# Ad Hoc Submission to the Universities Accord Panel

Universities Enable has prepared the following submission for consideration by the Panel considering the findings of the Disability Royal Commission released on 29th September 2023 https://disability.royalcommission.gov.au/news-and-media/media-releases/royal-commission-publishes-final-report-222-recommendations.

This submission was prepared by Professor Paul Harpur, University of Queensland, and Universities Accord Ministerial Reference Group member, with Universities Enable members Prof Elizabeth Kendall, Griffith University; Prof Simon Darcy, University of Technology Sydney; Professor Katie Ellis, Curtin University; Prof Scott Avery, University of Western Sydney; and Dr. Lisa Stafford, University of Tasmania. Universities Enable is a disability-led organisation constituted by university staff members who have disability.

This submission has also been endorsed by leading international experts in human rights and inclusion policy, who have lived experience of disability.

* Professor Anna Lawson from the University of Leeds School of Law and joint Director of the University of Leeds Centre for Disability Studies;
* Professor Michael Ashley Stein, Professor of Law at Harvard Law School and Executive Director of the Harvard Law School Project on Disability;
* Professor Lisa Waddington, European Disability Forum Professor of European Disability Law, Maastricht University, Faculty of Law.

## Importance of university and VET education for people with disabilities

People with disabilities in Australia are twice as likely as Australians without a disability to be unemployed, and access to tertiary education can help shift this outcome.[[1]](#footnote-2) Illustratively, although 53% of people with a disability aged 15 to 64 are employed, compared to 84% of the population without a disability, 67% of undergraduates with a disability secured full-time employment after graduation, compared with 73% of undergraduates without a disability.[[2]](#footnote-3) Tertiary education can close the employment gap.

## The paradigm shift in how disability is regulated: From anti-discrimination laws to the disability human rights paradigm

Disability anti-discrimination laws regulate universities and VET providers in their roles as educators, employers and providers of goods and services. The *Disability Discrimination Act 1992* (Cth) prohibits direct and indirect discrimination in certain situations and provides the basis for the formation of mandatory standards, such as the Disability Standards for Education 2005. It also provides a framework for the creation of voluntary disability action plans.[[3]](#footnote-4)

There is no doubt that anti-discrimination laws have been recognised as important in reducing some of the worst forms of discrimination in the tertiary education sector. However, public calls[[4]](#footnote-5) have recently been made to replace anti-discrimination responsibilities with a legal and policy framework derived from the disability human rights paradigm.[[5]](#footnote-6)

The Universities Accord Panel recognised that the Disability Royal Commission (DRC) represents the largest investigation into disability in Australia’s history. Where the DRC has made recommendations that pertain to educational and work equality in universities and VET providers, the Universities Accord Panel recommendations should defer to those of the DRC. The Accord should not make recommendations that are less paradigm-shifting than those advanced by the Disability Royal Commissioners.

The disability human rights paradigm was central to the work in the DRC and was strongly advocated by sector representatives in The Universities Accord Roundtable on the 19th of October 2023, as well as other actors who made submissions to the Universities Accord Panel.[[6]](#footnote-7) The United Nations Convention on the Rights of People with Disability (CRPD) goes much further than just seeking to reduce discrimination. Instead, the disability human rights paradigm recognises disability as part of human diversity and calls for both educational equality in life-long learning and work equality in higher education.[[7]](#footnote-8) Human rights are advanced through universal design, reasonable adjustments, addressing attitudes, funding disability-led disability research, and empowering people with disabilities to co-design, co-implement and co-monitor all measures concerned with improving disability rights.[[8]](#footnote-9)

The DRC has identified what needs to change in society to translate the hope of the CRPD into a lived reality in Australia. It made 222 recommendations, the following of which are relevant to universities and VET providers:

The DRC Recommendation 4.1 calls for the enactment of a Disability Human Rights Act. We believe that the proposed Disability Human Rights Act should expressly apply to universities and VET Providers.

