

Government response to the Review of the Disability Standards for Education 2005

The Australian Government is committed to ensuring that all students have access to a quality education. The Government has undertaken a range of significant reforms including:

- Implementation of national quality standards for early childhood education and care and school age care.
- The Review of Funding for Schooling to achieve a funding system beyond 2013 that is transparent, fair, financially sustainable and effective in promoting great education outcomes for all Australian students.
- Reform of the vocational education and training system and the negotiation of a revised National Agreement for Skills and Workforce Development and a new National Partnership Agreement on Skills Reform, to deliver a productive and highly skilled workforce that is responsive to the needs of a rapidly changing economy.
- A review of Higher Education Base Funding to make recommendations on the principles for public investment in Australian higher education and inquire into the levels of funding that are appropriate to ensure that Australian higher education remains internationally competitive.

The Government has also implemented a range of measures specifically designed to assist students with disability including support in accessing higher education through the Higher Education Disability Support Program, early intervention packages, working with children with autism and the *More Support for Students with Disabilities* initiative in schools.

These specific measures, combined with the Government's commitment to establish a National Disability Insurance Scheme, seek to ensure that people with disability receive the support needed to access and participate successfully in education and employment.

Review of Disability Standards for Education

The Disability Standards for Education 2005 are subordinate legislation under the *Disability Discrimination Act 1992*. The Standards are required by legislation to be reviewed every five years to determine whether they are effective and the most efficient mechanism for achieving the objectives of the *Disability Discrimination Act 1992*.

The Government commenced the Review of the Disability Standards for Education 2005 in December 2010 with the release of the terms of reference. The Review Team were tasked with determining whether the Standards:

- Provided clarity and specificity for education and training providers, for students with disability and their families in relation to their rights and requirements under the *Disability Discrimination Act 1992*;
- Assisted people with disability to access and participate in education and training opportunities on the same basis as those without disability;

- Assisted in eliminating discrimination (including harassment and victimisation) of people with disability in education and training;
- Promoted recognition and acceptance in the community of the principle that people with disability have the same fundamental rights as the rest of the community; and
- Are compatible with Australia's current education and training system.

In February 2011, a discussion paper calling for submissions from interested parties was released. The discussion paper raised several questions on whether the Standards contained sufficient information and guidance about the requirements of each section and how the Standards worked in practice.

The Review Team received 200 submissions from a wide range of stakeholders including education providers and users, advocacy and community organisations, parents, carers and student groups, state and territory governments and unions.

National roundtable discussions were conducted in February and March 2011 with key stakeholders and peak provider organisations. The submissions and outcomes of consultations were then analysed to develop the recommendations and final report.

Key Findings of the Review and Recommendations

The Review found the Standards provide a good framework for promoting the requirements for students with disability to be able to access and participate in education on the same basis as all other students.

During the Review, stakeholders suggested further work needs to be done to ensure the Standards are implemented more effectively. As a result, the Report makes 14 recommendations to improve effectiveness of the Standards. The recommendations cover the following key themes:

- Awareness raising
- Improving clarity
- Access and participation, discrimination and inclusion
- Complaints, accountability, and compliance processes
- Contemporary education practice and related issues.

Australian Government response to the Review Report

The Australian Government welcomes the report of the Review. The Government believes that every child is entitled to a high quality and challenging education. It is also acknowledged that students with disability face disadvantage in achieving education and employment outcomes.

Therefore, the Australian Government has implemented a number of measures to assist students with disability to access and participate in education.

More broadly, the Government has committed, as part of Australia's Human Rights Framework, to consolidate existing Commonwealth anti-discrimination legislation into a single, comprehensive law. The *Disability Discrimination Act 1992* along with the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Age Discrimination Act 2004*, and the *Australian Human Rights Commission Act 1986* are being consolidated. The Government is focusing on simpler provisions, less complexity and greater guidance for all users of the anti-discrimination system, both people with obligations and vulnerable groups, with an enhanced focus on proactive compliance.

While the Government supports in-principle a number of the recommendations relating to revising the Standards, any decisions about changes to the Standards will be deferred until after the outcomes of the project to consolidate Commonwealth anti-discrimination laws are clear. As the Standards are made under anti-discrimination law, it is important that any proposed amendments to the Standards are considered in the broader context of the Government's approach to anti-discrimination law. Draft legislation for the consolidated law will be released for further public consultation in mid-late 2012.

As noted, there have been significant changes in the policy landscape for people with disability. These changes will contribute to the Government's proposed actions for responding to the Review. The Australian Government's response to each of the 14 Review recommendations is outlined below.

