian Curriculum Assessment and Reporting Authority (ACARA).</p> <p>The definition of an educational authority in DSE 1.4 is limited to administration of an educational institution (such as a “school, college, university of other institution at which education or training is provided” DSE 1.4).</p> <p>DSE 1.4 “educational authority means a body or person administering an educational institution.”</p>	<p>DSE 1.4, DSE 1.5, DSE 1.5 Note 1, DSE 2.1</p> <p>The terms educational authority and organisations, and their respective roles, need to be clarified.</p> <p>9. Include in the definition of <i>educational authorities (DSE 1.4)</i> the role they have in registering teachers and principals under the Australian Institute for Teaching and School Leadership (AITSL) Australian Professional Standards for Teachers. For example, the New South Wales Education Standards Authority (NESA). <i>Similarly, the Australian Qualifications Framework (AQF) delivered through the Australian Government Department of Education, Skills and Employment and Registered Training Organisations (RTO) that are registered through the Australian Skills Quality Authority (ASQA).</i></p> <p>Both <i>Review Reports</i> recommended amendments to the DSE to include child-care providers and Registered Training Organisations (RTOs) (DEEWR, 2012, Recommendation 3; URBIS, 2015, Recommendation 11).</p>

<p>Contradicting this definition, the word ‘authorities’ is also used in DSE 1.5 <i>Note 1</i> to refer to:</p> <ul style="list-style-type: none"> (c) school registration authorities (d) post-compulsory education and training authorities (d)(i) State or Territory Training Authorities (g) bodies whose purpose is the development and accreditation of curricula, training packages or courses used by education authorities, institutions or providers, including: <ul style="list-style-type: none"> (i) authorities that accredit school education; and (ii) organisations that endorse training packages within the Australian Qualifications Framework; and (iii) authorities that accredit courses; <p>Omitted from the definition of education providers (DSE 1.4) is the role they have in registering teachers and principals under the Australian Institute for Teaching and School Leadership (AITSL) Australian Professional Standards for Teachers For example, the New South Wales Education Standards Authority (NESA). Similarly, the Australian Qualifications Framework (AQF) delivered through the Australian Government Department of Education, Skills and Employment and Registered Training Organisations (RTO) that are registered through the Australian Skills Quality Authority (ASQA).</p>	<p>The DSE needs to reflect the unequivocal responsibility of educational authorities such as ACARA, AITSL, NESA, ASQA and Australian Government Department of Education, Skills and Employment to ensure compliance with DSE legislature.</p>
<p>Eliminate ambiguity re child-care providers and align with national laws</p> <p>The exception that child-care providers do not need to comply with the DSE is ambiguous for users and providers (DSE 1.5).</p> <p>The point of contention lies around the words ‘care’ and ‘education’. If a service provider is exclusively providing care for a child, for example child minding, then the DSE (2005) does not apply. If however the provider has a responsibility to educate the child, then the DSE (2005) does apply. The stated exemption of childcare providers in DSE Part 1.5 <i>Note 1(a)</i> has resulted in some early childhood providers known in Australia as ‘Long Day Care’ and ‘Outside school hours care’ services not attempting to adhere to the legislature, and parents reporting exclusion and discrimination (DEEWR, 2012; URBIS, 2015).</p>	<p>DSE 1.4 Definitions</p> <p>DSE Part 1.5 Who must comply with the standards</p> <p><i>Note 1(a)</i></p> <p>A definition and distinction between, ‘<i>child-care</i>’ and <i>early childhood education providers</i> within the DSE (2005) (and the Guidance Notes) may clarify the exemption. This will enable the consistent application of the DSE in early childhood settings, education and care services that provide a framework or curriculum for learning (Early Years Learning Framework, National Quality Framework for Early Childhood Education and Care).</p> <p>The DSE needs to be aligned with the National law, <i>Education and Care Services National Law Act 2010</i> (as amended in 2018).</p>



<p>The DSE is not currently aligned with the National law, <i>Education and Care Services National Law Act 2010</i></p> <p>Part 1, Section 5 Definitions-</p> <p>“(1) In this law-</p> <p>children's service means a service providing or intended to provide education and care on a regular basis to children under 13 years of age that is primarily regulated under a children's services law of a participating jurisdiction and is not an education and care service;</p> <p>education and care service means any service providing or intended to provide education and care on a regular basis to children under 13 years of age <i>other than—</i></p> <p>(a) a school providing full-time education to children,...</p> <p>Example</p> <p>Education and care services to which this Law applies include long day care services, family day care services, outside school hours services and preschool programs including those delivered in schools, unless expressly excluded.</p> <p>family day care service means an education and care service that (a) is delivered through the use of 2 or more educators to provide education and care to children: and, (b) operates from 2 or more residences. Note A family day care service that is an approved family day care service may provide education and care to children from a family day care residence or an approved family day care venue;</p> <p>personal arrangement means education and care provided to a child—</p> <p>(a) by a family member or guardian of a child personally, otherwise than as a staff member of, or under an engagement with, a service providing education and care on a regular basis to children under 13 years of age; or</p> <p>(b) by a friend of the family of the child personally under an informal arrangement where no offer to provide that education and care was advertised;</p>	<p>Suggested wording:</p> <p>10. Child-care is the provision of care for a child (or children) by a person other than the child's legal guardians, such as a nanny, au pair, grandparent or child minder (also known as babysitter). Carers fulfil the caring duties of a parent such as provision of shelter, food, emotional support, personal hygiene such as toileting, and supervision. Carers are not otherwise a staff member of, or under an engagement with, a service providing education and care on a regular basis to children (under 13 years of age) or young people (under 18 years of age). Carers who only provide for the health, safety and wellbeing of children through the provision of care do not need to meet the Disability Standards for Education as they are not providing any education or training for the child. Carers must prohibit discrimination against children, or their associates, with disability, under the DDA (1992) Section 24 Goods, services and facilities.</p> <p><i>Early childhood education providers, such as children’s services, education and care services, and family day care services (as defined in the National law, Education and Care Services National Law Act 2010) must comply with the DSE (DSE 1.5). Wherever students are being taught, employees must comply with the DSE (2005).</i></p> <p>Please note that the <i>Education and Care Services Regulations (ECSR)</i> do not include any requirements to provide adjustments that ensure children with disability have choices, opportunities and learning experiences on the same basis as children without disability so they can access and participate in education experiences, achieve learning outcomes and achieve independence. Further, there is no requirement in the ECSR to develop an educational program that addresses specific needs based on individual assessments. Early childhood education providers have no regulation or guidance to prevent discrimination against students with disability, and no <i>minimal standards for required action to enact the human right to participate in education for persons with disability.</i></p>
<p>Eliminate ambiguity of word imputed</p> <p>Imputed is not a word that is commonly used or understood. There appear to be two meanings for the word, one that implies causation of disability by the person</p>	<p>DSE 1.4 Definitions</p> <p>DDA Section 4 Interpretation</p>

<p>who imputes the disability (Australian Macquarie Dictionary), and one that does not. From a legal point of view, ‘imputed’ means that someone has “thought, believed or presumed” (Rees et al., 2018, p. 352) that a person has a disability, and does not imply causation of the disability.</p>	<p>11. Clarification of the intended meaning of imputed needs to be included in DDA Section 4 Interpretation, and, DSE 1.4 Definitions. Suggested wording: <i>‘Imputed’ means that someone has thought, believed or presumed that a person has a disability, and does not imply causation of the disability.</i></p>
<p>Self regulation has not ensured compliance and is not appropriate Laws to regulate minimal compliance to legislation include the <i>Work, Health and Safety Act 2011, Aged Care Quality and Safety Commission Act 2018</i> and <i>Education and Care Services National Law Act 2010</i> (as amended 2018). These Acts have established commissions and external regulators that can prosecute, issue infringement notices (on the spot fines) (https://www.worksafe.qld.gov.au/laws-and-compliance/compliance-and-enforcement/penalties), shut sites down and revoke registration.</p> <p>There is no mechanism established to regulate or “ensure compliance” (Guidance Notes, 2006, p. 7) within the DSE (2005). Regulation is the responsibility of the education provider (Guidance Notes, 2006, p. 7). There is no external, independent regulation of practice. There are no systems to identify acts of omission (neglect) or commission (abuse) (Bryce, 2019) by education providers. The principles of fair, transparent and accountable procedures are not upheld when the education provider has the rights to make all decisions about what is reasonable and necessary, is not required to document decisions or provide evidence to support claims of unjustifiable hardship, and is the only regulator of policies, actions, and omissions. The DSE (2005) does not stipulate requirements for documentation or reporting of complaints, nor documentation of self-regulation monitoring procedures.</p> <p>The DSE relies on individual students, and their associates, to know their rights and the expected actions required of education providers, and to have the physical and emotional resources to pursue a complaint. The World Bank (2019) reported that persons with disability are among the least likely minority group to lodge formal complaints. The cumulative effect of disadvantage from groups who might experience additional disadvantage such as people who are Aboriginal and Torres Strait Islander, from low socio-economic and/ or multi-cultural backgrounds, and live in rural or remote Australia background (URBIS, 2015)</p>	<p>Australian Human Rights Commission legislation DSE 1.5</p> <p>12. Amend relevant Commonwealth legislation to <i>give the Australian Human Rights Commission the authority to take action where there are breaches of Standards without a student or parent having to take action</i> (Review 2012, p. 54) (see 9 above) DSE 1.5 The term ‘providers’ needs to be amended, as it now includes schools, education institutions, school systems, Australian Curriculum, Assessment and Reporting Authority (ACARA), Australian Institute for Teaching and School Leadership (AITSL), Australian Skills Quality Assurance Authority (ASQA) and state registration authorities such as NSW Education Standards Authority (NESA).</p> <p>13. DSE 1.5 The DSE, not the Guidance notes, should establish clear requirements for compliance with each of the parts of the standards, with mechanisms to determine <i>omission of actions</i> as well as compliance. Compliance needs to go beyond self-regulation to external independent regulation.</p> <p>14. DSE 1.5 An external regulator needs to be established (with similar authority as seen in the WHS, Aged Care and Education and Services Acts) to ‘ensure’ fair, transparent and accountable regulation of compliance at national, system and school levels. The external regulator needs to have authority to monitor, report to the <i>Australian Human Rights Commission</i>, prosecute, issue infringement notices (on the spot fines), shut sites down and revoke registration.</p> <p>The regulator must be authorised to interrogate the policy and practice of education providers for consistency, inconsistency and possible discrepancy with the content of the DSE. This includes identifying acts of omission</p>

