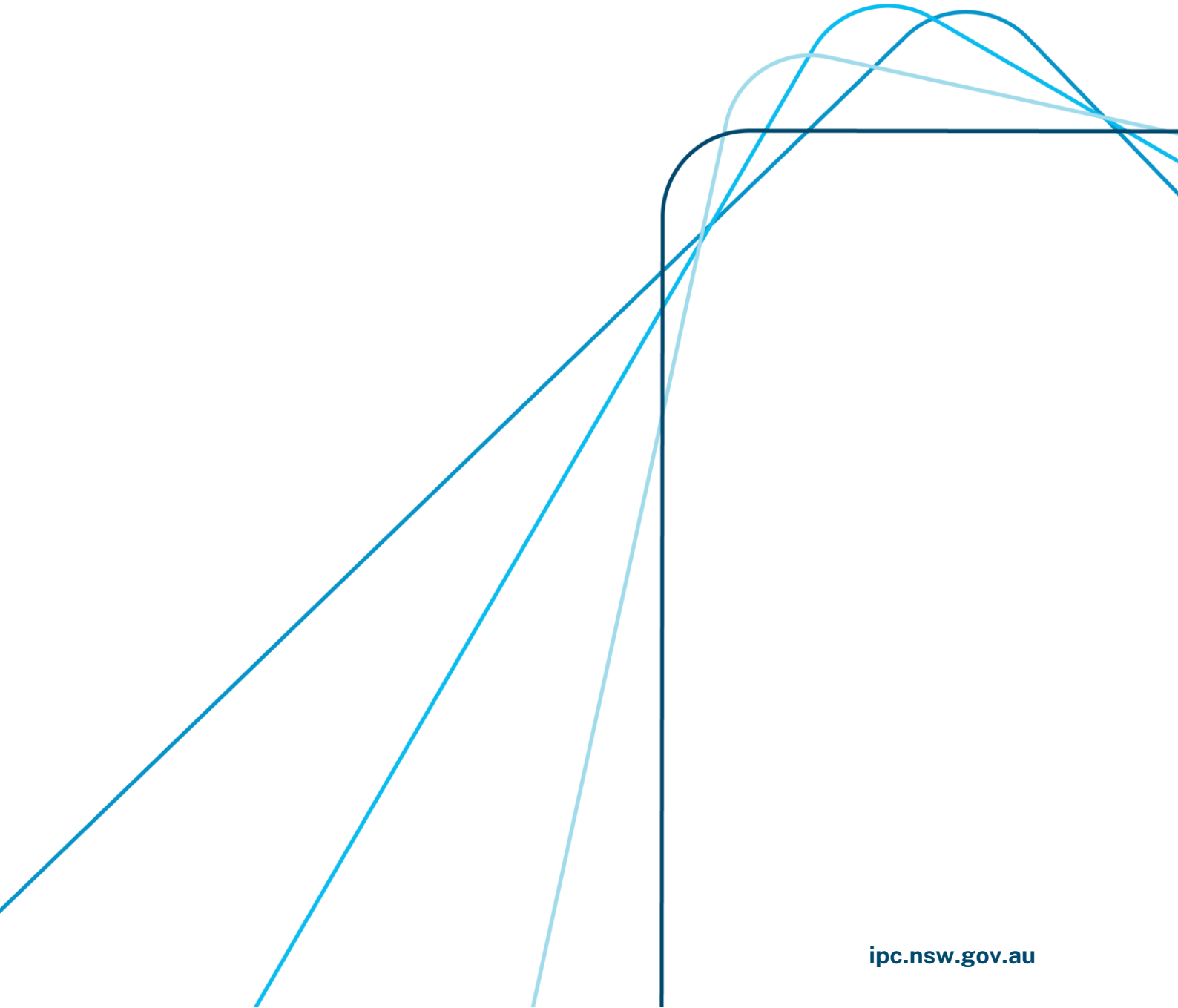
Information and Privacy Commission NSW

IPC Workplace Adjustments Policy

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1. Policy Statement

1.1 Purpose

The IPC is committed to creating an inclusive workplace where people feel they belong, fostering a positive culture and enhancing productivity. Inclusion enables genuine participation and contribution, regardless of seen or unseen individual differences. This aligns to the strategic objective in IPC's Strategic Plan that the IPC fosters an ethical culture where everyone's contribution is valued, and leaders and staff work together to achieve good outcomes and maintain the IPC's values.

The purpose of this policy is to establish a consistent and effective system that encourages workplace adjustments and enables an individual's full participation in the workplace. While the policy may, at the IPC's sole discretion, be used to cater to all employees requiring workplace adjustments, including carers, this policy has a particular focus on people with a disability.

