

Workplace Adjustment Policy

Doc ID: SUB20/197462

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Workplace Adjustment Policy

Why we have a workplace adjustment policy

The Department of Communities and Justice (DCJ) is committed to building a workplace culture of respect and inclusion for everyone. This requires us to create inclusive and accessible workplaces where people with disability or with carers responsibilities do not experience disadvantage or barriers that preclude or limit their ability to participate and contribute effectively.

We acknowledge that many of DCJ's workplaces can provide barriers due to software compatibility, workspace design from third parties or how we run everyday meetings and events. This makes workplace adjustments necessary for people to participate equitably.

This policy articulates how DCJ will work to provide a consistent and effective principles-based approach to workplace adjustments. We do this to ensure that every employee has what they need to perform their role to the best of their ability.

This policy and its corresponding procedure outline the responsibilities of each person involved in requesting, supporting or providing workplace adjustments, as well as the legal rights, responsibilities and options of those involved.

As an overarching principle, workplace adjustments should be timely, effective and person-centred. This means they meet the specific adjustment needs of employees with disability and/or employees who are carers, and they in turn can perform the inherent requirements of their roles to the best of their ability. Doing so ensures our employees are not discriminated against, can participate as well as any other employee and prevents losses of productivity, performance or engagement.

There are only two rare instances when adjustments cannot be provided: where it can be reasonably established that the inherent requirements of the role cannot be performed successfully even where adjustments are applied, or where providing the adjustment would introduce unjustifiable hardship for the organisation, as defined under the *Disability Discrimination Act 1992* (DDA). In these cases, the organisation will work with the individual to identify what other options may be possible.

This policy should be read in conjunction with the DCJ Workplace Adjustment Procedure, which provides detail on how to arrange and implement workplace adjustments. It is also supported by Workplace Adjustment Conversation Guides.

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This policy addresses DCJ's obligations as an employer under these pieces of legislation:

- **Disability Discrimination Act 1992** (Cth), which provides the framework for reasonable adjustments (noting we use the term 'workplace' adjustments throughout this policy) for people with disability and carers of people with disability, and the only grounds on which they can be declined.
- **Anti-Discrimination Act 1977** (NSW), which outlines the basis for discrimination against all carers and people with disability.
- **Carers (Recognition) Act 2010**, which articulates DCJ's responsibilities for meaningful employment of carers as a NSW Government employer.
- **Work Health and Safety Act 2011** (NSW) (WHS Act), which details how organisations must ensure, so far as is reasonably practicable, that their workplace is without risks to any person's health or safety. This includes managing risks and potential risks to the health, safety and wellbeing of all employees. Officers, workers and other persons also have obligations under the WHS Act. In practice, this requires DCJ to provide adjustments to ensure someone is not working unsafely or at psychosocial risk.

Who is eligible for an adjustment?

This policy applies to all employees of DCJ who are eligible to request workplace adjustments and those supporting an adjustment's implementation (managers, leaders and DCJ central teams in information technology, workplace safety, property and human resources).

Employees are eligible to ask for adjustments if they are a person with disability or a carer.

Disability can include a medical condition, chronic illness, neurodiversity and/or mental health condition. This could have short (temporary) or long-term (permanent) impacts on the employee.

Adjustments may also be necessary for situational disabilities, which are temporary disabilities based on specific circumstances, i.e., a barrier experienced only in the workplace. An example is an environment that impairs the senses only in that context (e.g. difficulty reading a screen due to bright sunlight or hearing with loud background noise).

A **carer** can be of someone with disability, chronic illness, mental health condition or frail age. For example, a parent of a neurodivergent child who needs various allied health appointments, or is providing care to an elderly family member. This includes carers of people who need help due to dementia or drug or alcohol dependency.

'Employees', 'Disability', 'Carer' and 'Medical condition' are defined in **Appendix 1**. DCJ does not require this eligibility is proven via medical documentation.

Employees can be ongoing, temporary or casual. People applying for roles in DCJ are also in scope – adjustments can be crucial to someone's ability to have an equal chance of succeeding in recruitment assessment.

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While contingent labour must arrange their adjustments with their employer, DCJ will support implementation in DCJ workplaces where practicable.

A need for workplace adjustment may be identified during the recruitment or onboarding stage or may arise and can be requested at any time during employment. Common examples of this can include an employee who:

- has acquired a temporary or permanent injury (physical and/or psychological)
- is neurodiverse and experiencing difficulty with noise in the office environment
- has recently been diagnosed with a chronic illness with episodic flare-ups, which is an adjustment that evolves accordingly
- has a high-risk pregnancy with disabling complications (e.g. mobility or diabetes)
- provides unpaid care to an aged parent, a child with a disability, or a person with a chronic health condition or addiction.

This list is not exhaustive, and the legislative definition in Appendix 1 provides more detail.

Policy exclusions

Property exclusions

This policy does not automatically cover building or facility design, provision of dedicated parking spaces and general access issues. These requests may be made to the relevant asset management or facilities teams.

DCJ Accommodation and Design Standards incorporate Australian building and design standards and provide detailed specifications for workplace design. For any questions or issues relating to office moves or relocation requests please email Allocations-Infrastructure&Assets-CS@facns.nsw.gov.au.

