



The right standards for change

VCOSS submission to the 2020 Review of
the *Disability Standards for Education 2005*

September 2020

The Victorian Council of Social Service is the peak body of the social and community sector in Victoria.

VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy.

In addition to supporting the sector, VCOSS represents the interests of Victorians experiencing poverty and disadvantage, and advocates for the development of a sustainable, fair and equitable society.

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This submission was prepared by Rhiannon Wapling and Talisha Ohanessian and authorised by VCOSS CEO Emma King.

For enquiries please contact Deborah Fewster at deborah.fewster@vcoss.org.au

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VCOSS acknowledges the traditional owners of country and pays respect to past, present and emerging Elders.

This document was prepared on the lands of the Kulin Nation.



Overview

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to participate in the 2020 review of the *Disability Standards for Education 2005* (the Standards). VCOSS works towards the elimination of disadvantage in all its forms, and the creation of a society where all people are supported to thrive. This includes allyship with people with disability. VCOSS supports more than 40 Victorian disability advocacy organisations to undertake collaborative systemic advocacy under the banner of the 'Empowered Lives' campaign.¹

Every student with disability has the right to access high-quality, inclusive and engaging education and lifelong learning opportunities. The Standards, which sit under the *Disability Discrimination Act 1992* (DDA), outline the rights of students, the obligations of education providers, and provide guidance for the application of inclusive practices.

The Standards are reviewed every five years. The 2015 review made a range of recommendations to improve the understanding and use of the Standards and to clarify roles and responsibilities, which the Government largely agreed with in principle.² However, many recommendations have not been implemented³ and key priorities still require considerable attention and action.

The 2020 review must not simply go through the motions – it needs to inspire and instigate targeted and timely action.

The review should also consider the impact of the COVID-19 pandemic, which is highlighting educational barriers and challenges, and is likely to prevent many people from engaging with the review process. The review and any subsequent actions or strategies should also be responsive to the findings of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and the development of the next National Disability Strategy.

¹ Empowered Lives, empoweredlives.vcoss.org.au.

² Commonwealth Department of Education and Training, *Australian Government Initial Response to the 2015 Review of the Disability Standards for Education 2005*, 2015.

³ UN Committee on the Rights Of Persons with Disability, *Concluding Observations: UN Report on Australia's Review of the Convention on the Rights of Persons with Disability (CRPD)*, September 2019.

Coordinated and comprehensive action to drive change

RECOMMENDATIONS

- Undertake comprehensive consultation with people with disability, families, carers, advocates, human rights experts and lawyers to inform the development of a stronger DDA and related Standards.
- Improve compliance with the DDA and related Standards through a staged introduction of proactive measures, assessment tools and auditing processes.
- Appoint an oversight body to review and analyse complaints to inform systemic change.
- Remove barriers to complaints being freely made and appropriately addressed by clarifying roles and improving communication to explain the complaints process.
- Co-design a comprehensive, actionable strategy to deliver inclusive education for students with disability.
- Improve data collection and reporting to gain deeper insights into the experiences of students with disability and identify areas for action.
- Ensure students with disability are included and prioritised in government education strategies.

Students with disability across different states, suburbs and settings continue to have vastly different educational experiences and outcomes. Instead of a system that guarantees enrolment at their school of choice, and provides students with the support they need to learn and thrive, the lived experience of many students with disability, their families and carers is that they have to continuously advocate for their rights to be upheld and for their needs to be met.

While the Standards provide a framework for explaining the responsibilities and obligations of education providers under the DDA, they do not effectively promote and protect the rights of students with disability.

The practical use and powers of the Standards are limited by:

- their broad and flexible nature, which leaves them open to wide interpretation by providers, through complaints processes and in legal proceedings
- inconsistent application across providers and settings
- a lack of funding and resources to implement reasonable adjustments
- poor accountability measures, and
- reliance on a complaints-based system to drive change and achieve compliance.

There is low awareness and understanding of the Standards, particularly among students, their families and carers. The Standards are commonly read and interpreted as an information sheet, instead of a summary of legal obligations. As many education providers are state-managed, many people are unfamiliar with the Standards and are unaware of their relevance and application in a state-based context.

Even when students with disability, their families and carers know their rights under the Standards and the DDA, discriminatory attitudes, practices and environments continue to prevent students with disability from accessing and participating in education. The expertise and voices of students with disability, families, carers and professionals about the support needed are sidelined in a process that prioritises the power and preferences of educators and is heavily influenced by financial pressures. Students with disability and their support networks must advocate for their rights, at a provider-level, to the relevant government department, or through lengthy complaints processes. Complaints processes are often not accessible to young people with disability who want to raise complaints independently. Complaints processes also lack independence, as providers or departments both hear and make decisions about complaints, without the oversight or input of an external body.