This policy is based on a mandatory whole of government template issued by the Office of the Public Service Commissioner (https://www.nsw.gov.au/departments-and-agencies/premiers-department/office-of-public-service-commissioner/model-policy-for-workplace-adjustments). It outlines individual responsibilities and procedures for how workplace adjustments may be requested and implemented and complements any existing workplace adjustments or future passport (a record that contains an employee's workplace adjustments) or processes within agencies. Workplace adjustments may be discussed and requested at any time during a recruitment process and during employment.

The *Disability Discrimination Act 1992* (Cth) (DDA) and the *Anti-Discrimination Act 1977* (NSW) (ADA) apply to the provision of workplace adjustments by NSW Government employers. Employers are required to make reasonable workplace adjustments unless it causes the agency unjustifiable hardship to do so, or where, even after the workplace adjustments have been made, the employee would still be unable to carry out the inherent requirements of the employment.

1.2 Scope

This policy applies to any IPC employee who requests a workplace adjustment to assist them to participate fully in the workplace. This may include an employee with disability and/or an employee with a particular physical or other characteristic that affects their full participation in the workplace. This could include an employee who has been injured, which could result in temporary disability, whether or not the injury meets the definition of a disability in the DDA and the ADA.[1]

This policy does not address the employer's obligations under the *Workers Compensation Act 1987* (NSW) or the *Workplace Injury Management and Workers Compensation Act 1998* (NSW). Additional and different obligations may apply in relation to employees who have a work-related injury or illness.

1.3 Definitions

Disability

- Disability includes both temporary and long-term physical, mental health, intellectual, neurological or sensory differences which, in interaction with various attitudinal and environmental barriers, may hinder full and effective participation in society on an equal basis with others.

[1] *Disability Discrimination Act 1992* (Cth) s 4 and the *Anti-Discrimination Act 1977* (NSW) s 4, 49A.

Note: This definition aligns with the social model of disability where societal barriers are considered obstacles to a person's equal participation, not their impairment. The social model of disability is defined within the United Nations' Convention on the Rights of Persons with Disabilities.

- The term 'disability' has a specific meaning when used in the *DDA* (section 4) and the *ADA* (sections 4 and 49A). The definitions in each Act are slightly different, but they are both very broad and include disabilities and illnesses, and extend to past, present and potential future disabilities.

Employee

- The term 'employee' includes those employed under the *Government Sector Employment Act 2013* (NSW) or as contractors (as contingent workers under labour-hire agreements).

Government Sector Agency

- Has the same meaning as that term in section 3 of the *Government Sector Employment Act 2013* (NSW) as amended from time to time.

Inherent requirements

- Characteristics, elements or requirements that are essential to the performance of the particular employment.
- Inherent requirements are determined by reference to the specific circumstances of a person's employment and role, including by reference to the terms of the employment contract and the nature of the work of the agency.

Unjustifiable hardship

- The law provides an exception to unlawful discrimination where the provision of services or facilities to enable an employee or potential employee with disability to do their job would cause the employer unjustifiable hardship.[2]
- This involves considering all of the relevant circumstances of a particular case.[3]
- At a minimum, determination of unjustifiable hardship requires consideration of the nature of the benefit and detriment to those concerned (such as the employee, the employer and the community), the effect of the employee's disability, the financial circumstances and the estimated amount of expenditure required to make the adjustment, whether any other financial or other assistance is available, and any other relevant circumstances.[4]

Workplace adjustments

- Changes, modifications, or alterations to a work process, procedure, or environment to enable a person to:
    - perform the work they are employed to do
    - work productively
    - work in a safe environment
    - be included in the workplace

[2] *Disability Discrimination Act 1992* (Cth) s 21B and *Anti-Discrimination Act 1977* (NSW) s 49D.

[3] *Disability Discrimination Act 1992* (Cth) s 11 and *Anti-Discrimination Act 1977* (NSW) s 49C.

[4] *Disability Discrimination Act 1992* (Cth) s 11(1) and *Anti-Discrimination Act 1977* (NSW) s 49C.

- increase their engagement and motivation to improve performance and ultimately meet the inherent requirements of their role.