Recommendations for raising awareness

Recommendation 1

1. The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with state and territory education ministers for early childhood and child care, schools, tertiary education and skills, develop a range of targeted information resources for education users and providers to promote awareness of the Standards including:
 - a. User-specific information including information on developing advocacy and negotiation skills.
 - b. Information specific to early childhood, schools, tertiary and registered training organisations.
 - c. Handouts outlining user and provider rights and responsibilities, to be included in all enrolment kits for each level of education and given to parents, associates and students on enrolment.
 - d. A disability and education website to make accessible online information on implementing the Standards.

The Australian Government is committed to improving access for all children to high quality, inclusive education and care services in both early childhood settings and school aged settings. The Government is also committed to increased access to quality vocational education and training and higher education.

The Government will work with relevant agencies to add information about the Disability Standards for Education to existing resource materials, where relevant. For example, information about the Standards could be added to existing resource materials provided under the Inclusion and Professional Support Program in early childhood education. For schools, an important component of the *More Support for Students with Disabilities* initiative is the collection and public dissemination of information on good practice. This will be available to students, parents, teachers and other school staff.

The Government will also produce additional information to address the need for specific information as identified in the Review and make these resources accessible to education users and providers.

Recommendation 2

The Australian Human Rights Commission, in consultation with the Attorney-General and the Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, undertake an awareness-raising campaign about the *Disability Discrimination Act 1992* and subordinate legislation including the Disability Standards for Education 2005.

The Australian Human Rights Commission has a role in promoting understanding and acceptance, and the public discussion of human rights in Australia. Respective state and territory anti-discrimination bodies also have a role in raising awareness of human rights and promoting awareness of anti-discrimination provisions. It was noted during the Review that there were a number of information and awareness-raising activities taken when the Standards first came into effect, but current levels of awareness vary across sectors and jurisdictions.

The Australian Government will discuss the feasibility of an awareness-raising campaign with the Australian Human Rights Commission and state and territory governments, taking into account the outcomes of the project to consolidate Commonwealth anti-discrimination laws. Any further action in relation to this recommendation will be subject to securing additional resources through the Federal Budget process. It is also noted that the actions proposed in response to recommendations 1, 4 and 7 would complement this recommendation in promoting greater awareness of the Standards.

Recommendations to improve clarity

Recommendation 3

The Attorney-General, in consultation with the Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, revise the Standards to include child care providers and to clarify that Registered Training Organisations are covered by the Standards.

The Government notes that since the Standards were introduced there have been significant changes in early childhood education and that extending coverage to child care providers will provide greater clarity and guidance for child care providers and users. It is also clear from responses to the Review that there is a need to promote greater awareness amongst Registered Training Organisations (RTOs) of their responsibilities in complying with the Standards.

Making it transparent that RTOs, as education providers, are covered by the standards would highlight the importance of the Standards in the Vocational Education and Training (VET) sector. The Australian Government will work with non-government sector peaks including Australian Council for Private Education and Training, and Enterprise Registered Training Organisation Association, to promote greater awareness of RTOs obligations under the Standards.

The Department of Education Employment and Workplace Relations (DEEWR) and Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE), will work with Attorney-General's Department (AGD) to make the necessary amendments to the Standards to address this recommendation.

Recommendation 4

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with the Attorney-General, develop user-friendly, sector-specific guidance materials in appropriate formats, which include practical examples to support consistent interpretation and application of the terms 'reasonable adjustment', 'unjustifiable hardship', 'consultation' and 'on the same basis'.

The Australian Government supports this recommendation and sees value in developing appropriate guidance materials on implementing the requirements of the Standards. Practical examples could include evidence from existing initiatives such as the Inclusion and Professional Support Program in early childhood education and the *More Support for Students with Disabilities* initiative in schools.

The Australian Government will take into account the outcomes of the project to consolidate Commonwealth anti-discrimination laws in developing guidance material. It is also noted that the actions proposed in response to recommendations 1, 2 and 7 would complement this recommendation in promoting greater awareness of the Standards. The Australian Government

will work with state and territory governments to make any new guidance material accessible throughout all jurisdictions.

Recommendations to address access, participation, discrimination and inclusion

Recommendation 5

The Attorney-General, in consultation with the Federal Minister for School Education, Early Childhood and Youth revise the Standards to include a requirement to develop individual education plans for students in schools. Individual education plans should include advice on the barriers that students with disability face in learning and how students with disability can be supported to overcome these barriers.