In the 15 years since the Standards were introduced, it is difficult to assess the extent of their influence. Over the past four years, the Australian Human Rights Commission (AHRC) received 497 education-related complaints of disability discrimination.⁴ The AHRC considers there have been variable outcomes driven by Standards under the DDA, and that there are limits to what they can achieve, especially for advisory measures.⁵ There is a lack of data about the educational experiences of Australian students with disability⁶, including those related to the outcomes of the Standards.

⁴ AHRC, *Complaint Statistics: Disability Discrimination Act - Complaints received by area, 2018-19, 2017-18, 2016-17, 2015-16.*

⁵ AHRC, *Free and equal - An Australian conversation on human rights: Discussion paper: Priorities for federal discrimination law reform*, October 2019, p.13-14.

⁶ UN Committee on the Rights Of Persons with Disability, *Concluding Observations: UN Report on Australia's Review of the Convention on the Rights of Persons with Disability (CRPD)*, September 2019.

Across a range of measures, available data indicates outcomes are not changing or are becoming worse:

- Children and young people with disability increasingly face difficulties with learning and fitting in socially⁷, and more commonly and frequently experience bullying and harassment at school⁸
- Young people with disability were twice as likely to have experienced bullying in the past 12 months than their peers, and were more likely to experience physical bullying and cyberbullying than young people without disability.⁹ Overwhelmingly, this bullying occurred in educational contexts¹⁰
- Anecdotally, our members report families are increasingly home-schooling children and young people with disability, before and beyond COVID-19, due to a lack of suitable, supportive local options
- Students with disability are less likely to finish Year 12 or equivalent¹¹
- Young people with disability feel less confident in their ability to achieve their post-school goals to pursue further study or employment, and fewer have plans to go to university than young people without disability¹²
- People with disability are less likely to pursue studies at TAFE or university¹³.

Educational environments are reflective of our broader community, which is not yet fully inclusive for people with disability. The challenges and barriers faced by students with disability are significant, and it will take a proportionate response to ensure all education settings are inclusive, welcoming and accessible.

Our members believe improving awareness, application and compliance with the current Standards is unlikely to be effective – strong, enforceable and practical laws and a national strategy are sorely needed to drive genuine, lasting change.

The DDA should be redrafted with people with disability, families, carers, advocates, education experts and lawyers, to better reflect Australia's obligations under the UN Convention on the Rights of Persons with Disabilities (CRPD). This process should also review international best-practice and consider a staged introduction of positive duties to require education providers to take proactive steps to prevent and eliminate discrimination. Compliance measures should be strengthened, and assessment and auditing processes established.

⁷ ABS, *4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings*, 2018; ABS, *4427.0 - Young People with Disability*, 2012.

⁸ AIHW, *Australia's children*, Cat. no. CWS 69, April 2020, p.369.

⁹ Mission Australia, *Young, Willing and Able; Youth Survey Disability Report*, 2019.

¹⁰ Ibid.

¹¹ AIHW, [People with disability in Australia: Highest level of education](#), September 2019.

¹² Mission Australia, *Young, Willing and Able; Youth Survey Disability Report*, 2019.

¹³ AIHW, [People with disability in Australia: Non-school education](#), September 2019.

Complaints processes and the remit and responsibilities of different entities should be clarified and communicated to ensure concerns can be freely and easily raised, handled by an appropriate independent role or body, and lead to the development of timely, constructive solutions. An oversight body should also be established or appointed to review, analyse and report on complaints to build the evidence base for systemic change.

Governments should also lead broad collaboration to develop an action-oriented, outcomes-focused strategy for inclusive education. The strategy should include a range of tangible short, medium and long-term goals and clear, measurable outcomes. As part of this work, governments should explore and address data gaps to ensure initiatives are appropriately targeted and evidence-based.

The rights and needs of students with disability should also be represented in all national and state-based education strategies, including those seeking to address bullying and harassment, careers education, and to support First Nations people, women and girls, and people living in regional and remote communities.

Support students with disability to access education

RECOMMENDATIONS

- Make it mandatory for education providers to share clear information with students, families and carers about the rights of students with disability, avenues for support and complaints processes.
- Increase funding for independent disability advocacy organisations to ensure students, families and carers can access timely support and build their self-advocacy skills.
- Implement accountability and transparency mechanisms to monitor and address gatekeeping, suspensions and expulsions of students with disability.
- Define consultation and develop guidelines to ensure the voices and expertise of students, their families and carers, is heard and respected.
- Outline a clear, fair and robust process for developing and implementing reasonable adjustments that respects the expertise and insights of students, carers and families, and focuses on measurable, timely goals.
- Explore and address funding and resource constraints that limit the provision of reasonable adjustments and contribute to discriminatory practices.

