

# NATIONAL STRATEGIC FRAMEWORK ON REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITY



women, youth &  
persons with disabilities

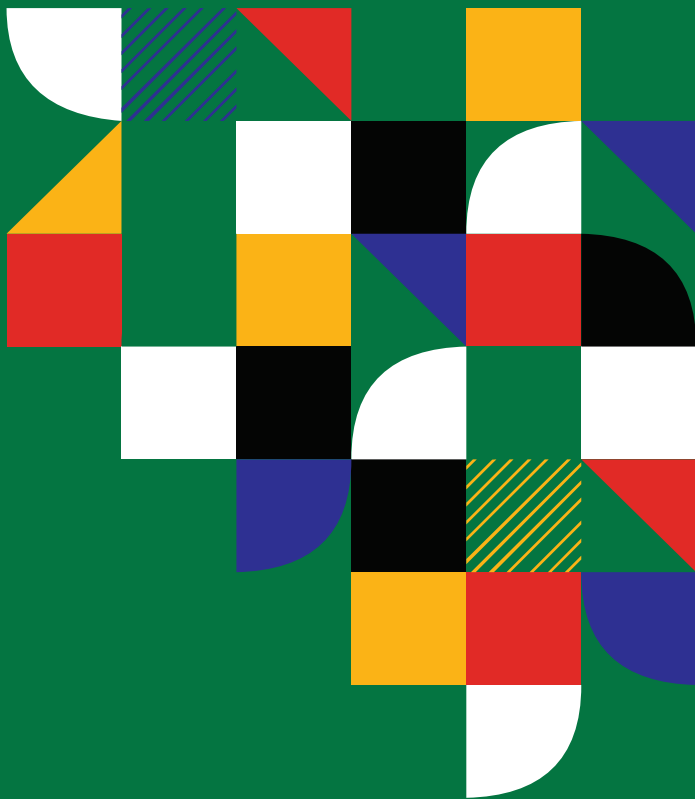
Department:  
Women, Youth and Persons with Disabilities  
REPUBLIC OF SOUTH AFRICA



**“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**

# CONTENTS



- 01** Framework, key terms, and purpose and scope
- 02** Legal and policy framework
- 03** Importance of disclosure
- 04** Financial implications
- 05** Monitoring and evaluation
- 06** Stakeholder roles and responsibilities
- 07** Legislative reform
- 08** Notes

The Republic of South Africa has committed to providing reasonable accommodation measures to persons with disabilities, as a signatory to the United Nations Convention on the Rights of Persons with Disabilities, and through its Constitution and related legislation. The state is responsible for ensuring access to reasonable accommodation and equitable budgeting for it, and duty-bearers have a duty to inform themselves and create an environment conducive to disclosure and inclusion.

This framework focuses on reasonable accommodation measures for persons with disabilities and aims to guide their implementation to uphold their rights and combat discrimination. It also defines the roles and responsibilities of stakeholders, amongst other guidelines.

The framework is guided by:

- White Paper on the Rights of Persons with Disabilities (WPRPD)
- National Development Plan (NDP)
- Strategic Framework for Universal Access and Design
- Bill of Rights of the Constitution of the Republic of South Africa
- Promotion of Equality and Prevention of Unfair Discrimination Act Number 4 of 2000, Chapter 5



### 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; the extent to which an environment, service or product allows access to as many people as possible, in particular to persons with disabilities. This includes buildings, facilities, constructed spaces, transport, information, equipment, services, activities, resources, utilities, language, communication and technology.



### 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.



### Reasonable accommodation

Necessary and appropriate modification and adjustments, as well as assistive devices and technology ... to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

[Refer to the framework for a full list of abbreviations and definitions.]



## Objectives of the framework

The framework aims to:

- explain reasonable accommodation as a fundamental human right;
- ensure its approach from a human rights and inclusive development perspective;
- ensure provision for it in service delivery by all public and private sector entities;
- support the development and implementation of reasonable accommodation plans; and
- facilitate the provision of accessible amenities and assistive devices to enable full partici-

### Rights and responsibilities of persons with disabilities

The socioeconomic rights of persons with disabilities include:

- the right to not be discriminated against;
- the right to independent living; and
- the right to reasonable accommodation measures.



Responsibilities include understanding one's reasonable accommodation requirements, participating in the process of designing and implementing services, and providing feedback if necessary. Additionally, individuals have the responsibility to report discrimination and the responsibility for disclosure of reasonable accommodation needs.

### **Obligations of government, business and civil society**

Service providers have an obligation to support participation and independent living for persons with disabilities through reasonable accommodation measures. The first is to innovate services to make them accessible to persons with disabilities. The second is to provide and support rehabilitation and habilitation to enable participation in life's activities. Examples of reasonable accommodation measures include:

- modifying information technology;
- reorganising the environment;
- changing policies and procedures; and
- providing accessible venues and specialised supervision and training.

### **Qualifying criteria for reasonable accommodation**

The framework outlines criteria for determining who qualifies for reasonable accommodation based on disability. To qualify, the person must have a long-term, recurring, or episodic impairment that is substantially limiting in nature, regardless of whether it is physical, sensory, neurological, intellectual, or psychosocial.