<p>compounds this issue. Very few matters in Australia proceed to litigation (Duncan et al., 2020).</p> <p>As the Commissioner’s recommendations are not binding, students and their associates become obliged to employ legal representatives in the Federal Court of Australia. Both <i>Review Reports</i> (2012, 2015) revealed consistent and ongoing issues related to non-compliance that resulted in disability discrimination. The financial burden acts as a dis-incentive and restricts complainants from pursuing their equal rights.</p> <p>Evidence provided (see mandated policies below) reveals that the largest education system in Australia, the NSW DoE, does not meet minimal mandated standards for policy content. Self-regulation is not working and is not adequate.</p> <p>Self-regulation has been unsuccessful, with numerous examples of ongoing and systemic discrimination. The DSE is not an effective or efficient mechanism for achieving its objects.</p>	<p>(neglect) or commission (abuse). Policies should be admissible evidence in court proceedings, in a similar manner as in the WHS Act.</p>
<p>Expand range of complaints options and improve complaints mechanisms</p> <p>The complaints mechanisms are not clearly stated within the DSE and not adequately communicated. Referring to four documents I have discovered: Complaints about contraventions to the DSE (2005) and disability discrimination can be made to the Human Rights and Equal Opportunity Commissioner under the legislative dispute resolution procedures established in the HREOC Act (1986) (<i>Explanatory Statement: Education Standards under the Disability Discrimination Act, 2005; DSE, 2005; Guidance Notes, 2006</i>). The complaints and conciliation process is limited by the HREOC Act (1986), as the Commission does not have the legal right to determine that discrimination has occurred (<i>Know Your Rights: Disability Discrimination, 2012</i>). The complaints mechanism is non-binding but can be escalated to the federal court.</p> <p>The complaints-based system is impeding the achievement of the aims of the DSE. The onus is on individual students and their families to enforce compliance with the Standards (Dickson, 2014). Families currently have the heavy burden</p>	<p>DSE 1.5, DSE 3.4, DSE 4, DSE 8, DSE 8.3(1) , DSE 8.3(2)(a) DSE 8.3(2)(b), DSE 8.3(2)(c), DSE 10.2</p> <p>15. Dispute resolution options need to be made available with regard to determination of <i>necessary and reasonable</i> (DSE 3.4) adjustments and <i>unjustifiable hardship</i> (DSE 10.2). Suggested wording: <i>DSE 3.4, DSE 10.2 The education provider is required to demonstrate and communicate reasons for the decision that the adjustment is not necessary and reasonable, or imposes unjustifiable hardship, within a reasonable timeframe of two weeks (DDA Section 11(2); Guidance Notes p. 6) and in an accessible format for the student and associates.</i></p> <p>16. Clarify the nature of the evidence required.</p> <p>17. DSE 1.5 ‘Provide a range of dispute resolution options including mediation, conciliation and arbitration, as an alternative to the courts’ (Review 2012, Rec</p>

(deBruin, 2019) to prove discrimination, rather than the education provider needing to demonstrate that they are complying with the legal obligations.

Complaints procedures are only mentioned in relation to harassment and victimisation (DSE 8). Disputes may feasibly arise over what adjustments are necessary and reasonable, and what may cause unjustifiable hardship, but this option is not available to the student with disability or their associates.

There is no requirement for complaint policy and procedures (DSE 8) to be designed so that all students and their associates can follow them without undue difficulty, in the same manner that is required in the enrolment standards (DSE 4) (e.g. accessibility, range of formats). Consultation with the Associate has also been omitted from DSE 8. This may result in the student and their associates not being aware of policies or not able to access them.

Differences with regard to human agency in decision-making, knowledge, advocacy skills and financial resources are areas of concern that limit the likelihood of complaints being initiated or pursued through formal processes such as the AHRC and court systems (DEEWR 2012; URBIS, 2015). "Reliance on people with disability or their associates to lodge complaints places the onus of action on the person with least power in the student-provider relationship" (URBIS, 2015, p.ii) and these people are more likely to have more complex needs for support and advocacy.

While the emphasis on consultation, participation and evaluation gives the impression students with disability and their associates have the capacity to effect change, closer examination reveals that the education authority is assigned the right to make decisions in the educational institution. Education providers 'decide, determine, assess, develop, establish, design, provide, facilitate and implement'. Thus, a student with disability and their family may participate in consultation but the principal makes the final decision about what is implemented. Similarly, the opinions and experiences of the student and their associates may influence outcomes in the Human Rights and Equal Opportunity

9, p. 54). These options must be communicated in an accessible format to the student and associates as part of the enrolment procedure.

18. Require complaint procedures to be designed so that all students and their associates can follow them without undue difficulty, in the same manner that is required in the enrolment standards (DSE 4) (e.g. accessibility, range of formats).

DSE 4(5) Information about the range of dispute resolution options including mediation, conciliation and arbitration, HREOC and the courts must be communicated in an accessible format to the student and associates as part of the enrolment procedure.

19. DSE 8.3(2)(c) The *complaint mechanisms* should also be *available to associates* as they may be harassed or victimised in the educational institution or by education providers

20. DSE 8.3(1) and 8.3(2)(a) The *obligation to prevent harassment and victimisation of associates* needs to be included.

21. DSE 8.3(2)(b) *Associates need to be informed about action to take if harassment or victimisation occurs; and,*

22. DSE 8.3(2)(c) *Associates need to be informed about complaints procedures and dispute resolution options that are "available to a student" so that they can advocate for the student.*

23. DSE 1.5 Provide clearer guidance on the process of complaints, where to get help and options available if the consultation process fails.

24. Clearly state the constraints on current complaints mechanisms. Suggested wording:

DSE 1.5 Complaints about contraventions to the DSE (2005) and disability discrimination can be made to the Human Rights and Equal Opportunity Commissioner under the legislative dispute resolution procedures established in the HREOC Act (1986). The complaints and conciliation process is limited by the HREOC Act (1986), as the Commission does not have the legal right to

<p>Commission (HREOC) and Federal Court, but this is limited to the provision of information in relation to a formal complaint.</p> <p>There is no Part or Section in the DSE that clearly explains the options or process for complaints and conciliation. There is no information about possible costs and to whom student and associates may seek assistance or advice. The absence of this information, and about disability legal centres and advocacy groups that may assist a family and their associates, impedes access to equality before the law (DSE 1.3(b)).</p> <p>‘The current reliance on discrimination law whereby parents have to bring a claim of discrimination to conciliation, and perhaps on to litigation, is failing to ensure the rights of children with disability to education’ (Duncan et al., 2020).</p>	<p><i>determine that discrimination has occurred. The complaints mechanism is non-binding but can be escalated to the Federal Court.</i></p> <p>(see 12 above) Amend relevant Commonwealth legislation to <i>give the Australian Human Rights Commission the authority to take action where there are breaches of Standards without a student or parent having to take action.</i></p> <p>25. Add a Part or Section in the DSE that clearly explains the options or process for complaints and conciliation. Provide information about: possible costs; to whom students and associates may seek assistance or advice; disability legal centres and advocacy groups that may assist a family and their associates.</p>
<p>Enforcement is absent</p> <p>There is no Part or Section in the DSE that clearly explains the process of enforcement. The Guidance Notes, not the DSE, state that, “compliance with the standards is the responsibility of providers” (Commonwealth of Australia, 2006, p.7). No information is imparted about likely costs or processes, or from whom students and associates may seek assistance. The absence of this information, and about disability legal centres and advocacy groups that may assist a family and their associates, impedes access to equality before the law (DSE1.3(b)).</p> <p>The legal process necessitates the employment of legal representatives as well as the risk of losing the complaint and being ordered to pay the legal costs of the respondent. For many students with disability and their associates this may be beyond the financial and emotional resources of this minority group that the DSE is meant to protect (Dixon, 2019).</p> <p>‘Enforcement of compliance with the legislation depends on the willingness and ability of often vulnerable individual complainants to pursue a claim of discrimination or breach of the Standards’ (Duncan, 2020, p. 14). Since very few cases proceed to court the existing case law is ‘not representative of the scope or nature of discrimination practice’ (O’Connell, 2017, p. 112) in Australia.</p>	<p>DSE 1.5</p> <p>26. Enforcement mechanisms need to be included in the legislature of the DSE. Add a Part or Section in the DSE that clearly explains the process of enforcement. Provide information about likely costs and processes, and from whom students and associates may seek assistance. This may include disability legal centres and advocacy groups that may assist a family and their associates.</p> <p>A shift from a complaints-based system of enforcement is urgently needed.</p> <p>(see 12 above) Amend relevant Commonwealth legislation to <i>give the Australian Human Rights Commission the authority to take action where there are breaches of Standards without a student or parent having to take action</i> (DEEWR, 2012, p. 54)</p> <p>(see 14 above) DSE 1.5 An external regulator needs to be established (with similar authority as seen in the WHS, Aged Care and Education and Services Acts) to ‘ensure’ fair, transparent and accountable regulation of compliance at national, system and school levels. The external regulator needs to have authority to monitor, report to the <i>Australian Human Rights Commission</i>,</p>

