



Department of Education and  
Early Childhood Development

# Disability in the Workplace

## Policy and Guidelines

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## The Purpose of this Policy

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This purpose of this policy is to inform DEECD staff of the employment and workplace relations requirements in relation to people with a disability.

There are significant benefits to be gained by employing and retaining people with a disability

- Reduced turnover and enhanced performance through high levels of loyalty and productivity demonstrated by employees with a disability.
- Enhanced organisation skill base and recruitment advantage in the labour market by tapping into a broader talent pool of potential employees.
- Improved corporate reputation in the community for fairness, inclusion and redressing disadvantage.

Cases demonstrating the contributions and achievements of employees with a disability in the Department can be viewed at [http://www.eduweb.vic.gov.au/edulibrary/public/hr/equalop/Case\\_Studies\\_v1\\_0.pdf](http://www.eduweb.vic.gov.au/edulibrary/public/hr/equalop/Case_Studies_v1_0.pdf)

This policy also seeks to:

- Ensure a transparent and consistent approach to creating equal opportunity for people with a disability who are currently employed or seeking employment with the Department.
- Assist DEECD leaders and employees achieve optimum access and inclusion of employees with a disability in the Department's workforce consistent with the principles of Human Rights and Disability Discrimination legislation.
- Provide all employees with the opportunity to develop professional learning, understanding, and positive attitudes about disability in the workplace.

DEECD staff need to be aware of the consequences of not providing equal opportunities in employment including:

- discrimination and liability costs
- loss of productivity and lower morale
- a negative impact on learning and development, and
- damage to the Department's reputation.

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## The DEECD Commitment

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The Department of Education and Early Childhood Development is committed to:

1. Providing an inclusive, accessible and safe work environment.
2. Ensuring that all employees are treated respectfully and equitably in all stages of the employment process including for the purposes of:
  - recruitment
  - selection
  - professional development & training
  - performance management
  - promotion or transfer; and
  - termination.
3. Acknowledging the significance of access and equality for people with a disability, and the provision of a workplace free from discrimination, bullying and harassment.
4. Ensuring that all employees and school councils are aware of their obligation to act in accordance with this policy.

## The Principles of Equal Opportunity

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### **Disability Act 2006 (Vic) – Changing Community Attitudes**

The *Disability Act 2006* (Vic) provides the framework for a whole-of-government and whole-of-community approach to enabling people with a disability to actively participate in the life of the community. The Act provides the framework for delivery of more flexible service provision based on maximum choice and a person's individual requirements.

The underlying theme of the *Disability Act* is the recognition that people with a disability have the same rights and responsibilities as other members of the community, including the right to:

- Be respected
- Live free from abuse, neglect or exploitation
- Realise their capacity for physical, social, emotional and intellectual development
- Exercise control over their own lives
- Participate actively in the decisions that affect their lives and have information and be supported where necessary to enable this to occur
- Access information and communication in a manner appropriate to their communication and cultural needs
- Services that support their quality of life.

### **Antidiscrimination Legislation: Enforcing Rights and Responsibilities**

Access to employment is a fundamental right that is protected under Victorian and Commonwealth Equal Opportunity laws.

Under these laws, a person with a disability who meets the genuine requirements of a job has the same right to be appointed to that job as anyone else.

The main pieces of legislation which make it unlawful to discriminate on the basis of disability are the:

- Disability Discrimination Act 1992 (Cwth) (DDA)
- Equal Opportunity Act 1995 (Vic) (EOA) and the
- Charter of Human Rights and Responsibilities Act 2006 (Vic).

When both Commonwealth and State laws apply, a person wishing to make a complaint can choose which laws they wish to use.

### **What is a Disability?**

The DDA makes it unlawful to discriminate against a person on the ground of **disability** in the area of employment. The EOA makes it unlawful to discriminate against a person on the basis of **impairment**. The term disability is used in this document

The definitions are broad to ensure that everyone with a disability is protected and include:

- total or partial loss of a bodily function, or part of the body
- the presence in the body of organisms that may cause disease, such as HIV or Hepatitis C
- malfunction, malformation or disfigurement of a part of the body
- a mental or psychological disease or disorder, or other conditions that may result in a person learning more slowly
- past disability or impairment which may include childhood illnesses, having had a broken leg, or a period of psychiatric illness.

