

Submission to the 2020 Review of the Disability Standards for Education

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Summary

This submission addresses the core focus of the DSE review by examining whether the Standards are effective for reducing discrimination, ensuring equality in educational rights, and promoting community acceptance. I discuss these in relation to all terms of reference. The first term of reference, the clarity of rights, obligations and measures under the Disability Standards for Education (DSE), is discussed with relevance to the standards for consultation and the planning of reasonable adjustments for students with disabilities. In my submission I outline the clear and pressing need to improve the clarity within the DSE for consultative planning, and recommend articulating compliance measures. The second term of reference, the knowledge of the rights, obligations and measures of compliance in the Standards, is discussed with regard to the recognition and acceptance of disability rights in education within pre-service teacher education, teacher registration requirements, and teacher professional learning. I outline how these might be improved to enhance the specific knowledge of the standards within the workforce of educators as well as school leaders. The third term of reference, the contribution of the Standards towards students with disability being able to access education and training opportunities on the same basis as students without disabilities, is discussed with regard to persistent disability discrimination experienced by students. I argue that it is imperative that the right of students with disabilities to access an inclusive education be articulated within the DSE consistent with the CRPD, in order to address segregation within Australian education.

Submission to the 2020 Review of the Disability Standards for Education

My submission was invited by the Australian Government Department of Education, Skills and Employment. The content of my submission is based on my experience as a researcher in inclusion and disability at Monash University, where I am currently employed as a Senior Lecturer. I teach and research in inclusive education with a focus on disability discrimination legislation and policy, inclusive system transformation, as well as evidence-based professional practice for school leaders and classroom teachers. Prior to working at Monash University, I worked for ten years in public and independent schools in Melbourne as a classroom English and Learning Support teacher for students in years 7-12. In my submission, I address

each of the terms of reference within the Discussion Paper released in relation to the 2020 Review of the Disability Standards for Education.

Term of Reference 1: Are the rights, obligations and measures of compliance set out in the Standards (and its Guidance Notes) clear and appropriate?

The rights, obligations and measures of compliance in relation to consultation and planning of reasonable adjustments need greater specificity and accountability in the DSE. The rights of students to be consulted, and the obligation for schools to consult with students or their associate when planning reasonable adjustments are specified within section 3.5 of the DSE. The standards and measures for achieving these are elaborated with regard to: enrolment (Section 4.2, 4.3); participation (Section 5.2, 5.3); curriculum development, accreditation and delivery (Section 6.2, 6.3); and student support services (Section 7.2, 7.3). However, consultation and planning does not always take place for many students with disability which has been noted as an issue in both previous reviews as well as other reports and research.

Previous DSE reviews have suggested that “consultation” requires further clarification including the definition and the specificity of compliance measures. The 2012 review noted the need for greater clarity in defining “consultation” as well as the need for compliance measures to assist schools in fulfilling their obligations. The 2015 review noted the persistence of this issue with variability in consultation and planning raised by several submissions and practice in schools described as “patchy”. In the 2015 DSE review, the lack of clarity in the Standards for consultation and planning of reasonable adjustments, and the variability within in practice was also raised, and observed to be compounded by misalignment with jurisdictional policy. For example, most states and territories have articulated their own guidelines for consultation and planning however these based on their respective disability policies for funding eligibility that use narrower definitions of disability than the broad definition within the Disability Discrimination Act. In recommendation 7 of the 2015 DSE review, the Review Team noted the need for Australian and State and Territory governments to work together regarding policies and procedures for consultation in planning reasonable adjustments for students with disability including the type of consultation, as well as the frequency and the documentation of consultation in planning for personalised learning for students. Recommendation 8 emphasised the need for guidance on producing personalised (individual) learning plans that enhances consistency in how the standards are met in schools.