	<p>prosecute, issue infringement notices (on the spot fines), shut sites down and revoke registration.</p> <p>The regulator must be authorised to interrogate the policy and practice of education providers for consistency, inconsistency and possible discrepancy with the content of the DSE. This includes identifying acts of omission (neglect) or commission (abuse). Policies should be admissible evidence in court proceedings, in a similar manner as in the WHS Act.</p>
<p>Contradictory decision making processes</p> <p>Service providers are recognised as “independent expert[s]” (DSE 3.4, <i>Note</i>) who have specialist knowledge about the type and extent of adjustments that are ‘necessary’ and ‘required’ by the student. It is contradictory to mandate that the education provider, who is not an expert nor independent, decide on what is <i>necessary and reasonable</i> within their environment. Unequal authoritative relationships may impede the intent to achieve equality.</p> <p>Contradictory pressures of making reasonable adjustments to alleviate the effect or any disadvantage in the student’s learning, but always relative to the cost and benefits to the education provider (DSE 3.4(2)(e)), establishes a competitive educational climate which potentially devalues, discriminates against and excludes students with disability. The judgement of what is reasonable is not impartial.</p> <p>The apparent discrepancy between what is determined to be <i>necessary</i> but unreasonable (DSE 3.4, <i>Note</i>) creates a difficult conundrum for education providers. If the costs and benefits of making an adjustment are measured relative to people with and without disability, and weighed against each other, then achievement of education <i>on the same basis</i> appears to be tenuous.</p> <p>There is no requirement for the students, associates or the education provider to agree on adjustments that are reasonable or implemented. The decision is entirely the privileged right of the education provider. Fair, equal and non-discriminatory access to education and training seems to be limited within the legislation by measures that work against, rather than with, each other.</p>	<p>DSE 3.3, DSE 3.4, DSE 3.6, DSE 1.3</p> <p>27. A collaborative decision making process is required, where stakeholders share their knowledge and experience to achieve the mutually agreed goal of ensuring equitable access to education for all students through the provision of agreed reasonable adjustments. Suggested wording:</p> <p><i>DSE 3.6 The student, associates and education provider must collaborate and mutually agree on the provision of specific reasonable adjustments.</i></p> <p>28. <i>DSE 3.6 When there is a dispute about what is necessary and reasonable, the education provider is required to demonstrate and communicate reasons for the decision that the adjustment is not necessary and reasonable within two weeks (DDA Section 11(2); Guidance Notes p. 6) and in an accessible format for the student and associates.</i></p> <p>29. Clarify the nature of the evidence required.</p> <p>A clearer mandate for education providers to be proactive in the provision of reasonable adjustments is needed. (See amendment 4 above)</p> <p>The DSE need to state more clearly that omission to provide a necessary and reasonable adjustment is a criminal act. Suggested wording:</p> <p>30. <i>DSE 3.3(2)(a) If an education provider’s actions, or omission to act, result in another person experiencing harm or less favourable treatment on the grounds of disability, the education provider may be prosecuted for a criminal</i></p>

	<p><i>act (Australian Law Reform Commission, n.d.; DDA Section 5(1); DDA Section 42).</i></p> <p>31. <i>DSE 3.3(2)(b) If an education provider’s omission to provide necessary and reasonable adjustments result in another person experiencing harm or less choices, opportunities and learning experiences on the grounds of disability, the education provider may be prosecuted for a criminal act.</i></p>
<p>The lexicon of consultation within the DSE constrains the intended promotion of recognition, acceptance and equal rights of persons with disability within the broader community.</p> <p>The education provider is given the responsibility and authority of decision maker with authority over “independent experts” (DSE 3.5), students with disability and their associates. This is repeated in DSE 10.2(3) where unjustifiable hardship may be claimed even when the adjustment is determined to be <i>reasonable and necessary</i>.</p> <p>The education provider, who is not independent and may not be an expert with regard to what a student needs to participate in education and training <i>on the same basis</i> as other students, to achieve learning outcomes, participate in courses and programs, and achieve independence, makes final decisions about:</p> <ul style="list-style-type: none"> Enrolment policy and procedures Who is accepted to be enrolled Reasonable and necessary adjustments Unreasonable adjustments Unjustifiable hardship Grievance policies and procedures Activities, opportunities, programs and courses Learning programs for staff Methods for self-regulation such as auditing and reporting mechanisms (Guidance Notes p. 9) <p>While collaboration refers to parity (equal status) in relationships and decision-making, the DSE establishes a hierarchical relationship between stakeholders where most decisions are made by the education provider. Human agency for all</p>	<p>DSE 3.5, DSE 3.6, DSE 4.2.(3), DSE 5.2(2), DSE 6.2(2), DSE 7.2(5), DSE 7.2(6), DSE 10.2(3)</p> <p>Establish collaborative relationships and decision-making processes where the student and associate have parity (equal status) in determining what adjustments are reasonable and necessary. (see amendment 27)</p> <p>32. Provide a clear definition of collaboration, and how it differs from consultation.</p> <p><i>DSE 3.5 Collaboration involves the student, associates, independent experts, support services and education providers working as equal partners to identify and implement reasonable adjustments so that the student with disability is supported to achieve learning outcomes, participate in courses and programs, and achieve independence. Collaboration requires the use of collective intelligence in the context of teams who exercise trust and mutual respect as they work together to achieve agreed goals. The collaborative interactions lead to new thinking, perspectives and actions for all participants.</i></p> <p><i>Consultation is a dialogue between people (consultants) who provide information or opinions to another person or group of people. There is usually a person appointed as the leader (for example the principal), who facilitates the collation of information and makes final decisions.</i></p> <p>Replace the term consulting with collaborating with. Replace consult with collaborate with.</p> <p>33. <i>DSE 3.5 Collaborating with the student ...the education provider must collaborate with the student...</i></p>

<p>stakeholders is limited. Combined, these legitimise a culture of inequality in relationships, human agency and consultation that puts at risk the intended promotion of recognition, acceptance and equal rights of people with disability within the broader community (DSE 1.3(c)).</p>	<p>34. <i>DSE 3.6 In deciding whether to make a particular reasonable adjustment for a student, the education provider, student, associates and independent experts must: ...</i></p> <p>35- 39. <i>DSE 4.2.(3) DSE 5.2(2), DSE 6.2(2), DSE 7.2(5), DSE 7.2(6)</i> <i>The provider must:</i> <i>(a) collaborate with...</i> <i>(b) in the light of that collaboration...</i></p> <p>40. <i>DSE10.2(3) Providers must communicate to the student and associate the basis on which the decision of unjustifiable hardship was made.</i></p>
<p>Mandate written documentation of consultation</p> <p>Currently, there is no requirement to document consultation and adjustments in the form of an Individual Education Plan (IEP) or Reasonable Adjustment Plan (RAP).</p> <p>Both of the <i>Review Reports</i> (DEEWR, 2012; URBIS, 2015) identified recurring concerns about the lack of consistency in the quality, content, frequency and documentation of consultation about reasonable adjustments with students and their associates. The Review in 2012 recommended that ‘formal mechanisms for compliance in relation to consultation with students and making adjustments’ (p. 54) be incorporated into the DSE. Both <i>Review Reports</i> recommended an amendment to the DSE (2005) to require documentation of consultation and individual education plans for all students with disability (DEEWR, 2012, Recommendation 5, 6, 11; URBIS, 2015, Recommendation 7, 8).</p> <p>While claiming to address the <i>Review Reports’</i> concerns about lack of consistency in the legislated mandate to consult, the process described in the <i>Planning for personalised learning and support: A national resource</i> (Australian Government DET, 2015b) document does not include writing down or recording decisions made during consultation, planning, implementation or review. In the section entitled “Where to go for additional guidance or assistance” (Australian Government DET, 2015b, p. 6) parents are advised to <i>ask</i> for the outcomes and proposed actions to be written and distributed to each participant. The onus of</p>	<p>DSE 3.5, DSE 4.2, DSE 5.2, DSE 6.2, DSE 7.2, DSE 8.3</p> <p>41. <i>Mandate written documentation of Reasonable Adjustment Plans (RAPs), developed in collaboration with key stakeholders, for all students with disability where reasonable adjustments are required.</i></p> <p>In 2011 the Australian Government reported on research that identified cultural concerns by people of Aboriginal and Torres Strait Islander heritage about terminology such as ‘Individual Learning Plans’ (ILPs) (Commonwealth of Australia, 2011). It was suggested that individual learning implied learning in isolation to others, whereas the priority focus of Personalised Learning Plans for Aboriginal and Torres Strait Islander students was connection with community.</p> <p>The Australian Government has provided two resources, using similar terminology, but with different purpose. The intent of the <i>Planning for Personalised Learning and Support</i> (Australian Government DET, 2015b) document is to guide education providers in the consultation process with regard to students with disability. The <i>Guide to developing Personalised Learning Plans for Aboriginal and Torres Strait Islander students – A professional learning resource</i> (Commonwealth of Australia, 2011) targets improved educational and health outcomes for students of indigenous heritage. As education services are required to have PLPs for indigenous students, it seems culturally insensitive to use the same terminology to refer to students with disability. Assumptions may be made about a student having</p>