Availability of parking, including dedicated spaces is limited in most DCJ buildings as per whole of government policy settings. Where it is available, best efforts will be made to ensure this access is prioritised for people with disability.

The policy does not cover travel to and from work for employees but covers travel whilst at work and visitor parking access requirements.

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Parental or foster care

Parent/foster/kinship caring responsibilities are not covered by this policy unless the child has a disability, a medical condition and/or mental health condition. For parental arrangements, DCJ can offer flexibility on an 'if not, why not' basis under DCJ's [Better Ways of Working Flexible Work Framework](#), but this is not a workplace adjustment per se.

What is a workplace adjustment?

Workplace adjustments are changes that support a person to:

- have an equitable employment experience when they apply for a role during recruitment, whether entering the agency for the first time, moving to a different role internally or during an organisational realignment process.
- perform the inherent requirements of a given role in an equitable, safe and productive way. This can include promotions (temporary acting arrangements or ongoing), career development opportunities such as stretch projects or learning and development provided by the agency.

Employees can seek and managers can offer adjustments throughout the recruitment and selection process, at the commencement of employment or at any time after commencement.

Most adjustments are needed because a workspace, workplace technology, event or occasion or roster, among other things, presents a barrier to participation for an employee in its standard form. While DCJ as an organisation will work to proactively prevent barriers from occurring by considering these in design or procurement where possible, adjustments and workarounds will be provided for individuals where necessary to meet their specific needs.

Common adjustments at DCJ

Most adjustments are simple to arrange and involve little cost. At DCJ, our data tells us that most adjustments involve workplace flexibility to manage needs. This policy takes precedence when arranging flexible-working adjustments over local arrangements for office attendance.

Adjustment needs can change over time as people's needs change. They may involve some trial and error when first implemented. They are rarely 'set and forget' for employees, particularly those who have chronic medical conditions or mental health conditions. Flare ups or deterioration may mean adjustments change frequently due to the changing nature of their disability.

It's also important that adjustments are understood by people working with these employees to prevent the need to re-negotiate them unnecessarily.

Common workplace adjustment examples are listed in **Appendix 3**, and case studies drawn from DCJ experiences are in the **Workplace Adjustment Procedure**.

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Adjustment roles and responsibilities

Roles and responsibilities are determined by how directly involved you are in the adjustment provision. There are:

- employees and managers, who are directly involved in the application of this policy
- organisational leaders and People branch, who are not usually directly included in discussions but can provide advice and direction
- other organisational teams within Corporate Services, typically called on to implement agreed adjustments, including central teams such as Infrastructure and Assets, Information and Digital Services or others.

Employee responsibilities

DCJ recognises that an initial diagnosis, whether for yourself or for someone for whom you care, can be a bewildering and turbulent time. You may not have all of the answers or know yet what you need. While the DCJ adjustment process has support for you to continue your employment to the best of your ability at its core, as an employee you also play an important role in ensuring the organisation knows that you need an adjustment, in actively helping to arrange this adjustment, and in speaking up if it is not working effectively.

You may also need to initially help your colleagues understand what they need to do differently to ensure you can participate effectively in team meetings, engagements and projects. It is then their obligation to continue any new practices.

Your responsibilities are to:

- Identify and ask for an adjustment to resolve any barriers you are experiencing in access or inclusion or your ability to undertake recruitment, perform your duties or participate in career development or training. If there is a risk to your safety or the safety of other employees, clients or inmates from the lack of adjustment, ensure this is understood by your manager so no one is potentially in breach of WHS law.
- Consider what information you would like to share when you ask for an adjustment. You cannot be asked to 'prove' that you need it via extensive or expensive medical reports, but you may need to consider sharing enough information so your manager understands the challenges you're experiencing and what they need to solve for.
- Be prepared to explore or negotiate where an adjustment may not seem feasible at first. Refer to the [Employee Conversation Guide](#) for tips.
- Ask for support if you're not sure about anything. If it's likely to include a new technology, task structure or working arrangement, JobAccess has occupational therapists who can help identify specific solutions or supports. The People Branch Human Resources Business Partnering (HRBP) and Inclusion teams can help you to understand this policy, and the Disability Employee Network (DEN) can offer practical advice and moral support.

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- Participate in the process, including contacting JobAccess for advice and funding (if required), providing supporting medical information or documentation to JobAccess if they seek it for funding. Medical information is confidential and does not need to be provided to DCJ to seek an adjustment from your manager.
- Effectively perform the inherent requirements of the position when the adjustments are in place. If they are not working or not properly in place, ensure this is discussed with your manager for further exploration of support.
- Liaise with Work Health and Safety and your manager to obtain a Personal Emergency Evacuation Plan (PEEP) if you need it. A PEEP is for a person who may need assistance to evacuate a building or reach a place of safety in the event of an emergency. For instance, a person with impaired mobility, or if you typically find situations like those can overwhelm you.

While it isn't compulsory to have a Workplace Adjustment Passport in ServiceNow, it does help to document what has been agreed. This ensures your arrangements are understood and you do not need to re-negotiate them unless your needs change or your role substantially changes. Review and update it if your circumstances/needs change or at least every two years to renew your permission for DCJ to hold that information on its system.

