

## **EXPLANATORY STATEMENT**

### **Education Standards under the Disability Discrimination Act**

Issued by the Attorney-General

*Disability Discrimination Act 1992*

*Disability Standards for Education (2005)*

The *Disability Standards for Education (2005)* (the Standards) are formulated under section 31 of the *Disability Discrimination Act 1992* (DDA). Disability standards are a form of delegated legislation. The primary purpose of the Standards is to clarify, and make more explicit, the obligations of education and training service providers under the DDA and the rights of people with disabilities in relation to education and training.

Disability standards under the *Disability Discrimination Act 1992* can be made in relation to the employment, education and accommodation of people with disabilities, as well as the provision of public transport services and facilities, the administration of Commonwealth laws and programs and the access to and use of public premises.

Once in place, compliance with a disability standard will be taken to be compliance with the DDA (for that area). It is unlawful to contravene a disability standard (section 32). If a person considers that they have been aggrieved under the DDA, then they may make a complaint to the Human Rights and Equal Opportunity Commission. The Commission can investigate and attempt to conciliate the complaint. Where a complaint is unable to be conciliated, it can be terminated by the Commission and proceedings alleging unlawful discrimination can be instituted in the Federal Court of Australia or the Federal Magistrates Court.

The Guidance Notes, attached, seek to provide additional explanatory material, including background information and comment, to assist the reader in interpreting and complying with the Standards. The Notes are intended to enhance understanding of the scope and practical application of the Standards.

Extensive consultation on the development of the draft Disability Standards for Education, including the possibility of making associated amendments to the DDA, has taken place over several years. In December 1995 the Ministerial Council for Education, Employment, Training and Youth Affairs (MCEETYA) agreed to establish a Taskforce to lead national collaboration in the development of the Disability Standards for Education. The Taskforce comprised representatives of State and Territory Governments and stakeholder groups within the education and training sector, including government and non-government schools, training providers and universities. The disability sector was represented

on the Taskforce by members of the DDA Standards Project, a group established to coordinate disability sector input into the development of all disability standards.

Two significant and wide-ranging public consultation exercises were conducted during the development of the Standards. The first, in 1997, determined that there was overwhelming support from the various education, training and disability sectors for the development of Disability Standards for Education. Work on drafting the draft Education Standards began in 1998. The second major consultation exercise, in 2000, sought comment on a draft set of Standards and accompanying guidance notes.

In July 2001 MCEETYA referred the draft Standards to its senior officials committee, the Australian Education Systems Officials Committee (AESOC) to progress consideration of the Standards, develop a Regulation Impact Statement and report back to Ministers. The working group set up by AESOC in response to this MCEETYA directive included representatives of State and Territory and non-government education and training providers as well as the disability sector. In response to concerns of some education providers regarding potential cost implications, a cost-benefit analysis of potential impact of the Standards was prepared by an independent expert, commissioned by the Australian Government Department of Education, Science and Training (DEST). This analysis was guided by a Steering Group comprising representatives of the Commonwealth, the State and Territory and non-government education providers and the disability sector. The analysis confirms professional development costs as the only legitimate costs of the Standards (over and above the costs of complying with the DDA).

The MCEETYA meeting in July 2003 endorsed the form and content of the Standards. On 15 June 2004 the Government announced its intention to implement the draft Standards, and released (for public information) copies of the draft Standards, Guidance Notes and Regulation Impact Statement.

On 12 August 2004 the Government introduced into Parliament a Bill to amend the Disability Discrimination Act to support the draft Disability Standards for Education. On 31 August the 40th Parliament was prorogued and all legislation before it lapsed. On 17 November 2004 the Government reintroduced the Bill into the 41st Parliament. The *Disability Discrimination (Education Standards) Act 2005* received the Royal Assent on 1 March 2005.

The Standards are required to be laid before each House of the Parliament within 15 sitting days after their formulation. The Standards may be subject to a notice of motion to amend the disability standards by either House of the Parliament under the procedures set out in section 31 of the *Disability Discrimination Act 1992*.