

ACIE Submission

Changes to the Disability Standards for Education 2005

**To include early childhood education and care services and
outside school hours care services**



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ACIE

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The [Australian Coalition of Inclusive Education \(ACIE\)](#) welcomes the opportunity to make the following submission regarding Changes to the Disability Standards for Education 2005 - To include early childhood education and care services and outside school hours care services.

BACKGROUND

1. ACIE is a national coalition of 25 not-for-profit organisations and has a combined representative membership of over 1.2 million. It brings together organisations with significant expertise in inclusive education and disability advocacy, and spans national and State and Territory based organisations, disability advocacy organisations, student and youth organisations, educators, and family and carer support organisations.
2. ACIE's work is guided by a human rights and evidence-based approach to inclusive education. It looks to the principles embodied in United Nations *Convention on the Rights of Persons with Disabilities (CRPD)*, which has been ratified by Australia, is binding on it under international law and is the most authoritative expression of the human rights of people with disability, including the right to inclusive education under Article 24 and further explained by the CRPD' treaty monitoring body, the CRPD Committee, in General Comment No. 4 (Right to Inclusive Education)¹.
3. Inclusive education in accordance with the CRPD and General Comment No.4 means the delivery of education to all students grouped by relevant age range, in general education classrooms in a way that addresses and responds to their diverse characteristics as learners, provides reasonable accommodations and supports to ensure an equitable and participatory learning experience and respects their fundamental human rights. It does not mean the delivery of education in separate, segregated, or self-contained environments or programs for students with disability, including in separate educational institutions, separate classrooms or subsections of classrooms.
4. The [Australian Disability Standards for Education \(2005\)](#) enacted under the *Disability Discrimination Act 1992 (Cth) (DDA)*, further state that students with disability have the right to access and participate in all aspects of school-life on the same basis as their non-disabled peers.
5. ACIE acknowledges the traditional custodians of the land on which we live and work, and we pay our respects to Elders, past and present, across the many Aboriginal and Torres Strait Islander nations across Australia.

¹ Committee on the Rights of Persons with Disabilities, *General Comment No 4: Article 24: Right to Inclusive Education*, 16th session, UN Doc CRPD/C/GC/4 (25 November 2016).

6. We also wish to recognise the generations of people with disability, and their families and allies, who have worked to advance the understanding and realisation of human rights, equality, and inclusion for all. We honour and respect their vision and legacy.
7. ACIE supports the inclusion of the Early Childhood Education and Care (**ECEC**) services in the Disability Standards for Education 2005 (the **Standards**). Extending the Standards to all the proposed ECEC services will provide critical guidance to those services around meeting their obligations under the DDA, which includes the provision of reasonable adjustments. This will assist to prevent gatekeeping that diverts students with disability from inclusive pathways and restricts their transition to regular schools. Having clear guidance on how children with disability access ECEC will not only reinforce the right of every child to access mainstream education from the earliest years, but also promote inclusion for children with disability in primary education and beyond.
8. ACIE notes and strongly welcomes the inclusion of Outside School Hours Care services as an ECEC service to be covered by the Standards.
9. In relation to consideration of what other related services should be covered by the Standards – In the Frequently Asked Question document, made available with the Consultation Paper, it has been proposed that services principally conducted to provide instruction in a particular activity (for example, a language class or ballet class) will not be covered by the proposed amendments. It is stated that this is because they do not meet at least one of the conditions in the definition of the draft Amendment Standards.
10. As a general principle, ACIE believes that the scope of the Standards should align with the concept of education under international law. Relevantly, services whose primary function is to provide education, as defined under international law – specifically Article 13 of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) and Article 24 of the CRPD – should be covered by the Standards. This also includes services that support or are incidental to education. The Standards should apply where the service involves structured, formal, and non-formal learning designed to foster the full development of the human personality and to strengthen human rights. In contrast, services such as after-school activities (e.g., dance classes, sports activities, developmental or other therapies), while valuable for personal enrichment, skill development, and recreation do not provide systematic instruction or contribute to the fulfillment of the right to education as understood in international law and do not constitute ‘education’ in the formal sense. Such services are the subject of anti-discrimination protections under section 24 of the DDA, which should be considered — and strengthened — as part of a broader review of the DDA, which has been recommended in Volume 4 of the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation.
11. ACIE further seeks clarification about how proposed amendments to the Standards from the 2020 review and any outcomes from the upcoming 2025 review are intended to be harmonised with proposed reform of the DDA in line with the Royal Commission’s recommendations. As the Standards derive their authority from the DDA, any substantive amendments to the Standards may require reconsideration following legislative changes to the DDA. As such, ACIE would like to better understand how it is proposed that amendments to the Standards will account for potential amendments to the DDA to ensure consistency and alignment between the two. Further, what mechanisms will be in place to prevent misalignment between the Standards and a reformed DDA, which may have implications for the validity and enforceability of the Standards following such reforms.