Manager responsibilities

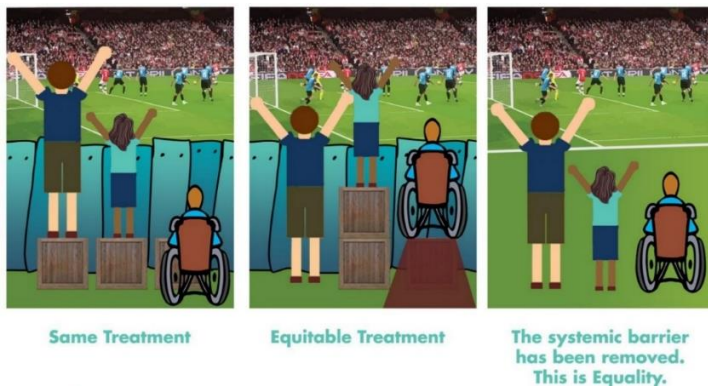
Managers play an important role through their visible support for both the adjustment process and DCJ's commitment to the employment of people with disability and carers. Managers also play a role in advocating for their employee by ensuring that adjustments are effectively implemented.

For most managers, striking a balance between support and operational requirements can be complex if you're new to the adjustment process, so role model seeking help and advice. You are not expected to be the expert.

Managers are responsible for:

- Proactively asking about potential workplace adjustments to everyone during recruitment, at onboarding and in circumstances where an employee has taken leave for illness or spoken with you about their health condition or the health of someone for whom they care.
- Working constructively and actively to find solutions to balance adjustments and role requirements with the employee to ensure they can participate to their fullest ability and the team's work can be done. Refer to the [Manager Conversation Guide](#) for tips.
- Creating positive and inclusive workplace and team environments that normalise support for employees with disabilities or carers responsibilities by providing access to workplace adjustments, to remove stigma and any biases around adjustments as 'special treatment', i.e. they are the difference between equality and equity.

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Source: Image sources: Variations of these images have been created by Craig Froehle, Angus Maguire, the Center for Story-Based Strategy and the Interaction Institute for Social Change.

- Building your own knowledge of disability and care arrangements, which includes understanding that your employees may be new to disability or caring arrangements themselves and building their own capacity in turn. Completing manager training for inclusive recruitment and disability inclusion supports achieving this.
- Support documenting workplace adjustments in a Workplace Adjustment Passport, using this mechanism to discuss, negotiate and endorse adjustments in a timely way. While not compulsory, this ensures your employee has a record of what has been agreed if you move roles.
- You may also need to support the employee to implement their workplace adjustments by working with teams such as Infrastructure and Assets, Information and Digital Services, Work Health and Safety and within your own team. This may require advocacy on your employee’s behalf to ensure adjustments are timely, fully implemented or fully understood. Ensure the employee is kept informed of progress where you are leading the discussion with other parties.
- Supporting the employee to finalise their Personal Emergency Evacuation Plan (PEEP) if needed.
- Only asking for relevant information to make the adjustment, as you cannot seek ‘proof’ of necessity or specifics about a diagnosis. Seeking an understanding of the functional challenges they’re experiencing is the most constructive approach, rather than for a diagnosis or doctor’s report. You want to know what challenge you’re trying to solve.
- Maintaining employee confidentiality and keep records secure. Obtain consent from the employee to share relevant details of their adjustment only when necessary (e.g. if you have someone acting in your role for a period when rosters are being planned).
- Seeking support if you need it with having collaborative conversations or building your disability/carer awareness. You are not expected to be the expert in this process and every adjustment is different, just as every disability or caring arrangement differs according to need. People branch can access the expertise needed, via your HR Business Partner.

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- If you need to decline an adjustment, providing documented and detailed operational reasons to your own manager and HR Business Partner for discussion that articulate how the role's requirements cannot be adjusted away or how it will cause unjustifiable hardship to the organisation. You will also need to document how you have tried to seek alternatives. Once agreed you will then need to have this conversation with your employee and share this analysis.
- Handling performance concerns as a separate process, and not used as a rationale for refusing an adjustment. See the 'Unsatisfactory Performance policy' for ensuring adjustments are in place and effective before performance can be effectively and reliably assessed. If a workplace adjustment need is discovered through a performance process, the performance process should be put 'on hold' while the adjustment is implemented and the employee is given time to settle in and fine tune the adjustment, if needed.
- Seeking feedback from staff with disability and carers responsibilities on areas for improvement.
- Supporting your employee's capacity to participate in the Disability Employee Network or Carer's Network (or any other relevant network) for peer support and capacity building.

Team/colleague responsibilities

While the focus of a workplace adjustment is on what the individual needs to perform their role, their team may also need to adjust some of their day-to-day work practices and habits to ensure the whole team is working inclusively and productively. Employees and their manager can agree how to best alert teams and colleagues of this need when its required.

Teams/colleagues are responsible for:

- learning about any adjustments their colleague has shared and needs their help to implement consistently
- making the adjustments needed to their own practices to ensure their colleague can fully participate, noting these can be ongoing changes to team practices. This can include consistently ensuring they receive the information they need to do their role in the alternative formats they've requested, or adapting the format of team workshops, meetings, events and information sharing. It can also include proactively planning accessible meetings, introducing themselves on Teams calls when speaking, and ensuring all documents shared are accessible (the [Accessibility Hub](#) has guidance).
- respecting the privacy of any information their colleague may choose to share about their disability/caring responsibilities
- building disability and caring responsibility awareness.