In response, the Australian Government subsequently developed and released the [Planning for Personalised Learning and Support: A National Resource](#) that outlines processes for conducting consultative planning, as well as for documenting and reviewing personalised learning plans for students. However, these guidelines are recommended but not mandated, meaning that there is still considerable jurisdictional inconsistency and discretion in decision-making devolved to schools. One illustrative example is that of the [Operational Guidelines](#) for the Victorian *Program for Students with Disabilities* (PSD), the policy outlining the procedures for students with disabilities who are in receipt of targeted funding. Within the PSD, consultation and planning of adjustments through Student Support Groups are only

specified as a requirement for the 15% of students with disabilities who receive targeted funding, meaning that schools may elect not to undertake consultative planning for the remaining 85% of students with disabilities. This means that schools may be technically compliant with jurisdictional policy but in breach of national legislation. While the Victorian DET website is clear that the DSE apply to all students with disabilities, this inconsistency between jurisdictional and national policy advice, and the lack of specificity in the DSE measures for compliance on consultation and planning, may well explain the variability in practice in schools, given this considerable discretion in whether or how they conduct consultative planning.

The impact on practice of this jurisdictional misalignment, and discretion by schools, have been detailed within the 2016 Senate Report [Access to Real Learning](#) as well as the 2018 report by the Castan Centre for Human Rights, [Improving Educational Outcomes for Children with Disability in Victoria](#). Both of these reports observed that the consultation and planning process could be superficial or even omitted entirely. These reports both emphasise the pressing need for the DSE to be amended to specify measures for compliance regarding the frequency, process, and documentary requirements in relation to consultation and planning for personalised learning. I strongly recommend that the DSE is amended to include a compliance measure for both the process of consultative planning as well as documentation of the planned reasonable adjustments. This could include documenting engagement with the processes of the national resource for planning personalised learning.

Do students, families and carers, educators, education providers and policy makers know about, understand, apply and comply with the rights, obligations and measures of compliance in the Standards?

There have been a number of endeavours to improve teachers' knowledge of students' rights and the corresponding professional obligations under the DSE. However there remains a clear need to further improve the preparation of graduate teachers and the ongoing professional learning of registered teachers in relation to their obligations.

This issue is not new. The 2010 review of the DSE found that there was a relative lack of awareness of the Standards regarding students' rights and schools' obligations. Amongst many of the recommendations for raising general awareness of the Standards was the recommendation to develop targeted online information sources for education providers. Following this, in 2014, the University of Canberra (UC) was commissioned to develop professional e-learning modules that schools and staff across the country could elect to undertake. The 2015 review of the DSE found that general awareness amongst school teachers was "fairly high" and noted the contribution of the UC e-learning modules as well as improvements such as dedicated units in pre-service teacher education to the increased awareness. However, the review also noted that teacher awareness of the standards lacked specificity in relation to the detail regarding their implementation or even which students meet the DDA definition of disability. Recommendation 4 outlined that

professional learning and guidance resources for educators should be developed to further strengthen the skills and knowledge within the workforce. The 2016 Senate review echoed this and emphasised better preservice teacher education as well as professional learning for both teachers and school leaders was needed to strengthen the workforce's awareness of the rights of students with disabilities.

Currently, initial teacher education courses at university, and teacher professional learning courses are linked to the [Australian Professional Standards for Teachers](#) (APST). The three standards within the APST against which Initial Teacher Education (ITE) courses and professional learning (PL) for students with disability are accredited or linked:

- Focus Area 1.5: Differentiate teaching to meet the specific learning needs of students across the full range of abilities;
- Focus Area 1.6: Strategies to support full participation of students with disability; and
- Focus Area 4.1: Support student participation.

However, these three APST focus areas are not very specific, so PL linked to these may not necessarily contain sufficient detail of the DSE needed to improve teachers' knowledge of students' rights or their own obligations under the Standards for enrolment, participation; curriculum development, accreditation and delivery, and student support services. Moreover, disability is not even mentioned in the [Australian Professional Standards for Principals](#) (APSP). Indeed, the APST have not been found sufficiently clear for improving workforce capacity. For example, Victoria's 2016 [Victorian Special Needs Plan](#) sought to build capacity for teaching students with disabilities by requiring targeted PL for teachers at registration renewal, as linked to these three APST focus areas. A [recent review](#) found that it was not possible to determine the success of this initiative due to the lack of specificity or oversight, or follow-up with teachers who had not sufficiently complied or provided documentation of their compliance with this requirement. Clearly neither the APST, nor the APSP are fit for purpose in improving workforce knowledge of schools' obligations under the DSE. A better option would be the use of targeted e-modules.

