

Entering the Professions

Professional Registration for Students with Disabilities

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Introduction

The introduction of the Federal Disability Discrimination Act 1992 (DDA) sought to provide comprehensive legislation to ensure that people with disabilities had equal rights to the provision of services, goods, housing, employment and education as non disabled people. The Disability Discrimination Act's definition of disability is broad, and includes people with physical, intellectual, psychiatric, sensory, neurological, learning disabilities, physical disfigurement and the presence in the body of disease-causing organisms. The Act makes no distinction between a disability that a person has had in the past, has now or may have in the future. The legislation provides protection for everyone in Australia against discrimination based on disability.

Section 22 of the DDA specifically addresses disability discrimination in higher education. The Human Rights and Equal Opportunity Commission (HREOC) interpretation of Section 22 is:

a person with a disability has a right to study at any educational institution in the same way as any other student. The DDA makes it illegal for an education authority to discriminate against someone because that person has a disability. Educators must offer a person with a disability the same educational opportunities as everyone else. This means that if a person with a disability meets the necessary academic entry requirements of a school or college he or she should have just as much chance to study as anyone else. Educators must base decisions on a person's ability to meet the essential requirements of the course; they should not make assumptions about what a person can or cannot do because of a disability. (HREOC, 1992, p.2)

Universities are required to not only ensure equal entry access but must provide appropriate assistance to enable a student with a disability the opportunity to meet the essential course requirements. The legislation refers to appropriate assistance as reasonable accommodation or adjustments.

The concept of reasonable accommodation or adjustment covers campus design, including the provision of equipment and access, and study course design. Applying the concept means that academic and administrative staff, wherever it is necessary, possible and reasonable to do so, take into account a student's disability and make appropriate adjustments to the learning environment to lessen the impact of the disability. (Reasonable Accommodations: Strategies for teaching university students with disabilities, 1993. p.3.)

Adjustments can include the provision of note takers, sign interpreters, course delivery, assessment and examinations arrangements to ensure students with disabilities are able to perform the essential study activities. The Australian Vice-Chancellors' Committee stated that: "*universities should have in place teaching and assessment strategies which are appropriate to students with disabilities. The assessment policies and practices of the university should make explicit provision for the use of procedural variations and/or alternative assessment strategies for students with disabilities*". (Australian Vice-Chancellors' Committee [AVCC], 1996, s.4.4. p.3.) Reasonable adjustments may vary over time depending on the specific requirements of the individual student, the student's health status and the essential or inherent requirements of the unit or course in which the student has enrolled.

The DDA provides a solid legal framework but due to the complexity of issues addressed, challenges have occurred. Some aspects of the legislation have been challenged in the High Court of Australia, while other aspects have become the subject of intense debate and discussion within the academic community. One aspect of the legislation that has attracted academic attention revolves around the issue of students with a disability being able to enrol in degree courses which require the person to be certified by an external accrediting body before they are eligible to seek employment in the profession. UWS has a number of courses that fall within this category including the Bachelor of Nursing. The following illustrates many of the issues that are frequently raised in relation to registration and study.

Case Study - Registration Issues and Undergraduate Nursing Students

A number of academics who lecture in the Bachelor of Nursing course assert they are confused about their professional responsibility; is the responsibility to the student, to the university or is it to the profession? Stickels (2002), suggests that academics are divided on this question:

some academics see themselves as gate-keepers for the profession having a 'duty of care' to ensure that only competent students are permitted to seek registration. This group see the "primary responsibility of the educator is to the patient and the registration board, not to the student, they are professionals first and educators second". Others would argue that the "primary role of the educator is to provide competent practitioners, fit to do the job and this would override the right of the student to education for personal reasons". Another view is that the "primary responsibility is to educate and it is the role of the registration board to protect the public....universities are the ultimate protectors of the public by graduating only competent people. P.11