The legislation covers conditions which people:

- presently have
- had in the past (eg: a past episode of illness)
- may have in the future (eg: a family history of a disability which a person may also develop)
- are believed to have. (For example: if people think someone has AIDS.)

The legislation also covers people with a disability who may be discriminated against because they:

- are accompanied by an assistant, interpreter or reader
- are accompanied by a trained animal, such as a guide or hearing dog or
- use equipment or an aid, such as a wheelchair or a hearing aid.

## Employees Protected by Anti-Discrimination Law

Equal Opportunity legislation covers all employees, whether they are full-time, part-time, casual, temporary (including contractors), probationary and those working on commission or those applying for a job. Some aspects of the law also apply to volunteers and volunteer organisations.

The law applies to all stages of employment, including recruitment, access to entitlements and promotion, returning to work, dismissal and retrenchment. Under the law, employment is defined as:

- employment under a contract of service, whether or not under an Australian Workplace Agreement, certified agreement, employment agreement or award within the meaning of the federal Workplace Relations Act 1996
- employment under the *Public Administration Act 2004* (Vic)
- engagement under a contract of service
- work that is remunerated wholly or partly on commission.

It is unlawful for an employer to discriminate against **an applicant** for a position on the grounds of the person's disability:

- a) in the arrangements made for the purpose of determining who should be offered employment; or
- b) in determining who should be offered employment; or
- c) in the terms or conditions on which employment is offered.

Similarly, it is unlawful for an employer to discriminate against **an employee** on the ground of the employee's disability:

- a) in the terms or conditions of employment; or
- b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
- c) by dismissing the employee; or
- d) by subjecting the employee to any other detriment.

The legislation also protects friends, relatives or carers with some form of personal connection with a person with a disability if they are discriminated against because of that connection or relationship. For example, it is unlawful discrimination if:



- A parent is refused a job because the employer assumes he or she will need time off work to look after a child with a disability; or
- An employee is harassed about working with a person with a disability.

### **Direct and Indirect Discrimination**

Discrimination can be both direct and indirect. Direct discrimination occurs when a person treats someone with a disability less favourably than a person without a disability, in the same or similar circumstances.

Indirect discrimination occurs when a person imposes an unreasonable requirement or condition which appears to be neutral, but which has the effect of disadvantaging a person because of their disability.

### **Exceptions in the Anti-Discrimination Legislation**

There are a limited number of circumstances where discrimination is allowed under the *Disability Discrimination Act* and *Equal Opportunity Act*. The two principal exceptions are:

- a) where unjustifiable hardship is caused by the provision of special services or facilities which are necessary for the person with the disability to do the work; and
- b) where the person, because of his or her disability, is unable to perform the inherent requirements of the job.

It is not unlawful to provide people with a disability special services, facilities or opportunities to meet their special needs in employment.

There are also some general exceptions which include circumstances where the discrimination is necessary to protect the health or safety of another person or property, or where the discrimination is authorised by another piece of legislation.

### **Vicarious Liability**

If a complaint is made against a member of staff, the Department and School Councils may be held liable for the discriminatory conduct of that staff member. This is called vicarious liability. Vicarious liability can also extend to the discriminatory actions of *agents* of the Department such as recruitment firms and consultants.

Employers can reduce their liability if they can show that they took 'reasonable precautions' to prevent the conduct from occurring.

It is not enough to have good written policies on equal opportunity. The policies must be understood by all employees, including those responsible for hiring staff, such as external recruiting firms. See the Department's website for further information on how to be proactive in preventing discrimination and harassment in schools:

<http://www.eduweb.vic.gov.au/hrweb/divequity/eeo/legislat.htm#H3N4000D4>

### **Public Sector Employment – Further Guidelines**

The *Public Administration Act 2004* (Vic) provides a framework for good public service administration in Victoria by defining the values, principles and conduct of public sector employment. These principles apply to all employees of the Department.