Since the last DSE review, the UC modules have been updated and rehoused onto the [NCCD professional learning portal](#) where the paywall has been removed and the content expanded considerably. A recommendation that I make for the 2020 DSE review team is to draw on previous lessons that improvements are achievable through carefully targeted pre-service teacher education and quality professional learning, and to leverage the NCCD professional learning modules that are high in quality for the teaching workforce, but to have these expanded to cater also to school leaders. I recommend that in schools' documentation of their compliance with their obligations under the DSE as captured through the NCCD, they also document the completion of a minimum number of NCCD professional learning modules by the principal and the NCCD team involved in collecting and lodging the school data, as relevant to their student cohort. Further, I suggest that the DSE review could recommend the national and state governments work with their respective teacher registration bodies regarding an appropriate minimum number of these professional

learning modules that should be undertaken by graduate teachers to achieve full registration, and for teachers in renewing their registration.

[In the 15 years since the Standards were developed, have the Standards contributed towards students with disability being able to access education and training opportunities on the same basis as students without disabilities?](#)

In this section I discuss the failure of the Standards to address the persistent issue of discrimination in Australian education, and how this undermines the DSE purpose of ensuring students with disability can access an education on the same basis as students without disabilities. In the 15 years since the Standards were developed, there have been many improvements in aspects of how education is provided for students with disabilities. However, as noted by the review of the [DDA in 2005](#) in the year prior to the release of the Standards, “arguably, one of the most serious forms of disability discrimination (in terms of long-term effects on individuals) is exclusion from, and segregation in, education” (p. 83).

It is indisputable that segregation in education is discrimination. Under the [Convention on the Rights of Persons with Disabilities](#) (CRPD), the human right to an education is clarified as being the right to an *inclusive* education. Inclusive education is then clearly defined within [General Comment 4](#) on Article 24: Education within the CRPD as inconsistent with segregation, integration and exclusion within General paragraph 11 as follows:

The Committee highlights the importance of recognising the differences between exclusion, segregation, integration and inclusion. *Exclusion* occurs when students are directly or indirectly prevented from or denied access to education in any form. *Segregation* occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities. *Integration* is a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions.⁴ *Inclusion* involves 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. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion.

Further, within General [Comment 6](#) on equality and non-discrimination, segregation is clearly specified as constituting discrimination. Having ratified the CRPD, and thus bound to uphold the obligation for ensuring the inclusivity of the education system, Australia is therefore also bound to end segregation as outlined in General Comment 4, given that this constitutes discrimination, as specified in General Comment 6. Yet within the DSE, the Standards by which Australia’s national anti-discrimination legislation (the DDA) is to be upheld in education, inclusion is neither defined nor the

right to it inscribed. This means that our anti-discrimination legislation is not fully compliant with Australia’s binding obligations under the CRPD.

Indeed, since the DDA and the DSE were implemented in Australia, [my research](#) on where students with disabilities have been educated shows that segregation has actually risen both in terms of segregating students into separate classrooms as well as into separate schools. Prior to the introduction of the DDA, segregated “special” school placements fell by 50%; however, in the decade following the DDA, they rose by 115.9% and rose again by 84% after the introduction of the DSE. Following the introduction of the DSE, special class placements fell by 14%. However, given that regular class placements did not rise during this time, but special school placements did, it can be assumed that these students moved into more segregated environments, rather than less segregated ones. This is clearly visible in the following graph taken from my analysis of student placement data from the years 1981-2015:

