



Disability Standards for Education 2005

I, PHILIP MAXWELL RUDDOCK, Attorney-General, formulate these Standards under paragraph 31 (1) (b) of the *Disability Discrimination Act 1992*.

Dated 2005

Attorney-General

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Introduction

These Standards are formulated by the Commonwealth Attorney-General under the Commonwealth *Disability Discrimination Act 1992* (the *Act*).

The Act seeks to eliminate, as far as possible, discrimination against people with disabilities. Under section 22 of the Act, it is unlawful for an educational authority to discriminate against a person on the ground of the person's disability or a disability of any associates of that person. Section 31 of the Act enables the Attorney-General to formulate disability standards in relation to a range of areas, including the education of persons with a disability.

The Standards are subordinate legislation and are subject to the objects of the Act. They clarify and elaborate the legal obligations in relation to education.

Under section 32 of the Act, it is unlawful for a person to contravene a disability standard. A complaint about an alleged contravention can be made to the Human Rights and Equal Opportunity Commission. Section 34 of the Act provides that, if a person acts in accordance with a disability standard, Part 2 of the Act does not apply to the person's action or, in other words, the person's action complies with the Act and is not made unlawful by it.

How the standards operate

The standards set out in Parts 4 to 8 of the Standards specify how education and training are to be made accessible to students with disabilities. They cover the following areas:

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

The Part for each area includes a statement of the *rights*, or entitlements, of students with disabilities in relation to education and training, consistent with the rights of the rest of the community. The statements of rights are included to assist people to understand, and comply with, the standards set out in the obligation provisions.

The Parts then describe the legal *obligations*, or responsibilities, of educational authorities, institutions and other education providers. These are the standards with which education providers must comply.

The Parts then describe *measures* that, if implemented, will be evidence of compliance with the legal obligation. The measures are examples of compliant actions and are performance based. However, the measures may not cover the needs of all students with disabilities, or all educational levels and contexts, and full compliance with the Standards may require additional or alternative actions. Further, compliance with the measures is not required if the legal obligation can be met in other ways.

Parts 4 to 8 of the Standards deal with the students with disabilities themselves; Part 9 provides that the provisions of the Act continue to govern the treatment of persons who have associates with a disability.

Part 10 of the Standards sets out exceptions to the legal obligations set out in Parts 4 to 8 of the Standards.

Part 11 of the Standards provides for 5 yearly reviews.

The Standards are accompanied by Guidance Notes which are intended to assist in interpreting them.

Section 1.1

Part 1 Preliminary

1.1 Name of Standards

These Standards are the *Disability Standards for Education 2005*.

1.2 Commencement

These Standards take effect on the day on which the requirements of subsection 31 (3) or (4) of the *Disability Discrimination Act 1992* are first complied with.

1.3 Objects

The objects of these Standards are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the area of education and training; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law in the area of education and training as the rest of the community; and
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

Note These are also generally the objects of the Act in relation to education (see section 3 of the Act).

1.4 Definitions

In these Standards, unless the contrary intention appears:

Act means the *Disability Discrimination Act 1992*.

adjustment has the meaning given by section 3.3.

discrimination has a meaning corresponding to the meaning of *discriminate*.

education provider has the meaning given by section 2.1.

harassment has the meaning given by section 8.1.

prospective student, for an educational institution, means a person who approaches the institution about seeking admission to, or applying for enrolment in, the institution.

reasonable, in relation to an adjustment, has the meaning given by section 3.4.

student means a person enrolled in an educational institution.

victimisation has the meaning given by section 42 of the Act.

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Note The definitions of terms in the Act apply to the Standard, under the *Acts Interpretation Act 1901*. These definitions include the following:

associate, in relation to a person, includes:

- (a) a spouse of the person; and
- (b) another person who is living with the person on a genuine domestic basis; and
- (c) a relative of the person; and
- (d) a carer of the person; and
- (e) another person who is in a business, sporting or recreational relationship with the person.

disability, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future; or
- (k) is imputed to a person.

discriminate has the meaning given by sections 5 to 9 of the Act.

educational authority means a body or person administering an educational institution.

educational institution means a school, college, university or other institution at which education or training is provided.