The *Public Sector Management and Employment Act 1998* requires that:

- all employment decisions be based on merit
- employees be treated fairly and reasonably and
- equal opportunity be provided.

The modelling of positive and respectful behaviours and the adoption of policies and practices that actively promote inclusion of people with a disability are key principles behind this legislation.

The Public Sector Standards Commissioner has issued [standards](#) and non-binding guidelines on:

- [Equal Employment Opportunity](#)
- [Fair and Reasonable Treatment](#)
- [Merit in Employment](#)
- [Reasonable Avenue of Redress](#).

The Commissioner's directions allow people with a disability (as one of the groups declared disadvantaged for the purpose of employment) to be appointed to a position without advertisement. An exemption from advertising for this purpose must be obtained from the Secretary of the Department.

<http://www.eduweb.vic.gov.au/hrweb/workm/plan/advertvacspss.htm>

## Disclosure<sup>1</sup>

There is no legal obligation for a job seeker or current employee to disclose a disability to an employer unless it is likely to affect their job performance or ability to work safely.

Disclosure is inevitable where the disability is obvious, but in many cases people with disabilities may be unwilling to disclose due to a fear of being stigmatised or discriminated against. An example might be a person with a mental illness.

Job applicants and employees may choose not to disclose a disability because it does not affect their work, or does so only occasionally.

In some activities/industries, some disabilities would need to be disclosed. If employees are taking medication, they are obliged to tell you if there is a likelihood that side effects will affect their work performance.

If an employee discloses a pre-existing disability or acquires a disability while an employee, an employer should seek to identify the issues regarding their position and the possible solutions available.

This requires clarification of the requirements of the job – what is necessary and what is incidental to getting the job done? Assumptions shouldn't be made about the disability, rather conversations with the employee should take place which are fair and supportive. All conversations and resolutions should be documented in the employee's private personal file.

## Confidentiality and Privacy

The privacy of personal and health information disclosed by a job applicant or support agency should be maintained in accordance with the *Information Privacy Act 2000* (Vic) and the *Health Records Act 2001* (Vic). Information regarding any disability, reduced function or impaired health status should be kept secure by the employer.

Failure to protect confidential personal information about a person's disability may leave an employer open to discrimination and/or privacy complaints. Disclosure is only permissible after

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<sup>1</sup> Information sourced from "Disclosing Disability in Employment – Best Practice Guidelines for Employers and the Recruitment Industry" Victorian Equal Opportunity & Human Rights Commission, 2007.

obtaining the consent of the individual concerned, or as required by law.

Further information about the Department's privacy policy can be obtained from:

<http://www.education.vic.gov.au/about/deptpolicies/informationprivacy.htm#1>

## **Reasonable Adjustment**

Reasonable adjustments are administrative, environmental, or procedural alterations required enabling a person with a disability to work effectively and enjoy equal opportunity.

The Department is committed to providing reasonable adjustment for job applicants and existing employees whether the disability is an existing or an acquired condition, or of a temporary or permanent nature.

The Department will:

- provide adequate resources to ensure that appropriate equipment and support services are available to employees with a disability where reasonably possible; and
- have due regard for each person's right to privacy and confidentiality when seeking information about their disability for the purpose of making reasonable adjustments.

Reasonable adjustments can include alterations to the type of work employees are doing. In some cases it may be appropriate to find new positions in the workplace as long as they do not compromise the employee's income, status, safety and wellbeing. It may be appropriate to have parts of roles absorbed by other employees.

Other employees affected by any changes should be kept informed. This helps to avoid misunderstanding or labelling (and possibly discrimination) in the workplace. Employers must be proactive in ensuring that the workplace is free from harassment and discrimination.

Requests for reasonable adjustment should be made to principals and managers in the first instance. Schools may also approach the Regional Office for assistance. Contact numbers for further information are available in the 'Advice' section of this document.

## Consultation with People with Disabilities

There are many circumstances when the Department seeks feedback from staff or the wider community. The principles of inclusiveness require that these consultation processes provide for engagement by, and participation of, people with a disability. Resources such as the Department's "[Accessible Communication – Workplace Guide](#)" are available to ensure that inclusive practices are part of the organisation of consultation processes.