12. ACIE would also like to bring attention to the terminology used in the Frequently Asked Question document (p3 bullet point 4) which refers to “children with additional needs”. This language does not align with a contemporary understanding and model of disability, that positions disability as an aspect of diversity that strengthens community. Children with developmental differences or disability may have specific needs and associated need for specific resources. The phrasing of this as “additional needs” subscribes to a historical and discriminatory positioning of disability as an extra demand or “burden” which education settings are faced with. ACIE requests that the terminology of “additional needs” be no longer used and the term “specific needs” be used in the future.
13. ACIE does not support the intention that the Standards will not apply to “Transition to school programs provided by a school to orient children to that school”. This intention is stated in the Frequently Asked Questions Document (p3 – bullet point 10). Any programs officially run by a school or in partnership with another organisation should be covered by the DSE. ACIE argues that there is a risk that transition to school programs can operate as a form of gatekeeping, and that their omission from the DSE potentially provides such a loophole. It is recommended that there be a review of this omission.
14. The proposed amendments state that subsection 6.2 (1) is to be repealed and substituted with:

“(1) The education provider must take reasonable steps to ensure that the course or program is designed in such a way that:

- (a) a student with a disability who is undertaking the course or program; or*
- (b) a student with a disability whom the provider has a reasonable expectation may undertake the course or program;*

is able to participate in the learning experiences (including the assessment and certification requirements) of the course or program, and any relevant supplementary course or program, on the same basis as a student without a disability, and without experiencing discrimination.”

ACIE has significant concerns around the statement “whom the provider has a reasonable expectation may undertake the course or program” (clause (b)). It is unclear on what basis this determination will be made. We recommend that the Standards provide further guidance on the circumstances (including through non-exhaustive examples) that should give rise to a reasonable expectation. Without such guidance, the wide discretion provided by this wording may be used as a means of legitimising gatekeeping.

15. It is noted that a number of relatively small amendments are being made to contemporise the Standards. While ACIE acknowledges that the language of “special needs” and “special measures” in the Standards is derived from Section 45 of the DDA, we nevertheless consider that it should be replaced in the associated Note with more contemporary language. The Note currently states:

“Special measures are intended specifically for the benefit of students with disabilities, and can take the form of programs or initiatives that afford students with disabilities, or with a particular disability, benefits, grants, programs, goods, or access to facilities, services or opportunities to meet their special needs in relation to education and training. However, providing specialised support services will not necessarily be sufficient to eliminate discrimination.”

16. “Special needs” is an antiquated term used in association with people with disability. Again, this language is not consistent with a contemporary understanding of disability which is based on human rights and the social model of disability. As stated in the “PWDA Language

Guide: A guide to language about disability” (August 2021 update, p. 7, see also p.12, 16, 20): “PWDA does not support the use of euphemisms or made-up words, such as [...] ‘special needs’ to refer to people with disability. These terms are ableist and condescending.” Further it is not consistent with the views, language and actions of Australian Disability Strategy.

17. It is recommended that “their special needs” be replaced with “specific needs” pending more detailed consideration of section 45 in the context of broader reforms to the DDA.

SUMMARY

ACIE recommend as follows.

1. The proposed Early Childhood Education and Care (**ECEC**) services in the Disability Standards for Education Amendment Standards 2025 be included in the Disability Standards for Education 2005 (**Standards**).
2. The Australian Government explain how the proposed amendments to the Standards from the 2020 review and any outcomes from the upcoming 2025 review are intended to be harmonised with proposed reform of the *Disability Discrimination Act* 1992 (**DDA**) in line with the recommendations in Volume 4 of the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People With Disability.
3. The term “additional needs” used in the Standards should be replaced with “specific needs”.
4. Transition-to-school programs provided by a school to orient children to that school should be covered by the Standards, and their current omission in the proposed Disability Standards for Education Amendment Standards 2025 should be amended.
5. The Standards should provide further guidance (including through non-exhaustive examples) on the circumstances that give rise to a “reasonable expectation” in the proposed substitution for subsection 6.2 (1).
6. The term “special needs” be replaced with “specific needs” pending more detailed consideration of section 45 in the context of broader reforms to the DDA.