1.5 Who must comply with the Standards

These Standards apply to education providers, subject to section 12 of the Act, and have effect as if they were limited application provisions under that section.

Note 1 Education providers, bound by the Standards, include the following:

- (a) preschools, including kindergartens (but not child-care providers);
- (b) schools in the public sector;
- (c) schools registered through school registration authorities in the private sector;
- (d) post-compulsory education and training authorities and providers, including:
 - (i) State or Territory Training Authorities; and
 - (ii) public providers that deliver education and training; and
 - (iii) private training providers, including business colleges, enterprises and commercial training businesses; and
 - (iv) community-based not-for-profit providers; and
 - (v) industry skill centres; and
 - (vi) Registered Training Organisations and group training providers that have satisfied the national criteria for provision of services and have been registered by a State or Territory training authority;

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- (e) higher education providers, including:
 - (i) universities, that is, self-accrediting higher education institutions, established under State, Territory or Commonwealth legislation; and
 - (ii) any other organisations that offer higher education level courses and are accredited or approved under the relevant State or Territory legislation;
- (f) providers of adult and community education;
- (g) bodies whose purpose is the development and accreditation of curricula, training packages or courses used by education authorities, institutions or providers, including:
 - (i) authorities that accredit school education; and
 - (ii) organisations that endorse training packages within the Australian Qualifications Framework; and
 - (iii) authorities that accredit courses; and
 - (iv) State and Territory recognition agencies.

Note 2 An education provider is responsible for defining the purposes and outcomes of the educational services it provides. These responsibilities are set out in legislation, regulations, published rules and guidelines that determine curricula, courses, training packages, accreditation and assessment.

Note 3 The Standards apply to education providers delivering education and training through a range of modes including in-class tuition, distance education, flexible delivery, computer-assisted learning, on-line delivery, part-time study for post-compulsory students and the various combinations of these modes, and on-the-job training.

1.6 Construction of Standards

- (1) These Standards are intended to be within the power conferred by the Act, and are to be construed accordingly.
- (2) A provision that, despite subsection (1), cannot be construed as being entirely within the power conferred by the Act has effect to the extent that it is within that power.

Part 2 Meaning of important terms

2.1 Education providers

For these Standards, an *education provider* is:

- (a) an educational authority; or
- (b) an educational institution; or
- (c) an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers.

2.2 Meaning of *on the same basis*

- (1) A person with a disability is able to seek admission to, or apply for enrolment in, an institution *on the same basis* as a prospective student without a disability if the person has opportunities and choices in admission or enrolment that are comparable with those offered to other prospective students without disabilities.

Note This subsection is relevant to subsection 4.2 (1).

- (2) An education provider treats a prospective student with a disability *on the same basis* as a prospective student without a disability if the provider makes any decisions about admission or enrolment on the basis that reasonable adjustments will be provided in accordance with section 5.2.

Note 1 This subsection is relevant to subsection 4.2 (2).

Note 2 An education provider that:

- (a) refuses a prospective student with a disability a place in the institution, or in the particular course or program applied for by the prospective student, on the ground that the student would be able to enrol in another institution, or in a course or program at another institution; and
- (b) does not refuse students without disabilities places on the same ground;

does not treat a prospective student on the same basis as a prospective student without a disability.

- (3) A person with a disability is able to participate in courses or programs provided by an educational institution, and use the facilities and services provided by it, *on the same basis* as a student without a disability if the person has opportunities and choices in the courses or programs and in the use of the facilities and services that are comparable with those offered to other students without disabilities.

Note 1 This subsection is relevant to subsections 5.2 (1), 6.2 (1) and 7.2 (1).

Note 2 In some cases, students with disabilities will not be able to participate on the same basis as other students if all students are treated in the same way, or if all students with disabilities are treated in the same way.

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Part 3 Making reasonable adjustments

3.1 Application of Part

This Part sets out how a reasonable adjustment is to be identified for the purposes of paragraphs 4.2 (3) (c), 5.2 (2) (c), 6.2 (2) (c), 7.2 (5) (c) or 7.2 (6) (c).