It would be difficult to argue against this last view because it contains three principles that are fundamental to our understanding of education in Australia. The three principles which the view supports are that the primary responsibility of educators is to educate and education is valued for its own sake. Secondly, that not all students are going to successfully complete a course, some will fail their course or discontinue. Only those students who are able to meet the academic requirements of a course as well as demonstrate competency in assessable practical skills proceed to graduation. The final principle places Registration Boards in the employment sphere where the primary responsibilities relate directly to the "maintenance and promotion of professional standards and to protect the community through maintaining professional standards". (Nurses Registration Board, [2005]. *About the Registration Board.*)

Some academics question if the university is acting ethically by accepting enrolments from students with disabilities knowing that they are unlikely to get employment in the profession. Others argue that the university should not allow students with disabilities to enrol in particular courses and for those students who acquire a disability after commencing their studies, the university ought to counsel the student out of the course. Some academics maintain that students with disabilities who have had reasonable adjustments (which is their legal entitlement) while at university could never function in employment without those adjustments. Academics have expressed the view that regardless of legislation no employer is going to provide the same adjustments in the work place, particularly when there will be extra cost involved. According to this argument nurses would be employed who could not, because of their disability, perform all the duties required. The inference here is that other nurses would have to perform the extra duties. This according to academics is simply not fair; it jeopardises the trust the community places in the profession and compromises the duty of care to the patients. Academics who maintain this view assert that for these reasons *they "feel uncomfortable about recommending students with disabilities for registration to the Nurses Registration Board". (Personal communication, Senior Academic, [2004] University of Western Sydney, Nursing School Meeting, February 27th 2004.)*

It is debatable if all aspects of this argument would find support in the general community. It would be reasonable, however, to assume that individuals would not willingly place their lives in the hands of a person who was incompetent or incapable of doing the job to an acceptable professional standard. It is also reasonable for the community to expect that universities play a part in ensuring that only appropriately qualified, skilled and competent people are eligible for professional registration. A prerequisite for applying for registration to a professional Registration Board is that the applicant must have already obtained appropriate academic qualifications from a recognised and approved university. To graduate from an Australian university the student must have successfully completed all components of the prescribed course. This includes being able to demonstrate appropriate knowledge and skills, as well as having successfully completed all compulsory work experience/clinical practicums. The Degree testifies that the holder is academically qualified, skilled and competent. If a student fails to satisfy the academic requirements of the course they are not eligible to graduate and in turn are not eligible to apply for professional registration. This all seems perfectly clear so why are some academics confused?

The Role of the University

In part, this confusion stems from a lack of familiarity with the Disability Discrimination Act itself. The DDA consists of 7 parts with a total of 132 sections, each addressing a specific issue; Section 22 addresses disability and education. Section 15 addresses issues relating to disability and employment. During an address to university academics the Disability Commissioner, Graeme Innes, Human Rights and Equal Opportunity Commission stated in respect of students:

“universities are responsible for education and are not responsible for [graduates] employment”. (Innes, G. [1998] Presentation to Academics: Understanding the Disability Discrimination Act 1992, October 1st, 1998. University of Western Sydney, Parramatta Campus).

This is an important distinction for several reasons. Firstly, if the role of the university is primarily to concern itself with the education of the student then the reasonable adjustments that a student with a disability would require while engaged in study could be quite different from the type of reasonable adjustments that the same person would require as an employee. Secondly, students with a disability may choose to enrol in a degree program in the knowledge that their particular disability may prevent them from being eligible for professional registration.

In courses without work experience or clinical practicum requirements, the provision of adjustments is relatively simple. This is because the adjustments are applicable only to the educational environment. Problems are more likely to emerge when a course has a compulsory work experience or practicum component. In such a situation a different set of adjustments from those required in the education environment need to be set in place. Further complications may arise because the learning goals of a particular placement may necessitate the student working in an environment where the disability may have a greater impact than it would if the student was placed in a different environment. The particular placement environment may very well be one that the student as a graduate would never consider for employment. Further difficulties may be encountered because of the length of practicums. For example, sometimes host agencies are reluctant to make major changes to the physical environment, the method of communication or the way the task is completed because the particular student will not be with the agency for any length of time to warrant such changes.