<p>seeking a record of the plan is placed on the family, rather than the education provider. The parent may ask, but the education provider decides if and how the plan is recorded. This has the effect of diminishing the accountability of the education provider, whose responsibility it is to ‘ensure’ they comply with legislation and prevent discrimination.</p>	<p>a disability because they have a PLP. However, the student may not have any disability.</p> <p>It is suggested therefore that the term Reasonable Adjustment Plan (RAP) be adopted within the context of Australian legislation. RAP does not emphasise disability (such as the term Disability Support Plan) and focusses attention on the provision of reasonable adjustments to facilitate equitable access and participation in education.</p> <p>While Individual Education Plan (IEP) is an internationally recognised term, it continues to be culturally insensitive to our Indigenous families.</p> <p>42. <i>Require all education providers to collaboratively design RAPs for all students with disability that focus on the provision of adjustments that ensure student/s with disability have choices, opportunities and learning experiences on the same basis as a student without disability so they can participate in education and training, achieve learning outcomes and achieve independence.</i></p> <p>43. <i>Mandate communication to the parents and associates’ in oral and written form, about the decisions and justification of those decisions, for not providing reasonable and necessary adjustments.</i></p> <p>44. <i>Establish minimum time requirements for collaboration with students and associates for RAP development, implementation and review, to at least every 6 months.</i></p>
<p>Correction in the use of terms admission and enrolment</p> <p>The Report on the Review of the DSE (2012) noted that admission and enrolment are used interchangeably throughout the DSE, however they refer to different processes and are not interchangeable. Admission is the process of being <i>allowed to enter</i> a place or organisation, whereas enrolment is the action of having a child listed as a <i>member</i> of a course, program or educational institution such as a university or school. The context of relevant sentences reveals that the intended meaning is enrolment. An amendment to clarify expected actions was recommended, with consistent substitution of the word ‘admission’ to enrolment (DEEWR, 2012).</p>	<p>DSE 4</p> <p>45. <i>Consistent substitution of the word ‘admission’ to the word ‘enrolment’ so that the child with disability becomes a valued member of the institution.</i></p>

<p>Omission of transition planning</p> <p>Transition planning was highlighted as a significant omission from the DSE (DEEWR, 2012). Recommendation 11 was to, “ensure that individual education plans are used to assist in transitions” and that students with disabilities are given options on the same basis as their peers (DEEWR, 2012, p.Xi).</p> <p>Transition involves a process of preparing for, and adjusting to, new contexts such as curricula, pedagogy, environment, and, relationships between peers and staff (Lincoln et al., 2016). A well-developed transition plan ensures that staff are equipped with information about student-specific academic and social needs, and necessary resources (Strnadová & Cumming, 2014; Towns, 2018). This in turn ensures successful outcomes for students (Dockett, 2018; Forlin et al., 2019; Lincoln et al., 2016; Towns, 2018).</p> <p>The Organisation for Economic Co-operation and Development (OECD), 2017) states that transitions must be “well-prepared and child centered, managed by trained staff collaborating with one another, and guided by an appropriate and aligned curriculum” (p. 13). Quality transition programs ensure information and strategies pertinent to the specific student’s strengths, interests and needs are shared with the new teachers and support staff (Neal & Frederickson, 2016; Tso & Strnadová, 2017). Information about student progress, “what works and doesn’t” (Towns, 2018, p. 44) is also shared in order to guide decisions about priority of needs, adjustments to curriculum, teaching and learning experiences, and assessment. Collaboration during transition ensures continuity in learning and support while simultaneously supporting adaptation to change (Dockett, 2018; Lincoln et al., 2016). Collaboration between all stakeholders optimises opportunities for learning (Strnadová & Cumming, 2014, 2016). During the transition period, communication between the personnel in the student’s present environment and the environment they will be moving into are considered critical (Pitt et al., 2019).</p>	<p>DSE 5</p> <p>46. <i>Establish clear formal transition points (into, between and out of): preschool/early childhood education settings; primary school; secondary high school; tertiary/post-compulsory education or work.</i></p> <p><i>Transition planning may also be required when a student with disability is moving from one position, stage, school or environment to another. This may include a student working with a new teacher because their current teacher has gone on leave, moving to a new class at the beginning of the school year, or moving from one primary school to another.</i></p> <p>47. <i>Mandate formal collaboration and transition planning between personnel in the student’s present environment and the environment they will be moving into. Eg preschool to school.</i></p> <p>48. <i>Require all education providers to collaboratively design Transition Plans for all students with disability that focus on the provision of adjustments that ensure student/s with disability have choices, opportunities and learning experiences on the same basis as a student without disability so they can participate in education and training, achieve learning outcomes and achieve independence.</i></p> <p>49. <i>Mandate written documentation of Transition Plans as part of the IEP/RAP developed in collaboration with key stakeholders, for all students with disability where reasonable adjustments are required. Suggested wording:</i></p> <p><i>Transition plans need to support adaptation to change and must include information and strategies pertinent to: the specific student’s strengths, interests and needs; student progress, what works and doesn’t; priority of needs; adjustments to curriculum, teaching, learning experiences, and assessment.</i></p>
<p>Clarify reasonable time and other timeframes</p> <p>The DSE requires the provision of adjustments within a <i>reasonable time</i> (DSE 3.7(1)). No timeframe is provided to determine what is considered to be a <i>reasonable period of time</i>. There is lack of clarity about what is reasonable with</p>	<p>DSE 3.7(2), DSE 8.5(d), DSE 8.5(f)</p> <p>50. <i>Direction for minimal standards for appropriate intervals, prompt and reasonable timeframes need to be provided. For example,</i></p>



<p>regard to how much <i>time</i> may elapse before an adjustment is implemented. The onus of responsibility with regard to time is placed on the student with disability (or associate) rather than the education provider who is expected to provide the adjustment within a reasonable time. This appears to limit the importance of provision of adjustments within a <i>reasonable time</i>, as the only specified point of accountability is placed on the student (or associate) rather than the provider. The lack of numerical references for what would be considered a reasonable time frame to implement an adjustment, or review adjustments, allows too much latitude and devalues the principle of timely provision of adjustments.</p> <p>Other time referents include ‘appropriate intervals and ‘prompt’. Eg DSE 8.5(d) the providers students and staff are effectively informed and reminded, <i>at appropriate intervals</i>, of their rights DSE 8.5(f) any cases or complaints of harassment and victimisation on the basis of disability are <i>handled promptly</i>..</p> <p>The only regular time frame provided in the DSE is the five yearly reviews of the DSE. The only other reference to time within the DSE is that adjustments need to be modified, <i>over the period of a student’s education</i> and training, as the student’s abilities and needs change.</p> <p>Time referents such as ‘appropriate’ ‘prompt’ and reasonable’ are open to interpretation. They could mean five yearly, annually, half yearly, or weekly. As this is regulated by the education provider, students with disability may not have what they consider to be reasonable timeframes for the provision of adjustments, information about their rights or ‘prompt’ handling of complaints.</p>	<p><i>IEPs/RAPs should be reviewed, in collaboration with the student and associates, at least every 6 months for relevance of goals, effectiveness of reasonable adjustments and student progress.</i></p> <p>51. DSE 8.5(d) the providers, students and staff are effectively informed and reminded, <i>on an annual basis</i>, of their rights</p> <p>52. DSE 8.5(f) any cases or complaints of harassment and victimisation on the basis of disability are <i>handled promptly, within 7 days, ...</i></p> <p>These amendments would be in line with other Commonwealth law that provides clear timeframes. Eg notice of outcome of the rating assessment of an education and care service “must be given within 60 days” <i>Education and Care Services National Law 2010, Section 136(2).</i></p>
<p>Correction of discrepancy and omission of associates from DSE 8.2</p> <p>There is a discrepancy between Application of the Part, and the <i>Rights given by this Part</i>. The application does not include students who have associates with disability, but it is included in the Rights given by this part.</p> <p>Associates of the student with disability, and associates with disability (of students with or without disability) (DSE 9.1), are not included in the mandatory group of human agents who need to be informed about strategies, programs,</p>	<p>DSE 8.2, DSE 8.3(1), DSE 8.3(2)(a)</p> <p>53. DSE 8.2 Application of the Part needs to explicitly include: <i>students who have associates with disabilities; Associates of students with disability; Associates with disability (of students with or without disability)</i></p> <p>54. <i>The obligation to prevent harassment and victimisation of associates</i> needs to be explicitly included in 8.3(1) and 8.3(2)(a)</p>

