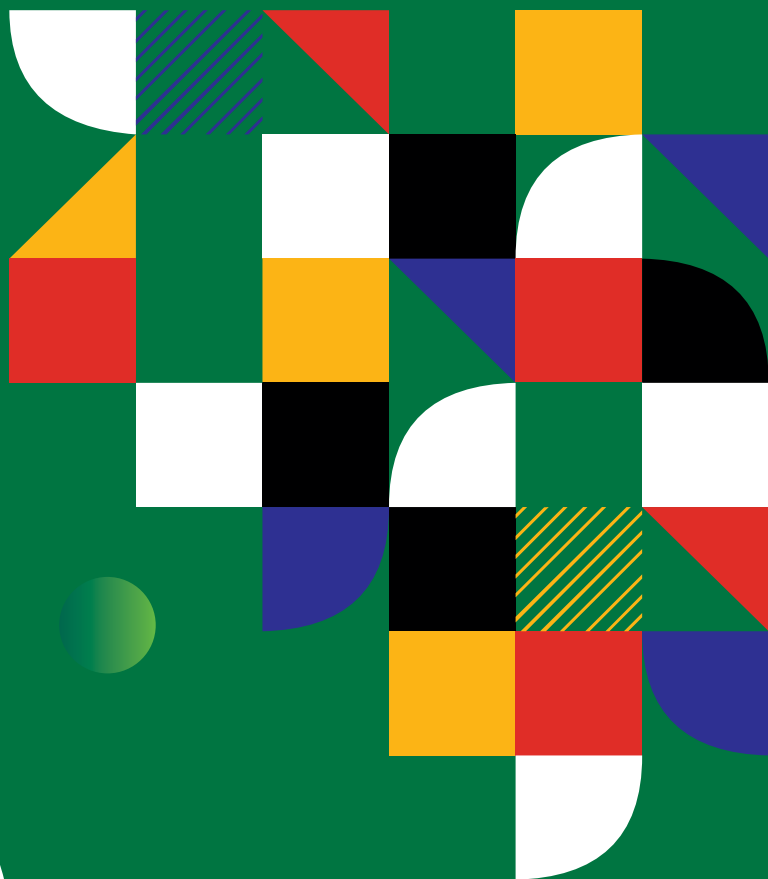


NATIONAL STRATEGIC FRAMEWORK ON REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES



women, youth &
persons with disabilities

Department:
Women, Youth and Persons with Disabilities
REPUBLIC OF SOUTH AFRICA



**NATIONAL STRATEGIC FRAMEWORK ON REASONABLE
ACCOMMODATION FOR PERSONS WITH DISABILITIES**

'Human dignity cannot be fully valued or respected unless individuals are able to develop their 'humanness' to the full extent of its potential. Each human being is uniquely talented. Part of the dignity of every human being is the fact and awareness of this uniqueness. An individual's human dignity cannot be fully respected or valued unless the individual is permitted to develop his or her talents optimally.'

Constitutional Court, 1996

Explanatory note

Whilst reasonable accommodation applies to all designated groups, this framework applies specifically to persons with disabilities.

Its purpose is to:

- guide the implementation of reasonable accommodation measures to uphold, support and promote the rights of persons with disabilities;
- support the legislative environment by encouraging the promulgation of legislation where there is none, and to accelerate consistent implementation of reasonable accommodation measures where legislation already exists;
- guide the application of reasonable accommodation for persons with long-term impairments and persons with temporary disabilities;
- provide a mechanism for integrated and multidisciplinary coordination of reasonable accommodation;
- combat unfair discrimination and secondary victimisation of persons with disabilities;
- provide for the development of procedures and norms and minimum standards for the issuing of assistive devices, reasonable accommodation measures and support services;
- support the provision of equitable budgeting for the provision of reasonable accommodation support to persons with disabilities; and
- provide for the specific roles and responsibilities of relevant organs of state and sector-based stakeholders to improve the application of reasonable accommodation measures and matters connected therewith.

Relationship of this framework to the White Paper on the Rights of Persons with Disabilities and to the National Development Plan

Persons with disabilities share the same goals and aspirations as peers without disabilities, but at times require specific support measures to be made available to enable them to participate fully and achieve equitable outcomes.

The National Development Plan (NDP), approved in 2012, envisages a country by 2030 which has eliminated poverty and has reduced inequality, a “country wherein all citizens have the capabilities to grasp the ever-broadening opportunities available”.

The NDP acknowledges that many persons with disabilities are not able to develop to their full potential due to a range of barriers, namely physical, information, communication and attitudinal barriers, and states that “Disability must be integrated into all facets of planning, recognising that there is no one-size-fits-all approach”.

The White Paper on the Rights of Persons with Disabilities (WPRPD), approved by Cabinet in December 2015, notes that discrimination on the basis of disability encompasses all forms of unfair discrimination, whether direct or indirect, including denial of reasonable accommodation, and defines reasonable accommodation as “necessary and appropriate modification and adjustments, as well as assistive devices and technology, not imposing a situation, where needed in a particular case, to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

The WPRPD directs that minimum norms and standards for reasonable accommodation support measures be developed and promulgated, and that all public and private institutions must ensure equitable access to and participation in programmes and services, which must

include the development and publication of reasonable accommodation measures in service charters and standards across the full spectrum of services.

Reasonable accommodation support tends to be individual and impairment specific, and includes measures to:

- make the physical environment accessible;
- provide persons with disabilities with access to information and communication;
- redress stress factors in the environment;
- accommodate specific sensory requirements such as those relating to light, noise and spatial stimuli;
- improve the independence and mobility of persons with disabilities;
- guarantee participation and supported decision-making by persons with disabilities; and
- provide access and participation to quality education and work.

Reasonable accommodation measures are therefore inclusive of assistive devices, assistive technology, personal assistance, adaptations of the built environment, signage, captioning, text available in audio, loop systems, FM systems, alerting/alarm systems for evacuation procedures, dedicated SMS lines to all emergency service call centres, adaptation of (for example) work arrangements and the implementation of flexibility within the workplace to accommodate persons with disabilities.

The provision of universally accessible services results in:

- Independent living,
- Participation in society, and
- Increased choices and options for quality of life.

Therefore, the relationship of this framework to the WPRPD and the NDP is to provide a tool-kit to all service providers in the public and private sectors and particularly to government itself, which is responsible for compliance.

Relationship of this framework to the Strategic Framework for Universal Access and Design

The inextricable link between universal access, universal design, reasonable accommodation and disability must be located within the context of the non-discrimination clause in the Bill of Rights of the Constitution of the Republic of South Africa.

It requires a paradigm shift in how we embed the provision of reasonable accommodation support in all programmes and services to compensate for barriers created by lack of universal access and design on the one hand and additional support measures required by persons with disabilities on the other, the ultimate aim being that of full participation and equal access to opportunities.

It is therefore important that this framework be read with the Framework on Reasonable Accommodation for Persons with Disabilities.

Mandate for the framework

The mandate for this framework is taken from the Bill of Rights of the Constitution of the Republic of South Africa, further supported by the Promotion of Equality and Prevention of

of Unfair Discrimination Act Number 4 of 2000, Chapter 5.

ACKNOWLEDGEMENTS

A participatory approach was followed in developing this framework.

The zero draft was developed by, among others, giving consideration to submissions made over the past few years for purposes of developing both the Baseline Country Report to the UN Convention on the Rights of Persons with Disabilities as well as the WPRPD. The zero draft was released for public comment.

A technical drafting team, consisting of representatives from the departments of Social Development, Transport, Public Works and Infrastructure, and Communications and Digital Technologies, as well as the SA Local Government Association and disability sector experts, collaborated through a validation workshop and subsequent electronic consultations in finalising the draft framework.

The contributions of the following public servants and disability rights activists in finalising the framework are acknowledged:

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- Ms Shakila Maharaj (Disability Management Services)
- Dr Laurentia Truter (Daisy SA)
- Ms Sebenzile Matsebula (Lindandanda Consulting)

PREAMBLE

WHEREAS the United Nations Convention on the Rights of Persons with Disabilities declares access to reasonable accommodation as a right to be afforded to persons with disabilities and urges all states to enact appropriate legislation to empower persons with disabilities;

WHEREAS the Republic of South Africa is a signatory to the United Nations Convention on the Rights of Persons with Disabilities and ratified the Convention, binding itself, as a member state, to the general application of international law on reasonable accommodation;

WHEREAS the Constitution of the Republic of South Africa and subsequent rights-based legislation provide for basic principles of justice and fairness for persons with disabilities;

WHEREAS the Bill of Rights (section 9, subsection 2) in the Constitution of the Republic of South Africa (1996) provides that everyone has the right, amongst others, to human dignity and equality before the law;

WHEREAS the Promotion of Equality and Prevention of Unfair Discrimination Act (2000) provides for the protection from discrimination and provision for specific individual needs, which must be reasonably accommodated by duty-bearers;

WHEREAS the Republic of South Africa recognises these rights by ensuring the provision of integrated and multi-disciplinary reasonable accommodation measures through a number of laws, policies and programmes;

WHEREAS the state has to take reasonable and necessary measures within its available resources to provide for reasonable accommodation and equitable budgeting for reasonable accommodation;

WHEREAS persons with disabilities may choose or be encouraged to declare and/or disclose their reasonable accommodation needs within their living, learning or working environment; and

WHEREAS duty-bearers also have a duty to inform themselves of reasonable accommodation measures, to create an environment which is conducive for disclosure and to promote inclusion.