3.2 Meaning of *student*

For this Part:

student includes a prospective student.

3.3 Adjustments

For these Standards, each of the following is an *adjustment*:

- (a) a measure or action (or a group of measures or actions) taken by an education provider that has the effect of assisting a student with a disability:
 - (i) in relation to an admission or enrolment — to apply for the admission or enrolment; and
 - (ii) in relation to a course or program — to participate in the course or program; and
 - (iii) in relation to facilities or services — to use the facilities or services;
on the same basis as a student without a disability, and includes an aid, a facility, or a service that the student requires because of his or her disability;
- (b) an adjustment mentioned in subsection 7.2 (4);
- (c) if a change is made to an adjustment mentioned in paragraph (a) or (b) — the adjustment as affected by the change.

3.4 Reasonable adjustments

- (1) For these Standards, an adjustment is *reasonable* in relation to a student with a disability if it balances the interests of all parties affected.

Note Judgements about what is reasonable for a particular student, or a group of students, with a particular disability may change over time.

- (2) In assessing whether a particular adjustment for a student is reasonable, regard should be had to all the relevant circumstances and interests, including the following:
 - (a) the student's disability;
 - (b) the views of the student or the student's associate, given under section 3.5;

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- (c) the effect of the adjustment on the student, including the effect on the student's:
 - (i) ability to achieve learning outcomes; and
 - (ii) ability to participate in courses or programs; and
 - (iii) independence;
- (d) the effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students;
- (e) the costs and benefits of making the adjustment.

Note A detailed assessment, which might include an independent expert assessment, may be required in order to determine what adjustments are necessary for a student. The type and extent of the adjustments may vary depending on the individual requirements of the student and other relevant circumstances. Multiple adjustments may be required and may include multiple activities. Adjustments may not be required for a student with a disability in some circumstances.

The Standards generally require providers to make reasonable adjustments where necessary. There is no requirement to make unreasonable adjustments. In addition, section 10.2 provides that it is not unlawful for an education provider to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on the provider. The concept of unreasonable adjustment is different to the concept of unjustifiable hardship on the provider. In determining whether an adjustment is reasonable the factors in subsection 3.4 (2) are considered, including any effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students, and the costs and benefits of making the adjustment. The specific concept of unjustifiable hardship is not considered. It is only when it has been determined that the adjustment is reasonable that it is necessary to go on and consider, if relevant, whether this would none-the-less impose the specific concept of unjustifiable hardship on the provider.

- (3) In assessing whether an adjustment to the course of the course or program in which the student is enrolled, or proposes to be enrolled, is reasonable, the provider is entitled to maintain the academic requirements of the course or program, and other requirements or components that are inherent in or essential to its nature.

Note In providing for students with disabilities, a provider may continue to ensure the integrity of its courses or programs and assessment requirements and processes, so that those on whom it confers an award can present themselves as having the appropriate knowledge, experience and expertise implicit in the holding of that particular award.

3.5 Consulting the student

Before the education provider makes an adjustment for the student, the education provider must consult the student, or an associate of the student, about:

- (a) whether the adjustment is reasonable; and
- (b) the extent to which the adjustment would achieve the aim mentioned in paragraph 4.2 (3) (b), 5.2 (2) (b), 6.2 (2) (b), 7.2 (5) (b) or 7.2 (6) (b) in relation to the student; and
- (c) whether there is any other reasonable adjustment that would be less disruptive and intrusive and no less beneficial for the student.

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3.6 Deciding on an adjustment to be made

In deciding whether to make a particular reasonable adjustment for a student, the education provider must:

- (a) assess whether there is any other reasonable adjustment that would be less disruptive and intrusive and no less beneficial for the student; and
- (b) assess whether the adjustment may need to be changed over the period of a student's education or training.

3.7 Adjustments to be provided in reasonable time

- (1) The education provider must take reasonable steps to ensure that any adjustment required to be made is made within a reasonable time.
- (2) Whether the time is reasonable depends, in particular, on whether and when the student, or his or her associate, has provided:
 - (a) in a timely way, any relevant information in the possession of the student or associate about how the disability affects the student in relation to education or training; and
 - (b) the student's or the associate's opinion about the matters mentioned in paragraphs 3.5 (a), (b) and (c).

