

POLICY ON PEOPLE WITH DISABILITIES

September 2002

1. INTRODUCTION

This policy document represents the Department of Public Works' thinking about what it can contribute to the development of disabled people and to the promotion and protection of their rights.

This document calls for extensive changes in the environment to accommodate the diverse needs of disabled persons in the workplace situation. The emphasis is on a fundamental shift in how we view disabled people, away from the individual medical perspective, to the human right and development of disabled people. It must ensure that they are given support and enable them to participate in the decision making of the department.

The Department of Public Works must be committed to achieving equitable employment that will be fair to all people especially for those who have been most disadvantaged during the past years, and to also ensure that no one discriminate against them.

According to the Employment Equity Act 55,1998 Section 6(1) stipulates that:

No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethic or social origin, colour, sexual orientation, age, disabilities, religion, HIV status, conscience, belief, political, culture, language and birth.

The rights of people with disabilities are protected by the Constitution. Chapter 2 of the Constitution guarantees fundamental rights to all citizens. It includes, in Section 9, the equality clause, and the right to freedom from discrimination based on a number of social criteria. Discrimination based on disability is specifically mentioned and disabled people are thus guaranteed the right to be treated equally and to enjoy the same rights as all other citizens. Provision is also made for affirmative action. Persons with disabilities have clearly been disadvantaged in the past, and should benefit from this clause.

The Department of Public Works has the responsibility to ensure that concrete steps are taken to ensure that people with disabilities are able to access the same fundamental rights and responsibilities as any other employee.

Through the development and implementation of this policy document, the Department of Public Works wishes to express its unswerving commitment to the upliftment and improvement of the conditions of those members of its workforce who are disabled.

2. PURPOSE

- ◆ To create a barrier free society that accommodate disabled people to move around the environment freely.
- ◆ To develop strategies that will provide people with communication disabilities with equal opportunities for access to information.
- ◆ To facilitate equal access to education.
- ◆ To narrow the unemployment gap between non-disabled and disabled job seekers.
- ◆ To ensure that disabled people are given opportunities to further education, training and career advancement.
- ◆ To create an enabling environment that will lead to the full participation and equalisation of opportunities for persons with disabilities at all occupational levels in the Department's workforce.
- ◆ To facilitate the integration of disability issues into department developmental strategies, planning and programmes
- ◆ To develop an integrated management system for the co-ordination of disability planning, implementation and monitoring in the department

3. AUTHORISATION

The Constitution Act

Employment Equity Act 55,1998 and the relevant Code of Good Practice

The White Paper on Integrated National Disability Strategy

White Paper on Public Service Training and Education (WPPSTE)

The Public Service Regulations, 1999 as amended in 2001 and 2002

White Paper on Transforming Public Service Delivery (Batho Pele)

4. DEFINITION

The scope of protection for people with disabilities in employment focuses on the effect of a disability on the person in relation to the working environment, and not on the diagnosis or the impairment.

People are considered as persons with disabilities who satisfy all the criteria in the definition:

- (i) having a physical or mental impairment;
- (ii) which is long term or recurring; and
- (iii) which substantially limits their prospects of entry into, or advancement in employment.

4.1 Assistive devices

Assistive devices are any device and ergonomic solution capable of reducing handicap experienced by an individual.

4.2 Disabled person

An individual whose prospects of securing and retaining suitable employment are substantially reduced as a result of physical or mental impairment' (ILO Convention 159)

4.3 Impairment

An impairment may either be physical or mental or a combination of both.

4.3.1 Physical Impairment

This means a partial or total loss of a bodily function or part of the body. It includes sensory impairments such as being deaf, hearing impaired, or visually impaired. Paraplegic, quadriplegic, clubbed foot and disabled in one limb may also serve as examples.

4.3.1.1 Visual impairment

Totally blind and partially sighted

4.3.1.2 Hearing impairment

Totally deaf and hard of hearing.

4.4 Mentally impairment

This means a clinically recognised condition or illness that affects a person's thought processes, judgment or emotions. Mentally handicapped and a mentally ill person.

4.5 People with speech disabilities

People with limited or no speech (non-speaking people) are people with normal hearing, but who are unable to express themselves due to a physical or intellectual impairment or unable to express themselves through speech.

4.6 Long-term or recurring

4.6.1 Long-term means the impairment has lasted or is likely to persist for at least twelve months.

4.6.2 Recurring impairment is one that is likely to happen again and to be substantially limiting. It includes a constant chronic condition, even if its effects on a person fluctuate.