Organisational leadership responsibilities

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Organisational leaders, when not the line manager in this context of this policy, play an important role in promoting and supporting the use of workplace adjustments, ensuring a consistent application of this policy throughout the employee lifecycle.

Leaders are responsible for ensuring that DCJ's legislative requirements and responsibilities are met. In practice, this means:

- encouraging managers to discuss workplace adjustments with their employees on a regular basis and holding those managers accountable for the WHS and discrimination risks incurred if they do not ensure they are in place
- ensuring their managers understand that workplace adjustments provide equal access to employment and when not in place, a person with disability may not be able to perform their work tasks as effectively or productively as their colleagues
- ensuring that any procurement or program/policy/project or training development in their span of control proactively considers accessibility in requirements gathering and testing in development, including how the item or service will meet the current Web Content Accessibility Guidelines and Australian Standard ES EN 301 549 when it is digital
- supporting the growth of disability and carer awareness for managers and for themselves and supporting participation as allies or members of relevant employee networks.

People Branch responsibilities

People Branch plays a role in this policy's development and in enabling its implementation. This can be through providing advice on scope in specific situations, ensuring managers apply the correct policy or coaching employees and managers when things do not go according to plan.

People Branch is responsible for:

- implementing and maintaining this policy and procedure, support materials and related training
- reviewing the effectiveness of this policy in consultation with key stakeholders, including the DEN and Carers Network
- ensuring DCJ provides accessible and inclusive recruitment by clearly offering the option for adjustments on all job advertisements and providing adjustments in recruitment processes
- advising employees and job candidates about their right to workplace adjustments and assisting the employee or candidate (and their service, DCJ Disability Employee Network (DEN), Carers Network or union representative if applicable) to seek the most suitable adjustments
- ensuring equal access and opportunity for career development and training for all DCJ employees, and that any training or development developed by DCJ is as accessible as possible by design. This means ensuring managers and course providers provide adjustments where necessary, and working with third-

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party providers to check their content, delivery and format is accessible or has a workaround that is just as effective a user experience.

- procuring downstream human resource systems that are accessible and ensuring all policies, programs, systems, communications and materials provided by People Branch are accessible, referencing DCJ's [Accessible Communications Policy](#) for guidance.
- sourcing, training and supporting sufficient Workplace Adjustment Passport Wizards, who can support adjustment conversations that are not constructive or effective. Wizards are typically drawn from HR or WHS roles and have additional capability in disability awareness, this policy, conflict resolution and perspective taking
- supporting the Workplace Adjustment Passport in ServiceNow and associated support material
- supporting employees and managers with Personal Emergency Evacuation Plans (PEEPs)
- supporting employees and managers where there may be a transition from a Return to Work injury (whether workplace related or not) that becomes an ongoing disability, to a business as usual workplace adjustment (where relevant), and understanding the differences in the relevant legislation and their respective requirements.

Infrastructure and Assets

- Implementing physical workplace adjustments related to access or use of DCJ assets and building facilities, following requests from either Talent Acquisition during the recruitment process or line managers in the onboarding process. For example, a physical workplace adjustment includes but is not limited to timely access to handrails, ramps, lighting, accessible doors, bathrooms, setting aside desks in an otherwise agile environment and ensuring employees receive the right access pass for their needs.

Information and Digital Services

- Working with third-party vendors to provide and implement assistive technology solutions where needed and troubleshoot inter-operability challenges and accessibility challenges where DCJ systems or software are not Web Content Accessibility Guidelines (WCAG) compliant to the current global standard.
- Continuing to build IDS team awareness and capability to provide effective support for employees needing IT-related adjustments.
- Maintaining the functionality of the Workplace Adjustment Passport in ServiceNow.
- Proactively ensuring new technology, including core employment systems, is scoped, procured or built by DCJ as accessibly as possible by design or workarounds identified prior to release through testing, and include relevant employee networks in final user testing.

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Assessing workplace adjustment requests

When assessing a request for a workplace adjustment, factors to be considered include:

- the nature, severity and duration of the disability (noting this includes medical conditions, injury or illness) or caring arrangement
- the functional limitations placed on the employee by the disability
- whether the disability or caring arrangement is likely to change over time (e.g. degenerative disability or fluctuating periods of wellness and regression for the person or the person for whom they're caring)
- what specific adjustments have been suggested by the employee, noting the employee may already know what they need or may require assistance to figure this out, and
- whether further specialist evaluation (i.e. assessment by an occupational therapist or other allied health provider) is genuinely required to identify and implement necessary reasonable adjustments. This specialist evaluation cannot be requested by the manager. They may be conducted via JobAccess or voluntarily provided by the employee from their specialists.

Confidentiality and sensitivity toward the employee should be maintained at all times.

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Reviewing workplace adjustments in place

Once implemented, workplace adjustments can be periodically discussed to see if they are working as intended. How often and the triggers for this discussion should be agreed up front between the manager and employee. This can be documented in the Passport as well.

Typical triggers would be a change in the employee's health/circumstances, or a material change in their role's inherent requirements. There is no need to set fixed dates, re-litigate or re-approve unless something has changed. The intent is to ensure the employee has what they need to perform, not to re-negotiate unless it is necessary.