Individuals with disabilities face marginalisation, exclusion, and safety risks due to the lack of appropriate and affordable accommodation support measures. Inadequate measures can lead to discrimination and loss of equality, are a waste of resources, and cannot be used as evidence in court.

### Definitions

#### **Unjustifiable hardship**

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, not consideration of the actual cost alone.

#### **Designated employer**

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 right to appropriate support

The concept of reasonable accommodation, in conjunction with universal access and design, allows for full and equal participation of individuals with disabilities in all aspects of society. Factors such as age, gender, culture, religion, and type and severity of impairment need to be considered. The type of reasonable accommodation needed depends on the essential functions of a task, environmental barriers, and the person's specific impairment. Reasonable accommodation involves necessary modifications, adjustments, and assistive technology to ensure equal participation in daily activities.

### Principles

The United Nations Convention on the Rights of Persons with Disabilities outlines principles for determining reasonable accommodation support requirements, which include:

- respect for individual autonomy;
- non-discrimination;
- effective participation and inclusion in society;
- accessibility; and
- equality of opportunity.

The Batho Pele principles, aligned with Chapter 10 of the Constitution, require reasonable

accommodation measures for persons with disabilities to access services and receive courteous treatment.

### Examples of reasonable accommodation measures

- Non-tech – adjustments to policies and protocols
- Low-tech – technologically simple devices such as accessible door handles or magnifiers
- High-tech – advanced assistive technology such as screen-reading software
- Live assistance – personal assistants, guide dogs, and service animals

### When to provide reasonable accommodation

The obligation to provide reasonable accommodation arises when a person with a disability voluntarily discloses their need for it, or when it is reasonably self-evident. The type of reasonable accommodation provided should be linked to the environment and add value to the person's quality of life. Reasonable accommodation should not be limited to the activity at hand, but should also include associated areas such as safety measures or access to information.

Service providers, including government, private, or civil society, need to understand the needs of their customers, including persons with disabilities. Basic levels of reasonable accommodation should be offered as standard, including basic sign language, guiding for the blind, and assisting people in wheelchairs.

### **Voluntary and involuntary disclosure**

Disclosure of disability is voluntary, and some people with disabilities may not want to disclose their disability due to various reasons, including fear of discrimination or abuse. However, disclosure of reasonable accommodation requirements should be linked to the disclosure of disability to ensure a smooth management system.

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

Information regarding a person's disability must be kept confidential and only accessible on a need-to-know basis. Written consent should be obtained when gathering information, and disclosure of such information without written consent is prohibited unless legally required.

### **The rights of individuals**

Individuals with disabilities have the right to disclose their disability at any time, and if they require reasonable accommodation, they may be required to provide sufficient information to confirm their disability status and their accommodation needs. They also have a responsibility to understand relevant legislation related to reasonable accommodation and disclosure. They must also understand their rights in terms of third-party disclosure. Individuals with hidden disabilities have the right to keep their disability confidential but may not expect to receive reasonable accommodation without disclosing their disability status. Confidentiality of information must be protected and disclosed only on a need-to-know basis.

### Responsibilities of duty-bearers

Duty-bearers are obligated to provide persons with disabilities with timely, accessible, and relevant information about their rights to reasonable accommodation support, including information about their disabilities and available support. Duty-bearers must cover the cost of functional assessments to determine feasible accommodation measures and ensure a minimal turnaround time between the identification of the requested support and its provision.

### Legitimate purpose

Professionals, such as social workers, medical personnel and health workers, can only obtain private information about a person with a disability if it is necessary for a lawful and legitimate purpose and with the person's written consent or supported process. This includes ensuring access to appropriate reasonable accommodation measures, particularly for independent living or special educational needs of children or adults in education and training programmes.

### Right to non-disclosure and legal obligation

A person with a disability has the right to disclose their disability and accommodation requirements at any time. If they choose not to disclose and their reasonable accommodation needs are not met, the organisation, institution, or employer is not obliged to provide accommodations, especially if the impairment is not self-evident. However, if the disability is self-evident, the service provider is expected to proactively determine what accommodations may be required.



### **Responsibilities of duty-bearers**

Duty-bearers are obligated to provide persons with disabilities with timely, accessible, and relevant information about their rights to reasonable accommodation support, including information about their disabilities and available support. Duty-bearers must cover the cost of functional assessments to determine feasible accommodation measures and ensure a minimal turnaround time between the identification of the requested support and its provision.

### **Legitimate purpose**

Professionals, such as social workers, medical personnel and health workers, can only obtain private information about a person with a disability if it is necessary for a lawful and legitimate purpose and with the person's written consent or supported process. This includes ensuring access to appropriate reasonable accommodation measures, particularly for independent living or special educational needs of children or adults in education and training programmes.

### **Right to non-disclosure and legal obligation**

A person with a disability has the right to disclose their disability and accommodation requirements at any time. If they choose not to disclose and their reasonable accommodation needs are not met, the organisation, institution, or employer is not obliged to provide accommodations, especially if the impairment is not self-evident. However, if the disability is self-evident, the service provider is expected to proactively determine what accommodations may be required.