<p>policies, procedures and codes of conduct that have been devised to prevent discrimination, harassment and victimisation of them.</p> <p>This has implications for accountability in meeting the goals of the DDA (1992) and DSE (2005). It is quite possible that a student with disability may be harassed or victimised but the associate of that student does not know or understand the complaints policy or procedures.</p> <p>In addition, DSE 8.3(2)(a) appears to overlook the possibility that associates of the student with disability may be harassed or victimised because of their role as advocates for the student. This is inconsistent with the elimination of discrimination against person/s with disability.</p>	<p><i>Associates of the student with disability, and associates with disability (of students with or without disability) (DSE 9.1), must be included in the mandatory group of human agents who need to be informed about strategies, programs, policies, procedures and codes of conduct that have been devised to prevent discrimination, harassment and victimisation of them.</i></p>
<p>Omission of accessibility requirements for complaints procedures</p> <p>The omission of accessibility requirements for complaints procedures, like those used in DSE 4 Enrolment, may result in students and associates not being able to know, understand or follow procedures.</p>	<p>DSE 8.3</p> <p>55. <i>An education provider must ensure harassment and victimisation policy and procedures are communicated and accessible to the student and his/her associates; and,</i></p> <p>56. <i>Made available in a range of formats within a reasonable timeframe of two weeks.</i></p> <p>57. <i>Complaints procedures must be designed so that the student and associate can understand, initiate and submit a complaint without undue difficulty; and,</i></p> <p>58. <i>Made available in a range of formats within a reasonable timeframe of two weeks.</i></p>
<p>Exclusion of students and associates from consultation re policies, strategies and programs to prevent harassment and victimisation</p> <p>The norm of consultation with students and associates as key human agents has not been followed in DSE 8. Students and associates are excluded from the development of policies, strategies and programs that are supposed to be devised to protect them.</p>	<p>DSE 8.3, DSE 8.3(2)(b), DSE 8.3(2)(c)</p> <p>59. <i>Students and their associates must be informed, consulted and involved in reviews about strategies, programs, policies, procedures and codes of conduct that have been devised to prevent discrimination, harassment and victimisation of them.</i></p> <p>60. <i>8.3(2)(b) Associates need to be informed about action to take if harassment or victimisation occurs.</i></p> <p>61. <i>DSE 8.3(2)(c) Associates need to be informed about complaint mechanisms that are available to students and associates.</i></p>

<p>Demonstrate and communicate that the exception of unjustifiable hardship operates</p> <p>When unjustifiable hardship is claimed there is no specific <i>requirement</i> within the DSE to demonstrate or prove an exception, to communicate the decision within a reasonable timeframe, what would constitute a reasonable time, or to whom the decision should be communicated.</p> <p>No guidance about what evidence would be necessary is suggested. Ambiguous use of terms ‘responsibility’ and ‘burden’ (DSE10.1) are open to interpretation. “Responsibility” and “burden” may mean that demonstration and proof of the exception needs to be provided when <i>requested</i> by key stakeholders. Alternatively, it may be interpreted as meaning that demonstration and proof of the exception is <i>expected</i> to be undertaken if an education provider claims that circumstances for an exception exist. While the Guidance Notes suggest that it is ‘good practice’ (p. 6) to notify a student or an associate, it is not mandatory.</p> <p>The lack of accountability for fair and transparent decision making processes with regard to unjustifiable hardship undermines the rights of persons with disability.</p>	<p>DSE 10.1(2), DDA Section 11(2)</p> <p>62. Addition of specific <i>requirement for education providers to demonstrate and communicate proof of unjustifiable hardship within a reasonable timeframe of two weeks</i> (DDA Section 11(2)) <i>and in an accessible format for the student and associates.</i></p> <p>63. Clarify interpretation of burden and responsibility in 10.1.</p> <p>64. Clear identification of <i>who the education provider must demonstrate and communicate proof that the exception is needed</i> (DSE 10.1(2)). That is, <i>the student, associate, service providers, staff, Australian Human Rights and Equal Opportunity Commission.</i></p> <p>65. Clarify the nature of the evidence required.</p>
<p>Correction of restatement of the objects in DSE 10.2(3)</p> <p>The stated objects in DSE 1.3 are to ensure the rights of persons with disabilities. The objects of the DSE (2005) have been inaccurately re-stated in Part 10.2(3) as ‘removing discrimination as far as possible, and of the rights <i>and interests of all relevant parties</i>’.</p> <p>This incorrect restatement of the objects in DSE10.2(3) compromises the intent of the DSE and creates inequity in the context of claiming unjustifiable hardship.</p> <p>DSE 10 requires education providers to weigh the cost and benefits of making an adjustment relative to people with and without disability. Unjustifiable hardship to the education provider is prioritised over access, participation and provision of reasonable and necessary adjustment to the student with disability. If the interests of the majority of people (without disability) are given priority over a minority group of people with disability, the comparative interests of the <i>majority</i></p>	<p>DSE 10.2(3)</p> <p>66. The objects of the DSE 10.2(3) need to be corrected, so that it accurately restates the objects in DSE 1.3 and the DDA.</p> <p>The stated objects in DSE 1.3 are <i>to ensure the rights of persons with disabilities.</i></p>

<p>are more likely to influence decisions, particularly those with financial ramifications (Dixon, 2019).</p> <p>The objective of asserting the rights of students with disability, preventing discrimination by exclusion, and increasing the inclusion of students with disability in education and the broader community, seems to be limited by the legislation itself.</p>	
<p>Minister for Education DSE 11.1 refers to the Minister for Education, Science and Training. This title is no longer current, and needs to be updated to the 'Minister for Education'.</p>	<p>DSE 11.1 67. Minister for Education, Science and Training (DSE 11.1) needs to be replaced with the 'Minister for Education'.</p>
<p>Mandated policies and procedures not clear A thorough awareness and understanding of mandated policies in relation to students and associates with disability within the DSE is not clear to users. This is evidenced by the lack of current policies and procedures that meet the mandated criteria within large education sectors, such as the NSW Department of Education (DoE).</p> <p>Specific policies mentioned in the DSE (2005) are: Enrolment information and procedures; Code of conduct for staff and students; Professional development programs; Policy, procedures, strategies and programs to prevent harassment and victimisation on basis of disability; Complaints procedures (conflict resolution). (See Appendix 1: Policy and procedures within the DSE)</p> <p>My policy analysis reveals that the NSW DoE do not, in 2020, meet the DSE for <i>any</i> of these. For example, in the list of 'legislative provisions' in the DoE Code of Conduct Policy 2020 the DDA and DSE are NOT listed. This demonstrates that education providers do not understand the intersection of the DSE (2005) with other legislation or policy. As the largest education system in Australia does not meet minimal mandated standards, the DSE are not clear enough and self-regulation is not adequate.</p>	<p>DSE 3, DSE 4, DSE 7, DSE 8, DSE 10 68. External regulation of mandated policies is urgently required. Analysis of these policies for consistency, inconsistency and/or discrepancies with the DSE is essential to determine if an education provider is meeting its legal responsibilities. Regulation needs to 'ensure' that the policies are written and implemented. Systemic breaches, 15 years after the DSE were legislated, currently exist for:</p> <p>Enrolment information and procedures; Code of conduct for staff and students; Professional development programs; Policy, procedures, strategies and programs to prevent harassment and victimisation on basis of disability; Complaints procedures (conflict resolution); Action plans.</p> <p>69. Evidence of implementation must also be sought and externally regulated.</p> <p>70. A summary in the Guidance notes is needed to more clearly state what policies are needed, and the specific content required. For example, see Appendix <u>Policy and procedures within the DSE 2005</u> (separate document).</p> <p>71. External analysis of these policies and procedures for consistency, inconsistency and/or discrepancies with the DSE is essential to determine if an education provider is meeting its legal responsibilities. Evidence of implementation must also be sought and externally regulated.</p>



<p>Implied mechanisms to support and regulate compliance are not clear</p> <p>The DSE implies that mechanisms will be established by education providers to support and regulate compliance. These include: Action Plans; Procedures for consultation; Procedures to seek, determine and review reasonable adjustments; Procedures to determine unjustifiable hardship; Policy and procedures for the education of all students to prevent discrimination, harassment and victimisation on the basis of disability; Policy and procedures for design, review and implementation of curriculum development, accreditation and delivery, course and program requirements and activities; Extra-curricular policy and procedures; Excursion policy and procedures; Procedures to ensure access to services; and, Self-regulation strategies to ensure compliance. (See Appendix 1: Policy and procedures within the DSE)</p> <p>My research has determined that the largest education provider in Australia, the NSW DoE, do not have these mechanisms to support and regulate compliance. For example, there are <i>no</i> procedures to determine unjustifiable hardship. Evidence from survey respondents indicates that procedures for consultation are often in direct breach of the DSE.</p>	<p>DSE 3, DSE 4, DSE 5, DSE 6, DSE 7, DSE 10 DDA Section 5, DDA Section 6, DDA Section 11, DDA Section 64</p> <p>Implying rather than mandating these policies and procedures has allowed too much latitude. Systemic breaches are evident.</p> <p>72. Minimal standards need to be mandated for: Procedures for consultation; Procedures to seek, determine and review reasonable adjustments; Procedures to determine unjustifiable hardship; Policy and procedures for the education of all students to prevent discrimination, harassment and victimisation on the basis of disability; Policy and procedures for design, review and implementation of curriculum development, accreditation and delivery, course and program requirements and activities; Extra-curricular policy and procedures; Excursion policy and procedures; Procedures to ensure access to services; and, Self-regulation strategies to ensure compliance.</p> <p>The Guidance Notes could provide a summary of mandated and assumed policies and their required content. (see amendment 70 above)</p> <p>External regulation is required to ‘ensure’ the objects of the DSE are achieved.</p>
<p>Mandated training of all staff omitted</p> <p>The Guidance Notes, not the DSE legislature, <i>recommend</i> (but do not require) staff induction and professional development programs 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.” (Commonwealth of Australia, 2006, p. 8)</p> <p>The term ‘understood’ infers some method of assessment of understanding.</p> <p>Specific timeframes for regularly informing and reminding students and staff are needed.</p>	<p>DSE 1.4, DSE 3, DSE 4, DSE 5, DSE 6, DSE 7, DSE 8.5(d) and (e), DSE Guidance Notes</p> <p>73. <i>Require</i> staff induction programmes to include components on: disability awareness and rights; obligations of education and training providers under the Standards; local specialised services (DSE 7.3(a); policies, procedures and codes of conduct, including matters of harassment and victimisation, are known and understood by staff (DSE 8.5(d); and, how to detect, and deal with, harassment in education and training settings (DSE 8.5(d)).</p> <p>74. DSE 8.5(d) and (e) The legislature needs to explicitly require staff to be regularly informed and reminded at least every 12 months, (in a similar fashion as mandatory training in first aide and CPR) about the obligation to provide individualised strategies, adjustments, and supports for students with disability to maintain an environment free from discrimination, harassment and victimisation on the basis of disability.</p>

According to the Nationally Consistent Collection of Data on School Students with Disability (NCCD) in 2019, nearly one in five (19.9 per cent) school students across Australia received an adjustment due to disability. To 'ensure' teachers do their jobs well and address the needs of 1/5 of their class, the Victorian Institute of Teaching (VIT) requires teachers to successfully complete at least one course per annum that addresses strategies and adjustments to support equitable provision of education to students with disability. This will potentially reduce the need for more individualised funding as the capability of staff increases.