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1.

**INTERPRETATION, OBJECTIVES
AND APPLICATION OF THE FRAMEWORK**

1.1 Abbreviations

AAC	Augmentative and Alternative Communication
AT	Assistive Technologies
CBO	Community-Based Organisation
CBR	Community-Based Rehabilitation
CEE	Commission for Employment Equity
CSIR	Council for Scientific and Industrial Research
EAP	Employee Assistance Programmes
DSD	Department of Social Development
DPO	Disabled Persons' Organisation
DSO	Disability Service Organisation
ECD	Early Childhood Development
FOSAD	Forum of South African Director Generals
HSRC	Human Sciences Research Council
ICF	International Classification of Functioning, Disability and Health
ICT	Information and Communications Technology
IDPs	Integrated Development Plans
IGR	Inter-Governmental Relation
ILO	International Labour Organisation
INDS	Integrated National Disability Strategy
M&E	Monitoring and Evaluation
MTSF	Medium-Term Strategic Framework
NDP	National Development Plan 2030
NDRM	National Disability Rights Machinery
NEDLAC	National Economic Development and Labour Council
PanSALB	Pan South African Language Board
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act, 2000
SABS	South African Bureau of Standards
SASL	South African sign language
UN	United Nations
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
WPRPD	White Paper on the Rights of Persons with Disabilities

1.2 Definitions and interpretations

In this framework, unless the context indicates otherwise, the following meanings will be attributed to terms:

Adaptive behaviour – the collection of conceptual, social and practical skills that are learnt and performed by people in their everyday lives:

- **Conceptual skills** include language and literacy; money, time, and number of concepts; and self-direction
- **Social skills** include interpersonal skills, social responsibility, self-esteem and gullibility
- **Problem-solving** includes the ability to analyse problems and overcome obstacles leading to the resolution of problems
- **Practical skills** include activities of daily living (personal care), occupational skills, health care, travel/transportation, schedules/routines, safety, use of

money and use of technology.

Affirmative action – any action taken to support or empower designated groups. In terms of disability equality, this means removing barriers or providing enablers to create a situation where equal participation is possible.

Accessibility – the extent to which aspects of society can be equally, easily, safely and appropriately used or reached by persons with disabilities (special needs) or impairments; accessibility describes the extent to which an environment, service or product allows access to as many people as possible, in particular to persons with disabilities. These aspects include buildings, facilities, constructed spaces, transport, information, equipment, services, activities, resources, utilities, language, communication and technology.

Assistive devices – any device, product, equipment or tool that is designed or adapted to enable persons with disabilities to participate in activities, tasks or actions. Products may be specifically produced or generally available for persons with disabilities or according to the specific needs of individuals.

Assistive technology – an umbrella term that includes assistive, adaptive and rehabilitative devices and services for persons with disabilities, which enable persons with disabilities to attain independence.

Augmentative and alternative communication – an umbrella term that encompasses the communication methods, aside from traditional speech, used to supplement or replace speech or writing for people who require an alternative means for producing or comprehending spoken or written language.

Barriers – obstacles and impediments that prevent people from free movement, decision-making, association and participation. Barriers may be social (including high cost, lack of disability awareness, prejudice, cultural differences and communication difficulties), psychological (such as fear for personal safety) or structural (including infrastructure, operations and information).

Braille – a system of writing for individuals with visual disabilities (blindness) that uses letters, numbers and punctuation made up of raised dots and patterns. Braille was the first digital form of writing for blind persons.

Communication – verbal and nonverbal means of conveying information, inclusive of languages, display of texts, Braille, tactile communication, large print, accessible multi-media and written, audio, plain language, lip-speaking services, speech-reading services, whisper interpretation, note-taking services and augmentative and alternative modes, means and formats of communication, and communication technology human reader and augmentative and alternative modes, means and formats of communication as well as accessible information communication technologies.

Committee – the national Universal Access and Design (UAD) Committee, which is the coordinating mechanism as established in terms of this framework.

Constitution' – the Constitution of the Republic of South Africa, 1996 (Supreme Law of the Republic).

Department – any government department responsible for service delivery within the three spheres of government: national, provincial and municipal. It also includes the agencies of any government department, state-owned entities or sector institutions.

Disability – an evolving concept imposed by society when a person with a physical, psychosocial, intellectual, neurological and/or sensory impairment is denied access to full participation in all aspects of life, and when society fails to uphold the rights and specific needs of individuals with impairments.

Discrimination – any act or omission, including a policy, law, rule, practice, condition or situation, which directly or indirectly (a) imposes burdens, obligations or disadvantages on, and/or (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds, which include disability and any other ground that might disadvantage a person, undermines human dignity or adversely affects an individual's rights and freedoms.

Disability discrimination – any distinction, exclusion or restriction of persons on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. It encompasses all forms of unfair discrimination, whether direct or indirect, including denial of reasonable accommodation.

Disability mainstreaming – requires a systematic integration of the priorities and requirements of persons with disabilities across all sectors of society. It requires effective planning, adequate human resources, and sufficient financial investment – accompanied by specific measures such as targeted programmes and services with the outcome of enabling persons with disabilities to participate in mainstream society and to continue to participate throughout their lives.

Disabled people's organisations – membership-based organisations constituted to advocate for the protection of the human rights of persons with disabilities and disability mainstreaming. They constitute the representative voice of persons with disabilities, inclusive of parents of children with disabilities, based on their membership demographics.

Disability services organisation – run by service providers and/or community members. Disability services organisations (DSOs) are not necessarily membership-based organisations and focus on the delivery of rehabilitation and other services to persons with disabilities and their families.

Disclosure of disability – a voluntary notification by persons with disabilities that the person has a disability, whether visible or invisible.

Duty-bearers – in human rights law, duty-bearers include government and their agencies at the national, provincial and local levels of government, traditional and tribal authorities, any government agency in any government department, all public officials and service providers in the public and private sectors.

Empowerment – processes, procedures and actions aimed at affording access, equal treatment, inclusion, participation, accountability and efficiencies to persons with disabilities.

Enabling environments – interrelated physical and other infrastructures, built environments, cultures, laws, policies, processes and procedures, information and communication technologies, and capacity and knowledge of staff in organisations that must be in place to facilitate the socio-economic development of all persons, regardless of age, gender, disability, culture etc.

Equality – the full and equal enjoyment of rights and freedoms as contemplated in the Constitution, including de jure and de facto equality and also equality in terms of outcomes . It ensures that individuals or groups of individuals are treated fairly and equally and no less favourably and with dignity, specific to their requirements. It includes the removal of discrimination to ensure that all opportunities and life chances are available to persons with disabilities and people who become disabled, on an equitable basis with others.

Equity – a system of justice and fairness where there is an even-handed treatment of all people. Under this system, individuals' needs and requirements are taken into account and they are treated accordingly. Equity demands fairness in every situation, whether it is in the distribution of benefits or burdens. Therefore, people are treated fairly but differently as their circumstances are given weight. It seeks to provide an equal opportunity to all individuals to let them attain their maximum potential. In this way, equity ensures that all individuals are provided with the resources they need to gain access to the same opportunities as the general population.

Exclusion – the act of socially isolating or marginalising an individual or groups on the basis of disability, gender, race, language, sexual orientation, culture, religion or socio-economic status by not allowing them to participate in or enabling them to benefit from an opportunity. Exclusion occurs when specific needs are not accommodated by allowing or enabling someone to fully participate or to be included in society and enjoy the same rights and privileges as others who are not discriminated against.

Full and equal participation – occurs if equalisation of opportunities to participate is provided through universal design and reasonable accommodation measures. In adapting to social structures, social models focus more sharply on empowerment, participation and modifications to promote equalisation of opportunities for all.

Gender equality – means equal recognition, enjoyment or exercise by a person irrespective of gender, disability or race, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other aspects of life, through the recognition of their respective needs and interests.

Impairment – a perceived or actual feature of the person's body or functioning that may result in limitation or loss of activity or restricted participation of the person in society with a consequential difference of physiological and/or psychological experience of life. For example, the international classification of disease could be utilised for purposes of defining physical, sensory, intellectual, psychosocial and neurological impairments.

