



Australian Government
Department of Education

Consultation paper:

Changes to the Disability Standards for Education 2005

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

January 2025

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Introduction

This consultation paper gives information about the [Disability Discrimination Act 1992 \(DDA\)](#) and the [Disability Standards for Education 2005](#) (the Standards) and an outline of possible changes to the Standards. The paper includes how you can give your feedback on these changes, with questions to guide your feedback. Feedback will help in preparing the final version of changes.

The Standards are a law made under the DDA. They set standards that providers must meet, and explain the rights of students with disability, in education and training.

The Disability Standards for Education Amendment Standards 2025 (the draft Amendment Standards) lists possible changes to the Standards. The main change is to include and clarify that most early childhood education and care and outside school hours care service providers in Australia must comply with the Standards. We call these early childhood education and care (ECEC) service providers and refer to this as including ECEC services in the Standards.

Currently, ECEC services must follow the DDA. They must not discriminate against children, their families or others because of disability and must make reasonable adjustments for children with disability. Currently, the Standards cover kindergartens and preschools but do not specifically cover other types of ECEC services.

This consultation paper avoids using legal language where possible to explain the changes for a public audience. You should not rely only on the information in this consultation paper to determine how the law currently applies or how the proposed changes would apply to you. We encourage you to read the paper alongside the DDA, the Standards and the draft Amendment Standards and seek professional legal advice if you need it.

Why are changes to the Standards being considered

Since the Standards were introduced in 2005, there have been reforms to improve the quality of education in this sector. These reforms mean that, like kindergartens and preschools, most ECEC services now provide an education program, and most must do so by law.

In 2020, the Australian Government did a review of the Standards (the 2020 Review). Parents and carers, ECEC services and advocates told the 2020 Review the requirements under the DDA need to be clearer. The 2020 Review recommended including ECEC services in the Standards. This change was also recommended in the 2010 and 2015 reviews.

Including ECEC services in the Standards aims to:

- make the obligations of ECEC services for children and students with disability consistent across the education sector
- make it clear in the Standards there is no difference between the rights of children with disability in preschool or kindergarten and other ECEC services that deliver education programs
- make it clear for families and carers what the rights of children and students are and how ECEC services must support children and students.

Find more information about the 2020 Review at www.education.gov.au/disability-standards-education-2005/2020-review-disability-standards-education-2005 and www.acecqa.gov.au/have-your-say-DDA.

What feedback we would like

Your feedback will help to make sure changes to the Standards support the inclusion of children with disability in ECEC services and inform the final version of changes to the Standards.

We would like your views on whether the changes cover the ECEC services most suited to be included in the Standards.

- Does the draft definition of an educational early childhood service accurately describe the types of ECEC services most suited to be included in the Standards, such as:
 - Child Care Subsidy approved providers under the national [Family Assistance Law](#)
 - Other ECEC services approved under a law of a state or territory who are also required to deliver an education program based on an [approved learning framework](#)?
- If you answered 'no', please tell us why not.
- Are there any other types of ECEC services that you think should be included in the Standards? If you answered 'yes', what other services should be included?

Please note we are not seeking feedback more broadly on the Standards or considering other changes through this consultation.

How to give your feedback

Please read this consultation paper first. You should also refer to the draft Amendment Standards, the current Standards, and the online FAQs to inform your feedback. You can find all the consultation documents at www.education.gov.au/disability-standards-education-2005/consultations/disability-consultation-ecec.

To give your feedback you can:

- fill out the online survey available at www.education.gov.au/disability-standards-education-2005/consultations/disability-consultation-ecec – this is the way we prefer to get your feedback
- upload written feedback through the online survey
- email an audio or video recording to DisabilityStandardsConsultation@education.gov.au.

The closing date for feedback is 5:00pm AEDT on 28 February 2025.

For help on giving your feedback, please email DisabilityStandardsConsultation@education.gov.au.

Your privacy

Your feedback can be anonymous. You do not have to share any personal information. We have questions in the online survey that will help us understand how you relate to the Standards and the ECEC sector. Please avoid using names or personal details of people or organisations in your feedback. You can read our privacy notice at www.education.gov.au/disability-standards-education-2005/consultations/disability-consultation-ecec.

