

REASONABLE ADJUSTMENT POLICY

PURPOSE

1. The ACT Public Service (ACTPS) acknowledges and values workplace diversity and is committed to ensuring an accessible and inclusive workplace. The purpose of this policy is to ensure all ACTPS directorates follow the principles of Reasonable Adjustment, ensuring all individuals have equal opportunities in the workplace¹.

BACKGROUND

2. The ACTPS is committed to the principles of equity and diversity and that these principles are provided to all employees.
3. Additionally, the ACTPS has obligations under the Commonwealth *Disability Discrimination Act 1992* (DDA) in addition to relevant ACT legislation including the *Discrimination Act 1991* (ACT), the *Human Rights Act 2004* (ACT), and the *Human Rights Commission Act 2005* (ACT). These obligations include ensuring that all employees and potential employees can participate fully in all aspects of employment. Under both Commonwealth and Territory legislation, the ACTPS must not discriminate, directly or indirectly, against an individual by treating them less favourably than a person without a disability would be treated.

APPLICATION

4. This policy applies to all ACTPS directorates and any individual:
 - employed under the *Public Sector Management Act 1994*;
 - employed by the ACTPS on a contractual basis;
 - engaged by a recruitment company; and
 - applying for a position with the ACTPS.
5. This policy also applies to recruitment companies engaged by the ACTPS to undertake recruitment activities. Such companies must ensure that principles of reasonable adjustment are applied throughout the recruitment process.

¹ HR Website.

PRINCIPLES

6. The principles of Reasonable Adjustment apply irrespective of whether the individual's disability was pre-existing or caused at work and whether it is permanent or temporary². It is important for ACTPS directorates to note that the principles and application of Reasonable Adjustment applies to all stages of employment including recruitment, selection, induction, training and career development, participation in projects and committees and return to work following an injury.
7. The ACTPS is committed to the principles of Reasonable Adjustment to ensure all individuals have equal employment opportunities. The ACTPS seeks to apply the principles of Reasonable Adjustment to remove barriers to workplace participation for individuals with disability and individuals with an injury.

What is Reasonable Adjustment

8. Reasonable Adjustment can be defined as administrative, environmental or procedural modification required enabling an individual to meet the requirements of a position. It may be a change to a Recruitment/Selection process or work process, practice or procedure that enables an individual with a disability or injury to apply for a job and perform their job in a way that minimises the impact of their disability or injury. Reasonable Adjustment allows an individual to:
 - perform the inherent or essential requirements of their job in a safe manner;
 - have equal opportunity to be considered for selection, appointment, promotion, transfer, training and other employment opportunities;
 - experience equitable terms and conditions of employment; and
 - maximise productivity and workplace satisfaction.

Unjustifiable Hardship

9. Under the DDA the ACTPS is required to provide Reasonable Adjustment wherever it is necessary and reasonable to do so, that is where it does not result in unjustifiable

²HR Website 'Where in the DDA is the requirement to make reasonable adjustment?'

hardship for the employer. When determining if unjustifiable hardship would be caused, the following is generally considered:

- the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
- the cost of the adjustment required in respect of the directorates financial situation.

10. What is considered 'reasonable' will depend on the facts and circumstances of each particular situation. Some examples of Reasonable Adjustment for an individual with disability or injury may include:

Job redesign:

- flexible working hours, working part time, providing time-off for counselling or medical appointments, allowing longer breaks or allowing the individual to telework or work from home for part of the week.

Job sharing:

- redistributing minor duties that an individual with a disability or injury finds difficult to do or having two people share a full-time position.

Workplace Modifications may include:

- providing voice activated software for someone who has a physical impairment or injury, providing an amplified phone for an individual who is hard of hearing, providing a digital recorder for someone who finds it difficult to take written notes or improving physical accessibility to the workplace;
- providing increased font size in documents for an individual with vision impairment or providing an Auslan interpreter for captioning for a deaf individual;
- providing a stand up work station for an individual with a back injury; and/or
- providing appropriate equipment or assistance to an individual with a disability or injury who is applying for a position with the ACTPS, for example arranging interpreters or readers or providing materials related to the recruitment process in alternate formats.

Note: Workplace modifications should be accessed through a workplace assessor or provider.

Direct and Indirect discrimination

11. Under Territory and Commonwealth legislation it is **direct discrimination** to treat an individual with a disability less favourably than an individual without the disability would be treated in the same or similar circumstances. Additionally, under the DDA it is direct discrimination not to make reasonable adjustments for an individual where the failure to make these adjustments results in the individual being treated less favourably than a person without the disability³.