The DRC recommendation 4.12 seeks to have positive duties included in the Disability Human Rights Act, on Commonwealth entities to promote disability equality. We recommend that, if the DRC Recommendation 4.12 is adopted, such duty should expressly bind universities and VET providers.

The DRC Recommendation 4.27 introduces positive duties in the Disability Discrimination Act 1992 (Cth) and would already apply to the tertiary education sector. To avoid any doubt, it is recommended that the duties found in DRC recommendation 4.27 be mirrored in State and Territory anti-discrimination laws.

Several DRC recommendations call for disability leadership in the development, implementation and monitoring of measures and strategies.[[9]](#footnote-10) Recommendation 5.5 calls for the establishment of a National Disability Commission, and 7.24 recommends that the Australian Government convene a disability-led Disability Employment Rights Council to improve coordination, consistency and clarity across regulatory bodies and frameworks to improve outcomes for people with disability in employment. Echoing the calls from the DRC, the CRPD,[[10]](#footnote-11) and submissions to the Universities Accord process, such as those from Universities Enable,[[11]](#footnote-12) have recommended the establishment of a disability-led higher education council or disability steering group. A well-resourced disability-led Council is needed to give voice to the needs, aspirations and know-how of students, academics, professional staff, and university administrators who live with disability.

## Safe universities are inclusive universities

One of the 5 immediate priority actions in the Australian universities Accord Interim Report concerns student and staff safety. Reforms to work health and safety laws have shifted how “safety” is understood and how it applies to equity groups such as students and staff with a disability.

The model code of practice on managing psychosocial hazards at work explains that when addressing risks to individual workers, it may also be reasonably practicable to accommodate the needs of an individual worker to prevent harm where the worker has disclosed those needs or the Person Conducting the Business or Undertaking (PCBU) is aware.[[12]](#footnote-13) For example, a worker with an injury or disability may need a quiet work area, different equipment or assistive technology to do their work.[[13]](#footnote-14)

Anti-discrimination laws have predominately approached people with disability through a reasonable adjustment lens, whereas the approach to work health and safety has been risk management through a proactive duty to take all reasonably practical steps to ensure safety. Reflecting the disability human rights paradigm advanced in the UN CPRD and the DRC means we must ensure that all aspects of universities (digital, social, physical and policy) are safe and inclusive places for people with disability. However, Australian research suggests that the way that students with disability are managed in tertiary education environments can be improved, particularly for those with invisible disabilities who may not feel empowered to disclose and ask for reasonable adjustments.[[14]](#footnote-15),[[15]](#footnote-16),[[16]](#footnote-17) Research focused on human rights discrimination claims in Australia shows that employers regularly misunderstand key legal concepts that underpin the DDA including: unjustifiable hardship; inherent requirements; reasonable adjustment; direct; and indirect discrimination. Universities need better understanding of these concepts if they are to create safe working environments for people with disability.[[17]](#footnote-18)

The code of practice on managing psychosocial hazards at work also reflects this new disability human rights paradigm, with an emphasis on universal design. For instance, in addition to making changes or accommodations to suit individual workers, PCBUs must also “eliminate or minimise psychosocial risks for all workers so far as is reasonably practicable.”[[18]](#footnote-19) The code focuses on the adoption of universal design is not adopted (i.e., environments designed to be accessed, understood and used to the greatest extent possible by all people regardless of age, size, ability or disability). It notes the need to identify, assess and control situations where “the nature of work, the work environment, or support and supervision” are not accessible, where discrimination exists or factors that are outside an individual’s control are used to negatively assess an individual’s performance.[[19]](#footnote-20)

It is our contention in this submission that inclusive universities are safe universities, and the proposed Student Safety Ombudsman should include attention to ensuring universal design is implemented and monitored in university and VET providers as part of their efforts to protect their students and staff safety. We also propose that university and VET providers be monitored in terms of their performance on accommodations to ensure access and inclusion for students and staff with disability and that such monitoring be informed by disability-led organisations or disabled employee/student resource groups. Disability inclusion is everybody’s business and should permeate all aspects of the Accord.

1. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Sobering employment rate of people with disability to be examined](https://disability.royalcommission.gov.au/news-and-media/media-releases/sobering-employment-rate-people-disability-be-examined) https://disability.royalcommission.gov.au/news-and-media/media-releases/sobering-employment-rate-people-disability-be-examined, Australian Government, 2023, accessed 21 October 2023. [↑](#footnote-ref-2)
2. Include Ability, Australian Human Rights Commission, [Disability and employment in Australia](https://includeability.gov.au/resources-employers/disability-and-employment-australia) https://includeability.gov.au/resources-employers/disability-and-employment-australia, Australian Government, 2021, accessed 21 October 2023; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [*Final Report - Executive Summary, Our vision for an Inclusive Australia and Recommendations*](https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf) *https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf*, Australian Government, 2023, accessed 21 October 2023. [↑](#footnote-ref-3)
3. P Harpur and B Szucs, ‘[Using the New Disability Human Rights Paradigm to Create Higher Education Leadership Opportunities’](https://journals.sagepub.com/doi/full/10.1177/13582291231169668#:~:text=Staff%20with%20disabilities%20at%20the,that%20are%20not%20exclusive%20to) *International Journal of Law and Discrimination*, 2023, 23(1-2):144–162., doi:10.1177/135822912311696. [↑](#footnote-ref-4)
4. Submissions to the Universities Accord process, Articles of the UN Convention on the Rights of Persons with Disabilities, and the recommendations made by the Disability Royal Commission. [↑](#footnote-ref-5)
5. P Harpur and MA Stein, ‘[Universities as Disability Rights Change Agents’](https://espace.library.uq.edu.au/view/UQ%3A925bb2a) (2018) 10 *Northeastern University Law Review,* 2018, 10(2):79-120. [↑](#footnote-ref-6)
6. Universities Enable, [*Universities Enable*](https://www.education.gov.au/australian-universities-accord/consultations/consultation-accord-terms-reference/submission/15179) *https://www.education.gov.au/australian-universities-accord/consultations/consultation-accord-terms-reference/submission/15179,* Department of Education Website, Australian Government, 2023, accessed 21 October 2023; P Harpur, L Stafford and Ellis, [*Paul Harpur, Lisa Stafford, Katie Ellis*](https://www.education.gov.au/australian-universities-accord/consultations/consultation-accord-discussion-paper/submission/15921) *https://www.education.gov.au/australian-universities-accord/consultations/consultation-accord-discussion-paper/submission/15921*. Department of Education Website, Australian Government, 2023, accessed 21 October. [↑](#footnote-ref-7)
7. P Harpur and MA Stein, ‘[*Universities as Disability Rights Change Agents*’](https://espace.library.uq.edu.au/view/UQ%3A925bb2a) *Northeastern University Law Review,* 2018, 10(2):79-120. [↑](#footnote-ref-8)
8. P Harpur, L Stafford and Ellis, [*Paul Harpur, Lisa Stafford, Katie Ellis*](https://www.education.gov.au/australian-universities-accord/consultations/consultation-accord-discussion-paper/submission/15921). Department of Education Website, Australian Government, 2023, accessed 21 October. [↑](#footnote-ref-9)
9. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [*Final Report - Executive Summary, Our vision for an Inclusive Australia and Recommendations*](https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf) *https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf*, Australian Government, 2023, accessed 21 October 2023, 7. [↑](#footnote-ref-10)
10. CRPD Committee, General Comment 7 on the Participation of Persons with Disabilities, U.N. Doc. CRPD/C/GC/7 (Nov. 9, 2018), at para 24. [↑](#footnote-ref-11)
