



2020 Review of the *Disability Standards for Education 2005*

Discussion Paper: Children with disability in early childhood education and care

Introduction

The purpose of this discussion paper is to support the Australian Government's consultations regarding early childhood education and care for the 2020 Review (Review) of the *Disability Standards for Education 2005* (the Standards). This follows the first [discussion paper](#), published on 16 July 2020, which set out the role of the Standards and the purpose and scope of the Review.

In this paper we set out how the [Disability Discrimination Act 1992 \(DDA\)](#) and the Standards apply to early childhood education and care. We explain what previous reviews told us about early childhood education and care and the Standards, what we want to learn about in this Review, and how you can get involved. This paper also includes discussion questions to help us learn about your views and experiences.

There is strong evidence that the **early years of a child's life have a profound impact on their future cognitive, social, emotional and physical development**. The skills and abilities acquired in early childhood are fundamental to a person's success and wellbeing later in life.

Early childhood education and care provides the foundation for children to learn and develop in a safe environment while also having the opportunity to socialise with other children. In addition to benefiting the child's development, early childhood education and care also supports working families to return to work.

In the December quarter of 2019, 1.3 million children from over 900,000 families attended early childhood education and care services¹. In 2018, the Australian Bureau of Statistics' Survey of Disability, Ageing and Carers (SDAC) reported **4 per cent of 0-4 year old children as having a disability**.

Disability Discrimination Act 1992 and early childhood education and care

The **DDA is Commonwealth legislation that has been in place for nearly three decades**.

Under the DDA, it is **unlawful to discriminate against a person on the basis of disability**. The DDA protects people with disability against discrimination in a range of areas of public life, including education.

¹ Available at <https://www.education.gov.au/child-care-australia-report-december-quarter-2019>

All early childhood education and care services must comply with the DDA.

This is because **section 22 of the DDA** makes it unlawful for an educational authority to refuse or fail to accept a person's application for admission, or to make certain terms or conditions on the admission, that discriminate against the person on the grounds of their disability. It is also unlawful for an education provider to discriminate against a person on the basis of their disability, including having curriculum content that excludes the person from participating.

If an early childhood education and care provider is not considered to be an education authority or education provider, as defined in the DDA, they need to meet **section 24 of the DDA**, which makes it unlawful for them as a provider of goods, services or facilities to refuse to provide those goods, services or facilities to someone because of their disability. This includes the terms and conditions which outline how relevant goods or services will be made available to others.

Under the DDA, an early childhood education and care **provider must make reasonable adjustments** to accommodate a person with disability, unless making the adjustment would impose an unjustifiable hardship on the provider.

Disability Standards for Education 2005 and early childhood education and care

The Standards came into effect on 18 August 2005. They seek to ensure that students with disability can **access and participate in education on the same basis as students without disability**.

The Standards are subordinate legislation to the DDA; this means they sit under the DDA. The purpose of the Standards is to clarify the obligations of education and training providers, and the rights of students with disability and their families under the DDA. They are intended to **make it easier to understand rights and obligations** under the DDA.

The Standards set out the **rights of students with disability** and the **obligations of education providers** regarding:

- enrolment
- participation
- curriculum development, accreditation and delivery
- student support services, and
- elimination of harassment and victimisation.

In an early childhood education and care context, the **Standards apply to “preschools, including kindergartens (but not child-care providers)”²**.

This means preschools (including kindergartens) and the children and families using their services have their rights and obligations under the DDA clarified by the Standards. Child care providers and families using their services rely on any precedents that may be set through individual court case outcomes to guide their interpretation of rights and obligations under the DDA.

The Standards were previously reviewed in 2010 and 2015. Both the **2010 and 2015 Reviews recommended considering extending the application of the Standards to child care providers**. The

² *Disability Standards for Education 2005*. Available at <https://www.legislation.gov.au/Details/F2005L00767>

2015 Review found that the sector had undergone significant reforms which increasingly emphasised the educational purpose of early childhood education and care services, and noted the exclusion of child care from the Standards appeared to be an anomaly.

Previous reviews also found the distinction made in the Standards between preschools / kindergartens and child care providers does not reflect the complex arrangements in place in the early childhood education and care sector.