Terminology also needs addressing. Professional development tends to be targeted at professionals. That is, teachers. The staff in educational institutions and authorities include administration officers/managers and teacher's aides, who are not regarded as professional and are therefore excluded from 'professional' development programs. The term Learning and Development programs is therefore preferred.

Policy writers and staff also need to be explicitly trained in the standards, as evidence from NSW indicates that policy writers and people in state office positions are not fully aware and therefore do not adequately support staff working in schools.

75. Learning and development programs must include assessment of understanding to be measured and observed, to ensure that the outcome is *the provision of adjustments that ensure student/s with disability have choices, opportunities and learning experiences on the same basis as a student without disability so they can participate in education and training, achieve learning outcomes and achieve independence.*

The Australian Professional Standards for Teachers and School Leaders (AITSL) could require regulatory authorities such as the NSW Education Standards Authority (NESA) to mandate teachers successfully complete at least one course per annum that addresses the DSE or strategies and adjustments to support equitable provision of education to students with disability.

76. DSE 8.5(e), Guidance Notes p. 8. Replace 'Professional development' with Learning and development, so that non-professional staff are included in learning experiences.

77. DSE 1.4 '**Staff**' of education providers needs to explicitly include teacher's aides, administration officers and managers, policy writers and personnel working in roles that support schools in meeting their legislative obligations.

Concluding remarks:

The DSE play an essential role in building systems that secure 'the intentional design of equitable learning opportunities for marginalised students, to ensure achievement of meaningful outcomes that maximise their capability, independence and valued contribution within community' (Ralston, 2020). In turn, this helps Australia meet its international commitment under the *United Nations Convention on the Rights of Persons with Disabilities (CRPD)* to provide:

... a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences (United Nations, 2016, [General Comment No. 4](#) on Article 24, para 11).

Ensuring the right to equality before the law in education (DSE 1.3(b)), recognition and acceptance (DSE 1.3(c)) for persons with disability requires more than the elimination of discrimination (DSE 1.3(a)). The DSE have the potential to strengthen the capacity of the national education system to redress exclusion and marginalisation of students by **informing, guiding and regulating practice** at all levels of education (early childhood, primary, secondary and tertiary), to 'ensure that each individual has an equal opportunity for educational progress' (UNESCO, 2020). The DSE are a pathway to attaining the Education Goals for Young Australians espoused in the Alice Springs

(Mparntwe) Education Declaration (2019) whereby: (1) The Australian education system promotes excellence and equity; and, (2) All young Australians become confident and creative individuals, successful lifelong learners, and active and informed members of the community (Education Services Australia, 2019).

Fundamental to the 26 issues raised in this submission are the notions of human agency and value. Collaborative partnerships are needed where the student, associates, independent experts, support services and education providers work as equal partners to identify and implement reasonable adjustments so that the student with disability is supported to achieve learning outcomes, participate in courses and programs, and realise their potential.

The DSE tend to assume too much and 'ensure' too little. The lack of accountability for fair and transparent self-regulation, complaints processes, enforcement, consultation and decision-making processes diminish and constrain the rights of persons with disability. Several omissions appear to preserve discrimination. For example, putting parents in the position of *requesting* written documentation for reasonable adjustment plans devalues the person, particularly when the education provider can legally decline the request.

Legislation directly influences practice (Ralston et al., 2019). It is imperative that the DSE establish unambiguous expectations for action that ensure education providers are well informed, guided and regulated to secure *education for all*.

Appendix: Key References

- Dally, K.A., Ralston, M.M., Strnadova, I., Dempsey, I., Chambers, D., Foggett, J., Paterson, D., Sharma, U., & Duncan, J. (2019). Current issues and future directions in Australian special and inclusive education. *Australian Journal of Teacher Education*, 44(8), 57-73. <http://dx.doi.org/10.14221/ajte.2019v44n8.4>
- Dickson, E. (2014). Disability standards for education 2005 (Cth): Sword or shield for Australian students with disability? *International Journal of Law and Education*, 19(1), 5–19.
- Dixon, R. (2019). Towards inclusive schools: The impact of the DDA and DSE on inclusion participation and exclusion in Australia. In K. Trimmer, R. Dixon, & Y. S. Findlay (Eds.), *The Palgrave Handbook of Education Law for Schools* (2nd ed., pp. 283–295). Palgrave Macmillan. <https://doi.org/10.1007/978-3-319-77751-1>
- Duncan, J., Punch, R., Gauntlett, M., Talbot-Stokes, R. (2020). Missing the mark or scoring a goal? Achieving non-discrimination for students with disability in primary and secondary education in Australia: A scoping review. *Australian Journal of Education*, 0(0), 1-19. DOI: 10.1177/0004944119896816
- Ralston, M.M., Dally, K.A., & Dempsey, I. (2019). Content analysis of Australian special education research 2005-2015. *International Journal of Whole Schooling*, 15(1), 82-131.
- Rees, N., Rice, S., & Allen, D. (2018). *Australian anti-discrimination and equal opportunity law* (3rd ed.). Federation Press.

Appendix: Policy and procedures within the DSE 2005 (separate document)

APPENDIX 1: Policy and procedures within the Disability Standards for Education (DSE)

The Guidance Notes for the DSE state that, “compliance with the standards is the responsibility of providers” (Commonwealth of Australia, 2006, p.7).

The DSE (Commonwealth of Australia, 2005) refers to several documents that education providers are expected to have, and prescribes content requirements to guide staff and regulate compliance. In addition, the DSE (2005) establishes the expectation that education providers will establish mechanisms, such as policies and procedures, to ensure that the objectives of the DSE (2005) are achieved. These are tabulated below.

Document mandated	Reference	Prescribed requirements to guide staff and regulate compliance
<u>Code of conduct for staff and students</u>	DSE 8 DSE Guidance Notes	<p>8.5 (a) Explicitly prohibit discrimination (DSE Guidance Notes, DSE 8.1, 8.3), harassment and victimisation of students with disability, on the basis of disability, including:</p> <ul style="list-style-type: none"> i) the need for individual strategies and adjustments for a student; ii) the need to use supports e.g. wheelchair, hearing aid, breathing support, interpreter, reader, assistant or carer, guide or hearing dog, or other appropriately trained animal; iii) explicitly prohibit harassment and victimisation of the associates of students with disability, on the basis of disability iv) code is known and understood by staff, and that staff are trained to detect, and deal with, harassment in education and training settings <p>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:</p> <ul style="list-style-type: none"> v) 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” (Commonwealth of Australia, 2006, p. 9).
<u>Complaints procedures</u>	DSE 8	<p>8.3 (2) Students and staff informed about:</p> <ul style="list-style-type: none"> (c) Complaint mechanisms available to the student who is harassed or victimised in relation to disability. [How students can report harassment and victimisation; how they are informed about the procedures to follow; if the information is accessible to the student (see requirements under DSE Part 4 Enrolment)] <p>8.5(c) the procedures for handling any cases or complaints of harassment and victimisation relating to disability are fair, transparent and accountable;</p> <p>8.5(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. [Time frames to ensure that the complaint is handled promptly and with “due regard to the severity of the matter”.]</p>

		<p>This may involve “establishing, or using and promoting existing, complaint procedures in relation to discrimination; ensuring that complaints are properly and effectively dealt with” (Commonwealth of Australia, 2006, p. 10).</p> <p>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” (Commonwealth of Australia, 2006, p.9).</p>
<p><u>Education of staff and students</u> Policy and procedures for education of staff and students</p>	<p>DSE 7 DSE 8 DSE Guidance Notes</p>	<p>Education of staff and students about:</p> <p>8.3(2)(a) Obligation not to harass or victimise on the basis of disability, a student with disability, or a student who has an associate with a disability.</p> <p>b) Action to take if harassment or victimisation occurs</p> <p>c) Complaint mechanisms available to the student who is harassed or victimised in relation to disability.</p> <p>5 (d) 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;</p> <p>5(e) policies, procedures and codes of conduct, including matters of harassment and victimisation, are known and understood by staff</p> <p>5 (e) staff are trained to detect, and deal with, harassment in education and training settings</p> <p>Induction of staff - “it is recommended that staff induction... 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.” (Commonwealth of Australia, 2006, p. 8)</p> <p>[The term ‘understood’ infers some method of assessment of understanding. Timeframes for regularly informing and reminding students and staff are needed. Individualised strategies, adjustments, and supports for students with disability are a requirement in maintaining an environment free from harassment and victimisation on the basis of disability (DSE 3, 5,6,7,8).]</p>
<p><u>Enrolment information and procedures</u></p>	<p>SE 3 SE 4</p>	<p>3 reasonable adjustments in relation to: application for admission and enrolment; building work to enable access or use of premises, provision of additional facilities.</p>