“Inherent Requirements”

- Is it possible for the university to successfully balance the learning needs of students with disabilities, the demand for academic rigour and work place/clinical practicum adjustments in a fair, equitable and transparent way?
- Is it possible for the university to be able to guarantee that the degree a student with a disability receives is exactly the same as the degree a student without a disability receives?
- Is it possible for graduates with disabilities to gain professional registration?
- Is it possible for graduates with disabilities to be offered employment in their professional field?

The answer to all these questions is yes, yes, yes and yes. The means to achieving this lie within the DDA's principle of “inherent requirements” (*Disability Discrimination Act [1992], part 2, s. 15. p.11*). This term although not defined in the recently proclaimed Disability Education Standards or the DDA itself, is used to convey the concept of inherent requirements of the job in defining discrimination and in defining some of the exceptions to the obligation not to discriminate. In the Commissioner's view:

Inherent requirements need to be determined in the circumstances of each job. They may include:

- *The ability to perform the tasks or functions which are a necessary part of the job*
- *Productivity and quality requirements*
- *The ability to work effectively in the team or other type of work organisation concerned*
- *The ability to work safely. (Australian Disability Clearinghouse on Education & Training [ADCE] Inherent Requirements, 2005.)*

“Inherent requirements” are the essential, core characteristics of a particular job that have to be fulfilled in order for the work to be successfully completed. “Inherent requirements” differ from the “requirements” of a job. “Requirements” is a much broader concept which may not be necessary to successfully complete a particular job. Any job that can be done in a number of different ways cannot claim that one of the methods is an “inherent requirement” of that job; it would be a requirement but not a core essential. This means *“that it could be unlawful to not employ a person with a disability if their only problem is that they are unable, because of their disability, to carry out some of the job requirements that are not really inherent to the job”*. (Commonwealth Attorney General’s Department [1994] *Acting Against Disability Discrimination: A practical manual for using the Disability Discrimination Act 1992*, p.42.)

As Stickels (2002) points out, the term “inherent requirements” originated from the *United Nations Convention Concerning Discrimination in Respect of Employment and Occupation*. Initially the term was only utilised within the employment sector, more recently the term has been applied to education with respect to the content of units, courses, examinations, practical and clinical experience. Just as the “inherent requirements” differ for every job so the inherent requirements differ for individual courses. All students including students with a disability must meet the “inherent requirements” of the course, including the “inherent requirements” of the work experience or clinical practicum. The university, under the DDA, provides students with disabilities with appropriate and reasonable academic adjustments so that they have the same opportunity as their peers to participate and complete all aspects of their course. This does not mean that the university should lower standards or adjust the “inherent requirements” so that a student with a disability could pass the course. Ultimately, the university has to be able to say with confidence that the value of the degree earned by any student with a disability is exactly the same as the value of the degree earned by a student without a disability.

The challenge for universities is to identify and clearly articulate the “inherent requirements” or essential core requirements of their courses and individual units. Additionally, the core skills associated with the laboratory, work experience, clinical practicum and fieldwork needs to be also identified. Academics have to be prepared to analyse the content of existing units to identify the essential as opposed to ancillary knowledge or task/skills. “Inherent requirements” need to be articulated for each unit:

on academic judgement, it must be justifiable on other than historical or employment-based grounds. Requirements imposed by external agencies (eg professional bodies, registration boards, external fieldwork agencies) are only important if they are essential to the academic course, as determined by University academic staff. (Watts, Stickels, Fraser, Carroll, Stewart, and Radloff. 2000.)