- There are a **diverse range of service types offered by early childhood education and care providers**. These include preschools, kindergartens, centre based day care, family day care, in home care, outside school hours care (including for school aged children), and a range of other services.
- **Early education and care learning programs, including preschool programs, are delivered across these different settings in different ways** (e.g. a centre based day care service may offer a preschool program).

2020 Review of the Standards

As part of the Review of the Standards, we are examining the **extent to which families, educators and early childhood education and care providers know about, understand and comply with their existing rights and responsibilities under the DDA**.

We will use this information to help us determine what may be required to:

- help parents and carers understand the rights of their child with disability
- give child care providers greater certainty and clarity about their obligations regarding children with disability
- support children with disability to access education in an early childhood education and care setting on the same basis as children without disabilities.

How to get involved in the Review

We **welcome comments from anyone** who would like to make a contribution.

Our public consultations for early childhood education and care will run from August to September 2020. We offer a range of ways to get involved and have your say. This will include a specific webinar and focus groups on children with disability in early childhood education and care. As dates for consultations are confirmed they will be published on the Review's [Consultation Hub](#).

On the Consultation Hub, you can make your own written, video and audio submissions or complete a questionnaire. There will also be a variety of online consultation opportunities, which you can express your interest to be involved in.

The COVID-19 pandemic has meant that most consultation will be online.

To find out more visit the Review's [Consultation Hub](#).

Consultations with early childhood education and care providers

The Australian Children's Education and Care Quality Authority (ACECQA) is the national authority that assists all governments in administering the National Quality Framework for early childhood education and care services. ACECQA will conduct consultations with early childhood education and care providers to inform the Review.

ACECQA's provider consultations will explore many of the issues in this discussion paper, and seek provider views on other opportunities to support access and participation of children with disability in early childhood education and care and school-aged education and care.

ACECQA will contact providers about the direct consultation process. For more information, please go to the [ACECQA website](#).

Individual providers are welcome to make a submission directly to the Review as well as, or instead of, participating in the ACECQA-led consultations.

Have your say

We want to hear your views. The following questions are things for you to think about to **help you provide your input to the Review about the experiences of children with disability and their parents and carers in early childhood education and care.**

You can answer the questions by making a submission, answering the questionnaire or contributing in other ways to the Review. The questions are simply a guide to help us understand your views and experiences.

When providing a response, please let us know whether you are a parent / carer, educator, advocate, or an early childhood education and care provider. Where appropriate, please also let us know which part of the early childhood education and care sector your comments relate to, e.g. preschool, centre based day care, family day care, in home care, outside school hours care, or other service types.

Questions for parents and carers of children with disability

Tell us about your experiences with early childhood education and care

- **Admission and access:** What has been your experience when accessing early childhood education and care for your child? What was the process like and were you happy with the outcome of the admission and access process?
- **Participation:** Did your provider make reasonable adjustments to ensure your child can participate in early childhood education and care? This includes your child participating in courses or programs, the curriculum, and using facilities. How did your early childhood education and care provider consult with you? Were you happy with this outcome?
- **Supporting children with disability:** Have you been able to access appropriate support for your child from early childhood education and care providers, including specialist support where required?

- Harassment or victimisation: If you and / or your child experienced harassment or victimisation in an early childhood education and care setting, what happened? What steps did the early childhood education and care provider take to address this?
- Compliance: If you considered that an early childhood education and care provider was not meeting their obligations, how was it dealt with? Did you know how to make a complaint? What happened?
- Transition: Tell us about your child's experience transitioning between early childhood education and care and school. Did your early childhood education and care provider share information with the school?
- Aboriginal and Torres Strait Islander children with disability: Tell us about your child's experiences accessing and participating in early childhood education and care. Did you feel the engagement was culturally appropriate?
- Specific experiences: Access and participation in early childhood education and care for children with disability may be affected by other circumstances such as your or your child's age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, and culturally and linguistically diverse background. Tell us about how your circumstances may have affected your child's access and participation in early childhood education and care.
- COVID-19: Were your child's experiences different during COVID-19 to their everyday experiences? What about during previous emergencies or natural disasters?