11. Universities Enable, [*Universities Enable*](https://www.education.gov.au/australian-universities-accord/consultations/consultation-accord-terms-reference/submission/15179), Department of Education Website, Australian Government, 2023, accessed 21 October 2023. [↑](#footnote-ref-12)
12. [Safe Work Australia, *Model Code of Practice: Managing psychosocial hazards at work https://www.safeworkaustralia.gov.au/doc/model-code-practice-managing-psychosocial-hazards-work*, Safe](https://icnprod01.sharepoint.com/Users/s375162/Library/Mobile%20Documents/com~apple~CloudDocs/Desktop/Safe%20Work%20Australia%2C%20Model%20Code%20of%20Practice%3A%20Managing%20psychosocial%20hazards%20at%20work%20https%3A/www.safeworkaustralia.gov.au/doc/model-code-practice-managing-psychosocial-hazards-work%2C%20Safe) Work Australia Website, Australian Government, 2022, accessed 21 October 2023. [↑](#footnote-ref-13)
13. Safe Work Australia, [Model Code of Practice: Managing psychosocial hazards at work, Safe Work Australia Website](https://www.safeworkaustralia.gov.au/doc/model-code-practice-managing-psychosocial-hazards-work), Australian Government, 2022, p 18, accessed 21 October 2023. [↑](#footnote-ref-14)
14. Yerbury, H., Darcy, S., Burridge, N., & Almond, B. (2022). Are we talking the same language? Contestable discourses between university staff accommodating students with disability. Disability & Society, 1-21. [https://doi.org/10.1080/09687599.2022.2142523](https://protect-au.mimecast.com/s/0bFwC3Q8BjImNEvjxipxniY?domain=doi.org). [↑](#footnote-ref-15)
15. Yerbury, H., Darcy, S., Burridge, N., & Almond, B. (2021). Bringing order or creating exclusion: classification systems for managing disability in a university. *Journal of Documentation*, 78(3) pp529-545 [https://www.emerald.com/insight/content/doi/10.1108/JD-12-2020-0208/full/html](https://protect-au.mimecast.com/s/8FTdC4QZEkIJkvxZ6c5aazo?domain=emerald.com). [↑](#footnote-ref-16)
16. Yerbury, H., Darcy, S., & Burridge, N. (2019). Accessing Learning Resources: experiences of students with disability. *Information Research,*24(4), paper colis 1929. Retrieved from [http://InformationR.net/ir/24-4/colis/colis1929.html](https://protect-au.mimecast.com/s/c0xDC5QZJlI0ND1yRUV88Du?domain=informationr.net" \t "_blank). [↑](#footnote-ref-17)
17. Darcy, S., Taylor, T., & Green, J. (2016). ‘But I can do the job’: examining disability employment practice through human rights complaint cases. *Disability & Society, 31*(9), 1242-1274. [http://www.tandfonline.com/doi/full/10.1080/09687599.2016.1256807](https://protect-au.mimecast.com/s/_fSrCD1jpYhBGkmxPHZ4Ydx?domain=tandfonline.com). [↑](#footnote-ref-18)
18. WorkSafe, [*Managing the risk of psychosocial hazards at work Code of Practice 2022*,](https://www.worksafe.qld.gov.au/laws-and-compliance/codes-of-practice/managing-the-risk-of-psychosocial-hazards-at-work-code-of-practice-2022#:~:text=The%20Managing%20the%20risk%20of,Act%202011%20(WHS%20Act).) WorkSafe Queensland Website, Australian Government, 2022, accessed 21 October 2023. [↑](#footnote-ref-19)
19. [NDIS Quality and Safeguards Commission, *Supervising for Capability Supervision and Support Relationship A Guide for Supervisors and Workers https://workforcecapability.ndiscommission.gov.au/tools-and-resources/supervision-capability*,](file://Users/s375162/Library/Mobile%20Documents/com~apple~CloudDocs/Desktop/NDIS%20Quality%20and%20Safeguards%20Commission%2C%20Supervising%20for%20Capability%20Supervision%20and%20Support%20Relationship%20A%20Guide%20for%20Supervisors%20and%20Workers%20https%3A/workforcecapability.ndiscommission.gov.au/tools-and-resources/supervision-capability%2C) Australian Government, 2023, accessed 21 October 2023. [↑](#footnote-ref-20)