When the changes will start

Once the consultation is completed, the Australian Government will review the draft Amendment Standards and consider next steps and timing of any changes. We will make sure early childhood education and care services are advised of any changes being made.

ECEC providers should continue to ensure they are meeting their obligations under the DDA while changes to the Standards are considered.

ECEC services to be included in the Standards

The ECEC services that have been identified as most suited to be covered by the Standards are those that by law must deliver an education program based on an approved learning framework.

If changes listed in Schedule 1 of the draft Amendment Standards are made, then the Standards would apply to:

- education providers, and students enrolled in or applying to enrol in an education service (as currently covered by the Standards)
and also to
- educational early childhood service providers, and children enrolled in or applying to enrol in early childhood education services.

The Standards would apply to the educational early childhood service providers in the same way they apply to educational institutions, educational authorities and education providers.

The Standards would apply when children enrol in, or apply to enrol in, educational early childhood service, in the same way they apply to students enrolled in, or applying to enrol in other educational institutions.

How we define the services

The definitions in the draft Amendment Standards aim to make it clear which ECEC services would be covered in the Standards. The definitions are the legal way to identify the services and providers the Standards would apply to. The draft definitions build on definitions used in other laws. For example, the definition of education and care services in Victoria's *Education and Care Services National Law Act 2010*.

For the draft Amendment Standards an 'educational early childhood service provider' is a person (such as a company or an individual) or a group of people (such as a partnership or unincorporated association) that provides an educational early childhood service. This includes:

- A service approved under [A New Tax System \(Family Assistance\) \(Administration\) Act 1999](#)
 - this is a service that attracts child care subsidy (CCS) or additional child care subsidy (ACCS)
- A service that is approved under a law of a state or territory to provide child care or a preschool program that is legally required to provide children with an education program that is based on an approved learning framework. This would include:
 - all services approved under the [National Quality Framework \(NQF\)](#)
 - some other non-NQF service types approved under state or territory law.

- Providers of services that develop or accredit curriculums, education programs based on an approved learning framework, or training services used by any of the above services.

For the draft Amendment Standards, an approved learning framework includes:

- the two nationally approved learning frameworks– these are the [*Early Years Learning Framework and My Time, Our Place – Framework for School Age Care in Australia*](#)
- a state or territory approved framework – for example, the [*Victorian Early Years Learning and Development Framework*](#).

The Standards would apply to any ECEC service provider that fits the definition. They may fall under more than one condition.

Example ECEC services to be included

Details of the ECEC services that the draft definition would include are at www.education.gov.au/disability-standards-education-2005/consultations/disability-consultation-ecec. This list is a guide only. How the Standards apply will depend on each service.

Examples include:

- **Centre Based Day Care** – usually in centres approved to provide quality early childhood education and care
- **Family Day Care** – usually where an educator provides education and care in their home
- **Outside School Hours Care** – education and care before and after school hours and during school holidays
- **In Home Care** – where an educator provides care in the child’s home for families who cannot access other forms of early childhood education.

What inclusion in the Standards will mean for ECEC services

All ECEC providers and services must already follow the DDA and make reasonable adjustments for children with disability and this will continue. The Standards explain how the DDA works in an education context. Amending the Standards to include ECEC will make it clearer and easier for ECEC providers and services to understand their obligations to support children with disability.

ECEC providers and services must keep making reasonable adjustments so that children with disability can take part and access services on the same basis as children without disability. Reasonable adjustments may include changes to buildings or equipment or teaching strategies to support the child. Services must also still consult with parents, carers and guardians on adjustments to help children join in.

ECEC services not affected by the changes

A service would not need to follow the Standards if it does not fit the definition of an educational early childhood service. These services must still follow the DDA by not discriminating based on a person’s disability. These services would be able to use the Standards to help them to not discriminate.

Services that do not fit in the definition might include services that provide education programs but do not have to follow an approved learning framework.

The changes in Schedule 1 of the draft Amendment Standards would also not affect education providers that must already follow the Standards. They will still need to follow the Standards.

Example ECEC services not affected by the changes

Examples include:

- informal care through personal arrangements such as other family members providing care
- services that give instruction in a particular activity – for example, language or ballet class
- care provided by a hotel or resort to children of short-term guests
- care provided where the parent or carer is readily available such as at a gym
- care provided under a child protection law of a state or territory.