When a workplace adjustment can be declined

The *Anti-Discrimination Act 1977* makes it unlawful to discriminate against an employee on the grounds of disability or caring responsibilities. The *Disability Discrimination Act 1992 (DDA)* and *NSW Carers Charter* contains provisions protecting the right to seek adjustments and have access to meaningful employment and career development.

Workplace adjustments can only be declined where:

- the inherent requirements of the role cannot be met even if the requested workplace adjustments are provided, or
- the provision of the adjustment presents an unjustifiable hardship. In practice, case law means the test for this is very high and it can therefore only apply in limited circumstances.

Senior leaders, managers and the People branch team can be held responsible for discrimination or a personal liability can be realised for a breach of workplace safety laws if they don't action a workplace adjustment once requested or act outside the scope of their organisational responsibilities under this policy. This includes senior leaders and managers who have delegation to approve requests, and the People team when providing advice on the process. A legal obligation arises to provide justification and reasoning for why an adjustment was not actioned.

If the inherent requirements cannot be performed

Identifying the true inherent requirements – or essential duties – of a role can be difficult. The inherent requirements of a role will vary depending on what the role is. The Australian Human Rights Commission guidance defines this as:

- the ability to perform tasks that are essential to perform a job productively and to the required quality
- the ability to work effectively in a team or other organisation

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- the ability to work safely.

When determining inherent requirements of a role, also consider the following factors:

- Whether a requirement is contained in the role description.
- Whether the employee would, or current employees in the same position do, perform the requirement in practice.
- If it is feasible for other employees to perform the requirement instead.
- How much time is spent in performing the requirement.
- What happens if the requirement is not performed.

Section 21A of the DDA outlines numerous factors to consider when assessing if the inherent requirements of the role cannot be met. Some of these factors include but are not limited to:

- the past training, qualification and experience of the employee with disability relevant to the particular work, and
- the employee with disability's performance if the employee already reports to the manager.

If you are unsure if the inherent requirements of the role are being met, contact the relevant Human Resources Business Partner (HRBP) in People branch for advice.

Inherent requirements are the essential duties of a role that must be performed - if you took the ability to do that duty out of that role, it would become a completely different role. While many tasks within a role are important, there is opportunity to think about job redesign, i.e., swap a task with another team member. The essential duties of the role are then still completed, both employees are receiving what they need and their roles remain scoped substantively at the same grade.

The inherent requirements of a role, including the tasks and/or circumstances in which it is carried out should be made clear in the role description, job advertisement and recruitment assessment, so both the prospective employee and the hiring manager have an indication of what the role entails.

If any adjustment/s are put into place and the employee cannot perform the inherent requirements of the role, then the [Procedures for Managing Non-Work Related Injuries or Health Conditions](#) has a series of steps to determine alternative duties and/or other considerations. The Injury Management Team can provide further information and guidance.

If it will cause the organisation unjustifiable hardship

The following items need to be considered when determining if an adjustment would cause unjustifiable hardship to the employer if provided:

- An assessment of the adjustments required by the person with the disability or the carer.
- The benefits and disadvantages that may impact any person concerned (both the person with a disability or carer as well as other employees in the workplace).

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- The costs involved in making the adjustments.
- An assessment of risks relating to security and safety in the workplace.
- Any alternative adjustments that may meet the need of the employee.
- The availability of financial and other assistance to the employer claiming unjustifiable hardship.
- Responsibilities and requirements or commitments made under the Department's Disability Inclusion Action Plan (DIAP).

Unjustifiable hardship only applies in rare circumstances and no single factor alone is likely to constitute unjustifiable hardship. As with other parts of the DDA, 'unjustifiable hardship' should focus on removing discrimination as far as possible. The DDA places the onus on the person or business unit who is claiming unjustifiable hardship to prove that the workplace adjustment would result in unjustifiable hardship for the organisation. Case law to date makes this an onerous test.

Where a requested adjustment is not provided by reason of unjustifiable hardship, every effort must be made to provide alternative adjustments in the workplace.

- *Example 1:* It may not be unlawful for the Department to refuse undertaking significant structural changes or engaging in extensive building work if it is beyond the financial means of the Department to do so.
- *Example 2:* Accessible parking spaces are limited in most DCJ office locations and it may not be possible to provide an allocated space as part of a workplace adjustment, but a booking system and flexible working arrangements can be provided instead.

If unjustifiable hardship is determined and supported by the relevant Band 1 executive for a work area, then the non-workplace injury pathway has a series of steps to determine alternative duties and/or other considerations. [The Procedures for Managing Non-Work Related Injuries or Health Conditions](#) provides further information, and the DCJ Injury Management Team can provide advice.

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If the employee would prefer a Recover at Work plan

If an employee produces a medical certificate and seeks out a Recover at Work (RAW) Plan over the course of their recovery, or the business requests Injury Management input *with* employee consent, then this alternative pathway can be pursued instead of a Workplace Adjustment.

It is also possible that an employee exiting the Recover at Work process may return to their substantive role and seek a workplace adjustment in order to perform their inherent requirements. In this case, People branch/'s Injury Management team will typically support its development.

What happens if a request is declined?