Information and communications technology – an umbrella term which includes any kind of information and communication device or application and its content, and encompasses a wide range of access technologies, such as radio, television, satellites, GPS, mobile phones, fixed lines, computers, tablets and network hardware and software.

Independence – state of being whereby available and adequate support services, assistive devices and personal assistance to persons with all disabilities enables persons with disabili-

disabilities to live independently.

Mobility – the means by which a person, whether with a disability or without, moves in their current environment. It is the ease of human movement with or without the use of assistive devices such as devices that augment dexterity, communication, sight or hearing, and mobility aids such as wheelchairs, crutches, guide dogs and mobility canes.

National disability rights coordinating mechanism – a function designated by the President during the macro-organisation of the state in line with Article 33(1) of the UNCRPD. The function is primarily responsible for the overall coordination of the implementation and monitoring of the national disability rights agenda.

Person – a legal natural or juristic person.

Persons with disabilities – includes those who have perceived and/or actual physical, psychosocial, intellectual, neurological and/or sensory impairments who, as a result of various attitudinal, communication, physical and information barriers, are hindered from participating fully and effectively in society on an equal basis with others.

Progressive realisation – a standard that is contained in the South African Constitution, specifically in association with socio-economic rights, such as section 26 (housing), section 27 (health care, food, water and social security), and section 29 (1)(b) (further education), and defined by the Constitutional Court, which has defined progressive realisation by referring to its development in international human rights law, including Paragraph 9 of General Comment 3 of the United Nations' Committee on Economic, Social and Cultural Rights (ICESCR).

The concept of progressive realisation constitutes recognition of the fact that the full realisation of all economic, social and cultural rights can generally not be achieved in a short period of time. Nevertheless, the fact that realisation over time, or in other words progressively, is foreseen under the ICESCR should not be misinterpreted as depriving the obligation of all meaningful content. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal, and to be able to provide evidence that this is being achieved. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the ICESCR and in the context of the full use of the maximum available resources.

Progressive realisation as it is referred to in this framework is applicable to three dimensions: more in number (access); more in diversity (compounded aspects); and better in quality (participation).

Reasonable accommodation – necessary and appropriate modification and adjustments, as well as assistive devices and technology, not imposing a situation, where needed in a particular case, to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Rights holders – All human beings are inherently rights-holders who should enjoy universal human rights that must be guaranteed through the progressive implementation of legislation.

Self-representation – the practice of people being able to articulate their own issues for

themselves. It refers to people being enabled and allowed to have their own voice in issues that relate to their specific needs and circumstances.

Universal access – the removal of cultural, physical, social and other barriers that prevent people with disabilities from entering, using or benefiting from the various systems of society that are available to other citizens and residents. The absence of accessibility or the denial of access is the loss of opportunities to take part in the community or society on an equal basis with others.

Universal design – the design of products, environments, programmes and services such that they are usable by all persons to the greatest extent possible without the need for adaptation or specialised design.

Universal design access plan (UDAP) – demonstrates to the service user how they are able to access services and how and within what timeframe implementation will take place. Unjustifiable hardship (legal interpretation) – an action that requires significant or considerable difficulty or expense. This involves considering, among other things, the effectiveness and efficiency of the accommodation and the extent to which it would seriously disrupt the operation of the business or create a disadvantage.

1.3 Objectives of the framework

The objectives of the framework are to:

- Explain the implications of reasonable accommodation support as a fundamental human right;
- Ensure that reasonable accommodation support is approached from a human rights and inclusive development perspective;
- Ensure that all public and private sector entities make provision for reasonable accommodation in service delivery;
- Allow for and support the development of reasonable accommodation plans (RAPs) as integral components of UDAPs. Where this is already sanctioned, to support the implementation of plans developed to support it; and
- Facilitate the implementation of programmes or the provision of reasonable accommodation measures, including the provision of accessible amenities and assistive devices to persons with disabilities that will enable them to fully participate in the activities of society.

1.4 Application of the framework

1.4.1 The legal application of the framework

This framework must be read and used in conjunction with relevant legislation and regulations, codes of good practice, technical assistance guidelines, South African National Standards, and the WPRPD.

The framework is intended to be used as a practical guide providing information and advice for government, the private sector and civil society, including persons with disabilities themselves, so that it can be understood and implemented.

1.4.2 South African legal context

Section 9 of the Constitution states that

The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

The equality clause is supported by the Promotion of Equality and Prevention of Unfair Discrimination Act, Act No. 4 of 2000, Chapter 5 –

Special measures to promote equality with regard to race, gender and disability

28. (1) If it is proved in the prosecution of any offence that unfair discrimination on the grounds of race, gender or disability played a part in the commission of the offence, this must be regarded as an aggravating circumstance for purposes of sentence.

(2) The South African Human Rights Commission (SAHRC) must, in its report referred to in

report referred to in section 15 of the Human Rights Commission Act, 1994 (Act No. 54 of 1994), include an assessment on the extent to which unfair discrimination on the grounds of race, gender and disability persists in the Republic, the effects thereof and recommendations on how best to address the problems.

(3) (a) *The State, institutions performing public functions and all persons have a duty and responsibility, in particular to:*

- (i) *eliminate discrimination on the grounds of race, gender and disability;*
- (ii) *promote equality in respect of race, gender and disability.*

(b) *In carrying out the duties and responsibilities referred to in paragraph (a), the State, institutions performing public functions and, where appropriate and relevant, juristic and non-juristic entities, must—*

- (i) *Audit laws, policies and practices with a view to eliminating all discriminatory aspects thereof;*
- (ii) *Enact appropriate laws, develop progressive policies and initiate codes of practice in order to eliminate discrimination on the grounds of race, gender and disability;*
- (iii) *Adopt viable action plans for the promotion and achievement of equality in respect of race, gender and disability; and*
- (iv) *give priority to the elimination of unfair discrimination and the promotion of equality in respect of race, gender and disability.*

A number of existing sectoral laws and policies make provision, to a greater or lesser extent, for reasonable accommodation support measures to be provided to persons with disabilities.

These include:

- **Employment context –**
 - The Employment Equity Act (1998), supported by the Code of Good Practice and Technical Assistance Guidelines;
 - JobACCESS Strategic Framework on the Recruitment, Employment and Retention of Persons with Disabilities in the Public Service;
 - The Policy on Reasonable Accommodation and Assistive Devices for Employees in the Public Service (2015);
 - Compensation for Occupational Injuries and Diseases Act (1993) as amended; and
 - Determination and Directive on Leave of Absence In the Public Service (2015);
- **Education Context –**
 - The White Paper on Post-School Education and Training (2013);
 - The Policy on Screening, Identification, Assessment and Support (2014); and
 - The NSFAS Bursary Scheme for Reasonable Accommodation Support to Students with Disabilities;
- **Disability Services –**
 - The Framework and Strategy for Disability and Rehabilitation Services in South Africa;
- **Other –**
 - Social Assistance Act (2004), and in particular the Grant-in-Aid benefit;
 - Income Tax Act (1962) as amended (SARS Disability Tax Benefits); and

- The National Housing Policy (with adjustment in 1999 to provide for special enhancements to the subsidy of houses intended for persons with disabilities, taking into account a range of disabilities and assistive devices); and
- Cross-cutting –
 - The WPRPD (2015).

Reasonable accommodation as a legal entitlement is best defined in the Employment Equity Act, which defines reasonable accommodation as “any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment”. This implies that reasonable accommodation applies to all persons, regardless of disability, that resort under the general principle of non-discrimination. Thus, reasonable accommodation must be provided to ensure equal opportunities on account of not only disability but other grounds for discrimination too, such as age and sex.

The provision of reasonable accommodation is specifically defined as a measure of “affirmative action”. Section 15.2 of the Employment Equity Act specifies that “Affirmative action measures implemented by a designated employer must include –... making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer”.

The Code of Good Practice on Disability in the Workplace defines the scope of reasonable accommodation in the employment context as applying to applicants and employees, and may be required during the recruitment and selection process; in the working environment; in the way work is usually done and evaluated and rewarded; and in the benefits and privileges of employment (paragraph 6.3). It also specifies that employers may adopt the most cost-effective means that are consistent with effectively removing barriers that prevent a person from performing a job and enjoying equal access to the benefits and opportunities of employment (paragraph 6.2).

The Code of Good Practice on Disability in the Workplace elaborates in a non-binding manner the scope of reasonable accommodation found in the 1998 Act. The Technical Assistance Guidelines on the Employment of People with Disabilities (chapter 5) further clarifies the concept of the “reasonableness” standard.

According to the Code, “unjustifiable hardship” is defined as “action that requires significant or considerable difficulty or expense. This involves considering, amongst other things, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business” (paragraph 6.12).