- Adjustments can include changes to recruiting methods, equipment, work practices and environment, and may change as people's needs change.
- The term 'reasonable adjustments' is synonymous with 'workplace adjustments' for the purposes of this policy.
- This policy uses the term 'reasonable adjustments' as this is the term used in the *DDA* with respect to adjustments for people with disability.[5] This phrasing may suggest that people with disability are requesting something unreasonable when they are seeking adjustments to do their job to the best of their ability. However, that is not the intention of the policy. Under the *DDA*, employers are required to make reasonable adjustments for employees with a disability, unless it would cause the employer unjustifiable hardship.[6]
- An employer may also have obligations to make workplace adjustments under the *ADA*.[7]

Workplace

- A place where work is carried out for a Government Sector agency and includes any place where an employee goes, or is likely to be, while at work, or working remotely (including working from home), or while at a work-related social event.[8] Where workplaces cover employees from more than one organisational unit, the relevant managers/directors are jointly responsible for implementing adjustments (in consultation with the employee). Workplaces may include buildings, outdoor locations and/or vehicles.

1.4 Legislation

Under the *DDA* and *ADA*, it is unlawful to discriminate against a person on the ground of disability. NSW Government Sector employers are required to comply with both Acts.[9]

Under the *DDA*, a person discriminates against a person on the ground of a disability by not making or proposing not to make reasonable adjustments for the person, where the failure to make reasonable adjustments has the effect that the person is, because of the disability, treated less favourably than a person without the disability in circumstances that are not materially different.[10]

Under both the *DDA* and *ADA*, it is unlawful for an employer to discriminate against an employee with disability in the terms and conditions of their employment or by subjecting them to any other detriment.[11] Failure to provide workplace adjustments may constitute discrimination against the employee on the ground of disability in employment.

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[5] *Disability Discrimination Act 1992* (Cth) s 4, 5(2), 6(2), 21A.

[6] *Disability Discrimination Act 1992* (Cth) s 4, 11.

[7] *Anti-Discrimination Act 1997* (NSW) s 49B(1)(b).

[8] *Work Health and Safety Act 2011* (NSW) s 8.

[9] *Disability Discrimination Act 1992* (Cth) s 13.

[10] *Disability Discrimination Act 1992* (Cth) s 5(2)(b). See also s 6(2)(b).

[11] *Anti-Discrimination Act 1977* (NSW) s 49D

Both the *DDA* and *ADA* provide an exception if providing a workplace adjustment or providing services and facilities will place an unjustifiable hardship on the employer.[12] All the circumstances are relevant when determining whether making an adjustment would impose an unjustifiable hardship on the employer.

Both the *DDA* and *ADA* also provide an exception if the person with a disability would be unable to carry out the inherent requirements of the particular work, even if the employer made reasonable adjustments for the person.[13]

Under the *DDA* and *ADA*, it is unlawful to discriminate against a person who has a relative or an associate with disability.[14] 'Associate' under the *DDA* includes a spouse, another person living with the employee on a genuine domestic basis, a relative, a carer, or a person in a business, sporting or recreational relationship.[15] 'Associate' under the *ADA* means any person with whom the person associates, whether socially or in business or commerce, or otherwise, or any person who is wholly or mainly dependent on, or a member of the household of, the person.[16]

Under the *DDA* and *ADA*, it is unlawful to discriminate against a person on the basis of their responsibilities as a carer.[17] The protection for carers under the *ADA* will not apply to everyone that has carer responsibilities for a person with a disability. A carer must be a person, who provides care for or support to their child, a child or adult for whom they are a guardian, authorised carer or an immediate family member.[18]

Under the *Sex Discrimination Act 1984* (Cth) it is unlawful to discriminate against a person by treating them less favourably by reason of their family responsibilities.[19] Family responsibilities include responsibilities to care or support a dependent child or immediate family member (spouse, adult child, parent, grandparent, grandchild or sibling).[20]

Under the *Work Health and Safety Act 2011* (NSW) (*WHS Act*), organisations must ensure, so far as is reasonably practicable, the health and safety of workers and that the health and safety of others is not put at risk.[21] This includes managing risks and potential risks to the health, safety and wellbeing of all employees. Officers, workers and other persons also have obligations under the *WHS Act*.

The WHS Act does not override or replace an agency's responsibilities under anti-discrimination legislation. Workplaces need to be able to manage both legal responsibilities so that workers can participate fully in the workplace without creating an unacceptable risk to their health and safety or the health and safety of other people in the workplace.

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[12] *Disability Discrimination Act 1992* (Cth) s 21B and *Anti-Discrimination Act 1977* (NSW) s 49D(4)(b).

[13] *Disability Discrimination Act 1992* (Cth) s 21A and *Anti-Discrimination Act 1977* (NSW) s.49D(4)(a).

[14] *Disability Discrimination Act 1992* (Cth) s 7 and *Anti-Discrimination Act 1977* (NSW) s 49B.

[15] *Disability Discrimination Act 1992* (Cth) s 4.

[16] *Anti-Discrimination Act 1977* s.4.

[17] *Disability Discrimination Act 1992* (Cth) s 8-9 and *Anti-Discrimination Act 1977* (NSW) Part 4B.