## Budgeting and resource allocation

Institutions providing services to persons with disabilities must budget for reasonable accommodation and other measures, even if there is no specific legislation requiring it. The responsibility for budgeting for live assistance and devices/technology will depend on the context, either as compensation of employees or as a goods/services or capital expense. It is important to ring-fence budget allocations for reasonable accommodation support to ensure they are not used for other purposes.

## Cost benefit and costing of reasonable accommodation

The cost-benefit of reasonable accommodation support must be assessed by considering the costs to households and the economy if persons with disabilities remain dependent versus their potential contributions if they are equipped with skills, qualifications and participate in community life. Costing for reasonable accommodation should consider individual needs, existing barriers and price fluctuations of assistive devices and technology.



## Consultation, participation, and engagement

Feedback from persons with disabilities is important for community living, housing, information and communication technologies, recreation, product design and development, and government or private services. Ongoing consultation, participation, and engagement of persons with disabilities are necessary for recurring modifications, monitoring, and compliance assessment of any intervention.



## Feedback mechanisms

All service providers, including government, have a duty to consult with their users and ensure their needs are met, and must monitor complaints received in relation to their service. However, service users still have the right to take their concerns to other bodies such as the National Consumer Commission, service ombudsman, South African Human Rights Commission, or the Equality Court.



## Reporting

All public and private institutions have a responsibility to report on reasonable accommodation support as part of their regular business management processes.

**All service providers, including government, private sector, and civil society, have a responsibility to enforce the rights of persons with disabilities, provide relevant reasonable accommodation, and provide clear and consistent information about available services.**

They must also coordinate and facilitate reasonable accommodation, provide training on assistive devices, and comply with national norms and standards.

- **The public sector**

Public entities are obligated to establish internal mechanisms to ensure universally accessible and equitable services for all persons, review and develop statutory regulations for inclusive facilities and services with reasonable accommodation support measures, bind private entities to comply, enable accredited training for stakeholders, and promote research to improve reasonable accommodation support products and services.

- **The private sector**

Private companies have a responsibility to ensure equitable access to their products and services without discrimination. They must develop an implementation plan and implement it within a reasonable timeframe, and be aware of their responsibilities when indirectly contracting with the state.

- **The research and development sector**

The research and development sector has a responsibility to prioritize research and development of affordable and appropriate reasonable accommodation products in partnership with national disability organisations and persons with disabilities themselves. They should formalise partnerships with international agencies and prioritise local production.

- **Civil society**

The participation of rights holders, particularly persons with disabilities, in the development of products, services, and standards is crucial, and should be done through recognised academic research methods.

### Mandate

The mandate of the department is to lead on socio-economic transformation and implementation of the empowerment and participation of women, youth and persons with disabilities through mainstreaming, advocacy, monitoring and evaluation.

### Vision

A transformed, inclusive society free from all forms of discrimination and capable of self-actualisation.

### Mission

To provide strategic leadership, coordination and oversight to government departments and the country in mainstreaming empowerment programmes for women, youth and persons with disabilities.

### Values (informed by the Batho Pele Principles of the public service)

- Tolerance and respect in the workplace
- Professionalism
- Continuous learning
- Integrity
- Caring
- Accountability
- Inclusivity
- Empowerment

**While certain areas pertaining to reasonable accommodation are governed by legislation to some degree or another, other areas require additional focus.**

Legislation includes provisions for these areas to ensure that persons with disabilities are not discriminated against and have access to equal opportunities:

- Business opportunities, access to finance, education and skills development, responsibilities of professionals, transport, access to public space, sports, arts, and culture.
- Transport and access to public space in some areas, limited participation in health and wellness, education and skills development, tourism and the environment, justice, good governance, responsive institutions and consumer rights, social protection, housing and settlement development, and sports, arts and culture.

### **Areas that require reasonable accommodation legislation include:**

- compliance oversight in the public and private sectors for justice, good governance, responsive institutions and consumer rights;
- humanitarian action, disaster management, and emergency reaction;
- rural transport (air, land and sea) and access to public space;
- 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; and
- food production and availability of goods and services.

**“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**

## Legal interpretation of limitations and exceptions

This framework should be read with sections 10 and 28 of the Promotion of Equality and Prevention of Unfair Discrimination Act to ensure that policies, laws, and regulations align with the Constitution and Bill of Rights. Reasonable accommodation must be understood within the framework to protect against unjustifiable hardship. The ultimate test for the adequacy of reasonable accommodation measures is the experience of the person with a disability. If someone perceives that support measures are inadequate, they may lodge a complaint through the relevant legislation.



## Acknowledgements

This framework was developed through a participatory approach. It includes submissions made in the past for other reports, and public comments. A technical drafting team consisting of representatives from various departments and disability experts collaborated to finalize the framework through a validation workshop and electronic consultations. The contributions of public servants and disability rights activists were acknowledged.

**[Refer to the framework for the full list of participants.]**