The concept requires an objective analysis that includes consideration of not only whether the accommodation will create “difficulty or expense that will seriously disrupt the operation of the business” but also (1) the effectiveness of the accommodation; (2) the impact of providing or failure to provide accommodation to the employee; (3) the systemic patterns of inequality in society; as well as (4) the objectives of the Act and the Constitution”.

Significantly, “unjustifiable hardship” is considered to be a more rigorous standard than “undue hardship”. This more rigorous standard is necessitated by South Africa’s history of providing so little employment and accommodation for persons with disabilities. The code thus encourages employers to make more effort to reduce and eliminate discrimination

discrimination and/or promote affirmative action.

The standards for reasonable accommodation measures to eradicate discrimination against persons with disabilities in South Africa are limited to certain sectors of life. South Africa has a constitutional responsibility to undertake a legal audit, reviewing existing discriminatory laws, bringing in new legislation to address gaps and promulgating standalone disability legislation if proved necessary. This framework will be a guiding document for any disability legislation.

1.4.3 International legal context

The UN Convention on the Rights of Persons with Disabilities defines reasonable accommodation as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”, and makes provision for reasonable accommodation in a number of articles, inclusive of:

- *Article 4 – General obligations – Par 1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake: (g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost; and (h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.*
- *Article 5 – Equality and non-discrimination – Par 3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.*
- *Article 14 – Liberty and security of the person – Par 2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.*
- *Article 19 – Living independently and being included in the community – States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that: 1 (b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.*

- *Article 20 – Personal mobility – States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by: 1 (b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost; and 1(d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.*
- *Article 21 – Freedom of expression and opinion, and access to information –States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by: 1 (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions.*
- *Article 24 – Education – Par 2. In realizing this right, States Parties shall ensure that: (c) Reasonable accommodation of the individual's requirements is provided; Par 3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including: (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring; and Par 5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.*
- *Article 26 – Habilitation and rehabilitation – Par 3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.*
- *Article 27 – Work and employment – Par 1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia: (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace.*

The Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled (MVT) was adopted by the World Intellectual Property Organisation in 2013. Its main goal is to create a set of mandatory limitations and

and exceptions for the benefit of the blind, visually impaired and otherwise print disabled. Works "in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media", including audio books and braille, fall within the scope of the MVT regime.

1.4.4 Rights and responsibilities of persons with disabilities

The framework intends to assist persons with disabilities by helping them to understand their rights and by providing them with certain obligations.

The framework intends to assist rights-holders by deepening an understanding of their constitutional rights and responsibilities.

The various rights and responsibilities are set out below.

(i) Rights:

- The right not to be discriminated against in all aspects and stages of life and to be treated with fairness, respect, dignity and privacy when accessing any services, facilities, devices and procedures of departments or public and private service providers;
- The right not to be discriminated against on the basis of age, gender, disability, race or any of the factors contemplated in Section 9 of the Constitution or in terms of Chapter 2 Section 9 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000;
- The right to independent living and alongside everyone else by having access to, among others, affordable, appropriate and timeous reasonable accommodation support; and
- The right to reasonable accommodation measures if a person is not accommodated by the mainstream service provision.

(ii) Responsibilities

- The responsibility to understand that one is entitled to be accommodated with every one else when using a facility, product or service;
- The responsibility to know and understand one's reasonable accommodation requirements and to negotiate for such within the constricts of the law if one should require any;
- The responsibility to participate as an informed partner with the service provider in the process of designing, implementing, monitoring and evaluation any service;
- The responsibility to provide feedback if one is not receiving the same standard of service as peers without disabilities, including access to information and communication; and
- The responsibility to report discrimination if one is not receiving the same standard of service as one's peers, including access to information and communication.

1.4.5 Obligations of government, business and civil society

(i) Obligation to support participation in society

Reasonable accommodation by nature relates to the needs of the individual. Therefore, the underlying prescript is that all service providers must innovate to make their services acces-

sible to any person with a disability who attempts to access them, and not deny the person the right of access to services of any kind.

(ii) Obligation to support independent living

Public as well as private parties have a duty to provide and support rehabilitation and habilitation, whilst a person with a disability (whether temporary or permanent) continues to participate in life's activities. No insurance policy or life cover may contradict this basic right to participate.

Every service provider, whether public or private, and whatever the nature of the service, has a duty to progressively implement universal design, access and reasonable accommodation and to be able to demonstrate at any point in time that it is doing so.

No service provider, whether public or private, and whatever the nature of the service, may downgrade universal access and design or reasonable accommodation support to a level previously provided. However, it may be necessary to rework how services are delivered to maintain competitiveness whilst maintaining equality of outcome.

Every service provider has an obligation to create an enabling environment and to provide universal access and reasonable accommodation measures.

(iii) Examples of reasonable accommodation measures which are the responsibility of service providers

Reasonable accommodation measures may include:

- Adapting or modifying existing or acquiring new information technology, e.g., computer apps, websites, software and hardware, including voice input and output software for people with sensory impairments;
- Reorganising the environment so that access needs are accommodated, and altering and modifying the environment when it is below minimum standards;
- Changing policies and procedures or communication systems, for example, the processes and systems around training and assessment materials, by, for instance, providing training materials on request in accessible formats such as braille or tape for persons with visual impairments, lip readers, or simplified text;
- Providing places to rest or prioritising persons with disabilities who are unable to stand in queues, and making an effort to reduce any stress for them;
- Identifying and hiring venues that are accessible to persons with disabilities for both internal and external services, including providing sign language services; and
- Providing specialised supervision and training, e.g., interpreters for deaf persons, personal aides, readers for blind persons, and coaches for persons with intellectual disabilities.

1.5 Limitations and exceptions

This framework shall apply to both the public and private sectors in equal measure as well as to civil society, regardless of the size of an operation. Whilst reasonable accommodation measures may vary depending on the nature of the service offered or provided, access to the service must be easily available, right of access must be assured and reasonable accommodation measures may not be limited to a claim of hardship alone.

At this stage, this framework should act as a guide, except where existing legislation makes

reasonable accommodation measures compulsory, such as in employment and services affected by the Promotion of Equality and Prevention of Unfair Discrimination Act (Act No. 4 of 2000) and the Employment Equity Act, inclusive of all public services and most private sector services.

It is anticipated that this framework will become regulation over the next three years under the Promotion of Equality and Prevention of Unfair Discrimination Act.

This framework should be used to guide government reporting on the implementation of the WPRPD.

Failure to observe this framework may by itself render a provider of services legally liable in any proceedings, especially where legislation requiring reasonable accommodation already exists, and where not so directly, courts and tribunals may use this framework to interpret and apply existing legislation.

1.6 Qualifying criteria for reasonable accommodation

The framework interprets qualifying criteria in order to assist in making decisions about who qualifies for reasonable accommodation in different circumstances, how they qualify and what reasonable accommodation measures should be considered.

The three basic criteria in this framework as set out below must all be met for a person to qualify for reasonable accommodation on the basis of disability.

- The person requesting reasonable accommodation must have **an impairment**. An impairment may be physical, sensory, neurological, intellectual or psychosocial or a combination of these.
- The impairment may be **long term, recurring or episodic and includes progressive conditions**, in which case it is a permanent condition. Long term means that the impairment lasts or is likely to last for over twelve months or for life. Recurring and episodic conditions are conditions that are likely to happen again and are substantially limiting in their nature and include conditions that subside for a period of time and recur again but are never cured. This includes a constant chronic condition even if its effect fluctuates. Progressive conditions are likely to develop, change or recur. People who have progressive conditions are considered to be persons with disabilities once the impairment starts to be substantially limiting to their functioning. Progressive or recurring conditions which do not substantially limit a person are not disabilities. For example, a person with cancer, tuberculosis, hypertension, diabetes, renal failure or HIV will not be covered under this framework until the symptoms progressively and substantially limit the person's ability to carry out day-to-day tasks without reasonable accommodation support, or until they need a continuum of care in the home environment.
- The impairment may be **substantially limiting** in nature, i.e., restriction of participation and limitation of daily activities. An impairment is substantially limiting if its nature or duration or the effects of the impairment substantially limit a person's ability to perform essential functions of a job or daily activities independently, without been assisted. This includes people who have temporary disabilities for the time that they are affected.

If the effects of the impairment are not substantially limiting but are long term or recurring, it falls within the scope of this. Similarly, if the effects of the impairment are substantially limit-

limiting but are long term or recurring, it falls within the scope of this. Similarly, if the effects of the impairment are substantially limiting but are not long term or recurring, it is also included under this framework for the period that the impairment remains substantially limiting.

1.7 Unjustifiable hardship

1.7.1 Definition

Unjustifiable hardship is legally defined as “an action that requires significant or considerable difficulty or expense”. This involves considering, among others, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business, and not consideration of the actual cost alone.