[18] *Anti-Discrimination Act 1977* (NSW) s 49S.

[19] *Sex Discrimination Act 1984* (Cth) s 7A.

[20] *Sex Discrimination Act 1984* (Cth) s 4A.

[21] *Work Health and Safety Act 2011 (NSW) s 19.*

All information relating to specific requests for workplace adjustments must be kept confidential and be managed in accordance with the provisions of the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW), as applicable.

See Appendix 2 – Legislation

2. Workplace Adjustments

2.1 What is a workplace adjustment?

Effective workplace adjustments are an important enabler for people, particularly those with disability, as they support people to:

- perform at their best
- work productively
- work in a safe environment
- be included
- increase their engagement and motivation to improve performance.

Adjustments can range from changes to equipment, work practices and environment, and may change over time as people's needs change.

Workplaces need to consider all options for adjustment for staff to perform their role. There are many reasons why someone may require an adjustment and there may be wide variations on how work is impacted.

Most adjustments are simple to arrange and involve little cost. What's most important is for people to have what they need to be able to perform their role and participate in the workplace on an equal basis with others.

Potential workplace adjustments may include, but are not limited to:

Workplace practice

- flexible working arrangements e.g. flexible start and finish times, working from home, working part-time. Refer to the IPC Flexible Working Hours Agreement Framework (D24/043965/DJ) for more information.
- changing how information is communicated in the workplace, including:
    - accessible meetings (transcripts, captioning, accessible rooms) and providing Auslan interpretation, Easy Read documents or emailing or using MS Teams rather than phone calls, or vice versa
    - structured communication – clearly defining communication expectations and using written communication methods (e.g., email, messaging apps) for instructions and task assignments
- providing a support worker or Auslan-English interpreter or captioning service
- ensuring workplace documents and web content are accessible for the particular disability if this is not already the case
- providing information in requested formats or providing additional time for an employee to process information or at preferred times
- modifying the job requirements e.g., co-workers exchanging tasks, adjusting a non-essential job task by customising a role to fit the employee's skills and support needs while still meeting the needs of employer

- adapting performance and development programs to meet individual needs.

Workplace environment

- occupational therapist assessment, ergonomic desk and chair assessment
- braille signage in communal work locations e.g., meeting rooms, photocopier area, kitchen
- providing a workspace with adjustable lighting, noise-cancelling headphones, or a quiet area to accommodate sensory sensitivities
- permanent and portable hearing loops
- an accessible parking space close to the work location for an employee who uses a wheelchair, has mobility issues or chronic pain
- adaptive switches that enable people to use technology
- modifications to an inaccessible building to enable access to the building or bathroom facilities.

Assistive Technology

- screen readers and screen enlargement applications
- voice recognition and transcription programs
- automated closed captioning
- keyboard and mouse alternatives and adaptions and assistive listening devices.

Recruitment practices

- discussing the individual's specific needs directly (if appropriate)
- providing a different way to assess the required capabilities to perform the role e.g., a scenario-based written assessment instead of a psychometric assessment
- adapting the assessment format, such as allowing the candidate to respond to interview questions in writing
- providing the interview questions to candidates in advance and/or providing more time for assessment tasks
- supporting candidates to use their own laptop or assistive technology
- checking the interview, time, assessments and room meets individual needs – good lighting, reduced noise, interview seating arrangements
- providing options for an Auslan-English interpreter and/or their preferred sound amplification devices such as hearing loops.

3. Roles and Responsibilities

The IPC is committed to taking a proactive and person-centred approach to workplace adjustments. Although a workplace adjustment is a key mechanism for fostering an inclusive and accessible workplace, it must also be supported by a culture that encourages inclusivity and where workplace adjustments are everyone's responsibility.

It is expected that leaders at all levels within the IPC will uphold this policy in full and proactively encourage others to do so too.

3.1 Senior Executives

Senior Executives are responsible for promoting and supporting the use of workplace adjustments, ensuring a consistent application of this policy across the IPC and throughout the employee lifecycle.

Senior Executives are accountable for building a safe environment in which people feel they can share the barriers they are experiencing, request the adjustments required to support them in their role and feel a sense of belonging. They can do this by:

- encouraging managers to discuss workplace adjustments with their employees on a regular basis
- ensuring legislative requirements and responsibilities are met
- supporting capability uplift for managers and adoption of agency wide technology solutions
- advocating for accessibility to be built into all work practices and environment, including the procurement of goods and services
- completing and promoting disability awareness training.

3.2 People managers

People managers are responsible for ensuring that workplace adjustments are in place, where required, to support employees to perform their duties.