The identification of “inherent requirements” needs to be built into the curriculum development process rather than attempting to identify retrospectively the essential or core requirements. In 2000 Curtin University started developing ‘Guidelines and Procedures to Assist Universities to Examine the Inherent Requirements of their Courses’ that could have been used as a blue print for other universities to follow. Unfortunately no further published information has been forthcoming. In the main, Australian universities have thus far paid little attention to the task of identifying “inherent requirements” even for courses where specific skills are required. Failure to identify and articulate “inherent requirements” makes it difficult and frustrating for academics and support staff to be able to provide appropriate advice, assist and discuss with students what the demands are going to be like for a particular course or what skills will be required to successfully complete the course. Lack of identification creates difficulties for prospective students as well because professional support staff do not have sufficient accurate, detailed information on the key learning goals and skills that the student will need to master the course. If a particular skill has been identified as being an inherent requirement and the student is unable to meet the requirement then the student has the option of discontinuing or changing to another course where they would be able to meet the inherent requirements. If, however, a student wishes to continue with a course and it is clear that the student will not be able to meet the inherent requirements, then the Australian Vice Chancellors’ Committee stipulates:

Where it is claimed on the basis of expert advice that a particular academic course is not available to a student because his/her disability has a particular functional implication, the matter must be examined by the most senior academic committee within the university, which should seek independent advice from other appropriate bodies. (AVCC, Guidelines relating to students with disabilities. 1996. Canberra Paragon Printers ACT, s 5.2, p.3.)

Universities must be primarily concerned with education and not with issues to do with employment (Disability Commissioner, G. Innes). The responsibility for educating the student commences at enrolment and terminates with graduation. Whether a graduate chooses to apply for professional registration or not is up to the individual; there is no rule that says that a graduate must be registered. Registration, however, is essential if the graduate wishes to pursue employment as a health practitioner. An application for professional registration can only be made after a person has successfully completed the relevant academic course. The issue of an individual's professional registration is not the responsibility of educators. It lies within the employment sphere, and with the particular professional registration board.

Given that registration is primarily the responsibility of the relevant registration board, why do so many academics complain that they "*feel uncomfortable about recommending students with disabilities for registration to the Nurses Registration Board*" (Personal communication, Senior Academic, [2004] University of Western Sydney, Nursing School Meeting, February 27th 2004.)

It would seem that some academics misunderstand their role and responsibilities in relation to a graduate applying for registration. In relation to nursing the process is clear. Once a student has successfully completed their academic course the university provides the Registration Board with a list of students who are eligible for registration. Graduates intending to gain registration must submit an 'Application for Registration as a Nurse'. The making of an application is the responsibility of the graduate; the University is not required to assist in this process. The Registration Board requires two character references which testify that the applicant is '*honest, trustworthy and of good character*'. *The referee is asked to make comments 'relating to the moral qualities which are relevant to the applicant's character including, but not limited to, the following:*

- *honesty and integrity;*
- *ability to maintain privacy and confidentiality;*
- *the moral strength to resist any opportunity for exploitation, including sexual exploitation;*
- *a commitment to maintaining the reputation and standing of the profession generally;*
- *respect for the personal and religious beliefs of others.*

Referees must be:

- *registered nurses, registered midwives or enrolled nurses in New South Wales or elsewhere*
- *members of another health profession which is regulated by an act of parliament in New South Wales or elsewhere;*
- *current employees of commonwealth, state, territory or local governments or statutory authorities (bodies established by statute) in Australia or other countries, who have been employed continuously for at least five years by their current employer;*
- *currently employed teachers who have been teaching for more than five years at schools or tertiary institutions, in Australia or another country;*
- *elected representatives in an Australian parliament (commonwealth, state or territory);*
- *barristers or solicitors.'*

(Nurses and Midwives Board, Application for Registration as a Nurse, Level 6, North Wing, 477 Pitt Street, Sydney, NSW 2005. September 2005)

In most cases students intending to seek registration do so while still at university and for convenience, academics are often asked to act as referee. It is this activity that can lead to academics becoming confused about their role and responsibility because academics believe they are acting in their formal capacity as an academic representing the School of Nursing and the University of

Western Sydney whereas in reality they are performing the task in their capacity as a qualified private citizen. The Registration Board does not require academics or the university to make any comment relating to a person's disabilities or impairment. On the application form, however, there is a specific question on impairment that the applicant is required to answer and where appropriate provide relevant documentation. The Nurses Registration Board has a formal and transparent process in place for examining applications for registration from people who have impairment.