### Accessible Communication

The *Accessible Communication: Workplace Guide* has been developed to assist in making workplace information and communication more accessible for people with a disability. Accessibility is a component of good communications planning. The Guide will benefit all employees as well as those with a disability or impairment and may be used by employees for one-on-one meetings, interviews, induction, training, group meetings and presentations. E-accessibility is also addressed.

Please read and use the [Accessible Communication: Workplace Guide](#).

<http://www.eduweb.vic.gov.au/edulibrary/public/hr/equalop/Accessible Communication Guide.doc>

### Accessible Physical Environments

The built environment can significantly impact on how readily people with a disability are able to access employment.

**Car parking:** the Department will endeavour to provide adequate parking facilities for employees with a disability.

**Central and regional office buildings:** the Department will endeavour to improve access to central and regional office buildings, and will maximise the accessibility/usability of the central and regional office work environment.

**Schools:** new or replacement schools are designed and built to conform to the Building Code of Australia for disabled access. Where schools are upgraded, those areas affected by the works will be upgraded to conform to the Building Code of Australia.

## Complaints

Employees can make a complaint using the Department's complaints resolution processes where they believe they have been treated unfairly or unreasonably in any matter related to their employment because of their disability.

The processes for lodging a complaint include both internal and external options. These can be found at the following website:

<http://www.eduweb.vic.gov.au/hrweb/workm/perform/comres.htm>

Individuals can make a complaint to external bodies such as the Victorian Equal Opportunity and Human Rights Commission

<http://www.humanrightscommission.vic.gov.au/Home.asp>

(complaints based on Victorian legislation) and the Australian Human Rights Commission (Complaints based on Commonwealth Legislation) <http://www.hreoc.gov.au/>.

## Guidelines for Recruitment and Selection

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The principles of non-discrimination should be adhered to throughout the recruitment process, irrespective of whether applicants have a disability or not. This means that it may be necessary to provide reasonable adjustments in recruitment & selection to ensure people with a disability are not disadvantaged.

### **The DEECD Disability Employment Scheme**

The Department has entered into an agreement with Disability WORKS Australia Pty Ltd (DWA) to implement the *DEECD Disability Employment Scheme*. The aim of the scheme is to increase the opportunities for people with a disability to gain employment in DEECD workplaces.

Under the scheme DWA refers applicants with a disability who match the selection criteria of advertised vacancies to recruiting DEECD managers. The referred applicants are included in the pool of candidates for potential interview selection.

Managers who receive an application from a person under The *DEECD Disability Employment Scheme* are strongly encouraged to consider interviewing the applicant.

For further information about the *DEECD Disability Employment Scheme* visit the Disability site on HRWeb:

<http://www.eduweb.vic.gov.au/hrweb/divequity/disability.htm>

### **Key Selection Criteria**

All job applicants must be measured against the key selection criteria taking into account provisions for reasonable adjustment. The key selection criteria should include only the specific skills, knowledge and abilities regarded as essential for performing the functions of the job. Recruitment and selection criteria documents should include a commitment to equal opportunity principles and practices.

## **Selection Procedure Guidelines**

### ***The Selection Panel***

When choosing selection panel members try to include someone with an awareness of disability issues in the workplace. There must also be at least one person with Merit Protection Board training on the panel. The selection committee should focus on the merit and abilities of the applicant rather than their disability [www.mpb.vic.gov.au](http://www.mpb.vic.gov.au).

### ***The Interview***

Applicants invited for an interview should be asked if they require any individual support or assistance prior to the interview. Arrangements should be made to accommodate these requests. An interview for a person with a disability is otherwise no different to one for a person without a disability.

In framing questions, interviewers should think about what they need to know.

Making assumptions regarding the capabilities of a person on the basis of a disability or medical condition is discriminatory.

Questions or statements must be based on assessing the person's skill and ability to perform the inherent requirements of the job.

To help find out the answers to these questions, provide a clear outline of the job's requirements and then ask the applicant:

- If there is any reason why he or she could not meet these requirements
- If any adjustments are needed to ensure a fair and equitable interview/selection process
- If he or she has any pre-existing impairment or illness that may be affected by the job
- If any adjustments would be needed for the applicant to do the job.