People managers should consult Systems and Corporate Services when advising employees about workplace adjustments.

People managers must:

- initiate regular discussions with all staff about their needs and what adjustments they may require in performing their role
- not require an employee to disclose any information that is not necessary to implement a workplace adjustment, (noting evidence may be required from JobAccess when requesting Employment Assistance Fund (EAF) funding – see 4.3)
- seek to increase their understanding of a variety of available workplace adjustments to assist in identifying the most suitable adjustments
- understand their legislative and confidentiality requirements, including:
    - that failure to provide a workplace adjustment could amount to disability discrimination (see section 4.4)
    - their responsibility to manage the risks and potential risks to the health, safety and wellbeing of all employees under the WHS Act
    - the requirements of the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW)
- ensure all action, including a decision on a request for adjustments, is taken promptly and communicate regularly with the employee throughout the process
- proactively monitor and implement a yearly workplace adjustments check-in, or more often if required
- support the workplace adjustments process by educating teams on the workplace adjustments policy and process, as well as lifting capability and understanding of disability and how to create an inclusive workplace
- ensure this policy and any related procedures are discussed as part of the return-to-work discussion when a staff member is returning after an illness or injury

- if they believe the adjustment is not reasonable or will cause an unjustifiable hardship, escalate the matter to the Director, Corporate Services and Business Improvement, who will be responsible for reviewing and making the final decision in consultation with the Director General Counsel and Regulatory Advice and Chief Executive Officer
- advise employees of the available review process if there is any dispute about the adjustment or the request
- role model inclusive behaviour across the team.

3.3 Employees

Employees should talk to their manager about their needs and what adjustments they may require in performing the requirements of their role and to work safely. An employee may ask for workplace adjustments at any stage of the recruitment processes or at any time during their employment.

Employees should actively participate and cooperate with their manager to assist in the implementation of any workplace adjustments. An employee has no obligation to share information about their disability unless it is necessary for determining whether an employee would be able to perform the inherent requirements of their role and work safely, or to determine and/or implement an adjustment for the employee. Any information requested from an employee for this purpose must be relevant, not excessive and should not unreasonably intrude into the personal affairs of the employee.

Employees are responsible for discussing with their manager any changes they may need to their workplace adjustments.

All employees should be aware that adjustments are available to ensure all staff have an equal opportunity to perform and progress in their role. Equity in employment is a right, not a privilege or favour.

4. Implementing workplace adjustments

4.1 Asking employees about workplace adjustments

Managers should ask all employees if they require any workplace adjustments, regardless of whether they have shared a disability or health condition. Managers should ask this question during the recruitment and onboarding process and then as part of regular ongoing conversations or after any known injury or illness.

An employee has no obligation to share information about their disability or health condition unless it is necessary to determine their ability to perform the inherent requirements of their role, including their ability to work safely, or to determine and/or implement adjustments. Any information requested from an employee for this purpose must be relevant, not excessive and should not unreasonably intrude into the personal affairs of the employee.

If further advice is needed to assist in determining whether a request for adjustments can be accommodated, the manager should seek support from Systems and Corporate Services which may require meeting with the employee directly to clarify specific needs and seek any additional information. The manager must maintain confidentiality if personal or health information has been shared unless the employee has provided consent to this information being shared or it is otherwise authorised by law.

4.2 Arranging workplace adjustments

4.2.1 Workplace adjustments requests

When a workplace adjustment is requested, the manager and employee should discuss the nature of adjustments required. The manager can seek advice from Systems and Corporate Services, if necessary, ensuring confidentiality of personal information, health information and any other sensitive information is maintained.

Employees can request adjustments at any stage of their employment. The request can also be made to someone other than their line manager such as another relevant manager or senior executive. Each employee is an expert in their own disability and experience and is often best placed to explain what adjustments they need.

Where a workplace adjustment is requested due to disability, it must be provided unless it would cause the IPC unjustifiable hardship (see section 4.4).

Where different ways of working are required, such as changing work hours or locations, ideally these should be organised in line with existing flexible working policies, where appropriate, or in consultation with Systems and Corporate Services. If an adjustment includes flexible working, it should still be managed as per the requirements set out in this policy.

4.2.2 Personal Emergency Evacuation Plan

Managers must also ask the employee whether they need a personal emergency evacuation plan (PEEP) and submit any required documentation so a PEEP can be tailored to the employee's specific needs and location.

4.2.3 JobAccess assessment

JobAccess is a Commonwealth initiative to provide support and information for people with disability, employers and service providers. A free assessment with JobAccess is available to assist with selecting appropriate adjustments. Assessments are done by qualified professionals who will assess the workplace for any barriers that may exist for the employee. The assessor then prepares an assessment report and speaks to the manager and employee about any recommended adjustments. Managers and employees can consult Systems and Corporate Services for further guidance.