Although professional registration boards do have some involvement in the development of the curriculum and do impose some conditions on universities their responsibility is to the profession and not the individual student. Professional registration boards, secure in the knowledge that the applicant already holds the appropriate academic qualifications, focus their attention on issues related to professional practice, including *“those activities which relate directly to the maintenance and promotion of professional standards of nursing and midwifery practice in New South Wales to protect public health and safety”*. (NSW Nurses Registration Board. *About The Board 2005*.)

When an applicant discloses that they have an impairment/disability the Registration Board takes the view that *“while the Board's primary responsibility is to protect the community through maintaining professional standards of nursing and midwifery practice, it takes the view those most impaired nurses and midwives can continue to practise, subject to appropriate limitations”* (NSW Nurses Registration Board. *Impaired Nurse, 2005*). In some cases the Registration Board will place conditions on the registration that prevents nurses with impairments from working in particular environments.

If the Registration Board determines that an applicant with impairment could not meet the “inherent requirements” of professional practice then the Registration Board could refuse registration. The Acting Against Disability Discrimination Manual (1994) interprets Section 19 of the DDA as *“Qualifying and vocational bodies may refuse to authorise or to qualify a person with a disability, if because of the person's disability; the person is unable to carry out the inherent requirements of the trade or profession (s 19). Educational authorities are not able to pre-empt the decisions of the qualifying body.”* Once again it is the principle of “inherent requirements” that come into play but this time it is not the inherent requirements of education but the inherent requirements of the profession. Exactly what are the inherent requirements of a Nurse Practitioner remains to be explored.

A number of issues have been addressed in this paper in response to academic concerns relating to students with disabilities. These concerns include firstly, allowing students to enrol in courses that require the person to have registration before seeking employment. Secondly, that even if the student was able to complete the course their disability would preclude them from applying for professional registration. Finally, even if the student was able to pass the course and gain registration they would not be able to discharge all the duties required of the job. This paper endeavoured to reassure academics and the wider community that there was no need for alarm; all the issues raised by the academics as being of concern had already been considered by the legislators when drafting the Disability Discrimination Act and appropriate safe guards have been incorporated into the Act where necessary.

The DDA was intended to offer every Australian protection from discrimination based on disability and to ensure a person had a legal right to access and participate in education and employment. This recognises that in order for access and participation to occur, some people would need to have adjustments made to the environment or the way that a task was carried out. These adjustments need to be reasonable and relevant to the specific environment or activity. Although appropriate adjustments are provided the person must still meet the inherent or essential requirements of the course or job. Failure to meet the “inherent requirements” would result in a student having to discontinue a course or changing to a course where the “inherent requirements” could be met.

It is imperative that the University identify the “inherent requirements” of each unit and course. Once the inherent requirements are known, academics and professional student support staff are better positioned to be able to enter into open and transparent discussions with the student about the demands of the course, skills required and available options. However, the decision to continue or not with a particular course must rest with the student with a disability. The student may choose to continue with a course even when it is apparent that gaining registration or professional employment may be difficult or impossible.

The “inherent requirements” for registration or professional practice may be very different from “the inherent requirements” involved in education. Ultimate responsibility for registration and professional practice fall outside the educational arena. Educators have a responsibility to educate students, to ensure that every student, with or without a disability successfully meets all the academic requirements needed for that student to be eligible for graduation. Registration is only possible once the person has the necessary academic qualification but even with appropriate qualifications registration is not guaranteed as the graduate must also meet the “inherent requirements” of the profession. This is the role of the relevant professional registration board. In the case of the nursing profession, for example, if registration is granted employment as a health professional is only offered if the person is able to satisfy the “inherent requirements” of the job. It would be difficult for a person with a disability to fulfil all the requirements of the education system, the Registration Board and the professional employment sector unless they were capable and competent.

“The university’s primary responsibility is to educate and it is the role of the registration board to protect the public universities are the ultimate protectors of the public by graduating only competent people”. (Stickels, 2000).

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