An organisation may make a case for unjustifiable hardship. However, it cannot refute the need to provide reasonable accommodation measures by comparing service users with disabilities to other non-disabled service users, or the expense in itself, without due consideration of the overall size of the organisation. This is a particularly important measure for government and its agencies.

Expense on its own cannot be used as a shield against providing reasonable accommodation, due to the right of access created in the Promotion of Equality and Prevention of Unfair Discrimination Act as well as the Consumer Protection Act and Promotion of Access to Information Act. It may be that, depending on the size and gross income of the organisation, the type of reasonable accommodation measure and the extent to which it is provided is different for different organisations.

1.8 Legal interpretation of limitations and exceptions

This framework must be read in conjunction with sections 10 and 28 of the Promotion of Equality and Prevention of Unfair Discrimination Act and its amendment (No. 4 of 2000 and 52 of 2002) to avoid grey areas where the needs of persons with disabilities are not adequately covered by policies, laws and regulations that are not in line with the Constitution and Bill of Rights.

Any policy, Act or legal document on reasonable accommodation is dependent on a common understanding of the meaning of reasonable accommodation as prescribed by this framework, within reason, for the protection of unjustifiable hardship (see below).

The actual experience of the rights-holder for whom reasonable accommodation measures were provided must be the ultimate litmus test to determine the adequacy of the support provisions. If a rights-holder remains aggrieved due to their perception or experience that support measures are inadequate and therefore hinder equitable access and full participation, they may institute a grievance on the basis of inadequate accommodation through the Consumer Protection Act, the Promotion of Equality and Prevention of Unfair Discrimination Act, or the Equity Act, whichever is relevant in the specific context.

2.

**REASONABLE ACCOMMODATION WITHIN
THE RIGHTS PERSPECTIVE**

2.1. Problem statement

Persons with disabilities throughout their life cycle continue to experience marginalisation and exclusion as well as risk to their personal safety and well-being as a result of not having access to appropriate, affordable and timeous reasonable accommodation support measures.

Equally, where accommodation measures are put in place but are unsuitable and fail to address the particular barriers to participation that the individual experiences, the result is loss of equality of outcome and an experience of discrimination.

Measures aimed at the reduction or removal of barriers to participation that are insufficient or do not have the desired effect are a waste of resources and cannot provide supporting evidence in a court case.

2.2 The right to appropriate reasonable accommodation support

Reasonable accommodation, combined with universal access and design, facilitates full and equal participation by persons with disabilities in all activities of society. These measures must therefore be linked to, among others, service operations, customer care, facilities management, maintenance management and, with respect to employment, occupational health and safety measures and employee wellness programmes.

Reasonable accommodation measures may vary according to the stage of life of individuals. Measures suitable for children with disabilities will not necessarily be suitable for adults; measures suitable for persons living in urban settlements might not be suitable for persons living in deep rural communities, etcetera. Different measures may need to be tailored in relation to age, gender, culture, religion, and type and severity of impairment.

The type of reasonable accommodation measures required for a person with a disability depends on three main factors. These are:

1. A particular daily activity or task and its essential functions and inherent requirements;
2. Barriers created by any environment, including leisure, retail, social, cultural, religious, work, business, education, health, travel or living environment; and
3. A person's specific impairment.

Reasonable accommodation therefore refers to necessary and appropriate modifications and adjustments as well as assistive devices and technology not imposing a situation, where needed in a particular case, to ensure the outcome that persons with disabilities are able to fully and activity participate in life's activities on an equal basis with others.

2.3 Principles

The United Nations Convention on the Rights of Persons with Disabilities stipulates that the following principles be applied when determining reasonable accommodation support requirements:

- Respect for inherent dignity, individual autonomy (including the freedom to make one's own choices) and independence of persons;

- Non-discrimination;
- Effective participation and inclusion in society;
- Respect for the difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women; and
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

The Batho Pele principles form an integral part of service delivery for any public service. These principles are aligned to Chapter 10 of the Constitution. Reasonable accommodation measures are required for many persons with disabilities to:

- i. Be consulted about the level and quality of the public services they receive and, wherever possible, they should be given a choice about the services that are offered;
- ii. Understand service standards, i.e. what level and quality of public service they will receive so that they are aware of what to expect;
- iii. Access services to which they are entitled;
- iv. Be treated with courtesy and consideration;
- v. Be given full, accurate information about the public services they are entitled to receive;
- vi. Understand how national and provincial departments are run, how much they cost and who is in charge;
- vii. Access redress if the promised standard of service is not delivered.

Taxpayers deserve value for money through public services that are economical and efficient.

Private sector service providers must develop their own codes of conduct for interacting with the public based on the above principles.

2.4 Categories and types of reasonable accommodation measures

Reasonable support can be divided into the following main categories:

- Non-tech: An accommodation that costs virtually nothing, e.g., flexi-time, additional preparation time for an individual, a colour-coded filing system, and adjustments to policies and protocols.
- Low-tech: Any accommodation that is technologically simple or unsophisticated and readily available in most offices (e.g., replacing a door knob with an accessible door handle or providing a magnifier).
- High-tech: Any accommodation that uses advanced or sophisticated devices (assistive technology, e.g. screen-reading software with synthesized speech, or assistive devices).
- Live assistance (personal assistance or guide/service animals): Personal assistants include personal aides, guides, lip-speakers, whisper interpreters, South African sign language interpreters, note-takers, interpreters for deaf-blind persons, sexual and intimacy assistants, service dogs and guide dogs.

Specialist services may be utilised to determine need and advise on appropriate types of reasonable accommodation, but the user of the live assistance, assistive device and/or technology should in all instances be consulted and have the final say with regard to suitability, safety, comfort and usability.

This framework does not seek to provide lists of types of assistive devices or technology, due to the very dynamic nature of the technology environment. Departments which have developed quite extensive reasonable accommodation support lists include the Departments of Basic Education and Health, the South African Revenue Services and the National Student Financial Assistance Scheme.

Any lists for purposes of planning, budgeting and provisioning must therefore be updated at least annually.

2.5 Services and standard operational procedures

The legal obligation to make reasonable accommodation available occurs either when a person with a disability discloses a disability-related accommodation need voluntarily or when such a need is reasonably self-evident.

The type of reasonable accommodation measure offered should always be linked to the context or nature of the environment. The measure offered should add value to the quality of life of a person in terms of their experience, productivity or performance.

Reasonable accommodation should not be limited to the activity at hand or as requested but should include areas associated with such activity, such as occupational safety measures, means of escape or access to service-related information.

2.5.1 Procurement, transfer and disposal of assistive devices

The procurement and disposal of assistive devices in government is governed by section 38, subsection 1, paragraph 3 of the PFMA, which prescribes an appropriate procurement and provisioning system that is fair, equitable, transparent, competitive and cost-effective.

The procurement of independent related assistive devices and associated reasonable accommodation allows for tax rebates.

2.5.2 Utilisation, repair and maintenance of assistive devices and technology

An institution procuring assistive devices and/or technology is responsible for the maintenance, repair, upgrading and replacement of such devices and/or technology.

Assessment regarding the need for assistive devices and/or technology and subsequent training on the effective utilisation thereof within a workplace context must be treated as an integral component of the institution's workplace skills plan as well as the employee's personal development plan.

3.

DISCLOSURE OF REASONABLE ACCOMMODATION REQUIREMENTS

3.1 Capacity of duty-bearers to understand disclosure

All service providers, whether governmental, private or civil society, have a duty to understand the needs of their customers or service users, including persons with disabilities. Basic awareness that there are people with a wide variety of accommodation needs is a prerequisite to being in business and working in government.

Therefore, basic levels of reasonable accommodation should be offered as standard. This includes being able to speak a basic form of recognisable sign language, being able to guide someone who is blind, and knowing how to offer assistance to an elderly person or someone in a wheelchair.

3.2 Voluntary and involuntary disclosure

Disclosure of disability is a voluntary notification by persons with disabilities.

Many people with disabilities, in particular when it is a hidden disability, do not want to disclose their disability, however, especially if there is a culture of bullying and disrespect within a service, learning or work environment. This is particularly true in situations where abuse is common.

Disclosure of disability must be linked to disclosure of reasonable accommodation requirements to facilitate a seamless management system.

3.2.1 Legal obligation to disclose for occupational health, safety and fire egress

Confidentiality of information must be protected and this type of information should only be accessible on a need-to-know basis for the benefit of ensuring non-discrimination and/or for objective safety concerns related to a specific individual and to specific reasonable accommodation needs.

In addition to gaining written consent when gathering information from elsewhere, unless legally required, no persons may disclose any information related to any person's disability to anyone else without the written consent of that person.