4.3 Funding

Workplace adjustments range from no cost, like varied work schedules or frequent rest breaks, through to adjustments that have substantial costs, like specialised equipment.

Workplace adjustments may be funded through existing budgets.

Additional funding support may be available through the JobAccess Employment Assistance Fund (EAF). This is a reimbursement scheme that supports the implementation of a range of adjustments subject to the EAF's eligibility criteria. JobAccess provides a free Workplace Modification Assessment to assess what adjustments are needed for employees with disability to do their job. It is also available to existing employees if their duties or role have changed, their disability has changed, or a new modification becomes available that would better meet their needs. There is no restriction on the types of adjustments that can be approved under the Fund, as long as the person meets the EAF eligibility criteria.

4.3.1 Timeframe and review process

Any agreed workplace adjustments are to be provided within a reasonable timeframe agreed between the employee seeking adjustments and their manager. The manager must keep the employee seeking the adjustments up to date on progress.

Once fully implemented, managers should regularly check-in with employees to ensure any adjustments are continuing to meet their needs. The workplace adjustments should be reviewed at least yearly (or more often if required) and when circumstances change such as a change in the nature of the issue or a change in work duties/location/health. Action can then be taken to alter the workplace adjustments if necessary to ensure the employee's needs continue to be optimally met.

Employees should raise any concerns with their manager in the first instance. If they are unavailable or where it is inappropriate to do so, they can discuss with their director. See Section 5 (Escalation Pathway) of this Policy for further detail.

4.4 Declining a workplace adjustments request

If it is considered that:

a) making a workplace adjustment would impose an unjustifiable hardship on the agency, or

b) a person cannot carry out the inherent requirements of the role, even with services and facilities, like workplace adjustments, provided to them

the matter should be escalated to Systems and Corporate Services, who will be responsible for further assessing the request and deciding whether to accommodate or decline the request.

When deciding, the IPC will:

- thoroughly consider all possible adjustments and how they might be made
- discuss the issues directly with the employee or groups involved
- consult relevant sources of advice such as Systems and Corporate Services and external sources where applicable – see Appendix 1.

4.4.1 Unjustifiable hardship exception

Under the *DDA*, employers are required to make reasonable adjustments for employees with disabilities, unless it would impose unjustifiable hardship on the employer.[22] Similar requirements apply under the *ADA*.

In determining what constitutes unjustifiable hardship on the employer, all relevant circumstances[23] of the particular case must be considered. This includes, but may not be limited to:

- the nature of the benefit or detriment likely to accrue to, or be suffered by, any person concerned;
- the effect of the disability of any person concerned;
- the financial circumstances, and estimated amount of expenditure required to be made by the employer; and
- the availability of financial and other assistance to the employer.

Determining whether there will be an unjustifiable hardship requires a balancing of potentially conflicting interests. When claiming unjustifiable hardship, the burden of proving something would impose an unjustifiable hardship lies on the employer.

Examples of adjustments that have been found not to be reasonable because they would impose an unjustifiable hardship on the employer are:

- providing a 'buddy' for an employee working in patient care in a hospital, who would attend to all duties alongside the employee on an ongoing basis, on the basis that it is unreasonable to expect an employer to effectively employ two individuals to complete the work of one individual, both financially and practically[24]

[22] *Disability Discrimination Act 1992* (Cth) s 21B and *Anti-Discrimination Act 1977* (NSW) s 49D(4)(b).

[23] *Disability Discrimination Act 1992* (Cth) s 11 and *Anti-Discrimination Act 1977* (NSW) s 49C.

[25] *Gordon v St Vincent's Hospital Sydney Ltd* [2023] FCA 1188.

- a request that all work directions be in writing and the employee be given 24 hours' notice in writing for any meetings, which would also be attended by a support person. On the basis that an adjustment of this nature would be unworkable in practice, as the employee's managers would not be permitted to discuss any matter with the employee without 24 hours' notice and arrangements for a support person.[25]

Examples of adjustments that would not impose an unjustifiable hardship that have been identified in the case law are:

- modifications to an employee's workstation enabling them to sit at a stool while serving customers, notwithstanding an employer's policy not to provide chairs/stools[26]
- assistance with heavy lifting, such as lifting a wheelchair.[27]

Determining what does or does not constitute unjustifiable hardship depends on the individual circumstances.[28]

4.4.2 Inherent requirements of the role and other exceptions

There may be some situations that arise for some people with some disabilities where they are unable to carry out a role due to the inherent requirements of that particular role.