Note The requirement for a provider to consult a student with a disability, or an associate of the student, about how the disability affects the student in relation to education or training is set out in paragraphs 4.2 (3) (a), 5.2 (2) (a), 6.2 (2) (a), 7.2 (5) (a) and 7.2 (6) (a).

3.8 Relation to premises standards

- (1) These Standards do not affect the application of premises standards to building work undertaken as an adjustment or part of an adjustment.
- (2) If:
 - (a) these Standards require building work to be undertaken as an adjustment, or part of an adjustment; and
 - (b) premises standards apply to the building work;
these Standards do not require the building work to meet specifications more onerous than those required by the premises standards.
- (3) In this section:

premises standards means disability standards, formulated by the Attorney-General under section 31 of the Act, that deal, in whole or in part, with the access to or the use of any premises.

building work includes the construction of a new building.

Part 4 Standards for enrolment

4.1 Application of Part

This Part applies in relation to:

- (a) an individual with a disability who is a prospective student for an educational institution; and
- (b) an education provider that is:
 - (i) the educational institution mentioned in paragraph (a); or
 - (ii) an educational authority that administers the educational institution.

Rights given by this Part

The effect of the following standards is to give prospective students with disabilities the right to enrol in an educational institution on the same basis as prospective students without disabilities, including the right to reasonable adjustments that are necessary to ensure that they are able to so enrol on the same basis as prospective students without disabilities.

4.2 Enrolment standards

- (1) The education provider must take reasonable steps to ensure that the prospective student is able to seek admission to, or apply for enrolment in, the institution on the same basis as a prospective student without a disability, and without experiencing discrimination.
- (2) The provider must ensure that, in making the decision whether or not to offer the prospective student a place in the institution, or in a particular course or program applied for by the prospective student, the prospective student is treated on the same basis as a prospective student without a disability, and without experiencing discrimination.
- (3) The provider must:
 - (a) consult the prospective student, or an associate of the prospective student, about whether the disability affects the prospective student's ability to seek admission to, or apply for enrolment in, the institution; and
 - (b) in the light of the consultation, decide whether it is necessary to make an adjustment to ensure that the prospective student is able to seek admission to, or apply for enrolment in the institution, on the same basis as a prospective student without a disability; and
 - (c) if:
 - (i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and
 - (ii) a reasonable adjustment can be identified in relation to that aim; make a reasonable adjustment for the student in accordance with Part 3.

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- (4) For this section, the provider has taken reasonable steps to comply with subsection (1) if the provider has complied with subsection (3).

Note See Part 10 for exceptions to the legal obligations set out in the standards. These include a provision that it is not unlawful for a provider to fail to comply with a standard if, and to the extent that, compliance would impose unjustifiable hardship on the provider (section 10.2).

4.3 Measures for compliance with standards

Measures that the education provider may implement to enable the prospective student to seek admission to, or apply for enrolment in, the institution on the same basis as a prospective student without a disability include measures ensuring that:

- (a) information about the enrolment processes:
 - (i) addresses the needs of students with disabilities; and
 - (ii) is accessible to the student and his or her associates; and
 - (iii) is made available in a range of formats depending on the resources and purposes of the provider and within a reasonable timeframe; and
- (b) enrolment procedures are designed so that the student, or an associate of the student, can complete them without undue difficulty; and
- (c) information about entry requirements, the choice of courses or programs, progression through those courses or programs and the educational settings for those courses or programs is accessible to the student and his or her associates in a way that enables the student, or associates, to make informed choices.

Part 5 Standards for participation

5.1 Application of Part

This Part applies in relation to:

- (a) a student with a disability who is enrolled in an educational institution; and
- (b) an education provider that is:
 - (i) the educational institution mentioned in paragraph (a); or
 - (ii) an educational authority that administers the educational institution.

Rights given by this Part

The effect of the following standards is to give students with disabilities the right to participate in the courses or programs, and to use services and facilities, provided by an educational institution, on the same basis as students without disabilities, including the right to reasonable adjustments, where necessary, to ensure they are able to participate in education and training, on the same basis as students without disabilities.