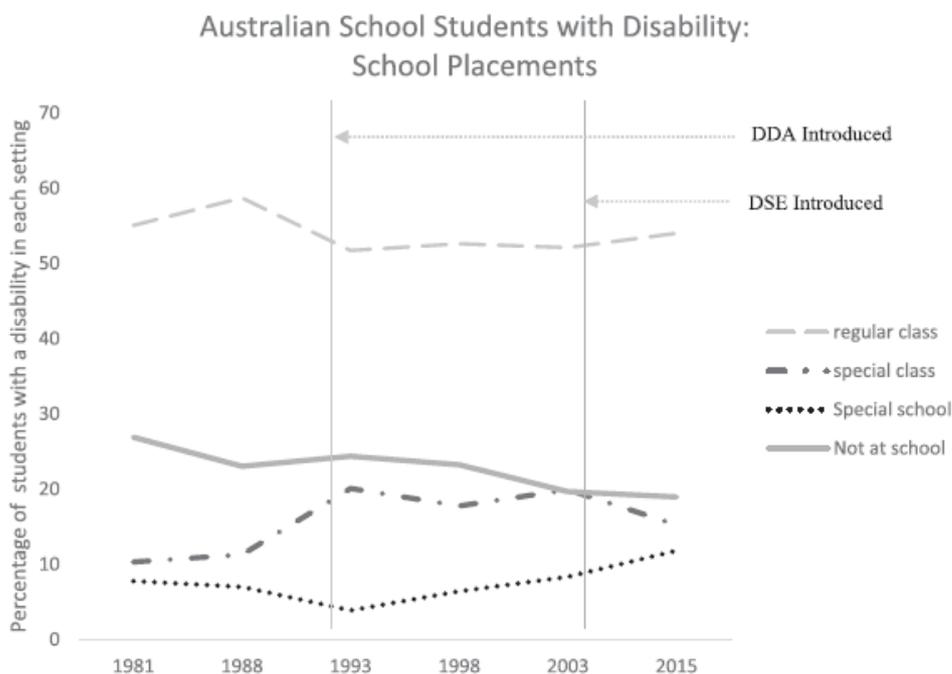


Figure 1 School placement of Australian students with a disability aged 5–20 during the selected period 1981–2015.

Other [Australian research](#) suggests some reasons for this increase in discrimination as being the persistence of gatekeeping and restrictive practices. In this research, over 70% of surveyed Australian family members of a student with a disability reported having experienced “gatekeeping practices whereby schools seek to minimise enrolment and participation through the use of a range of Restrictive Behaviour Management Practices” (p. 2) such as enrolment rejection or discouragement, or limitations placed on attendance or participation. These findings have been echoed by annual surveys conducted by [Children and Young People with Disability Australia](#) who have reported that many students with disabilities are

pushed out of regular schools by having their enrolment application refused or discouraged, being excluded through restrictive practices, being denied reasonable adjustments, or being excluded from participating in school activities and events. It is important to note that while it is commonly reported that parents of children with disabilities “choose” to send their child to a segregated setting, parental choice of special or regular education for their child is not necessarily a choice made from two options of equal quality. This is particularly salient when considering “push” factors where schools discourage the enrolment of student with disabilities claiming insufficient resources, and “pull” factors such as the concentration of resources that exist within segregated special schools. These show how important it is to meet the CRPD obligation of ceasing the resourcing of a dual track system of special and regular schools, and to develop a single inclusive system that appropriately supports all students to reach their potential.

It is clear that the DSE have not had a positive impact on the access of student with a disability to the general education system despite the benefits that flow when this access is provided, and despite it being a human right under the CRPD which Australia is bound to implement. [My review](#) of academic research found that five decades of academic studies show an inclusive education provides better outcomes for all students, and for students with disabilities this means better access to the academic curriculum, richer social networks amongst same-aged peers, better academic progress, and better long-term adult outcomes such as further education, independent living, and better employment. Given the strong case for inclusive education both as a human right and as an evidence-based practice, it is vital that the DSE is amended to articulate the right of every student to receive a high-quality inclusive education with appropriate adjustments support on the basis of need, consistent with the CRPD.