		<p>2(1) must take reasonable steps to ensure that the prospective student is able to apply for, and enrol in, educational courses and programs on the same basis as all other students</p> <p>2) Decision to offer admission and enrolment is made <i>on same basis</i></p> <p>3)(a) must consult the prospective student or associate about whether the disability affects the prospective student's ability to seek admission to, or apply for enrolment</p> <p>3)(b) make necessary reasonable adjustments.</p> <p>3 (a) information about the enrolment process:</p> <p>i) addresses the needs of students with disability;</p> <p>ii) is accessible to the student and his or her associates;</p> <p>iii) is made available in a range of formats depending on the resources and purposes of the provider and within a reasonable timeframe;</p> <p>b) enrolment procedures are designed so that the student (or associate) can complete them without undue difficulty;</p> <p>c) information, that enables the student (or associate) to make informed choices, about: entry requirements; the choice of courses or programs; progression through those courses or programs; educational settings for those courses or programs is accessible to the student (or associate).</p>
<p><u>harassment and victimisation</u> Policy, procedures, strategies and programs to prevent harassment and victimisation on basis of disability</p>	<p>DSE 8 DSE Guidance Notes</p>	<p>3 (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.</p> <p>3 (2) Students and staff informed about:</p> <p>a) Obligation not to harass or victimise on the basis of disability, a student with disability, or a student who has an associate with a disability.</p> <p>b) Action to take if harassment or victimisation occurs</p> <p>c) Complaint mechanisms available to the student who is harassed or victimised in relation to disability.</p> <p>Policy and procedures must:</p> <p>4.5(a) Explicitly prohibit harassment and victimisation on the basis of disability; including</p> <p>i) the need for individual strategies and adjustments for a student; and</p> <p>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</p> <p>b) explicitly prohibit harassment and victimisation of the associates of students with disabilities, on the basis of disability</p>

		<p>(c) the procedures for handling any cases or complaints of harassment and victimisation relating to disability are fair, transparent and accountable; and</p> <p>(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</p> <p>(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</p> <p>(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.</p> <p>.2 <i>Note</i> 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. [So, a school cannot claim that it was not aware of this requirement, or that the cost of developing and implementing strategies and programs to prevent and remove discrimination, harassment and victimisation would cause unjustifiable hardship (Commonwealth of Australia, 2006, p. 10).]</p>
<p><u>professional development programs</u></p> <p>learning and development programs]</p>	<p>SE 7 SE 8 SE Guidance Notes</p>	<p>.3(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</p> <p>.3(d) appropriately trained support staff, such as specialist teachers, interpreters, note-takers and teachers’ aides, are made available to students with disabilities.</p> <p>.5(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;</p> <p>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</p> <p>staff are proficient in interacting with students in ways which do not discriminate against people with disabilities. (Commonwealth of Australia, 2006, p. 8)</p>

		<p>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.” (Commonwealth of Australia, 2006, p. 8)</p> <p>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.” (Commonwealth of Australia, 2006, p. 8)</p> <p>Providers must take “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” (Commonwealth of Australia, 2006, p. 10).</p>
<p>Document inferred through the establishment of mechanisms</p>	<p>Reference</p>	<p>Prescribed requirements to guide staff and regulate compliance</p>
<p><u>Access to services</u> Procedures to ensure access to services</p>	<p>SE 7</p>	<p>7.2 for the student to be able to participate in the activities for which he or she is enrolled the education provider must:</p> <ol style="list-style-type: none"> (1) ensure a student can use the support services (2) take reasonable steps to ensure that the student has access to specialised support services provided by the education provider (but may arrange for it to be provided by another person or agency). (3) take reasonable steps to facilitate the provision of the service to the student by another person or agency. (4) access to and provision of specialised support services is an adjustment (5) consult about reasonable and necessary adjustments <p>7.3(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;</p> <ol style="list-style-type: none"> (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.
<u>Action plan</u>	DSE 10 DA Part 3, Section 59-64	<p>0.2(3) <i>Note</i> 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:</p> <p>d) in the case of the provision of services, or the making available of facilities— an action plan given to the [Australian Human Rights] Commission under section 64 of the DDA.</p> <p>DDA Section 59 Scope This Part applies in relation to a person (the <i>action planner</i>) who, under Part 2, is prohibited from discriminating against another person on the ground of a disability of the other person.</p> <p>DDA Section 61 Provisions of action plans The action plan must include provisions relating to:</p> <ul style="list-style-type: none"> (a) devising of policies and programs to achieve the objects of this Act; (b) communication of these policies and programs to persons within the action planner; (c) review of practices within the action planner with a view to the identification of any discriminatory practices; (d) setting of goals and targets, where these may reasonably be determined against which the success of the plan in achieving the objects of the Act may be assessed; (e) the means, other than those referred to in paragraph (d), of evaluating the policies and programs referred to in paragraph (a); (f) appointment of persons within the action planner to implement the provisions referred to in paragraphs (a) to (e) (inclusive). <p>DDA Section 62 Action plans may have other provisions The action plan may include provisions, other than those referred to in section 61, that are not inconsistent with the objects of this Act.</p> <p>DDA Section 64 Action plans may be given to Commission</p> <ul style="list-style-type: none"> (1) The action planner may give a copy of the action plan, or of any amendments to the action plan, to the Commission. (2) If the action planner does so, the Commission must make the copy available to the public.
<u>Consultation</u>	SE 3	See Appendix 2: Consultation in the DSE: Vocabulary, human agents and content.

<p>procedures</p>	<p>SE 4 SE 5 SE 6 SE 7</p>	<p>Consultation includes: Providing information and opinions; negotiating; agreeing; evaluating; collaborating; reminding; and, complaining.</p> <p>Consultation is about: Learning capacity and needs of the student (how the disability affects the student’s ability to participate); whether adjustments are necessary; what adjustments might be necessary; evaluation of reasonable adjustments (other adjustments that are less disruptive and intrusive and no less beneficial; unjustifiable hardship; how the student can participate in activities, programs and courses; design of activities, programs, courses curriculum development, accreditation and delivery to include the student; facilities and support services and how to access them; enrolment; harassment and victimisation on the basis of disability; rights and responsibilities; Code of conduct; professional development; Policy, procedures, strategies and programs to prevent harassment and victimisation on basis of disability; and, complaints.</p> <p>Consultation involves: The education provider, student (or associate), specialised service providers, staff and students.</p> <p>The provider must repeat the process of consultation as necessary to allow for the changing needs of the student over time.</p> <p>Recommendation Eight of the Review of the DSE (Thomas, Grealy, Kurti, & Wise, 2015) resulted in the development of the <i>Planning for personalised learning and support: A national resource</i> (Education Services Australia, 2019) to guide consultation procedures.</p>
-------------------	--	--

<p>Curriculum development, <u>accreditation and delivery,</u> <u>course and program design</u> policy and procedures</p>	<p>SE 5 SE 6 SE 7 DA Section 5 DA Section 6</p>	<p>The guide suggests a “formal policy statement on compliance with the DDA and the Standards and more direct advice to staff” (Commonwealth of Australia, 2006, p. 9). [See Code of conduct above]</p> <p>Articulate the need to provide individualised strategies (DSE 5; 8.5), adjustments (DSE 3), and supports (DSE 7, 8.5(a)) that ensure that students with disability have choices, opportunities and learning experiences (DSE 6.6(2)(b)) <i>on the same basis</i> as students without disability (DSE 4.2(3)(b), 5.2(2)(b), 6.2(2)(b), 7.2(5)(b), 7.2(6)(b)) so they can participate in courses and programs (DSE 2.2), use the facilities and services (DSE 7), achieve learning outcomes (DSE 3.4(2)(c), 6.3(b)) and achieve independence (DSE 3.4(2)(c)).</p> <p>Incorporate procedures to prevent direct and indirect disability discrimination (DDA sections 5 and 6).</p> <p>Procedures for consultation, reasonable adjustments, access to services, extra-curricular and excursion policies, incorporated into design, implementation and review stages of curriculum development, accreditation and delivery, course and program development.</p> <p>5.2(1) plan for participation and use of facilities and service (2) consult about, and provide, reasonable adjustments 5.3 (a) activities sufficiently flexible for the student to be able to participate in them; (b) course or program requirements are reviewed, in the light of information provided by the student (or associate) to include activities in which the student is able to participate; (c) appropriate programs necessary to enable participation by the student are negotiated, agreed and implemented; (d) additional support is provided where necessary, to assist the student to achieve intended learning outcomes; (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; (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 <i>designed to include the student</i>.</p> <p>6.2 (1) design the course or program to ensure participation in learning experiences, including assessment and certification requirements (2) consult about, and provide, reasonable adjustments</p>
---	---	---