3.2.2 Promotion of disclosure by rights holders

A person with a disability can disclose their disability at any time, even if there is no need for immediate reasonable accommodation. If the disability is not self-evident and the person discloses that they have a disability and may need to be accordingly accommodated, they may be required to disclose sufficient information to confirm their disability status and their accommodation requirements.

Persons with disabilities have a responsibility to familiarise themselves with the content of existing legislation regarding reasonable accommodation. They must understand the relationship between reasonable accommodation entitlements related to independent living, service delivery and employment.

They must furthermore familiarise themselves with relevant legislation that has a direct bearing on the issue of disclosure. This includes sections 7 and 8 of the Employment Equity Act,

sections 12 and 13 of the South African Schools Act, the Mental Health Care Act and section 10/28 of the Promotion of Equality and Prevention of Unfair Discrimination Act.

They must understand the documents that will be used to guide employers in the implementation of the Employment Equity Act and in other areas where reasonable accommodation measures are already required and, most importantly, will be used to guide the courts where disputes arise.

Persons with disabilities must also understand their rights in terms of third party disclosure. Persons with no self-evident or hidden disabilities have the right to keep their disability status confidential but must not expect, then, to be provided with reasonable accommodation.

3.2.3 Responsibilities of duty-bearers

Duty-bearers are under obligation to ensure that persons with disabilities have access to timeous, accessible and relevant information with regard to their rights to reasonable accommodation support. This includes –

- Persons with disabilities being provided with information as it relates to their disabilities and to reasonable accommodation support which could support their mobility and literacy independence, independent living, health status, productivity and safety, as an integral part of their rehabilitation and/or habilitation;
- Persons with disabilities being provided with information on their rights by disabled people organisations and disability service organisations; and
- Persons with disabilities being provided with information on reasonable accommodation support available by education and training institutions, employers, those with whom they are in a consumer relationship, and facility and programme managers.

Duty-bearers must bear the cost of any functional assessment aimed at determining the most feasible reasonable accommodation support measures. Competent educational, vocational and occupational personnel with expertise, working in consultation with the end-users, must be used to gather the required information.

Duty-bearers must ensure a minimal turnaround time between identification of the type of reasonable accommodation support requested to when it is provided. The provisioning of reasonable accommodation support is not about luxury items or services but rather about services that are essential for functioning, safety, participation, learning and productivity.

When a request for reasonable accommodation and assistive devices is declined, such refusal must always be in writing, stating explanatory reasons why the request has been declined, and a record should be kept thereof.

A person with a disability whose request for reasonable accommodation or assistive devices has been declined must be afforded an opportunity to make representation to the accounting officer of the institution.

3.2.4 Legitimate purpose

Professionals, including social workers, medical service personnel and health workers, may only obtain private information about a person with a disability if this is necessary to achieve a legitimate purpose lawfully and with the written consent of the person or supported

process.

A legitimate purpose would be to ensure access to appropriate reasonable accommodation measures through the use of information, especially where a requirement for accommodation relates to independent living or to special educational needs of children or adults who participate in education and training programmes, educational support services, educational materials, or guidance and assistance on individual educational support services, or any other related needs of persons with sensory, physical, psychosocial, intellectual or neurological impairments.

3.2.5 Right to non-disclosure and legal obligation

A person with a disability may choose to disclose their impairment and associated accommodation requirements at any time for processes relating to independent living, education, service access and employment. However, if they choose not to disclose their disability and their reasonable accommodation needs are not catered for, especially if the impairment is not self-evident, in this case in the prescribed manner in this framework, the organisation, institution or employer is not obliged to provide the necessary accommodations. If the disability is self-evident, then rights holders and, if the need arises, a service provider is lawfully reasonably expected to proactively determine what accommodation may be required.

4.

FINANCING REASONABLE ACCOMMODATION

4.1 Budgeting and resource allocation for reasonable accommodation

Organs of state, the private sector and all other institutions that provide services to persons with disabilities must budget for reasonable accommodation and other measures. In the event that there is no sector legislation requiring this, the mandate is inferred through the plans required under the Promotion of Equality and Prevention of Unfair Discrimination Act as well as through sector-based legislation.

Within an employment or general service delivery context, budgeting for live assistance (personal assistance) will be a responsibility relating to the compensation of employees, and budgeting for devices and/or technology will be a goods and services/capital expense item, depending on the cost of the item. It is therefore not necessary to have a 'special' budget, as expenses incurred for purposes of reasonable accommodation must be viewed as general expenses incurred in any business.

Within an educational, health, social welfare and disability-specific context, budget allocations must be ring-fenced to ensure that funds earmarked for reasonable accommodation support are not utilised for other purposes.

4.2 Cost benefit and costing of reasonable accommodation

The cost benefit of reasonable accommodation support must be assessed by weighing up the direct and indirect costs to households if persons with disabilities are doomed to a life of dependence and unproductivity, plus the cost to the economy if persons with disabilities remain dependent on family members (who then themselves cannot contribute to the economy) and on social assistance, vis-à-vis the contribution that persons with disabilities make to the economy if they are able to equip themselves with knowledge, skills and qualifications, contribute to the tax base and participate in community life.

Costing for reasonable accommodation is subject to:

- The individual needs of a person with a disability;
- Existing physical, attitudinal and communication barriers in the living environment (and or workplace); and
- Price fluctuations of assistive devices and technology, especially in a non-competitive environment where a large number of devices often has to be purchased or procured from sole service providers, and where the majority of devices and technology has to be imported.

While centralised tenders and bulk procurement can drive down the cost, it must never compromise individualised requirements being met.

Upscaling local production will not only drive the cost down but also encourage the development of devices and technology that are more appropriate for local conditions.

5.

MONITORING AND EVALUATION

Evidence that informs reasonable accommodation policy and programme development on the one hand and strengthens accountability on the other is derived through effective monitoring and improvement processes, research and statistics, and data management, as described below.

- *Monitoring and evaluation:* All monitoring and evaluation (M&E) processes must incorporate the provision of appropriate, relevant and timeous access to reasonable accommodation support measures.
- *Evaluation feedback and improvement:* Mechanisms for interpreting and extrapolating feedback gathered from evaluations must be in place. These mechanisms should be aimed at making use of the feedback to ensure the ongoing improvement of policies and programmes.
- *Research:* Policy review and the design of programmes and services often lack evidence-based research on the denial of and/or successful access to reasonable accommodation support. Improved coordination of research focusing on the benefit and impact of appropriate, relevant and affordable access to reasonable accommodation support, or the absence thereof, provide sound evidence for future policy and practice decisions.
- *Disaggregated data and statistics management:* Reliable statistics play a crucial role in the development of policies and legislation aimed at improving the lives of South Africans. Disaggregation of data and statistics makes visible how these policies and programmes impact on the lives of those at risk of marginalisation, exclusion and discrimination, enabling the development of inclusive policies and programmes. Statistics and non-financial data must include information about the type of reasonable accommodation support provided.

Participation in monitoring and evaluation processes must be approached within the context of the Framework for Strengthening Citizen-Government Partnerships for Monitoring Front-line Service Delivery (2013), which emphasises the active participation of citizenry in order to provide key perspectives on service delivery that is vital to responsiveness by government.

Monitoring and evaluation of the extent to which reasonable accommodation support was provided (or not) in relation to applications received must be done across the Government-Wide M&E System (GWMES), which encompasses the Policy Framework on the GWMES; National Treasury's Framework for Managing Programme Performance Information (FMPPI); Statistics South Africa's South African Statistical Quality Assessment Framework (SASQAF); and the 2011 National Evaluation Policy Framework (NEPF) produced by DPME.

5.1 Indicators for reasonable accommodation

Central to the development of good indicators is the engagement of persons with disabilities, particularly when they stand to be directly affected by any intervention. Such feedback is key to all facets of reasonable accommodation support – community living, housing, information and communication technologies, recreation, product design and development, and government or private services. Even with feedback channels in place, it is important that the consultation, participation and engagement of persons with disabilities must occur on an ongoing basis, which can be extremely beneficial for recurring modifications, monitoring and compliance, and gaps assessment of any intervention.

This is consistent with the requirements of the UNCRPD and the WPRPD, which both state that persons with disabilities should have the opportunity to be actively involved in the decision-making process about reasonable accommodation policies and programmes, including those that concern them directly.

Indicator sets should include:

- Number of applications received;
- Type of reasonable accommodation support requested;
- Number of applications approved;
- Turnaround time from application to provisioning;
- Extent of backlogs in provisioning; and
- Number of complaints received.

Evaluating both existing and potential new measures that promote universal design is important for the achievement of universal access. The prevention of the erosion of basic thresholds to right of access through compliance with minimum standards is important in achieving access to services in a universal manner. The relationship of universal design to reasonable accommodation is a balance in evaluating implementation measures and maintaining basic minimum thresholds.