5.2 Participation standards

- (1) The education provider must take reasonable steps to ensure that the student is able to participate in the courses or programs provided by the educational institution, and use the facilities and services provided by it, on the same basis as a student without a disability, and without experiencing discrimination.
- (2) The provider must:
 - (a) consult the student, or an associate of the student, about whether the disability affects the student's ability to participate in the courses or programs for which the student is enrolled and use the facilities or services provided by the provider; and
 - (b) in the light of the consultation, decide whether an adjustment is necessary to ensure that the student is able to participate in the courses or programs provided by the educational institution, and use the facilities and services provided by it, on the same basis as a student without a disability; and
 - (c) if:
 - (i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and
 - (ii) a reasonable adjustment can be identified in relation to that aim; make a reasonable adjustment for the student in accordance with Part 3.
- (3) The provider must repeat the process set out in subsection (2) as necessary to allow for the changing needs of the student over time.

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- (4) For this section, the provider has taken reasonable steps to comply with subsection (1) if the provider has complied with subsections (2) and (3).

Note See Part 10 for exceptions to the legal obligations set out in the standards. These include a provision that it is not unlawful for a provider to fail to comply with a standard if, and to the extent that, compliance would impose unjustifiable hardship on the provider (section 10.2).

5.3 Measures for compliance with standards

Measures that the education provider may implement to enable the student to participate in the course or program for which the student is enrolled and use the facilities and services provided by it on the same basis as a student without a disability, include measures ensuring that:

- (a) the course or program activities are sufficiently flexible for the student to be able to participate in them; and
- (b) course or program requirements are reviewed, in the light of information provided by the student, or an associate of the student, to include activities in which the student is able to participate; and
- (c) appropriate programs necessary to enable participation by the student are negotiated, agreed and implemented; and
- (d) additional support is provided to the student where necessary, to assist him or her to achieve intended learning outcomes; and
- (e) where a course or program necessarily includes an activity in which the student cannot participate, the student is offered an activity that constitutes a reasonable substitute within the context of the overall aims of the course or program; and
- (f) any activities that are not conducted in classrooms, and associated extra-curricular activities or activities that are part of the broader educational program, are designed to include the student.

Part 6 **Standards for curriculum development, accreditation and delivery**

6.1 **Application of Part**

This Part applies if:

- (a) a course or program is designed by an education provider; and
- (b) (whether the course or program is offered to students by that provider, or by another) either:
 - (i) a student with a disability is undertaking the course or program; or
 - (ii) the provider has a reasonable expectation that students with disabilities may undertake the course or program.

Rights given by this Part

The effect of the following standards is to give students with disabilities the right to participate in educational courses or programs that are designed to develop their skills, knowledge and understanding, including relevant supplementary programs, on the same basis as students without disabilities.

6.2 **Standards for curriculum development and accreditation and delivery**

- (1) The education provider must take reasonable steps to ensure that the course or program is designed in such a way that the student is, or any student with a disability 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.
- (2) If a student is enrolled in the course or program, the provider must:
 - (a) consult the student, or an associate of the student, about whether the disability affects the student's ability to participate in learning experiences of the course or program, or any relevant supplementary course or program; and
 - (b) in the light of that consultation, decide whether an adjustment is necessary to ensure that the student is able to participate in those learning experiences on the same basis as a student without a disability who is enrolled in the course or program; and
 - (c) if:
 - (i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and
 - (ii) a reasonable adjustment can be identified in relation to that aim; make a reasonable adjustment for the student in accordance with Part 3.

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- (3) The provider must repeat the process set out in subsection (2) as necessary to allow for the changing needs of the student over time.
- (4) For this section, in relation to a student enrolled in a course or program, the provider has taken reasonable steps to comply with subsection (1) if the provider has complied with subsections (2) and (3).

Note See Part 10 for exceptions to the legal obligations set out in the standards. These include a provision that it is not unlawful for a provider to fail to comply with a standard if, and to the extent that, compliance would impose unjustifiable hardship on the provider (section 10.2).