		<p>6.3 ensure that:</p> <ul style="list-style-type: none"> (a) curriculum, teaching materials, assessment and certification requirements are appropriate to the needs of the student and accessible to him or her; (b) delivery modes and learning activities take account of intended educational outcomes and the learning capacities and needs of the student; (c) 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; (d) teaching and delivery strategies 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; (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; (f) assessment procedures and methodologies are adapted to enable the student to demonstrate the knowledge, skills or competencies being assessed. <p>7.2 Access to support services is planned and facilitated</p> <p>7.3(d) appropriately trained support staff, such as specialist teachers, interpreters, note-takers and teachers’ aides, are made available to students with disabilities.</p>
<p><u>Excursion</u> policy and procedures</p>	<p>SE 6 SE 3</p>	<p>6.3(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 <i>designed to include the student</i></p> <p>Seek, make and review reasonable adjustments</p>
<p><u>Extra-curricular</u> policy and procedures</p>	<p>SE 5 SE 3</p>	<p>5.3(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 <i>designed to include the student</i>.</p> <p>Seek, make and review reasonable adjustments</p>
<p><u>Reasonable adjustments</u> Procedures to determine reasonable adjustments</p>	<p>SE 3</p>	<p>3.4(1) an adjustment is reasonable in relation to a student with a disability if it balances the interests of all parties affected.</p> <p><i>Note</i> Judgements about what is reasonable for a particular student, or a group of students, with a particular disability may change over time.</p>

		<p>(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:</p> <ul style="list-style-type: none"> (a) the student’s disability; (b) the views of the student (or associate), given under section 3.5; (c) the effect of the adjustment on the student, including the effect on the student’s: <ul style="list-style-type: none"> (i) ability to achieve learning outcomes; and (ii) ability to participate in courses or programs; and (iii) independence; (d) effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students; (e) costs and benefits of making the adjustment. <p><i>Note</i> 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. Multiple adjustments may be required and may include multiple activities. Adjustments may not be required for a student with a disability in some circumstances.</p> <p>(3) In assessing whether an adjustment to the course or program 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.</p> <p><i>Note</i> 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.</p> <p>3.5 Consulting the student (see above)</p> <p>3.5 (e) <i>Note</i> 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. 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,</p>
--	--	--

		<p>whether this would none-the-less impose the specific concept of unjustifiable hardship on the provider.</p> <p>3.6 In deciding whether to make a particular reasonable adjustment for a student, the education provider must:</p> <p>(a) assess whether there is any other reasonable adjustment that would be less disruptive and intrusive and no less beneficial for the student;</p> <p>(b) assess whether the adjustment may need to be changed over the period of a student’s education or training.</p> <p>The national resource <i>Planning for Personalised Learning and Support</i> (Education Services Australia, 2019), developed in response to recommendations from the Report on the Review of the DSE (Thomas et al., 2015), provides recommendations for this planning process.</p>
<p><u>Self-regulation strategies</u></p>	<p>SE Guidance Notes</p>	<p>The DSE Guidance Notes (Commonwealth of Australia, 2006) state the expectation that education providers will be “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” (Commonwealth of Australia, 2006, p. 10) to ensure compliance with the DDA an DSE.</p> <p>“compliance with the standards is the responsibility of providers” (Commonwealth of Australia, 2006, p.7)</p> <p>“...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” (Commonwealth of Australia, 2006, p. 9).</p> <p>“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” (Commonwealth of Australia, 2006, p.9).</p>
<p><u>Procedures to determine unjustifiable hardship</u></p>	<p>SE 10 DA Section 11 DA Section 64</p>	<p>10.1(2) If an exception is invoked, it is the responsibility of the provider to demonstrate that the exception operates.</p> <p>10.2(3) <i>Note</i> Section 11 of the DDA provides that, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:</p> <p>(a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned;</p> <p>(b) the effect of the disability of a person concerned;</p>

		<p>(c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship;</p> <p>(d) in the case of the provision of services, or the making available of facilities — an action plan given to the Commission under DDA section 64.</p> <p>The application of unjustifiable hardship should take account of the scope and objects of the DDA 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.</p>
--	--	--

References

Commonwealth of Australia. (2005). *Disability standards for education*. Retrieved from <https://docs.education.gov.au/node/16354>

Commonwealth of Australia. (2006). Guidance notes for the disability standards for education 2005. Retrieved from [https://www.legislation.gov.au/Details/F2005L00767/Supporting Material/Text](https://www.legislation.gov.au/Details/F2005L00767/Supporting%20Material/Text)

Education Services Australia. (2019). *Planning for personalised learning and support: A national resource*. Retrieved from <https://docs.education.gov.au/documents/planning-personalised-learning-and-support-national-resource>

Thomas, J., Grealy, C., Kurti, L., & Wise, P. (2015). *2015 Review of the Disability Standards for Education 2005: Final report*. Retrieved from urbis.com.au

APPENDIX 2: Consultation in the DSE: Vocabulary, human agents and content

Verb	Education provider with-	About what
Assist	staff of education provider and student	Assist the student to access the services that the student needs (DSE 7.3(a))
Collaborate	specialised service providers eg health, personal care and therapy, and services provided by speech therapists, occupational therapists and physiotherapists. (7.3 examples)	Facilitate through collaborative arrangements the provision of specialist services (DSE 7.3(b))
Complain		Complaint mechanisms available to the student who is harassed or victimised in relation to a disability of the student or of an associate of the student (DSE 8.3(2)(c)) 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 (DSE 8.5(f))
Consult	the student, or an associate of the student	If and how the disability affects their ability to (DSE 3.7(2)(a)): <ul style="list-style-type: none"> • seek admission to (DSE 4.2 (3)(a)) • apply for enrolment (DSE 4.2(3)(a)) • participate in the courses or programs for which the student is enrolled and (DSE 5.2(2)(a)) • participate in learning experiences of the course or program (DSE 6.2(2)(a)) • use the facilities or services (DSE 5.2(2)(a)) • access support services (DSE 7.2(5)(a); 7.2(6)(a)) • participate in education and training <i>on the same basis</i> as other students (DSE 2.2) • learning capacity and needs of the student (DSE 6.3(b)) • achieve learning outcomes (DSE 3.4(2)(c); 6.3(b)) achieve independence (DSE 3.4(2)(c))
Consult	the student, or an associate of the student	Whether an adjustment is 'necessary' to: <ul style="list-style-type: none"> • alleviate the effect or any disadvantage in the student's learning resulting from his or her disability (DSE 3.3(a); 6.3(d)) • address the needs and learning capacity of the student (DSE 6.3(b))

		<ul style="list-style-type: none"> • 'ensure' the 'student is able' (DSE 4.2(3)(b); 5.2(2)(b); 6.2(2)(b); 7.2(5)(b); 7.2(6)(b)) • 'achieve' the aims (DSE 4.2(3)(c); 5.2(2)(c); 6.2(2)(c); 7.2(5)(c); 7.2(6)(c)) • 'enable' the student (DSE 4.3; 5.3; 6.3) • 'assist' the student (DSE 5.3(d)) <p>so that the student with disability has:</p> <ul style="list-style-type: none"> • choices, opportunities and learning experiences (DSE 6.6(2)(b)) • <i>on the same basis</i> as a student without a disability (DSE 4.2(3)(b); 5.2(2)(b); 6.2(2)(b); 7.2(5)(b) 7.2(6)(b)) • so they can participate in education and training (DSE 2.2) • achieve learning outcomes ((DSE 3.4(2)(c); 6.3(b)) <p>achieve independence (DSE 3.4(2)(c))</p>
Consult	the student, or an associate of the student	What adjustment(s) might be necessary (DSE 3.5(b)(c); 4.2(3)(b)(c); 5.2(2)(b)(c); 6.2(2)(b)(c); 7.2(5)(b)(c); 7.2(6)(b)(c))
Consult	the student, or an associate of the student	Identify reasonable adjustments (DSE 3.5(a)(b)(c); 3.6(a); 4.2(3)(c)(ii); 5.2(2)(c)(ii); 6.2(c)(ii); 6.3(c); 7.2(5)(c)(ii); 7.2(6)(c)(ii))
Consult	the student, or an associate of the student	Evaluate the: <ul style="list-style-type: none"> • extent to which the reasonable adjustment would 'achieve' (DSE 3.5(b)) the desired outcome whether there is 'any other reasonable adjustment that would be less disruptive and intrusive and no less beneficial for the student' (DSE 3.5(c))
Consult	the student, or an associate of the student	Opinion (of the student or associate) about the proposed adjustment/s (DSE 3.7(2)(b))
Inform Remind	staff and students	Informed about the: <ul style="list-style-type: none"> • obligation not to harass or victimise students with disabilities, or students who have associates with disabilities (DSE 8.3(2)(a)) • Appropriate action to be taken if harassment or victimisation occurs (DSE 8.3(2)(b)) • Complaint mechanisms available to the student who is harassed or victimised in relation to a disability of the student or of an associate of the student (DSE 8.3(2)(c)) <p>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 (DSE 8.5(d))</p>
Negotiate, agree	the student, or an associate of the student	Negotiate, agree and implement appropriate programs (DSE 5.3(c))

Provide information	the student, or an associate of the student	<p>Feedback from the student about how they are able to participate in activities, to inform a review of the design and implementation of planned activities, course and program requirements (DSE 5.3(b))</p> <p>Demonstrate and prove the exception of unjustifiable hardship, to the student and associate. The Guidance Notes state that it is “good practice” (Commonwealth of Australia, 2006, p. 6) for the education 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” (Commonwealth of Australia, 2006, p. 6).</p>
Provide information	staff of education provider	<ul style="list-style-type: none"> • aware of the specialised services available for the student (DSE 7.3(a)) • provided with information that enables them to assist the student to access the services that the student needs (DSE 7.3(a)) <p>expected actions, policies and procedures mandated within the DSE (see Appendix XXX: Policy and procedures mandated in the DSE)</p>