5.2 Universal design access plan (Section on reasonable accommodation)

This section must be read in conjunction with Chapter 6 of the Strategic Framework on Universal Access and Design.

Duty-bearers use a UDAP to demonstrate progressive implementation of universally accessible services, inclusive of reasonable accommodation support to both employees and customers/clients.

The UDAP will become an integral component of the equality plans referred to in Chapter 5 of the Promotion of Equality and Prevention of Unfair Discrimination Act (2000).

5.3 Feedback mechanisms

All service providers have a duty to consult their users and to make sure that their needs have been accommodated. This includes government, whether national, provincial or municipal, and any agency of government. Service providers must monitor the number, nature and extent of complaints received in relation to the service.

However, it should be noted that these feedback mechanisms do not preclude any service user from taking their concerns directly to the National Consumer Commission, a service ombudsman (such as the CCMA), the South African Human Rights Commission or the Equality Court.

5.4 Reporting

Reporting on reasonable accommodation support is an integral element of regular reporting as part of business management processes, and is the responsibility of all public and private institutions.

Annual reports must include feedback on the indicators in paragraph 5.3 in their annual reports.

6.

ROLES AND RESPONSIBILITIES

All service providers in government, the private sector and civil society must, within their scope of responsibility:

- Give effect to and, within their scope of responsibilities, enforce the rights of persons with disabilities, without prejudice;
- Render relevant reasonable accommodation to persons with disabilities in an integrated and coordinated manner;
- Provide clear, timely and consistent information about reasonable accommodation support, relevant services and legal assistance available to persons with disabilities;
- Provide training on assistive devices and technology and ensure that human and financial resources do not place an onerous and undue burden on persons with disabilities;
- Coordinate and facilitate reasonable accommodation;
- Provide reasonable accommodation through partnerships with persons with disabilities and service providers and ensure that reasonable accommodation rendered complies with prescribed national norms and standards;
- Provide statutory support on reasonable accommodation; and
- Provide psychosocial services as part of reasonable accommodation.

Universal access and design, inclusive of reasonable accommodation support, underpins design, planning, budgeting, implementation, monitoring, evaluation, reporting and regulation. It is therefore the responsibility of every institution (public and private), every duty-bearer and all rights holders, all regulators and those tasked with oversight to play their part in ensuring that it contributes to the promotion of equality and social justice for all South Africans.

In this regard, all public and private sector institutions must –

- develop an application guideline with criteria of qualification for reasonable accommodation support as an integral part of their standard operating procedures;
- maintain an updated database of successful and unsuccessful applicants for reasonable accommodation support;
- facilitate service contracts with service providers rendering reasonable accommodation support services;
- provide professional assessment in instances where a person with a disability does not know his or her exact requirement for reasonable accommodation support – and, on specific request, by suitably trained staff in the relevant field; and
- work in collaboration with disabled people organisations to improve service delivery and access to assistive devices, including economic empowerment and employment opportunities for persons with disabilities.

6.1 The public sector

State organs must take appropriate measures to:

- establish internal mechanisms and capacity to ensure that universally accessible and equitable services are delivered to all persons, regardless of age, ability, gender, language, culture or socio-economic status;
- review, amend and develop statutory regulations and monitor the implementa-

tion of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public to ensure they are inclusive of reasonable accommodation support measures;

- bind, by law, private entities, either national or international, that offer facilities and services which are open or provided to the public, taking into account all legal aspects of reasonable accommodation, in particular for persons with disabilities;
- enable registered service providers to provide accredited training for stake holders on reasonable accommodation support; and
- promote and support research to strengthen the design, development, production and distribution of reasonable accommodation support products and services.

The WPRPD implementation matrix provides targets for actions to be taken by government departments and entities towards 2019 as well as 2030.

6.2 Reasonable accommodation coordination within the public sector

Reasonable accommodation support in the public sector must be approached from three perspectives:

- Reasonable accommodation support to public sector employees – The Department of Public Service and Administration is the lead department and must coordinate a government-wide forum of HR practitioners responsible for employment equity and reasonable accommodation support to employees. This forum could also include state-owned enterprises, which should be invited through their respective line departments.
- Reasonable accommodation support to clients/participants of public sector programmes to enable them to participate as equal participants – Disability rights coordinators in government departments must report to their respective Forum of South African Director Generals (FOSAD) cluster work groups on strategies, measures taken and progress made. The National Disability Rights Coordinating Mechanism, currently hosted by the Department of Women, Youth and Persons with Disabilities, will be responsible for overall coordination of this aspect.
- Reasonable accommodation support for purposes of rehabilitation, communication and educational access at public sector facilities – National Treasury, supported by the Departments of Health, Basic Education, Higher Education Science and Technology, Communications and Digital Technologies, and Trade and Industry, will be responsible for overall coordination with a view to accelerating centralised bidding processes for expanded access.

6.3 The private sector

The private sector has a responsibility to ensure that everyone is able to access their environment, products and services equitably and without discrimination. Private companies indirectly contract with the State and must make themselves aware of their responsibilities

to develop an implementation plan and to implement it within a reasonable timeframe.

6.4 The research and development sector

The research and development sector must prioritise research into, and the development of, affordable, appropriate and locally produced reasonable accommodation products in partnership with national disability organisations and persons with disabilities themselves by, among others, formalising partnerships with international agencies in this field.

6.4 Civil society

It is essential that rights holders should participate, through recognised academic research methods, in the development of products, services and standards, particularly those that become national standards.

7.

**STRENGTHENING THE LEGISLATIVE FRAMEWORK
FOR REASONABLE ACCOMMODATION**

7.1 Areas of participation in reasonable accommodation legislation

1. Employment, business opportunities, access to finance (employment only)
2. Education and skills development, responsibilities of professionals (schools only)
3. Transport (air, land and sea) and access to public space (some special schools only)
4. Sports, arts and culture (promotion of sports for persons with disabilities)

7.2 Areas of participation in supportive reasonable accommodation legislation

- Transport (air, land and sea) and access to public space (in some areas only)
- Health and wellness (limited)
- Education and skills development, responsibilities of professionals (limited)
- Tourism and the environment (limited)
- Justice, good governance, responsive institutions and consumer rights (limited)
- Social protection (social assistance and community development) (limited)
- Housing and settlement development (limited)
- Sports, arts and culture (limited)

7.3 Areas of participation which require reasonable accommodation legislation

- Justice, good governance, responsive institutions and consumer rights (compliance oversight in the public and private sectors)
- Humanitarian action, disaster management and emergency reaction
- Transport (air, land and sea) and access to public space: rural
- Education and skills development, responsibilities of professionals (skills development, professional responsibility and compliance)
- Employment, business opportunities, access to finance (compliance with legislation)
- Water, sanitation, clean air, energy and waste management
- Food production and the availability of goods and services

8.

GENERAL PROVISIONS

This national strategic framework serves as a prescriptive guide regarding reasonable accommodation for persons with disabilities in legislation and policy within different fields of disability-inclusive developments. It places reasonable accommodation within the context of universal access and design planning in its proper context and provides guidelines that are basic and simple for alignment with the White Paper on the Rights of Persons with Disabilities. It is a useful tool for all practitioners and clarifies the mandates, roles and responsibilities for all concerned.

8.1 Relationship between universal design, universal access, reasonable accommodation and disability

The inextricable link between universal design, universal access, reasonable accommodation and disability begins with the philosophy and design directives of planners and providers of services, whether private developers or government departments. Their philosophy governs their thoughts and actions. This results either in additional unplanned costs for altering buildings and costs associated with reasonable accommodation or, if those involved fully understand and assimilate knowledge on universal design, better buildings accessible for everyone throughout their lives and a better quality of life for all as a result.

The concept of unjustifiable hardship is applicable, but users of this concept need to be careful that they are not using it as an excuse to ingrain the discrimination that persons with disabilities have experienced for so long. Such an approach will not be supported in the outcome of equity court cases. It has not been supported in any case to date.

Most of the costs of providing a universally accessible service are overcome in the conceptualisation, planning, proper management and full analysis of the requirements of service delivery. This is part of a general duty of care to deliver services to all who wish to use them, and not a form of segregated service provision.

Research and trend analyses are helpful in monitoring the effects of improvements to the quality of life of people who are some of the most vulnerable in society. Any research of value in this area should be undertaken with persons with disabilities, and research organisations are well placed to undertake this type of work.

CONCLUSION

Everyone is equal before the law and has the right to equal protection and benefit of the law. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

The Constitution of the Republic of South Africa, 1996

The equality clause in the Bill of Rights of the Constitution of the Republic of South Africa in relation to universal access – or the lack thereof – for persons with disabilities has resulted in a number of court judgements in favour of rights holders. Precedents have been established, among others, through the following judgements:

- W H Bosch v The Minister of Safety and Security & Minister of Public Works, Case no. 25/2005 (Equality Court)
- Esthé Muller v Minister of Justice & Minister of Public Works, Case no 01/2003 (Equality Court settlement)
- Lettie Hazel Oortman v St Thomas Aquinas Private School, Bernard Langton, Equali-

ity Court 1/2010 (Equality Court)

The above cases, although referring to physical access in the built environment, required that reasonable accommodation measures be taken to ensure access, as the existing built environment did not meet universally designed access standards.