6.3 Measures for compliance with standards

Measures that the education provider may implement to enable the student 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, include measures ensuring that:

- (a) the curriculum, teaching materials, and the assessment and certification requirements for the course or program are appropriate to the needs of the student and accessible to him or her; and
- (b) the course or program delivery modes and learning activities take account of intended educational outcomes and the learning capacities and needs of the student; and
- (c) the course or program study materials are made available in a format that is appropriate for the student and, where conversion of materials into alternative accessible formats is required, the student is not disadvantaged by the time taken for conversion; and
- (d) the teaching and delivery strategies for the course or program are adjusted to meet the learning needs of the student and address any disadvantage in the student's learning resulting from his or her disability, including through the provision of additional support, such as bridging or enabling courses, or the development of disability-specific skills; and
- (e) any activities that are not conducted in a classroom, such as field trips, industry site visits and work placements, or activities that are part of the broader course or educational program of which the course or program is a part, are designed to include the student; and
- (f) the assessment procedures and methodologies for the course or program are adapted to enable the student to demonstrate the knowledge, skills or competencies being assessed.

Part 7 Standards for student support services

7.1 Application of Part

This Part applies in relation to:

- (a) a student with a disability who is enrolled in an educational institution; and
- (b) an education provider that is:
 - (i) the educational institution mentioned in paragraph (a); or
 - (ii) an educational authority that administers the educational institution.

Rights given by this Part

The effect of the following standards is to give students with disabilities rights in relation to student support services provided by educational authorities and institutions, on the same basis as students without disabilities.

The standards also give students with disabilities rights in relation to specialised services needed for them to participate in the educational activities for which they are enrolled. These services include specialist expertise, personal educational support or support for personal and medical care, without which some students with disabilities would not be able to access education and training.

7.2 Standards for support services

- (1) The education provider must take reasonable steps to ensure that the student is able to use support services used by the students of the institution in general on the same basis as a student without a disability, and without experiencing discrimination.
- (2) If a specialised support service is necessary for the student to be able to participate in the activities for which he or she is enrolled, and is of a kind that is provided by the education provider, the provider must take reasonable steps to ensure that the student has access to the service (but may arrange for it to be provided by another person or agency).
- (3) If a specialised support service is necessary for the student to be able to participate in the activities for which he or she is enrolled, and is of a kind that is not provided by the provider, the provider must take reasonable steps to facilitate the provision of the service to the student by another person or agency.
- (4) Each of:
 - (a) the provision of access to specialised support services mentioned in subsection (2); and

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- (b) the facilitation by the provider of the provision of specialised support services mentioned in subsection (3);
is an adjustment for the purposes of these Standards.
- (5) The provider must:
- (a) consult the student, or an associate of the student, about whether the disability affects the student's ability to access support services used by the students of the institution; and
 - (b) in the light of that consultation, decide whether an adjustment is necessary to ensure that the student is able to access those support services on the same basis as a student without a disability; and
 - (c) if:
 - (i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and
 - (ii) a reasonable adjustment can be identified in relation to that aim;make a reasonable adjustment for the student in accordance with Part 3.
- (6) The provider must:
- (a) consult the student, or an associate of the student, about the need for the student to have access to specialised support services that are provided by the provider or by other persons or agencies; and
 - (b) in the light of that consultation, decide whether an adjustment of the kind mentioned in subsection (4) is necessary for the student to be able to participate in the activities for which he or she is enrolled; and
 - (c) if:
 - (i) an adjustment is necessary to achieve the aim mentioned in paragraph (b); and
 - (ii) a reasonable adjustment can be identified in relation to that aim;make a reasonable adjustment for the student in accordance with Part 3.
- (7) The provider must repeat the processes set out in subsections (5) and (6) as necessary to allow for the changing needs of the student over time.
- (8) For this section:
- (a) the provider has taken reasonable steps to comply with subsection (1) if the provider has complied with subsection (5) and with subsection (7) as it relates to subsection (5); and
 - (b) the provider has taken reasonable steps to comply with subsections (2) and (3) if the provider has complied with subsection (6) and with subsection (7) as it relates to subsection (6).