The Government notes that many education authorities currently require the completion of individual education plans to support students with disability. It is also noted that there were a number of issues raised during the Review in relation to how the plans are developed and how the plans can be used to assist students with disability in setting and achieving education goals.

DEEWR will investigate ways to develop national consistency in relation to the format of, and support for, effective use of individual education plans across jurisdictions in collaboration with state and territory education authorities. DEEWR will provide advice to AGD on possible amendments to the Standards relating to this recommendation.

Recommendation 6

The Attorney-General, in consultation with the Federal Minister for Tertiary Education, Skills, Science and Research revise the Standards to include a requirement to implement an agreed support plan for students with disability in the tertiary sector. The plan should set out the student's rights and responsibilities, the provider's responsibilities, any adjustments that have been agreed to, and mechanisms for review and support.

The Government will consider the feasibility of this recommendation in partnership with state and territory governments and the tertiary sector. Tertiary sector consultation will include how the proposed revisions to the Standards and new compliance requirements could be implemented in the higher education context.

The development of agreed support plans in the VET sector should be integrated into the VET Quality Framework for RTOs regulated by the National VET regulator, the Australian Skills Quality Authority (ASQA) as well as the Australian Quality Training Framework in order for this to function at RTO level.

The requirement for an agreed support plan under the Standards which would cover Australian Apprentices would be beneficial in terms of formalising arrangements and making responsibilities clearer to all parties. The term 'support plan' is consistent with the terms currently used in the sector. In the context of Australian Apprenticeships, the support plan should acknowledge the employment element of the training and could be completed in conjunction with Australian Apprenticeship Centre staff and shared with the employer, subject to the Australian Apprentice's consent in disclosing that information.

Recommendation 7

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care develop sector specific materials for education providers that are easily accessible in an online format and take the form of good practice guides on:

- a. Developing individual education plans in schools or disability support plans in the tertiary sector.
- b. Inclusive education practice, information about the learning impacts of specific disabilities and practical advice on adjusting teaching modes, assessment and curriculum design and adaptation.
- c. Addressing indirect discrimination, bullying, harassment and victimisation experienced by students with disability.
- d. Managing challenging behaviour, student safety and the use of restrictive practices with students with disability.
- e. Strategies for meeting the needs of students with disability who have complex and multiple needs.

The Australian Government supports this recommendation and recognises the need for the development of good practice guides. It is noted that there are a number of resources currently available in the states and territories, as well as material being developed under the *More Support for Students with Disabilities* initiative and by disability support units in tertiary institutions.

The Government will compile an easily accessible evidence-bank of existing material and work with states and territories and education providers to ensure that a range of guidance materials covering the issues listed in Recommendation 7 are accessible to all education providers.

Recommendations relating to complaints, accountability and compliance**Recommendation 8**

As part of the initiative to consolidate Commonwealth anti-discrimination laws, the Attorney-General's Department consider issues raised during the Review concerning:

- a. compliance and investigation of systemic breaches.
- b. the complaints process and development of a range of alternative dispute resolution options including mediation and arbitration.

Recommendation 9

The Attorney-General, in consultation with the Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, revise the Standards to establish clear requirements for compliance with each part of the Standards.

Recommendation 10

The Attorney-General, in consultation with the Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care and state and territory education ministers, investigate options for compliance reporting against the Standards for education providers.

The Australian Government notes these recommendations and will consider these issues in the context of the project to consolidate Commonwealth anti-discrimination laws. Processes for complaints and compliance across all Commonwealth anti-discrimination laws are being considered under the consolidation project, including:

- options to assist people to meet their anti-discrimination obligations
- ensuring there are simple, cost-effective mechanisms for resolving complaints of discrimination
- the roles and functions of the Australian Human Rights Commission.

The Australian Government acknowledges the concerns raised during the Review process by both education users and providers relating to compliance requirements. In particular, it is noted that further guidance and greater clarity would assist providers to understand how to meet their obligations under the Standards, as well as helping students with disability in the consultation process for adjustments. It is also recognised that any work to specify compliance requirements should not by default be seen as minimum standards or restrict the ability of students to negotiate appropriate adjustments.

DEEWR and DIISRTE will work with AGD in the context of the project to consolidate Commonwealth anti-discrimination laws to identify appropriate ways to improve compliance processes.