This framework provides guidance for the embedding of reasonable accommodation within the context of universal access and design in all aspects of community life in order to secure the right to equal access and participation for all citizens and residents in South Africa, regardless of age, gender, ability, religion, culture or language.

GENERAL SECTOR-BASED PROVISIONS

Purpose of the appendix

UDAPs provide the practical, implementable steps that service providers must take to enable persons with disabilities and other vulnerable groups to participate equally in social and economic life. Service providers in the public and private sectors enable participation through the analysis of services (value chain), the identification of barriers (non-compliance with national standards) and the design and implementation of UDAPs. The purpose of this appendix is to explain how this should be done.

Whether or not a specific chapter on reasonable accommodation is required depends on the area of participation and the nature of the value chain. This must be determined through the analysis of the nature of the service.

Areas of participation

Development practitioners must apply universal access and design principles in twelve sector-based areas of participation. These are:

1. Justice, good governance, responsive institutions and consumer rights
2. Water, sanitation, clean air, energy and waste management
3. Food production and the availability of good and services
4. Humanitarian action, disaster management and emergency reaction
5. Social protection (social assistance and community development)
6. Housing and settlement development
7. Transport (air, land and sea) and access to public space
8. Health and wellness
9. Education and skills development, responsibilities of professionals
10. Employment, business opportunities, access to finance
11. Tourism and the environment
12. Sports, arts and culture

Reasonable accommodation needs to be addressed

Requires urgent action – Areas where no or limited reasonable accommodation measures are currently available, or are discriminatory:

- Justice, good governance, responsive institutions and consumer rights (compliance oversight in the public and private sectors)
- Water, sanitation, clean air, energy and waste management
- Food production and the availability of good and services
- Humanitarian action, disaster management and emergency reaction
- Transport (air, land and sea) and access to public space: rural
- Education and skills development, responsibilities of professionals (skills development, professional responsibility and compliance)
- Employment, business opportunities, access to finance (compliance with legislation)

Specific measures required by individual departments

SARS	<p>Tax rebates for reasonable accommodation in all spheres of life; not assistive devices only</p>
Departments responsible for health services (public or private)	<p>Modifications to buildings – where it can be proven that universal design prescripts were followed and reasonable accommodation is therefore necessary. A valid certificate of compliance with national building regulations and compliance with minimum standards for the year in which occupation occurred</p> <p>Provision of reasonable accommodation within health care facilities, e.g., medication, assistive devices, counselling services, rights-based medical testing and accessible facilities</p> <p>Training of health care and rehabilitation staff in disability rights</p> <p>Limited availability of assistive devices through health insurance or government schemes</p>
Social development and welfare services	<p>Services are provided but not to a nationally compliant minimum standard: Provide accessible service points and residential facilities for all welfare services and social assistance. Reasonable accommodation must include psychosocial interventions, child protection, user-friendly social assistance services and accessible information.</p>
The South African Police	<p>Provide accessible police stations and custody facilities with the Department of Correctional Services for offenders. Provide private and confidential accessible area at its station.</p> <p>Provide information in accessible formats. Provide referral for prosecution.</p>

Reasonable accommodation needs to be addressed	
Justice and constitutional development	<p>Provide accessible court facilities and sign language interpreters and accessible formats for persons with disabilities regarding their prosecution information and victim empowerment information.</p> <p>Capacity to contract.</p>
Education	<p>Provide affordable, accessible, reasonable accommodation and adequate opportunity within the education system, from entry to exit.</p> <p>Provide transitional reasonable accommodation, from school to work.</p> <p>Reasonable accommodation plans for learners and students with disabilities must be completed and submitted to both basic and higher education, as part of the UDAP.</p> <p>Screening, identification, assessment and support services must be applied throughout the education system.</p> <p>Protect learners with disabilities within inclusive or specialised learning environments.</p> <p>Provide learners and students with reasonable accommodation support within and outside the premises or institution.</p> <p>Develop training support material which is accessible to the individual learner or student.</p> <p>Develop policies, practices and guidelines for inclusive education support.</p> <p>Provide immediate access to learning materials that reasonably accommodate the development needs of the learner or student.</p>
Department of Tourism	<p>Provide reasonable accommodation norms and standards for tourism facilities.</p>
Department of Public Works and Infrastructure, and Department of Trade and Industry	<p>Enforce standards in the built environment.</p> <p>Provide reasonable accommodation where assessed as being necessary for an individual.</p>
Department of Transport	<p>Provide a public transport system which is accessible, affordable, reachable, user-friendly and includes easy connectivity from one destination to the next.</p> <p>Where public transport is difficult to access, a subsidy policy should be introduced.</p> <p>Reasonable accommodation must be provided on all forms of public transport, including aviation (maritime).</p> <p>Roads: A national parking badge scheme must be introduced.</p> <p>Sufficient parking bays must be accessible to all persons with disabilities.</p>

Reasonable accommodation needs to be addressed	
	<p>NMT: Roads should have suitably designed sidewalks and safe places to cross the road.</p> <p>SARS: Rebate on the manufacture of adapted vehicles.</p> <p>Learners with disabilities – safe, protected and accessible transport suitable for their age.</p>
<p>Department of Employment and Labour, and Department of Public Service and Administration</p>	<p>Ensure compliance with employment equity targets on disability and reasonable accommodation.</p> <p>Take non-compliance cases to the labour courts, CCMA and bargaining councils.</p> <p>Private sector companies, institutions and NGOs may regulate their transport policy accordingly within reasonable and necessary reasonable accommodation measures in relation to the specific needs of their clients, members and employees who have disabilities.</p> <p>Ensure that reasonable accommodation measures are put in place for transport where there is no accessible transport system. Determine what reasonable cost would involve with the assistance of the relevant accounting officer.</p> <p>Specially adapted vehicles should be provided.</p> <p>Transport for work should be accommodated on mainstream public transport, and if this is not possible, by the employer.</p>
<p>Employment and labour practices (public and private sectors)</p>	<p>Implementation of policy that includes the following:</p> <ul style="list-style-type: none"> • Procurement, transfer and disposal of assistive devices • Utilisation, repair and maintenance of assistive devices • Addressing the needs of persons with different categories of disabilities • Job seeker tips • Recruitment and selection • Recruitment process • Non-discrimination in job profiles and specifications • Budget allocation and ringfencing for assistive devices necessary to perform the job • Inclusive: Advertising, selection, interviews, guidelines for interviewees and interviewers to avoid discrimination, conditional job offers, placement, orientation and training, induction (of staff member and others in the team) • Equal treatment subject to reasonable accommodation • Disability sensitisation • Training and career advancement • Non-discrimination in career advancement • Non-discrimination in skills development

Reasonable accommodation needs to be addressed	
	<ul style="list-style-type: none"> • Retention • Compliance with the Employment Equity Act • Termination of employment • Operational reasons for incapacitation • Reasons why continued employment is no longer possible upon incapacitation of disabled or non-disabled employees • Employment equity planning • Phase one – Preparation • Phase two – Implementation • Phase three – Monitoring • Supported employment model • Job coaching • Mentoring • Additional skills development • Job reallocation • Staff relocation
<p>Reasonable accommodation-related testing procedures for medical and psychological testing</p>	<ul style="list-style-type: none"> • Legal compliance verification • Inclusion of temporary and recurring disability • Reasonable accommodation related to the impairment category • Disability-related enquiries: amount of personal information that is relevant without violating personal information legislation • Restriction on information that may be obtained from third parties • Testing after illness or injury • Rehabilitation and retention • Health and safety screening • Pre-benefit medical examinations • Use of assessment • Accommodation in psychometric testing • Adapting existing psychometric tests • Burden of proof • Administration guidelines
<p>Independent living-related reasonable accommodation</p>	<p>Persons with disabilities must:</p> <ul style="list-style-type: none"> • Relate their personal experiences of daily living with their disability and explain their disability-specific requirements • Have access to an enabling environment that will allow them to freely disclose their information to external professionals • Exercise the right to be treated equally regarding reasonable accommodation in their living home environment and in the placement process at the workplace and ask for accommodation to enable

Reasonable accomodation needs to be addressed	
	<ul style="list-style-type: none"> • them to participate equitably • Take a role in disability awareness programmes
Social protection packages	<ul style="list-style-type: none"> • Compensation • Provisions related to COIDA • Unemployment Insurance Fund • Retirement fund