Note See Part 10 for exceptions to the legal obligations set out in the standards. These include a provision that it is not unlawful for an education provider to fail to comply with a standard if, and to the extent that, compliance would impose unjustifiable hardship on the provider (section 10.2).

Section 7.3**7.3 Measures for compliance with standards**

Measures that the education provider may implement to ensure that the student is able to access support services used by students in general, on the same basis as a student without a disability, and to ensure his or her access to specialised support services, include measures ensuring that:

- (a) staff of education providers are aware of the specialised services available for the student and are provided with information that enables them to assist the student to access the services that the student needs; and
- (b) the provision of specialised services for the student, where necessary, is facilitated, including through collaborative arrangements with specialised service providers; and
- (c) any necessary specialised equipment is provided to support the student in participating in the course or program; and
- (d) appropriately trained support staff, such as specialist teachers, interpreters, note-takers and teachers' aides, are made available to students with disabilities.

Examples

Examples of the specialised services mentioned in paragraph 7.3 (c) include services in health, personal care and therapy, and services provided by speech therapists, occupational therapists and physiotherapists.

Examples of the specialised equipment mentioned in paragraph 7.3 (d) include adaptive technology and assistive devices.

Section 8.1

Part 8 **Standards for harassment and victimisation**

8.1 **Meaning of *harassment***

For these Standards, *harassment*:

- (a) in relation to a person with a disability, includes an action taken in relation to the person's disability that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the person; and
- (b) in relation to a person who has an associate with a disability, includes an action taken in relation to the associate's disability that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the person or the associate.

Note Harassment in education or training is unlawful under sections 37 and 38 of the Act.

8.2 **Application of Part**

This Part applies in relation to an education provider that is:

- (a) an educational institution; or
- (b) an educational authority that administers the educational institution; if either:
- (c) a student with a disability is enrolled in the educational institution; or
- (d) the provider has a reasonable expectation that a student with a disability may enrol in the educational institution.

Rights given by this Part

The effect of the following standards is to require strategies and programs to support the right of students with disabilities to education or training in an environment that is free from discrimination caused by harassment or victimisation on the basis of their disability.

The standards also support the right of students who have associates with disabilities to an educational environment free from discrimination, harassment or victimisation in relation to those disabilities.

Note The exception set out in section 10.2, relating to compliance that imposes unjustifiable hardship on an education provider, does not apply to a requirement in this Part.

8.3 **Standards for eliminating harassment and victimisation**

- (1) An education provider must develop and implement strategies and programs to prevent harassment or victimisation of a student with a disability, or a student who has an associate with a disability, in relation to the disability.

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- (2) The provider must take reasonable steps to ensure that its staff and students are informed about:
- (a) the obligation not to harass or victimise students with disabilities, or students who have associates with disabilities; and
 - (b) the appropriate action to be taken if harassment or victimisation occurs; and
 - (c) complaint mechanisms available to a student who is harassed or victimised in relation to a disability of the student or of an associate of the student.

8.4 Harassment and victimisation provisions of the Act continue to apply

For section 34 of the Act, an action that contravenes section 37, 38 or 42 of the Act is not an action in accordance with these Standards.

Note Section 37 of the Act makes it unlawful for a member of staff of an educational institution to harass a student or prospective student with a disability.

Section 38 of the Act makes it unlawful for a member of staff of an educational institution to harass a student or prospective student who has an associate with a disability.

Section 42 of the Act makes it an offence to victimise a person for acting to assert or support a right given by the Act.