12. It is **indirect discrimination** under both Territory and Commonwealth legislation to subject an individual to treatment which is less favourable in its impact. That is, it is discrimination to impose a requirement or condition on a person that because of their disability would not be able to comply with the requirement or condition and this would result in disadvantage. It is also discrimination to impose a requirement or condition and not provide reasonable adjustment, where the failure to provide reasonable adjustment is likely to disadvantage the individual with the disability⁴.

RECRUITMENT PROCESS

13. The principles of Reasonable Adjustment apply to all stages of the recruitment process to ensure that all applicants have the opportunity to compete for the position equally and fairly. Selection panels/managers need to ensure that all applicants are assessed on their ability to meet the inherent requirements of the role in partnership with the merit principles.

14. Inherent requirements need to be determined in the circumstances of each job and may include⁵:

³ http://www.austlii.edu.au/cgi-bin/download.cgi/au/legis/cth/consol_act/dda1992264

⁴ http://www.austlii.edu.au/cgi-bin/download.cgi/au/legis/cth/consol_act/dda1992264

⁵ HR Website 'Employment and the Disability Discrimination Act. Part 1. – what does "inherent requirements" mean?

- 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; and/or
- the ability to work safely.

15. The type and degree of modifications to either a selection process and/or the way in which duties can be performed are broad and depend on the needs of the individual concerned. It is essential for selection panels/managers to ask applicants if any reasonable adjustments are required to enable them to participate equally in the recruitment process. Selection panels/managers should ask all applicants when inviting applicants to an interview whether reasonable adjustments will be required. This is irrespective of whether applicants have indicated that special requirements are required on the application form.

RESPONSIBILITIES

16. When implementing a Reasonable Adjustment the following responsibilities apply:

Individual/Employee

- The individual/employee requiring reasonable adjustment is responsible for notifying their manager or executive of their given circumstance.
- Individuals/employees also have a level of responsibility to provide assistance (if required) and if they are in a position to do so.

Manager

- Once being notified, managers are responsible for speaking with the individual/employee to clarify their needs, and required to begin the process with the corporate area of their given directorate.
- Managers have a responsibility to ensure that all employees have the necessary resources available to be able to perform the inherent requirements of the position.
- Managers must ensure that they are very clear and specific about the inherent requirements of the position.

- Managers have a responsibility to understand the concept and principle of Reasonable Adjustment and seek information if needed.
- Managers should champion Reasonable Adjustment.

Corporate/HR Area

- Administrative responsibilities sit with the corporate area of the relevant directorate; this includes overseeing the process to ensure suitable reporting is undertaken, as well as being the main point of contact for liaising with the Employee Assistance Fund (EAF) when it has been agreed that Job Access will provide funding.
- Corporate areas are responsible for assisting and advising managers and employees both on and throughout the process, in the organisation of assessments and providing advice on whether EAF can be accessed.

Executive/Delegate

- It is the executive delegate's responsibility to endorse the financial commitment given to sourcing the reasonable adjustment. Prior to making any decisions delegates are encouraged to seek assistance from HR or EAF, in particular if they wish to decline the adjustment.

Employer

- Creating an workplace environment where all employees and potential employees have access to participate fully in all aspects of recruitment.
- The decision as to what reasonable adjustment is required rests with the employer.

Selection Panels

- Selection panels have a responsibility to understand and champion reasonable adjustment. As part of this, the chair of the selection panel must ensure that all panel members understand the principles of reasonable adjustment and apply these principles.
- Selection panels have a responsibility to ensure all applicants have the opportunity to request reasonable adjustments, and all reasonable requests are catered for. This includes asking all applicants when arranging interview times as to whether they require any special requirements for the interview.

- An equal opportunity to apply for the position and to participate in the recruitment process rests with selection panels.

FUNDING OF REASONABLE ADJUSTMENT REQUIREMENTS IN THE ACT PUBLIC SERVICE

17. Responsibility for meeting the cost of workplace adjustments and modifications will depend on the nature of the work. Below is a general guide in relation to funding arrangements. Each case needs to be assessed on an individual basis and managers are encouraged to liaise with their corporate area.

- Where the workplace adjustment or modification relates to accommodation matters, that is, the physical building or fittings attached to the building which are required for disability access, funding assistance maybe available through the EAF up to the value of \$33,000.00 (as at April 2015). Modification to accommodation may include such things as automatic doors, ramps or modification of toilet facilities etc. Costs over and above this amount will be met by the Directorate and in conjunction with the building owner where appropriate.
- Where the workplace adjustment or modification involves the provision of specialised personal equipment to support the employee (e.g. adaptive speech software for the computer, telephone amplification devices etc) the cost can be met by the EAF through reimbursement to the individual business area once an application to the EAF has been approved and the equipment purchased. Equipment which is standard issue to all employees will not be covered by EAF funding. Areas should check with Shared Services on what reimbursement options are available before purchasing equipment to have funds returned to their area budgets. Alternatively, individual employees may apply to the EAF through their individual Employment Service provider who will make arrangements for assessment, applications to the EAF and purchase of equipment on approval. It should be noted that not all employees will have engaged a Employment Service Provider. Equipment purchased through EAF for an employee remains the personal property of that employee.