4.6.3 Progressive conditions are those that are likely to develop or change or recur. People living with progressive conditions or illnesses are considered as people with disabilities once the impairment starts to substantially limiting. Progressive or recurring conditions which have no overt symptoms or which do not substantially limit a person are not disabilities.

4.7 Substantially limiting

4.7.1 An impairment is substantially limiting if, in its nature, duration or effects, it substantially limits the person's ability to perform the essential functions of the job for which they are being considered.

4.7.2 Some impairments are so easily controlled, corrected or lessened, that they have no limiting effects. For example, a person who wears

spectacles or contact lenses does not have a disability unless even with spectacles or contact lenses the person's vision is substantially impaired.

4.7.3 An assessment to determine whether the effects of an impairment are substantially limiting, must consider if medical treatment or other devices would control or correct the impairment so that its adverse effects are prevented or removed.

4.7.4 For reasons of public policy certain conditions or impairments may not be considered disabilities. These include but are not limited to –

- (a) sexual behaviour disorders that are against public policy;
- (b) self-imposed body adornments such as tattoos and body piercing;
- (c) compulsive gambling, tendency to steal or light fires;
- (d) disorders that affect a person's mental or physical state if they are caused by current use of illegal drugs or alcohol, unless the affected person is participating in a recognised programme of treatment;
- (e) normal deviations in height, weight and strength; and conventional physical and mental characteristics and common personality traits.
- (f) An assessment may be done by a suitably qualified person if there is uncertainty as to whether an impairment may be substantially limiting.

4.8 Environmental accessibility

The term encompasses both accessibility of the built environment and accessibility in terms of access to communication, for example,

- 1 Design of buildings, nature trails, urban and rural infrastructure that will ensure inclusive use by all citizens, including wheelchair users and parents with prams.
- 2 Use technology that will ensure inclusive use by all consumers, e.g. the use of Sign Language, availability of documents in Braille and/or on cassette.

4.9 Human resources development (HRD)

Human resources development is a set of social investments which support the development of a healthy, educated, stable and productive population. It addresses the development of human capabilities, abilities, knowledge and know-how to meet people's evergrowing needs for goods and services, to improve their standard of living of life. It is a process in which citizens acquire and develop the knowledge and skills necessary for occupational tasks and for other social, cultural, intellectual and political roles that are intrinsic to a vibrant democratic society.

4.10 Personal assistance services (PAS)

Personal assistance services enable people with severe disabilities to exercise their rights to choice and dignity within their own homes.

Examples of PAS include readers for persons with visual disabilities; drivers for persons with visual or severe physical, intellectual disabilities, including people with epilepsy; interpreters/facilitators for deaf people and non-speaking persons; persons care assistants for people with severe disabilities; service dogs for people with visual and severe disabilities; and advocates for people with severe intellectual disabilities.

4.11 Special Needs Education

Special Needs Education focuses on the education system and its ability to accommodate learners with different special needs (social model), and refers to the education of learners with a wide range of educational needs of specified nature. It includes:

- 1 learners who require psychological and educational guidance, career and counseling services and life-skills;
- 2 learners with sensory, physical and neurological disabilities;
- 3 learners with varying degrees of mental disabilities;
- 4 learners with emotional and/or behavioral difficulties;
- 5 learners with severe developmental and health disturbances;

- 6 learners with speech and language difficulties;
- 7 disadvantaged learners (in poverty, suffering from chronic malnutrition, street children);
- 8 learners with general and specific learning disabilities;
- 9 gifted and talented learners.

4.12 Support services

Any device, mechanism or strategy that lessens or limits the handicap and enables people with disabilities to maintain their dignity and to live independent lives with their communities. It could include personal assistance services (PAS), assistance devices and specialised equipment.

5 POLICY GUIDELINES

The policy document is based on the guidelines as outlined in the White Paper on an Integrated National Disability Strategy that are discussed hereunder.

5.1 BARRIER FREE ACCESS.

The department must create an environment, which is accessible to all employees, including disabled people. For example, a lift can be used to assist disabled people who use wheelchairs to have access to all offices in the department.

According to the Employment Equity Act 55,1998 Section 15 (2)(a) stipulates that:

(2) Affirmative action measures implemented by a designated employer must include-

- (a) Measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affect people from designated groups.