We want to understand what you know about your and your child's rights

- Have you heard of the DDA? If so, where?
- Do you understand what the DDA does?
- Do you feel like you understand your and your child's rights when it comes to being able to access and participate in early childhood education and care?
- What could be done to improve awareness of the DDA?
- What could be done to improve your understanding of your and your child's rights under the DDA?

Questions for early childhood educators and providers

Tell us about your experiences with children with disability

- Admission and access: What has been your experience with children with disability accessing early childhood education and care?
- Participation: Do you understand your obligations for making reasonable adjustments to ensure a child with disability can participate in early childhood education and care? This includes participating in courses and programs, the curriculum, and using facilities. Do you know how to consult with the parent / carer? If you have had experiences in making reasonable adjustments, please tell us about this.

- Supporting children: How have you supported children with disability during their education? Who was involved in planning the support?
- Compliance: Have any children in your care or parents / carers said that you were not meeting your obligations? How did you address this?
- Transition: Tell us about your experience assisting a child with disability to transition from early childhood education and care to school.
- Aboriginal and Torres Strait Islander children with disability: Tell us about your experiences supporting Aboriginal and Torres Strait Islander children with disability. How did you help them to access and participate in education? How did you consult with them and their families and carers? Did you feel that you had a sufficient level of cultural competency to engage in a culturally appropriate manner?
- Specific experiences: Access and participation in early childhood education and care for children with disability may be affected by other circumstances such as their or their parent or carer's age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, and culturally and linguistically diverse background. If you have experience with children or parents and carers who were affected by other circumstances, tell us about how you helped their child to access and participate in early childhood education and care.
- COVID-19: Has COVID-19 impacted your experience with children with disability? What about during other major events, such as natural disasters?

We want to understand what you know about your obligations

- Have you heard of the DDA? If so, where?
- Do you understand what the DDA does?
- Have you received or provided training of any kind on the DDA? What did this involve?
- Do you understand your obligations when it comes to children with disability being able to access and participate in early childhood education and care?
- How does your early childhood education and care provider / manager support you to meet your obligations under the DDA?
- Do you feel confident negotiating and implementing a reasonable adjustment? Do you know how to determine if this would result in unjustifiable hardship?
- What could be done to improve awareness of the DDA?
- What could be done to improve your understanding of your obligations under the DDA?

Accessibility

To help ensure people with disability are able to engage with the Review and share their insights and experiences, consultations will be accessible. This includes access to Easy Read documents, Auslan-English interpreters and captioning. Easy Read and other materials will be made available in advance to help people consider the information being provided and the questions being asked. The Review will consider people's preferences about how they want to share their experience. People can choose how they want to engage, including answering questions in their own time

online or joining a discussion. We will do our best to ensure opportunities, including the length and time of consultations, accommodate people's specific needs and requests.

Public consultations will inform our advice to governments

Your input to the Review will provide insights into how well services and families understand their rights and obligations under the DDA in relation to education and learning delivered within an early childhood education and care setting. If we find that the current arrangements are not working well, we will make recommendations on what needs to change, how to change it, and in what timeframe changes should be implemented.

We will do this in partnership with state and territory governments, who we will work with closely and collaboratively to develop the final report and associated report recommendations. Our intention is to focus on opportunities for national collaborative action between the Australian Government, states and territories, and government and non-government education providers.

The Review report will be provided to the Federal Minister for Education in December 2020. The final report will be presented to all governments for their consideration in early 2021.

Making a submission

People and organisations are invited to make submissions on the Review's [Consultation Hub](#).

Written, video and audio submissions in response to this discussion paper will be accepted. Written submissions are limited to 3000 words.

Only submissions that cannot be provided electronically may be provided in hard copy form, to the following address:

Disability Standards for Education Review Team
Disability Strategy Taskforce
GPO Box 9880
Canberra City ACT 2601

Contacts

For queries about the Review, including this paper, please contact the Department of Education, Skills and Employment at DisabilityStrategy@dese.gov.au.

For queries about how to get involved in the Review consultations, including support to register for a webinar or to complete the questionnaire, please contact The Social Deck at engage@thesocialdeck.com or on 0491 617 118.