- Costs associated with work place assessment of employee needs will generally be met by the individual's business area or by Job Access, except in cases where an individual's employment service provider is involved. This may happen in circumstances where specialist assessment may be required (eg: for vision impairment or hearing loss) An assessment should be reviewed each time an employee changes positions or their duties change substantially.
- Funding is available through Job Access for disability awareness training up to the value of \$1,500.00 for supervisors/staff which maybe applied for directly by line areas.
- Funding is available to the provision of Auslan interpreter services or Real Time Captioning Services up to the value of \$6,000.00 per annum. This may be used to support a person in a job interview, to undertake training or in any other avenue to support an employee with hearing loss.
- Funding is available up to \$1,500 for the provision of work place support for a person with a disability who requires more intensive assistance.

CONFIDENTIALITY

18. At all times, the individual(s) responsible for processing a request for reasonable adjustment or implementing a reasonable adjustment will respect the privacy of the applicant or employee who has requested the adjustment. Information about the applicant or employee's disability will only be disclosed to a third party with the consent of the applicant or employee.
19. However, in order to introduce an adjustment into the workplace, it will be necessary for information about the impact of the employee's disability or condition on their work performance to be disclosed to the appropriate supervisor(s). It is imperative to first have a discussion with the (new) employee and outline the process. This includes encouraging the employee to contribute to what reasonable adjustments can be made.

LEGISLATIVE REFERENCE

The key principles of this policy are consistent with:

ACT Legislation:

- Discrimination Act 1991
- Human Rights Act 2004
- Human Rights Commission Act 2005
- Legislative Assembly (Member's Staff) Act 1998
- Public Sector Management Act 1994
- Territory Records Act 2002
- Work Health and Safety Act 2011
- Agency Enterprise Agreements

Commonwealth Legislation:

- Disability Discrimination Act 1992
- Equal Employment Opportunity for Women in the Workplace Act 1999
- Fair Work Act 2009
- Health Records (Privacy and Access) Act 1997
- Privacy Act 1998
- United Nations Convention on the Rights of Persons with Disability (UN CRPD)

Related Policy

- ACTPS Respect Equity and Diversity Framework
- The ACTPS Employment Strategy for People with Disability 2010
- The ACTPS Employment Strategy for Aboriginal and Torres Strait Islander People
- Relevant Agency Guidelines, Procedures and Fact Sheets
- Employment Assistance Fund Guidelines
- Respect at work policy, People Management Policy Statement No.2, Issued December 2010
- Australian Human Rights Commission, Disability Rights, Employment related frequently asked questions.

RESOURCES

Internal Resources

- **Directorate's Corporate Team**
- **Recruitment**
- **Inclusion Manager or Equivalent**
- **Directorate's Employee Assistance Provider**
- **The Australian Network on Disability Manager's Guide on Disability** (available in the ACTPS Manager's Toolkit)

Other Resources Available

- **Job Access** (<http://www.jobaccess.gov.au/>)
- Job Access is an information and advice service funded by the Australian Government. It offers help and workplace solutions for people with disability and their employers.
- **Employment Assistance Fund** (<http://jobaccess.gov.au/content/employment-assistance-fund>)
- The Employment Assistance Fund helps people with disability and mental health condition by providing financial assistance to purchase a range of work related modifications and services.
- **Employment Assistance Fund Guidelines**
(<http://jobaccess.gov.au/content/employment-assistance-fund>)
- The Employment Assistance Fund guidelines contain detailed information on the Employment Assistance Fund including eligibility, the application process and the documentary evidence required to support your application and reimbursement.
- **Workplace Adjustment Tool**
(http://www.jobaccess.gov.au/work_place_adjustment_tool)
- The Workplace Adjustment Tool can assist in providing solutions and products to ensure your workplace is accessible for people with disability and remove barriers.

- **The ACT Human Rights Commission** (<http://www.hrc.act.gov.au/>)
- The ACT Human Rights Commission can provide individuals with further assistance to understand their legal obligations under the relevant pieces of legislation. In addition, the ACT Human Rights Commission can take complaints of unlawful discrimination under the *Discrimination Act 1991* (ACT).

Bronwen Overton-Clarke
Commissioner for Public Administration
on behalf of Kathy Leigh, Head of Service

November 2015

Document Name: Reasonable Adjustment Policy
Prepared by: Workforce Capability and Governance Division, CMTEDD
Feedback to: psm@act.gov.au