Learning about human and legal rights, and building confidence to take action or speak up, is a process shaped by insights, incidents and experiences.¹⁴ Often people learn about their rights when something goes wrong, or when something doesn't feel right. Experiences of discrimination, exclusion and harassment during education impact students with disability, their families and carers, in a range of practical, social, emotional and financial ways.

¹⁴ VCOSS, *Changing attitudes and realising rights: VCOSS submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – Rights and Attitudes Issues Paper*, August 2020.

Early messaging for children, families and carers – from medical professionals, educators and the broader community – tends to focus on deficits rather than strengths and potential. This messaging shapes expectations and decision-making about students' learning potential, education options and career pathways across their lifetime.

Accessible information about rights

Early childhood education and care services provide crucial support for children with disability and can often be the setting for a lot of 'firsts', including the first point of contact with a formal service system, the first time families and carers face enrolment barriers, and in some cases, early identification of learning and developmental concerns. In the early years, families and carers of children with disability often do not know about their child's rights. When they are turned away from a service, they move onto the next one, unaware the barriers they are facing are driven by discriminatory attitudes and practices. Accessing services and navigating enrolment processes can be even more challenging for children and families who experience multiple, complex and intersecting forms of discrimination, including culturally and linguistically diverse and First Nations children with disability, their families and carers.

During school enrolment, families and carers are usually not informed their child's right to access education on the same basis as their peers.¹⁵ Families and carers of children with disability who have a formal diagnosis, or are linked into a peer support group or advocacy organisation, are more likely to know and assert their rights.

These gaps can be addressed. The Standards, the DDA, education frameworks and policies should oblige education providers to proactively share information about the rights of students with disability with students themselves, families and carers, in a range of accessible, age-appropriate and engaging formats.

Advocacy services and self-advocacy supports, including peer groups, should also be available for all students and their support network. Disability advocacy organisations across Australia are under resourced and under pressure. Governments must work together with the sector to expand the reach, coverage and access to advocacy support.

¹⁵ E Jenkin, C Spivakovsky, S Joseph and M Smith, *Improving Educational Outcomes for Children with Disability in Victoria: Final Report*, June 2018.

Fair and transparent enrolment processes and decisions

School enrolment is often “the first of many battles [families] have to fight in order to ensure their child receives anything like an adequate education”¹⁶. A recent survey by Children and Young People with Disabilities Australia shows 12.5 per cent of students with disability have been refused enrolment.¹⁷ Where enrolment is not explicitly refused, students and families get a very clear sense of whether they are welcome. Students with disability in rural and regional areas can be especially impacted by gatekeeping practices and may have fewer local education choices and less anonymity in moving to another school. The enrolment compliance measures of the Standards are not focused on the things that matter most. They should seek to address unlawful enrolment refusal or the application of terms and conditions of admission as stated in the DDA.¹⁸ Compliance and accountability measures should focus on the decision-making of providers and seek to transparently monitor, address and eliminate gatekeeping practices.

Participation and inclusion

A lack of adjustments and individualised supports are raised as common barriers for students with disability.¹⁹ While the Standards promote measures to support the participation of students with disability, what these measures look like and how they are developed and implemented varies significantly.

The Standards state that measures to support participation should be developed in consultation with students, families and carers, yet what constitutes ‘consultation’ is not defined. Our members report that too often, consultation does not occur in a meaningful way, if at all. Families and carers already hold fears about speaking up, of retribution for their child or family and of being labelled. The lack of a formal and fair process prevents families from engaging in a positive, constructive conversation about their child’s learning and needs. Young people with disability are often not included in conversations about their access needs, and decisions are made on their behalf by families, carers and teachers.

¹⁶ Commonwealth Senate Education and Employment References Committee, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016, p.3.

¹⁷ CYDA, *Time for change: The state of play for inclusion of students with disability: Results from the 2019 CYDA National Education Survey*, October 2019.

¹⁸ *Disability Discrimination Act 1992 (Cth)*, s.22.

¹⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Summary of responses to the first Education and learning Issues paper*, 28 July 2020, p.3.

Under the Standards, adjustments are considered 'reasonable' if they balance the interests of all parties, yet ultimately, their implementation depends on the decisions of educators and the availability of funding and resources. Even when evidence is presented by students, families and allied health professionals, and resources are provided based on what is known to work, education providers can disagree with an adjustment.

The quality and detail of individual education plans (IEPs) which describe adjustments and strategies for students is variable and inconsistent across settings. IEPs are not always documented or informed by genuine engagement with students, families and carers. When IEPs are in place they are not always followed, and alternative or counter-productive strategies are sometimes introduced by educators without consultation, including restrictive practices. The lack of measurable, specific, evidence-based and time-bound goals also makes many IEPs ineffective in driving outcomes.