DEEWR and DIISRTE will also investigate options for incorporating compliance requirements into existing frameworks and reporting arrangements. For example the Australian Skills Quality Authority, VET Quality Framework and the Australian Quality Training Framework are relevant to compliance measures in the VET sector. Under the National Quality Standard for early childhood education and care providers state and territory Regulatory Authorities are responsible for both regulatory requirements and quality assurance of early childhood services.

Recommendations relating to contemporary education practice**Recommendation 11**

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with state and territory education ministers, ensure that individual education plans (Recommendation 5) are used to assist in transitions between early childhood education, primary, secondary and tertiary sectors and ensure that students with disability are given options on the same basis as all other students.

The Australian Government supports this recommendation. The Early Years Learning Framework and the *More Support for Students with Disabilities* initiative include provisions for individual plans to assist in transitions. DEEWR will use the information provided by education authorities under these initiatives. The analysis will be used to report on progress under the National Disability Strategy which includes transitions through education to employment as a priority area. The analysis will also be used in the best practice and sector specific guidance proposed under Recommendations 1 and 7.

Recommendation 12

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care consider whether the Standards are reflected appropriately in national policy and regulatory frameworks for each education sector including:

- a. National Quality Framework for Early Childhood Education & Care
- b. National Assessment Program – Literacy and Numeracy (NAPLAN)
- c. VET Quality Framework
- d. National Professional Standards for Teachers and Principals
- e. Higher Education Standards Framework.

The Australian Government supports this recommendation. DEEWR and DIISRTE will review existing frameworks specified in Recommendation 12 and any others that guide the delivery of key education services and advise the relevant agencies on any changes required to take into account the Disability Standards for Education. The advice will take account of any changes to the Standards arising from this report.

DEEWR will liaise with relevant agencies to promote awareness of the Standards to ensure they are reflected in future national policy frameworks, as appropriate.

The Government notes that the lack of effective integration of the Standards with the Australian Quality Training Framework reduces the effectiveness of the Standards in the VET sector. DIISTRE will consult the bodies responsible for VET standards and regulatory frameworks, the National Skills Standards Council (NSSC) and the Australian Skills Quality Authority (ASQA), and state regulatory bodies to integrate the Standards with the national VET regulatory standards (which include both the VET Quality Framework used by ASQA and the AQTF). There are also a number of relevant projects in the National VET Equity Advisory Council 2012-13 work plan that will assist with Recommendation 12(c).

Recommendation 13

The Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care ensure that practice guides on the Standards take greater account of technological advances and reflect the current and emerging technologies being used in all education sectors.

The Australian Government supports this recommendation and will use evidence from existing initiatives to inform sector specific practice guides.

In schools, under the *More Support for Students with Disabilities* initiative DEEWR will analyse the information provided by jurisdictions undertaking outputs that provide assistive technology to support the teaching of students with disability and adapting the curriculum. In the long term DEEWR will investigate ways of utilising social media to promote public awareness of the Standards.

There are two priority areas in the National VET Equity Advisory Council (NVEAC) work plan that area relevant to this recommendation: working in collaboration with Flexible Learning Advisory Group and project 1.2 on student-centred support services and assistive technology. DIISTRE will work with NVEAC to ensure that the outcomes from these initiatives are widely disseminated.

Recommendation to address related issues

Recommendation 14

The Federal Minister for Tertiary Education, Skills, Science and Research, the Minister for School Education, Early Childhood and Youth and the Minister for Early Childhood and Child Care, in consultation with state and territory education ministers, identify ways to address the following issues raised during the review which impact on the effectiveness of the Standards:

- a. Promotion of inclusive education practice and investigation of ways to recognise inclusion in contemporary policy initiatives, such as the *My School* website and funding guidelines.
- b. The continuation, by all levels of government, of work towards achieving nationally consistent data on school students with disability as soon as possible.
- c. Allocating resources to implement the Standards across all education sectors.
- d. Appropriate training of support staff to meet core competencies.

The Australian Government supports this recommendation. A number of relevant actions are already underway to address inclusive education practice in early childhood and schools, develop and apply a nationally consistent definition of students with disability and the provision of additional resources and appropriate training of staff under the *More Support for Students with Disabilities* initiative.

The Government will promote inclusive education practices through the mechanisms established for future schools funding.

The Government is committed to establishing nationally consistent data for supporting students with disability. A trial of a model to gather comparable data about school students with disability and the level of adjustment provided to these students was completed in 2011. The next stage of this work will consider how the data collection can be implemented nationally and determine how states, territories and the Australian Government can ensure that adequate resources are available to support effective implementation of the Standards and train education staff to deliver high quality education to students with disability.