The White Paper on an Integrated National Disability Strategy on barriers free access informs that:

There are a number of barriers in the environment, which prevent disabled people from enjoying equal opportunities with non-disabled people. For example, structural barriers in the built environment

- Flights of stairs

- Inaccessible toilets and bathrooms

- High kerbstones

- Uneven pavements

The Department must create a barrier free society that accommodates the diversity of needs, and enables the entire population to move around the environment freely and unhindered. For example, Department of Public Works is responsible for public buildings. Employees in the Building Directorate should complete an orientation course on barrier free access / design to sensitise them towards the needs of people with disabilities.

5.2 COMMUNICATION

The department must be responsible to ensure that Communication is regarded as an important aspect of access to the workplace environment.

The White Paper on an Integrated National Disability Strategy regarding Access in Communications stipulates that:

- (1) Sign Language is the first and natural language of Deaf people, whatever the spoken language of his or her hearing parents may be. Sign Language is the central focus of Deaf people's human rights. It is important to note that Sign Language is a language in its own right, with its own grammar and syntax. Sign Language uses the modality of space, in contrast with the spoken Language in South Africa.
- (2) Special Language System/Augmentative and alternative Communication refer to any mode of communication used by people who can not use spoken or sign language. They include Braille, touch, Bliss symbols or other means of communication

For example the use of Sign Language, availability of documents in Braille and/or on cassette, availability of communication boards for non-speaking people, and assistive listening devices and system for deaf people should be considered by the Department.

Communication is an important aspect of access to public services. Access to communication, therefore, forms an integral part of the equalisation of opportunities for people with communication disabilities, such as deaf people, people with speech disabilities and people with visual disabilities.

In order to meet the above challenges, the Department must ensure that it makes provision of sign language training, special language systems / augmentative and alternative communication which refers to any mode of communication used by people who cannot use a spoken or sign language. They include Braille, touch, bliss symbols or other means of communication. The department can also provide services which include sign language interpreters, lip speakers, note takers and communication facilitators if needs be.

The department must also ensure that disabled people have access to information that concerns their life in the workplace environment.

5.3 EDUCATION

The department must ensure that all people have equal access to education opportunities, irrespective of their disabilities. It must also take into consideration that every person has unique interests, abilities and learning needs.

The department must give disabled people opportunity to receive education, for example outcomes based, as this will equip them with the necessary skills to access the job market. In acknowledging a broader range qualifications and acquired knowledge, the National Qualification Framework will give people with disabilities better access to formal education and the job market.

The White Paper on an Integrated National Disability Strategy regarding learning principle stipulates that every employee must:

(1) have access to widest possible educational and social opportunities;

- (2) receive education and training in as normal an environment as possible;
- (3) be provided with the resources needed to realise their higher potential.

The Department of Public Works will ensure that there is provision of special needs in education which will include support in the form of: life skills and independence training, assistive devices and specialised equipment, and access to educational programmes such as sign language and braille instruction. All employees should receive education and training in as normal an environment as possible and should be provided with the resources needed to realise their highest potential. Access to Adult Basic Education and Training (ABET) is the key to the economic liberation of adults with disabilities.

One of the principles of the White Paper on Public Service Training and Education, namely, equity and empowerment, states that – training and education will be linked to broader plans and programmes for promoting employment and occupational equity, and will be targeted in particular at the empowerment of historically disadvantaged groups.

5.4 EMPLOYMENT

Unemployment remains a fundamental problem, affecting majority of people with disabilities. Therefore it is the responsibility of the department to provide a range of employment opportunities and offering real possibilities of occupational choice.

According to the Employment Equity Act 55,1998 section 15(2) c states that:

- (2) Affirmative action measures implemented by a designated employer must include-
 - c. 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 designated employer.

Section 13 (1) of the Employment Equity Act 55,1998 also indicates that:

Every designated employer must in order to achieve employment equity, implement affirmative action measures for people from designated groups in terms of this Act.

Section (15)(2)(d) (i) of the Employment Equity Act states that:

(2) Affirmative action measures implemented by a designated employer must include-

(d) Subject to subsection (3), measures to-

(i) Ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels in the workforce.