### **Guiding principles**

- Treat the person with a disability as you would any other applicant.



- It is important not to make assumptions about people with disabilities. If you need information, ask the applicant.
- Feel free to ask if the person needs assistance but do not automatically assume he or she needs it.
- Provide assistance to enable the person to compete fairly (e.g. access to buildings, an interpreter at the interview).
- If selection tests are to be used, make them available in a form accessible to applicants with a disability.
- Be willing to repeat a question, or ask for clarification and be patient.
- Do not avoid asking essential questions relating to the position.

Be open-minded. People with a disability are often able to perform at the same level as people without a disability.

Advice about running a successful selection panel is available at: <http://www.eduweb.vic.gov.au/hrweb/workm/select/panelsPSS.htm>

#### Examples of appropriate questions

- This job involves conducting research and report writing. Can you tell us how you would go about that?
- This job involves teaching a class of twenty-five 9 year old students. Can you tell us how you go about carrying out your teaching duties?
- If you were successful in getting this position, is there any equipment or reasonable adjustments to the workplace you may need?

#### Examples of inappropriate questions

- How did you acquire your disability?
- How would your disability affect your ability to carry out the functions of this job?
- Do you think your disability means you would perform this role better or worse than a person without a disability?

## Retention of Employees with a Disability: Injury & Acquired Disability

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Current employees can acquire disabilities, become injured, have a pre-existing disability which worsens over time or disclose a pre-existing disability for the first time. In each case employees are protected against discrimination and harassment by the law.

### **Injury at work**

Discrimination against injured workers is against the law whether the injury was sustained at work or outside the workplace.

The *Accident Compensation Act* gives employers responsibilities when employees are injured at work including holding the injured worker's position open for 12 months and helping the worker return to work.

Under the *Occupational Health and Safety Act* an employer can refuse to employ or re-employ an injured worker in order to protect the health and safety or property of any person, including the injured person.

### **Return to work**

Effective rehabilitation is characterised by a process whereby the employee progressively moves from injury or illness to full productivity. Good practice provides for the process of transition back to full productivity to begin as soon as possible after the injury or illness is identified.

The procedures for managing employees who have suffered work related injuries or illnesses are detailed in the [\*WorkCover Claims Management Kit\*](#).

[http://www.eduweb.vic.gov.au/edulibrary/public/hr/safetyhw/WorkCover\\_Management\\_Kit.pdf](http://www.eduweb.vic.gov.au/edulibrary/public/hr/safetyhw/WorkCover_Management_Kit.pdf)

The Employee Health Unit can provide advice to principals and managers on the management of employees with disabilities that are work related. The Employee Health Unit can be contacted on 9637 2386. Initial advice on where to obtain assistance in assessing and planning for a reasonable adjustment can be obtained from the Department's Medical Advisory Service on 9692 7756.

If the reasonable adjustment involves adapting a worker's physical environment advice may be sought from the Department's Occupational Health and Safety provider Noel Arnold's and Associates on (03)9890 8811.

### **Access to Flexible Work**

The Department recognises the importance of flexible work and leave arrangements in supporting employee work-life balance and maintaining a diverse workforce. Flexible work arrangements can be instrumental in both recruitment and retention of employees with a disability.

A wide range of flexible work and leave options can be accessed by employees with a disability. They can range from short term one-off arrangements to meet medical appointments to longer term options that may include reduced hours, flexible start and leave times and telecommuting arrangements.

Flexible work arrangements can assist employees with family or carer responsibilities. Carer responsibilities may include caring for children, spouse or family member with a disability. For further information please see the Department's [Flexible Work Guidelines](http://www.eduweb.vic.gov.au/hrweb/divequity/balance.htm).  
<http://www.eduweb.vic.gov.au/hrweb/divequity/balance.htm>

## Assistance for Employees and Employers

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Employees with a disability seeking assistance should in the first instance approach their manager or principal. Where additional support is required this can be provided by the General Manager or Regional Office. Advice can be sought from the contacts listed in the next section.