If an employee is unsatisfied with the workplace adjustment process or decision, the first step is to try to resolve this internally. This may include:

- asking a manager or HR BP/third party to review the application or decision
- the HR BP or Passport Wizard facilitating or mediating an open and respectful conversation between the parties. A DEN representative or other person can attend as peer support for the employee
- providing the employee with information on how they can access supports throughout a review/appeal process (refer to Workplace Adjustment Procedure)
- refresher training for the general work area on the requirements of this policy, provided by People team.

If a more formal complaint is necessary, then the [Workplace Issues Procedure](#) can be used initially, and escalated if discrimination may have occurred.

External resolution can also be sought via formal matters registered with the Anti-Discrimination Board, the Australian Human Rights Commission or SafeWork NSW. Union members can also seek support from the Public Service Association.

- [Anti Discrimination NSW - How to make a complaint](#)
- [Australian Human Rights Commission - Complaints](#)
- [SafeWork NSW](#)
- [Public Service Association - Contact](#)

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Who funds workplace adjustments?

The majority of requested workplace adjustments at DCJ are a type of flexible working arrangement or minor ergonomic equipment and do not require additional funding, so this section may not be relevant for everyone.

There are three potential forms of funding for workplace adjustments, ranked in order of precedence:

1. **JobAccess Employment Assistance Fund (EAF)**. The Commonwealth EAF provides financial assistance and advice to people with disability to purchase a range of work-related modifications and services and should be used in the first instance where equipment is needed. Assistance is available for existing and new employees with disabilities, as well as those who require assistance to find and prepare for work. JobAccess may require the purchase of equipment first and will then reimburse this purchase. Use the internal funding (described next) rather than expect the individual employee to spend what could be several thousand dollars of their own money. Work with the employee then to ensure the organisation is reimbursed. JobAccess may have a cap on funding for individuals, depending on the adjustment type. Use the next option for internal funding if this occurs.
2. **Internal funding – using Star WBS costing codes**. Where reimbursement through EAF is not approved or the employee is not eligible or has exhausted their allocation, the adjustment can be costed to the relevant business unit cost centre initially, including a Star WBS code so it can be identified and re-allocated. This is to be arranged by the manager. If the anticipated costs are significant, speak to your HR Business Partner, who can seek guidance from Inclusion and Diversity. This is because DCJ has an obligation as an employer to ensure arrangements are funded and acknowledges this may not always be possible at the local level. Budget should not typically be a source of adjustment refusal unless it meets the test for unjustifiable hardship, and this requires assessment.
3. **Internal funding – local area**. Purchasing of equipment (e.g. document holder, chair, etc.) can be funded internally by individual business units, which can be helpful in expediting implementation.

For more information and relevant fund codes, refer to the **Workplace Adjustment Procedure**.

Privacy and sensitivity

Employees cannot be asked by DCJ to provide sensitive or private medical records or 'prove' that they have a disability or caring arrangement as part of the adjustment process. As an organisation, we cannot impose a higher burden of proof on some employees just to enable them to do their work. DCJ also recognises that extended waiting periods to access specialist diagnosis can often result in a WHS or performance issue that could have been avoided via an adjustment, even an interim one.

It may be reasonable for the employee to share details of their medical condition or caring arrangement in order for their manager to understand what they need to solve for, particularly where an adjustment may initially seem impractical. Again, managers cannot demand private or sensitive health-related information

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but can encourage the employee to share the challenge they have with current arrangements to find a solution.

In certain circumstances there may be a need to convey information about the required adjustment to co-workers also affected, or where the employee has agreed that information regarding the disability or adjustment may be shared with other employees. Employee consent must be obtained first before doing so and an agreed form of words used. An example could be a certain rostering combination shared with a rostering team to prevent the employee having to consistently seek a given rostering pattern, or a workaround where another employee assists the employee with the adjustment to access software from a third party that is inaccessible.

Any information must only be shared for a directly related purpose for which it was conveyed, and in accordance with the provisions of the *Privacy Act 1988 (Commonwealth)*, the *Privacy and Personal Information Protection Act 1998 (NSW)*, the *Government Information (Public Access) Act 2009* and the *Health Records and Information Privacy Act 2002 (NSW)*, as applicable (for example, the JobAccess report may contain personal or sensitive records and should therefore not be attached to a Passport but can be kept in SAP – it depends). Disability information should be marked ‘health information’ in sensitivity markings.

The People Branch will have administrative access to personal workplace adjustment information for reporting or employee-related purposes.

People Branch may report on de-identified workplace adjustment data including:

- what type of adjustments are provided across the agency
- the number of adjustment requests
- response times to adjustment requests
- how satisfied people are with adjustments.

DCJ has duty of care to all employees. This means we have a responsibility for the health and safety of everyone in the workplace. Some practical ways of carrying out our duty of care responsibilities include ensuring:

- the work environment, systems of work, machinery and equipment are safe and properly maintained
- information, training, instruction and supervision are provided
- adequate workplace facilities are available for workers
- workers’ health and workplace conditions are monitored

By offering and implementing workplace adjustments we are ensuring that these conditions are met. Meeting a duty of care does not automatically mean that we are required to have evidence of a disability or medical condition, or access to medical records.

Where there are concerns for an employee’s wellbeing during or after the workplace adjustment has been implemented managers can refer the employee to the [Employee Assistance Program \(EAP\)](#), which provides staff with confidential coaching, counselling and support for workplace and personal issues, resources such as [My Healthy Workplace](#) or provide flexibility or leave to be able to seek support or treatment from their treating practitioners.