Under the *DDA*, in limited employment-related circumstances, it may not be unlawful to discriminate against another person on the grounds of that person's disability if, because of the disability, they would be unable to carry out the inherent requirements of the particular work, even if reasonable workplace adjustments were made.[29] Similar provisions exist in the *ADA*.[30]

The inherent requirements of the work will vary depending on what the role is. It is the employer's responsibility to determine the inherent requirements of the role. The employer should ensure that job advertisements, role descriptions and employment contracts clearly set out the tasks and/or services the employee will perform, the necessary skills and capabilities to do so and the circumstances in which the employment will be carried out. This should be done both during the hiring process or when they are introduced as part of a role re-design.

The following factors are to be taken into account in determining whether a person would be able to carry out the inherent requirements of the particular work: that person's past training, qualifications and experience relevant to the particular work, their performance in working for the employer (if they already work for the employer), and any other relevant factors that are reasonable to take into account.[31]

If a person with disability cannot perform the inherent requirements of a role because of the disability, the employer must consider how the employee could be provided with workplace adjustments to help them perform the role.[32] The employer should consult with the prospective or existing employee about how the inherent requirements of a role can be performed.

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[25] *Kristjansson v State of Queensland* [2018] FCCA 3894.

[26] *Daghlian v Australian Postal Corporation* [2003] FCA 759.

[27] *Lonie v LiveBetter Services Ltd* [2023] NSWCATAD 60.

[28] You can find out more about unjustifiable hardship in the Australian Human Rights Commission's online guide.

[29] *Disability Discrimination Act 1992* (Cth) s 21A.

[30] *Anti-Discrimination Act 1977* (NSW) s 49D(4)(a).

[31] *Disability Discrimination Act 1992* (Cth) s 21A(2) and *Anti-Discrimination Act 1977* (NSW) s 49D(4).

[32] *Disability Discrimination Act 1992* (Cth) s 4, 11 and *Anti-Discrimination Act 1977* (NSW) s 49B(1)(b).

There are other exceptions to the disability discrimination provisions, including that it is not unlawful to discriminate if the disability of the person concerned is an infectious disease and the discrimination is reasonably necessary to protect public health,[33] and where discrimination is necessary to comply with other laws or court orders.[34]

4.5 Confidentiality

In order to make workplace adjustments, some personal health information may need to be shared. The nature of that information will depend on the circumstances, and the focus should be on the inherent requirements of the role and the employee's ability, offering workplace adjustments when needed.

If information is required, the IPC will notify the employee as to:

- why information about their personal health is being collected
- any law that requires the particular information to be collected,
- how the information will be used and stored
- where the information will be stored
- how they can access their information
- who has access to this information
- how the information can be amended and updated
- who the information will be disclosed to
- how long it will be stored for
- how it will be destroyed.

All responsible parties should ensure they treat information about the disability or health condition of an individual confidentially.

The IPC is responsible for ensuring all records in relation to workplace adjustments are secured against loss, unauthorised access, modification or misuse and are otherwise held and dealt with in accordance with applicable legislative requirements under the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

5. Escalation pathway

5.1 Grievance process

Any grievances under this Policy are to be dealt with in accordance with the IPC Managing Workplace Issues Procedure (D25/004851/DJ). A list of advice and support services is provided at Appendix 1.

5.2 Informal resolution

If the employee is unsatisfied with the workplace adjustments process or decision, they should try to resolve the issue internally first. This may include:

- a manager or Systems and Corporate Services reviewing the application or decision

[33] *Disability Discrimination Act 1992* (Cth) s 48 and *Anti-Discrimination Act 1977* (NSW) s 49P.

[34] *Disability Discrimination Act 1992* (Cth) s 47 and *Anti-Discrimination Act 1977* (NSW) s 54.

- a director facilitating or mediating an open and respectful conversation between the parties
- providing the employee with information on how they can access supports throughout a grievance procedure
- refresher training for the general work area on the requirements of this policy.

Any resolution process should be accessible for the employee.

5.3 Formal investigation

In cases where employees would like to lodge a formal complaint, they should make a report in accordance with the steps outlined in the IPC Managing Workplace Issues Procedure (D25/004851/DJ). Employees can also report or make a complaint to an authority or regulator, such as Anti-Discrimination NSW or the Australian Human Rights Commission. Investigations should be conducted in a confidential, impartial, timely, fair and accessible manner.