Students with disability face a range of barriers in remaining engaged in education. They may drop out or avoid school due to stigma, prejudice and bullying from their peers, teachers and parents, not because of their academic participation or performance.²⁰ A lack of early intervention and adequate supports can contribute to disengagement. Students with disability also experience high rates of suspension and expulsion.²¹ Making sure students receive the support they need to participate in learning, and to remain engaged in education settings, is critical for their lifelong learning and future pathways.

Resources and support

While the Discussion Paper does not intend to explore funding issues, it is impossible to ignore the impact of a lack of resources on enrolment decisions and the provision of reasonable adjustments. Educators and education providers, who hold the primary decision-making power for adjustments, have to consider the resources available to deliver supports. If funding is simply not available or sufficient, the most affordable adjustment is more likely to be chosen, even if it does not meet the student's needs. Resourcing decisions can also contribute to gatekeeping and the encouragement of part-time attendance.²² Governments must work together to explore and address resourcing issues that affect the implementation of reasonable adjustments for students with disability.

²⁰ UNICEF, *Children and Young People with Disabilities Fact Sheet*, 2013.

²¹ Victorian Ombudsman, *Investigation into Victorian government school expulsions*, August 2017; CYDA, *Time for change: The state of play for inclusion of students with disability*, October 2019, p.9.

²² Victorian Ombudsman, *Investigation into Victorian government school expulsions*, August 2017, p.37.

Boost the capacity, knowledge and rights awareness of educators and providers

RECOMMENDATIONS

- Embed and promote the human and legal rights of students with disability across all education frameworks and policies.
- Establish consistency in restrictive practices frameworks, policies and reporting mechanisms to improve protections for students with disability and inform educators.
- Improve the quality and depth of training for educators about the rights of students with disability, student and family consultation and inclusive education practices, through pre-service tertiary studies and ongoing professional development, networking and mentoring.
- Clarify and communicate the roles and responsibilities of the NDIS and education providers.
- Strengthen the capacity of NDIS Partners in the Community to support inclusive education environments and communities.

All education settings have a role to play in supporting students with disability to build their skills and confidence, explore their interests and pursue their aspirations. Educators from early learning through to tertiary settings work under a range of national and state-based frameworks, funding requirements, legislation and regulations, including the Standards.

There is a low and mixed understanding of the Standards and how to put them into practice across education settings.²³ The Standards currently apply to kindergarten services but do not currently encompass childcare services, a gap that has been identified by both previous reviews.²⁴

²³ Commonwealth Senate Education and Employment References Committee, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016, p.26-30; VEOHRC, *Held back: The experiences of students with disabilities in Victorian schools*, September 2012, p.10.

²⁴ Urbis, *Final report: 2015 Review of the Disability Standards for Education 2005*, Recommendation 11, Australian Department of Education, Employment and Workplace Relations, *Report on the Review of Disability Standards for Education 2005 – June 2012*, Recommendation 3.

While early childhood education services are generally aware of their responsibilities for supporting all children with their individual needs, they may not know about their obligations under the Standards or the DDA, or feel confident in putting their knowledge into practice. In education settings where the Standards currently apply, their effectiveness relies on the attitudes and knowledge of educators and leaders, and access to sufficient resources.

Governments should adopt a comprehensive approach to build the skills and capacity of education providers and educators to deliver inclusive and accessible learning.

The human and legal rights of students with disability should be consistently and prominently embedded across all existing educational frameworks. For example, improving the incorporation of key principles and legislation in the National Quality Framework could strengthen inclusive practices in early childhood education settings. National consistency in frameworks, policies and reporting mechanisms to monitor and eliminate restrictive practices across settings is also needed to protect students with disability.²⁵

The quality and depth of training and learning for educators, before they commence in their roles and during their career, needs to be increased and reformed to incorporate best practice approaches to supporting students with disability. Tertiary training should work to build educators' knowledge and understanding of the rights of students with disability, and of different disabilities. Educators should be equipped with practical skills in consulting and engaging students with disability, their families and carers, in developing and implementing reasonable adjustments, and in identifying the boundaries of their role and expertise. Ongoing professional development, networking and mentoring should also be provided to ensure educators can continue developing their skills.

Educators should be supported to connect and collaborate with specialist supports and services, including allied health professionals and behaviour specialists. The interface between the NDIS and the education system remains confusing for students and educators alike. In response to the 2015 review, the Australian Government agreed further work is required to clarify and communicate roles and responsibilities.²⁶ The role of NDIS Partners in the Community could be better leveraged and resourced to build local relationships and knowledge and enhance inclusion in education and community settings.

²⁵ Civil Society CRPD Shadow Report Working Group, *Disability Rights Now 2019: Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019*, July 2019, p.27.

²⁶ Australian Department of Education and Training, *Australian Government Initial Response to the 2015 Review of the Disability Standards for Education 2005*, December 2015, p.5-6.