Other changes being made

Changes to the Guidance Notes

The [Guidance Notes](#) give extra information to help people understand and comply with the Standards. The Guidance Notes are not part of the law. The 2020 Review recommended that we simplify the Guidance Notes to make them more useful.

The Guidance Notes are on the [Federal Register of Legislation website](#). If changes are made to the Standards, we will replace the Guidance Notes with updated guidance materials made available on the [Department of Education website](#). This will be available alongside other current resources on the Standards and allow everyone to access guidance and resources from one place. It will also allow for a smoother and quicker process when making future updates to guidance on the Standards.

Other miscellaneous changes

Schedule 2 of the draft Amendment Standards lists other minor or technical changes to the Standards. This includes changes to:

- use the new name for the Australian Human Rights Commission instead of the previous name, the Human Rights and Equal Opportunity Commission
- use gender-neutral language like ‘the student’ or ‘the child’ instead of ‘his or her’
- make corrections to how a student with disability is described in Part 6 Standards for curriculum development, accreditation and delivery so that it is the same in each of the sections of that Part.
- refer to the correct section number of the DDA (Section 39)
- update the title for the Minister for Education.

Background to the changes

This section provides background on disability discrimination law, why the changes to the Standards have been recommended and work done in the ECEC sector as a result of the 2020 Review of the Standards.

General information and resources on the DDA and the Standards are available at www.education.gov.au/disability-standards-education-2005.

Overview of Commonwealth disability discrimination law

The national *Disability Discrimination Act 1992* (DDA) is a law that protects Australians from discrimination based on disability. The DDA sets out the types of actions that are illegal disability discrimination. This includes discrimination within education and training and discrimination in the provision of goods and services.

ECEC services must follow the law. They must not discriminate against children, their families or others because of disability. They should also make reasonable adjustments to support children with disability to access and take part in services. Reasonable adjustments include changes to buildings or equipment or teaching strategies to support the child with disability.

Under the DDA there are also standards that explain how the law applies in different areas. This includes the *Disability Standards for Education 2005* (the Standards).

The Standards set out what an education provider must do to not discriminate based on a student's disability. This is achieved primarily through:

- consultation with children with disability and their families
- the making of reasonable adjustments; and
- the elimination of harassment and victimisation.

By following the Standards, providers comply with the DDA. In this way, the Standards make it easier for providers to understand what they must do under the law.

Resources to support inclusion of children with disability in ECEC services

In response to the 2020 Review:

- the Australian Children's Education and Care Quality Authority published products to support ECEC services to understand and comply with the DDA: www.acecqa.gov.au/resources/disability-discrimination-act-1992-dda-resources
- the Australian Government released a toolkit for parents and carers of young children with disability to explain their rights and how to advocate for their child in ECEC: www.education.gov.au/disability-standards-education-2005/resources/advocating-your-child
- the Australian Government also worked with state and territory governments to align national ECEC policies and regulations and obligations under the DDA.

Feedback from consultations to date

Past Reviews of the Standards heard a call for ECEC services to be in the Standards.

The draft Amendment Standards was informed by advice from representatives of:

- state and territory government education departments
- Catholic and independent school sectors
- the ECEC sector
- disability stakeholders.

In April 2023 we consulted with a small group of stakeholders to help decide which ECEC services to include in the draft Amendment Standards. This found that ECEC services that are required by a Commonwealth or state and territory law to deliver education programs based on an approved learning framework were most suited to be included in the Standards.

Other ways to include ECEC services in the Standards were also considered. One approach was to only include education and care services approved under the Education and Care Services National Law (National Law). This approach was not preferred because it:

- would not fully meet the aim of the 2020 Review recommendation to apply to most types of ECEC services
- would exclude the early childhood services that are not approved under the National Law but operate under other state or territory regulations and use an approved learning framework
- could exclude some preschools and kindergartens that are outside the scope of the National Law. This would go against the original policy aim that the Standards should apply to preschools and kindergartens.

Another approach was to change the Standards to include all services that provide any type of care to children under 13 years old. This approach was not preferred because it would be difficult to apply the education concepts in the Standards to services that do not have to provide an education program based on an approved learning framework.

The next review of the Standards

By law the Minister for Education must review the Standards every five years in consultation with the Attorney-General. The next review will commence in 2025 after this consultation.