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In serious incidents a delegate may direct an employee to take sick leave if they are satisfied that, due to the employee's illness, the employee is:

- is unable to carry out their duties without distress
- risks further impairment of their health by reporting for duty; or
- is a risk to the health, wellbeing or safety of other staff members, Departmental clients or members of the public. In this situation the delegate must immediately contact their HRBP for advice.

Sharing disability or caring information

An employee has no obligation to share information about their disability unless it is likely to affect their ability to perform the inherent requirements of their role and they're concerned it presents a risk to their own or others' safety.

This policy does not require identification of the medical aspects of a particular disability, only what the challenge is in performing the duties, and what services and/or facilities might be required to enable the inherent requirements to be met. Employees with disability are encouraged to talk to their manager about the impact of their disability on performing the inherent requirements of their role and appropriate workplace adjustments so they can work to their full potential.

Supporting medical information or documentation relevant to the adjustment or disability can be required in some limited circumstances; for example, lodging a JobAccess funding request.

Carers are not required to provide the medical information of the person for whom they care.

Communication

A copy of the Workplace Adjustment Policy and Procedure will be available in accessible formats for staff on the DCJ Intranet site. In addition, all internal and external candidates will be provided with information, in an appropriate format, about this policy and related documents on role advertisements, through inductions, the Intranet and in staff communications regarding workplace adjustments.

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Review

People Branch will review this policy and related procedures every three years or when any significant new information, change in scope, legislative or organisational change requires amendments to this document. All reviews will be conducted in consultation with key stakeholders, including the DCJ DEN and Carers Network.

Workplace Adjustment Policy

Appendix 1 - Definitions

Term	Definition
Carer	<p><i>Carers (Recognition) Act 2010</i> defines carers as people who provide ongoing unpaid support to people who need it because of their disability, chronic illness, mental illness or frail age. This includes carers of people who need help due to dementia or drug or alcohol dependency. It also includes foster carers if they are caring for a child who needs additional support, for example if they have a disability or mental health condition. It does not include paid care workers. Carers can be family members, friends, housemates or neighbours. A carer may support more than one person and care may be provided by multiple carers.</p>
Disability	<p>The <i>Disability Discrimination Act 1992</i> (DDA) s 4(1) defines disability as any impairment, abnormality, or loss of function of any part of the body or mind. It includes physical, sensory, intellectual and psychiatric disabilities, as well as serious illnesses. The definition also covers conditions that exist now, have existed in the past but no longer exist, may exist in the future, or which the person is assumed to have.</p> <p>“Disability” , in relation to a person, means:</p> <ul style="list-style-type: none"> a) total or partial loss of the person's bodily or mental functions; or b) total or partial loss of a part of the body; or c) the presence in the body of organisms causing disease or illness; or d) the presence in the body of organisms capable of causing disease or illness; or e) the malfunction, malformation or disfigurement of a part of the person's body; or f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour. <p>The United Nations Convention protects all persons with disabilities, who are defined in Article 1 as including “...those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”</p>

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Term	Definition
	<p>The definition is broader than many realise. At DCJ, it specifically includes the following visible and non-visible disabilities:</p> <ul style="list-style-type: none"> • Blind or low vision • Deaf or hard of hearing • Neurodiversity such as Attention Deficit Hyperactivity Disorder, Autism, Dyslexia, Dyspraxia, Dyscalculia • Mental health conditions such as depression and anxiety • Mobility impairments • Medical conditions or chronic illness <p>Note this list is not at all exhaustive, and the legislative definition provides guidance on what is in scope. If in doubt, seek advice from the Inclusion and Diversity team at DCJ.</p>
Employee	<p>'Employees' includes ongoing, temporary and casual employees as well as candidates applying for roles in DCJ, interns and students on placement. It does not include contractors hired by third party labour firms.</p>
Flexible work arrangements	<p>May include hybrid and remote work, part time, job share, or ad hoc flexible arrangements such as time off for medical appointments, working from alternate locations, longer rest breaks and flexible start/finish times.</p> <p>Flexible working arrangements in the context of a workplace adjustment mean that the employee may need an arrangement that deviates from the standard team plan for days in an office. Provided the inherent requirements of the role can still be met (e.g. client contact) this is feasible. Medical certificates to 'prove' need are not required for this variation.</p>
Inherent requirements	<p>Essential requirements for the performance of the role that cannot be altered through role redesign. In the view of the Australian Human Rights Commission, "inherent requirements" of a role must be determined according to the circumstances of each role and may include:</p> <ul style="list-style-type: none"> • the ability to perform the tasks or functions which are a necessary part of the role • productivity and quality requirements • the ability to work effectively in the team or other type of work organisation concerned • the ability to work safely.