6. Moving to another role, department or agency

When workplace adjustments/passports are provided for an employee, and that employee moves to another role within their own agency or to another NSW government sector Department or agency (temporarily or permanently):

- if the employee consents to the adjustments being shared with the new manager/agency, the workplace adjustments details for the employee will be provided to the new manager/agency for review
- the new manager/agency may need to review the current workplace adjustments to ensure it meets the needs of the employee and the requirements of the new role
- transfer of adjustments should be considered on a case-by-case basis. Where reasonable and practical, the existing adjustments will transfer with the employee
- if the new role is substantially different, the adjustments may need to be reviewed to ensure it meets the employee's needs and inherent requirements of the new role and does not cause an unjustifiable hardship
- any existing, ongoing, or new funding requirements will (if applicable) transfer to the new employing agency
- if the employee is unsatisfied with the workplace adjustments process or decision, they should refer to the relevant escalation process of the new agency/role
- if the adjustments relate to equipment that has been provided through the Employee Assistance Fund, ownership of the asset must be confirmed in writing as part of the EAF approval. This will determine who is responsible for maintenance or repairs and what will happen to the equipment if the person with disability changes jobs. In most cases, any modification or equipment that is portable should move with the employee where practicable. Equipment provided to an employee outside of this Fund will remain the property of the IPC and approval must be sought to transfer this equipment to another government agency.

7. Monitoring and Evaluation

The IPC is committed to effective monitoring, evaluation and organisational learning processes that will foster an inclusive work environment. This includes:

- regular review of this policy and implementation of the workplace adjustments passport
- regularly collecting and assessing de-identified reports and data for trends, patterns and lessons to drive continuous improvement

- regularly consulting with employees, employee networks and unions to share knowledge and understand issues from an employee perspective
- actively promoting an inclusive workplace that encourages workplace adjustments.

8. Related policies and procedures

- IPC Work Health and Safety Policy
- IPC Managing Workplace Issues Procedure (D25/004851/DJ)
- IPC's Flexible Working Hours Agreement Framework (D24/043965/DJ)
- IPC Privacy Management Plan.

Document information

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Business Unit:	Systems and Corporate Services
Author:	Director Corporate Services and Business Improvement
Approver:	Chief Executive Officer
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Document history

Version	Date	Reason for Amendment
1.0	October 2025	First publication

Appendix 1: List of advice and support services

Employee Assistance Program

IPC provides an Employee Assistance Program (EAP), which is a short-term, confidential, counselling service designed to offer a problem-solving, solution-oriented approach to support employees with personal or work-related issues.

The EAP is staffed by independent qualified practitioners. The EAP will provide adjustments such as interpreters or captioning if required.

All employees (and their immediate family) have access to the EAP, which provides for a limited number of counselling sessions at no cost to the employee and can be provided over the phone or face-to-face.

Managers and supervisors can access Manager Assist through the EAP, to help with workplace issues.

IPC EAP provider is PeopleSense (1300 307 912).

- Anti-Discrimination NSW
    - Workplace Adjustments Series
    - (02) 9268 5544
    - 1800 670 812 (toll free)
    - adbcontact@justice.nsw.gov.au
- Australian Human Rights Commission
    - Unjustifiable hardship: Australian Human Rights Commission's online guide
    - 1300 656 419 (local call)
    - 1800 620 241 (toll free)
    - complaintsinfo@humanrights.gov.au
- Australian Disability Network
    - (02) 8270 9200
    - info@AusDN.org.au
- Fair Work Commission
    - 1300 799 675
    - sydney@fwc.gov.au
- First Peoples Disability Network
    - (02) 8399 0882
    - enquiries@fpdn.org.au
- IncludeAbility
    - includeability@humanrights.gov.au
    - (02) 9284 9600
- Job Access
    - 1800 464 800

- Mental Health NSW
    - Mental Health Line: 1800 011 511 (open 24/7)
- People with Disability Australia
    - Free call: 1800 422 015
    - pwd@pwd.org.au
- Office of the Public Service Commissioner
- SafeWork NSW
    - 13 10 50
- The NSW Industrial Relations Commission
    - IRC.Registry@courts.nsw.gov.au
    - 02 8688 3516
- Enable NSW
    - enable@health.nsw.gov.au
    - 1 800 ENABLE (1 800 362 253)

Appendix 2: Legislation

- *Anti-Discrimination Act 1977* *(NSW)*
- *Disability Discrimination Act 1992* *(Cth)*
- *Disability Inclusion Act 2014* *(NSW)*
- *Government Sector Employment Act 2013* *(NSW)*
- *Health Records and Information Privacy Act 2002* *(NSW)*
- *Privacy and Personal Information Protection Act 1998* *(NSW)*
- *Sex Discrimination Act 1984* *(Cth)*
- *Work Health and Safety Act 2011* *(NSW)*

Information and Privacy Commission NSW
T 1800 IPC NSW (1800 472 679)
www.ipc.nsw.gov.au

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