

Introduction

This discussion paper has been produced by ACECQA, on behalf of all state and territory governments and the Australian Government, to inform the [2020 Review of the *Disability Standards for Education 2005*](#).

This paper asks providers of early childhood education and care (ECEC) and school age education and care services across Australia about their awareness and understanding of their obligations under the *Disability Discrimination Act 1992* (DDA). This includes questions of access and participation by children with disability to education and care.

ACECQA's paper complements a broader [discussion paper](#) by the Australian Government about ECEC and the *Disability Standards for Education 2005*, and is provided in two parts:

- **Part 1** is for all ECEC and school age education and care providers.
- **Part 2** asks questions that specifically target **National Quality Framework (NQF)** approved ECEC and school age education and care providers.

Part 1: Awareness and understanding of the *Disability Discrimination Act 1992*

Part 1 relates to the DDA and focuses on providers' awareness and understanding of the DDA. It also seeks to better understand how children with disability currently access ECEC and school age education and care services.

The *Disability Discrimination Act 1992* and ECEC and school age education and care

The DDA has been in place for nearly three decades.

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

All ECEC and school age education and care services must comply with the DDA.

Under the DDA, it is unlawful for an ECEC and school age education and care provider to limit or refuse access to services because of a child's disability. The provider must also make reasonable adjustments to accommodate a person with disability, unless making the adjustment would impose an unjustifiable hardship on the provider.

The *Disability Standards for Education 2005* and early childhood education and care

The *Disability Standards for Education 2005* (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 rights and obligations under the DDA easier to understand.

The Standards set out the rights of students with disability and the responsibilities of education providers in relation to: enrolment; participation; curriculum development, accreditation and delivery; student support services; and elimination of harassment and victimisation.

In an ECEC context, the Standards currently apply to “preschools, including kindergartens (but not child care providers)”.¹

Both the 2010 and 2015 Reviews recommended considering extending the application of the Standards to child care providers. The 2015 Review found that the sector had undergone significant reforms which increasingly emphasised the educational purpose of ECEC services, and noted the exclusion of child care from the Standards appeared to be an anomaly.

The distinction made in the Standards between preschools/kindergartens and child care providers does not reflect the various arrangements in place in the ECEC sector.

- There are a diverse range of service types offered by ECEC providers. These include preschools, kindergartens, centre based day care, family day care, in home care, outside school hours care (including for school age children), and a range of other services.
- ECEC 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).

As part of the [2020 Review of the Standards](#), the Australian Government is examining the extent to which families and children know about their rights, and educators and early childhood education and care providers know about, understand and comply with their responsibilities under the DDA.

To inform this review, ACECQA is undertaking consultations with ECEC and school age education and care providers.

How children with disability are currently accessing ECEC and school age education and care services

Governments publish statistics that relate to enrolment and attendance of children with disability in ECEC and school age education and care services. While data is limited, what is available indicates many children with disability are enrolled in, and are accessing ECEC and outside school hours care. The proportion of children attending services approved for government subsidies with disability has increased over the past two decades.²

However, the proportion of children with disability enrolled in/attending ECEC remains slightly below representation levels in the population. For children aged 6-12 years with disability attending Child Care Subsidy (CCS) approved services (i.e. children attending outside school hours care services), that gap between attendance and representation in the population is more pronounced.³

Limited availability of data prevents a more precise assessment of the extent to which attendance and/or enrolment levels of children with disability compares to that of all children.

Questions for all providers of ECEC and school age education and care

In light of the above, we are seeking information from providers about the extent to which children with disability are currently accessing and participating in ECEC/school age education and care services, any barriers to that access and participation, as well as your experience as a service provider in meeting the requirements of disability discrimination legislation.

Questions for all ECEC and school age education and care providers

The following questions are included in an [online survey](#) that you are encouraged to respond to. Please complete and submit your responses to the survey by **Wednesday 16 September 2020**. All responses will remain anonymous.

1. How would you rate your level of awareness of the DDA?
2. How would you rate your understanding about the DDA and your obligations under it?
3. How did you become familiar with the DDA?
4. Is further work required to improve ECEC/school age education and care providers' awareness and understanding about the DDA? If yes, what might that be?

2 Derived from 2000-2020 editions of the Report on Government Services. Source: Steering Committee for the Review of Government Service Provision (2020) [Report on Government Services 2020, Vol B](#).