The following schemes are in place to encourage the employment of people with a disability:

### ***Recruitment assistance***

Disability Works Australia Pty Ltd (DWA) is an agency specialising in the recruitment of people with disabilities. DWA provides advice on most disability issues relating to employment. See the information on page 15 or the DWA website at <http://www.dwa.org.au/index.htm>

### ***Workplace Modifications***

The Workplace Modifications Scheme pays for the costs involved in modifying the workplace or purchasing special or adaptive equipment for eligible employees with disability. It is also available to existing employees if they have had a change in duties, career progression, change in disability and/or a new modification becomes available that would increase their productivity. For further information see

[http://www.jobaccess.gov.au/JOAC/Employers/Financial\\_help\\_and\\_wages/Workplace\\_modifications\\_and\\_adjustments/](http://www.jobaccess.gov.au/JOAC/Employers/Financial_help_and_wages/Workplace_modifications_and_adjustments/)

### ***Supported wage system***

The Supported Wage System is a process that allows employers to pay less than the award wage by matching a person's productivity with a fair wage. Eligible people with a disability can choose to access a reliable productivity-based wage assessment to determine fair pay for fair work. For further information see

[http://www.jobaccess.gov.au/JOAC/Employers/Financial\\_help\\_and\\_wages/Help\\_with\\_wages/](http://www.jobaccess.gov.au/JOAC/Employers/Financial_help_and_wages/Help_with_wages/)

### ***Wage Subsidies***

Wage subsidies are payments made to the employer to assist with covering the cost of paying wages in the first few months of

employment of a person with disability. They aim to increase the competitiveness of workers with disability. For further information see

[http://www.jobaccess.gov.au/JOAC/Employers/Financial\\_help\\_and\\_wages/Help\\_with\\_wages/](http://www.jobaccess.gov.au/JOAC/Employers/Financial_help_and_wages/Help_with_wages/)

### ***On-the-job Support***

Approved Disability Employment Network suppliers can provide free training and support to people with a disability and their employer, until the employee reaches an agreed level of sustained productivity and quality of work. For further information see

<http://jobsearch.gov.au/provider/default.aspx>

### ***Auslan for Employment Programme***

There are three levels of financial assistance available to employers and their co-workers in the workplace for people with a hearing impairment.

1. Auslan interpreting and deaf awareness training in the workplace for deaf employees, including travel assistance where eligible.
2. Auslan interpreting for employment interviews for job seekers with a hearing impairment. This is for people who are profoundly deaf.
3. Assistance for co-workers of employees who are deaf to undertake studies in Certificate Level 2 Auslan (Nationally recognised courses.)

For further information see

[http://www.jobaccess.gov.au/JOAC/Employers/Financial\\_help\\_and\\_wages/Auslan\\_interpreting\\_and\\_co-worker\\_training/](http://www.jobaccess.gov.au/JOAC/Employers/Financial_help_and_wages/Auslan_interpreting_and_co-worker_training/)

**Insert sources of Advice and Information here.**

**Responsibilities of Principals, Managers and School Councils:**

- Comply with the Department's disability employment policy *Disability in the Workplace - Policy and Guidelines*.
- Promote this policy in the workplace.
- Encourage full participation of employees with a disability.
- Apply the Department's reasonable adjustment policies.
- Treat seriously any behaviour which may constitute discrimination or harassment on the basis of disability, and take immediate action - whether or not any complaint has been made.
- Refer to this policy within school equal opportunity and anti-harassment policies.
- Ensure employee participation in relevant training provided by the Department.

**Responsibilities of Employees:**

- Comply with the Department's disability employment policy *Disability in the Workplace - Policy and Guidelines*.
- Comply with the [Code of Conduct for Victorian Public Sector Employees](#) and the Victorian Charter of Human Rights.
- Model appropriate behaviour.
- Treat information relating to discrimination allegations with appropriate confidentiality.
- Treat a person who is making (or is involved in) a complaint of discrimination fairly.
- Actively participate in relevant training provided by the Department.

**Insert a list of national and local organisations that can help with specific disabilities here**