8.5 Measures for compliance with standards

Measures that the education provider may implement to enable the student to participate in education and training in an environment free from harassment and victimisation include measures ensuring that:

- (a) the provider's policies, procedures and codes of conduct for its staff and students explicitly prohibit harassment and victimisation of students with disabilities, on the basis of disability, including:
 - (i) the need for individual strategies and adjustments for a student; and
 - (ii) the need to use such supports as a wheelchair, hearing aid, breathing support, an interpreter, a reader, an assistant or carer or a guide or hearing dog, or other appropriately trained animal; and
- (b) the policies, procedures and codes of conduct for staff and students explicitly prohibit harassment and victimisation of the associates of students with disabilities, on the basis of disability; and
- (c) the procedures for handling any cases or complaints of harassment and victimisation relating to disability are fair, transparent and accountable; and
- (d) the provider's students and staff are effectively informed and reminded, at appropriate intervals, of their rights and responsibilities in maintaining an environment free from harassment and victimisation on the basis of disability; and

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- (e) the professional development programs offered to the provider's staff ensure that policies, procedures and codes of conduct, including matters of harassment and victimisation, are known and understood by staff, and that staff are trained to detect, and deal with, harassment in education and training settings; and
- (f) any cases or complaints of harassment or victimisation on the basis of disability are handled promptly and with due regard to the severity of the matter.

Part 9 Treatment of a person who has an associate with a disability

9.1 Act continues to apply in relation to person who has associate with a disability

For section 34 of the Act, an action that contravenes the provisions of section 22 of the Act in relation to a person who has an associate with a disability is not an action in accordance with these Standards.

Note The relevant provisions of section 22 of the Act provide that an educational authority must not discriminate against a person in admission to an education institution, or as a student, on the ground of a disability of any of the person's associates.

Section 10.1

Part 10 Exceptions

10.1 Exceptions

- (1) These Standards do not render it unlawful for an education provider to fail to comply with a requirement of these Standards if section 10.2, 10.3, 10.4 or 10.5 applies.
- (2) If an exception is invoked, it is the responsibility of the provider to demonstrate that the exception operates.

10.2 Unjustifiable hardship

- (1) This section does not apply to a requirement in Part 8 of these Standards.
- (2) These Standards do not render it unlawful for an education provider to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on the provider.
- (3) The provider must comply with the Standards to the maximum extent not involving unjustifiable hardship.

Note Section 11 of the Act provides that, for the purposes of the Act, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
- (b) the effect of the disability of a person concerned; and
- (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship; and
- (d) in the case of the provision of services, or the making available of facilities — an action plan given to the Commission under section 64 of the Act.

The application of unjustifiable hardship should take account of the scope and objects of the Act and the Standards, particularly the object of removing discrimination as far as possible, and of the rights and interests of all relevant parties. In determining whether the exception of unjustifiable hardship can be relied on, all relevant circumstances of the particular case are to be taken into account.

The Standards generally require providers to make reasonable adjustments where necessary. In determining whether an adjustment is reasonable the factors in subsection 3.4 (2) are considered, including any effect of the adjustment on anyone else affected, including the education provider, staff and other students, and the costs and benefits of making the adjustment. There will be possible adjustments which are not reasonable. There is no requirement on providers to make unreasonable adjustments. The concept of unreasonable adjustment is different to the concept of unjustifiable hardship on the provider in section 10.2. Where the obligation to make a reasonable adjustment none-the-less imposes unjustifiable hardship on the provider, section 10.2 will operate. The concepts of reasonable adjustment and unjustifiable hardship seek to provide a balance between the interests of providers and others, and the interests of students with disabilities.

Section 10.5**10.3 Acts done under statutory authority**

These Standards do not render unlawful anything done in the circumstances described in section 47 of the Act.

10.4 Protection of public health

These Standards do not render it unlawful for an education provider to isolate, or discriminate against, a student with a disability if the disability is an infectious disease or other condition and it is reasonably necessary to so isolate or discriminate to protect the health and welfare of the student with a disability or the health and welfare of others.

10.5 Special measures

- (1) These Standards do not render it unlawful for an education provider to provide special measures (including specialised units or institutions) intended specifically for the benefit of students with disabilities.
- (2) In this section:

special measure means an act mentioned in section 45 of the Act.

Note 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.

Section 11.1

Part 11 Review**11.1 Timetable for review**

The Minister for Education, Science and Training, in consultation with the Attorney-General, must:

- (a) within 5 years after the commencement of these Standards, conduct a review of the effectiveness of these Standards in achieving their objects, including a consideration of whether any amendments are desirable; and
- (b) conduct further reviews to be completed at intervals of not more than 5 years.