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Term	Definition
Medical condition (or health condition)	A disease, condition or injury incurred by an individual that requires ongoing medical attention or limit activities of daily living or both. Common health conditions are asthma, arthritis, diabetes, heart, stroke and vascular disease, cancer, back pain, mental and behavioural conditions.
Mental health condition	A general term for a group of illnesses that can affect a person’s thinking, perceptions, mood or behaviour over a prolonged period of time, making it difficult to cope with work, relationships and other demands. It can be generalised or experienced based on particular triggers.
Mobility	This means working with advice from HR to identify and explore potential transfers, secondments, re-assignments and temporary re-assignments across DCJ, using the mobility provisions in the Government Sector Employment Act 2013. The aim is to support ongoing employment participation.
Passport Wizard	Passport Wizards have training in disability awareness, policy and conflict resolution and can help mediate difficult adjustment conversations between employees and their managers without taking sides. Ask your HRBP for your local Wizard details.
Risk	According to Safe Work Australia’s Glossary; risk is defined as “the possibility that harm (death, injury or illness) might occur when exposed to a hazard.”
Workplace	Any place at which an employee or workplace participant works or otherwise attends. Homes can be workplaces where working from home is an element of the adjustment, but the provision of equipment to employee homes is examined on a case by case basis because there are a number of variables.
Workplace adjustment	An adjustment means an adjustment to the role or work environment that is necessary and achievable to support an employee to perform the inherent requirements of their role effectively. Workplace adjustments may include, but are not limited to, physical work environment modifications, alternative communication methods, specialised training, flexible work arrangements, role modifications and provision of equipment.

Workplace Adjustment Policy

Term	Definition
Workplace Adjustment Passport	A digital record of any adjustments an employee has in place, to aid mobility in role changes or support consistency when managers change. They are a record and system of organisational support.
Unjustifiable hardship	<p>Unjustifiable hardship focusses on whether the adjustment will adversely affect the Department or other people involved so much that it would be unfair to carry it out. It is determined under the DDA by considering the following:</p> <ul style="list-style-type: none"> • Nature of the benefit or detriment likely to accrue to, or to be suffered by any person concerned (including the person seeking the adjustment and all other people in the workplace); • The effect of the disability on any person concerned; • Cost of the adjustment required in light of the organisation's financial situation; and • Availability of financial and other assistance to the employer claiming unjustifiable hardship.

Workplace Adjustment Policy

Appendix 2 - Legislative context

This policy is underpinned by the *Disability Discrimination Act 1992 (Commonwealth)*. Other relevant legislation includes:

- *Anti-Discrimination Act 1977 (NSW)*
- *Disability Inclusion Act 2014 (NSW)*
- *Carers (Recognition) Act 2010*
- *Carers Charter NSW*
- *Government Sector Employment Act 2013 (NSW)*
- *Government Sector Employment Rules 2014*
- *Health Records and Information Privacy Act 2002 (NSW)*
- *Injury Management and Workers Compensation Act 1998 (NSW)*
- *Privacy and Personal Information Protection Act 1998 (NSW)*
- *Privacy Act 1988 (Commonwealth)*
- *Government Information (Public Access) Act 2009*
- *Work Health and Safety Act 2011 (NSW)*
- *Workers' Compensation Act 1987 (NSW)*

Appendix 3: examples of common adjustments

Common workplace adjustments can include, but are not limited to these examples:

- Modifying recruitment tests and interviews so that a person with disability can demonstrate their ability to do the job. This can include providing a different type of assessment for the same capabilities or providing more time. Inclusive assessment by design is providing interview questions to everyone three days beforehand – this is equitable for all.
- Allowing a person flexibility in their working hours, such as working part-time, job share or flexible starting and finishing times, to manage medication or medical appointments for someone they care for. In this context, they are adjustments under this policy, rather than flexible working arrangements under DCJ's Flexible Working Framework.
- Swapping some duties within a team that a person finds difficult to do or to do at set times.
- Adjusting lighting, providing a fixed desk location to better access necessary facilities such as accessible toilets or for particular equipment, or providing a quiet space to better support neurodiversity, mental health or cognitive load.
- Different styles of communication for people with vision or hearing issues or neurodivergence, by asking the individual how they prefer to communicate/receive information and changing the team's approach to suit.
- Allowing someone to work from an alternate office location or work from home for more days than the usual team plan to manage the treatment needs of the person for whom they care, support their own mental health condition or to support their sensory load.
- Shifting furniture, widening a doorway, providing an accessible bathroom or a ramp so that a person using a wheelchair or other mobility aid can move around comfortably and safely.
- Allowing a person with a physical or mental health condition time off during working hours for rehabilitation, assessment or treatment (e.g. physiotherapy or psychotherapy appointments).
- Providing additional training, mentoring, supervision and support to an individual or to a team to better support an individual in turn, for example, sighted guide or accessible workshop facilitation training.
- Purchasing or modifying equipment, such as speech recognition software for someone who is low vision or blind, an amplified phone for a person who is hard of hearing, or a digital recorder for someone who finds it difficult to take written notes.
- Providing Auslan interpreters for a person who is deaf or hard of hearing to participate in staff meetings or development, or readers who will read out documents for someone with low vision or learning disability.

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- Ensuring someone has a Personal Emergency Evacuation Plan to help them safely exit the building in case of an emergency.

Document information

Document name	Workplace Adjustments Policy
Document reference	SUB20/197462
Replaces	Workplace Adjustment Policy version 2.0
Applies to	All ongoing, temporary and casual employees, and people applying for roles with DCJ.
Policy Administrator	Workforce Strategy, Inclusion and Systems team
Email	InclusionandDiversity@dcj.nsw.gov.au
Approval	People and Engagement Sub-Committee 12 August 2024

Version	Effective date	Reason for amendment	Due for review
2	2 September 2024	Policy review schedule	2 September 2027