3 Data acquired from 2020 Report on Government Services (RoGS) which uses the most recent data about the proportion of children attending CCS approved services with disability from 2016. Data acquired from 2020 RoGS that is collected from State and Territory Governments about the proportion of children enrolled in preschool program with disability is from 2018. The proportion of children in the population of children with disability is from 2018. Source: Steering Committee for the Review of Government Service Provision (2020) [Report on Government Services 2020, Vol B](#).

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5. Do you understand your obligations for making reasonable adjustments to ensure a child with disability can participate in ECEC/school age education and care? Would you know how to consult with the parent/carer?
6. Do you feel confident negotiating and implementing a reasonable adjustment? Do you know how to determine if this would result in unjustifiable hardship?
7. Have you ever made a reasonable adjustment?
8. Have any parents/carers said that you were not meeting your obligations? How did you address this?
9. Do you have any other comments about the extent to which children with disability are currently accessing and participating in ECEC/school age education and care services?
10. To what extent do you agree or disagree with the following statements?
 - a. There are barriers currently preventing children with disability from accessing ECEC/school age education and care services. If you 'agree' or 'strongly agree', what are those barriers?
 - b. There are barriers currently preventing children with disability from participating in the educational program within ECEC/school age education and care services. If you 'agree' or 'strongly agree', what are those barriers?
 - c. There are specific barriers currently preventing Aboriginal and Torres Strait Islander children with disability from accessing and/or participating in ECEC/school age education and care services? If you 'agree' or 'strongly agree', what are those barriers?
11. How has your service/s supported children with disability to access and participate in ECEC/school age education and care settings, including any effective support to transition to school?
12. To what extent do you agree or disagree that the following types of ECEC/school age education and care face specific challenges in implementing inclusive practices for children with disability?
 - a. Preschool/Kindergarten (school operated). If you 'agree' or 'strongly agree', what are those challenges?
 - b. Preschool/Kindergarten (non-school operated). If you 'agree' or 'strongly agree', what are those challenges?
 - c. Long Day Care. If you 'agree' or 'strongly agree', what are those challenges?
 - d. Outside School Hours Care. If you 'agree' or 'strongly agree', what are those challenges?
 - e. Family Day Care. If you 'agree' or 'strongly agree', what are those challenges?
 - f. In Home Care. If you 'agree' or 'strongly agree', what are those challenges?
 - g. Other ECEC services. If you 'agree' or 'strongly agree', what is that type(s) of service and what are those challenges?

Part 2: How does the National Quality Framework promote and support inclusive education and care for children with disability?

Part 2 of this discussion paper relates to the National Quality Framework (NQF) and how it promotes and supports inclusive education and care for children with disability.

It asks specific question of **NQF approved ECEC and school age education and care providers – and peak bodies representing those providers** – about how the NQF operates as an inclusive regulatory system.

The National Quality Framework and inclusion

A set of guiding principles underpin the NQF, which include that the:

- rights and best interests of the child are paramount; and
- principles of equity, inclusion and diversity underlie the National Law.

Children with disability (or any groups of children with additional and/or specific needs) are not explicitly mentioned in the provisions of the National Law or the National Quality Standard (NQS).

Instead, the NQF consistently emphasises the inclusivity of all children and the need to tailor all aspects of education and care to the unique circumstances of *'each'* and *'every'* child. Ensuring the the inclusivity of all children is reflected in both:

- the NQS – providers of ECEC and school age education and care services need to cater for each child to be rated as Meeting NQS
- the National Law and National Regulations – providers of ECEC and school age education and care services must comply with provisions under the National Law and National Regulations that prescribe obligations with respect to each child at the service.

Questions for NQF approved ECEC and school age education and care providers – or peak bodies representing those providers

The following questions are included in an online survey that you are encouraged to respond to. Please complete and submit your responses to the [survey](#) by **Wednesday 16 September 2020**. All responses will remain anonymous.

13. How does the NQF support you to deliver inclusive education practices?

14. In complying with your obligations under the NQF, to what extent are children with disability supported to do the following on the same basis as a child without a disability?
- Seek admission or apply for enrolment at an education and care service
 - Access the education and care service environment and its facilities
 - Participate in an educational program that has been designed to develop their skills, knowledge and understanding
 - Access any specialised support services needed to participate in the educational program
 - Access an education and care environment that is free from discrimination caused by harassment or victimisation on the basis of their disability.
15. What government mechanisms or initiatives could further promote inclusive access and participation by children with disability in education and care services?

Written submissions

If you would also like to make a written submission, please email DSEfeedback@acecqa.gov.au. In particular, we would love to hear about any examples of existing, effective approaches to inclusive education and care for children with disability.

Please submit your written submission by **Wednesday 16 September 2020**. We may make written submissions public, unless you tell us not to.