The White Paper on an Integrated National Disability Strategy regarding Employment Equity in the open Labour Market stipulates that:

The enactment of legislation that promotes a policy of equitable employment levels for disabled workers in both public and private sectors. Components that could be included in an employment equity policy are:

- ◆ Methods to determine the potential candidate pool of disabled workers. For example, advertisements should be accessible to persons with disabilities and, where reasonable and practical, circulated to organisations that represent the interests of people with disabilities.
- ◆ Targeting a percentage of positions at entry and higher levels for disabled workers
- ◆ Targets for the employment of disabled workers in the private sector
- ◆ Financial or tax incentives to organisations that attain targeted employment levels of disabled workers.
- ◆ Incentives to public service to train and employ persons with multiple or severe disabilities
- ◆ Conditions whereby neither the employer nor the disabled worker suffers undue financial disadvantage from an employment contract

The Code of Good Practice provides some guidance to employers on the importance of not equating disability with ill health, and cautions employers against dismissing people with disabilities on the basis of innocent assessment of ill health if they have the necessary capacity to meet the inherent requirements of the job.

The Department must ensure that the unemployment gap between non-disabled and disabled job-seekers is narrowed and that conditions must be created to broaden the range of employment options for disabled people so as to provide them with real possibilities of occupational choice.

The White Paper on Public Service Training and Education, section 2.2.6.2 states that:

Similarly, current regulations pertaining to the recruitment and appointment of people with disabilities, serve to confine many disabled workers to the status of temporary rather than permanent employees, effectively precluding such employees from participating in the full range of training and education opportunities. The temporary status of disabled employees and the limited range of training and education opportunities available, restrict disabled employees to particular occupational classes, with very little prospect for upward mobility. Such prospects are further constrained by the fact that special provision is not made for them in the various courses and programmes that they are able to access.

5.5 HUMAN RESOURCES DEVELOPMENT (HRD)

The HRD section must be used as the key element to break the cycle of disabled people with no skills, knowledge and attitudes.

According to the Employment Equity Act 55,1998 Section 15(2) d (ii) states that:

(2) Affirmative action measures implemented by a designated employer must include-

(d) Subject to subsection (3), measures to-

- (ii) Retain and develop people from designated groups and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for skill development.

The Public Service Regulations Act Part IX (A) also stipulates that:

Employee should have ongoing and equitable access to training geared towards achieving an efficient, non-partisan and representative public service. Training should support work performance and career development. It should become increasingly driven by needs, and link strategically to broader human resources management practices and programmes aimed at enhancing employment equity and representative.

Reconstruction and development of our society involves a recognition of and intention to address the developmental needs of disabled people within a framework of inclusive development.

People with disabilities are a natural and integral part of society as a whole, and should have opportunities to contribute their experience, talents and capabilities to national and international development.

Departmental and provincial priorities will need to be set, however, in accordance with the principles outlined above. They will also need to conform to broad national training priorities laid down for the short to medium term in the White Paper on Transforming Public Service Delivery (WPTPS) as follows:

- The provision of accelerated and intensive skills training programmes for affirmative action appointees (women and people with disabilities in particular).
- The provision of training at all levels in gender and race awareness, public service ethics, and respect for cultural diversity and human rights.

Employees with disabilities shall be consulted in order to ensure input specific to their career advancement.

Facilities and materials for training, work organisation and recreation should be accessible to employees with disabilities.

5.6 PUBLIC EDUCATION AWARENESS

All disability programmes should be carried out with appropriate consultation and facilitation, and should include the necessary monitoring mechanisms.

The department must ensure that the development of a disability awareness programme within the department is prioritised. People with disabilities are best equipped to change perceptions and attitudes towards disability, and should therefore play a central role in the development of strategies and projects.

All training of personnel who deal with the public should contain disability as a human rights and development issue. The department shall include the Code of Good Practice: Key Aspects on the Employment of People with Disabilities as part of the presentation in the orientation and induction programme.

The department must observe / recognise the 3rd of December as the International Day of Disabled People. This day should be used to contextualise and promote disability as a human rights and development issue.

In line with the recommendations in the National Disability Strategy, priority will also be accorded to disability awareness training to enable managers and able-bodied workers to facilitate the full participation of fellow disabled employees, and to deliver more disability sensitive services to the public.

6 RECOMMENDATIONS

The following information is about recommendations that specific institutions / departments have to consider in order to promote the interests of people with disabilities, as outlined in the White Paper on an Integrated National Disability Strategy. This section will, however, discuss specific recommendations that affect mainly the Department of Public Works.

RECOMMENDATION 2B PUBLIC EDUCATION AND AWARENESS RAISING

It is recommended that every government line function, in consultation with the Office on the Status of Disabled Persons, Office of the Deputy President, and the South African Federal Council on Disability (SAFCD), facilitate the development of a disability public awareness programme relevant to its own area of responsibility.

RECOMMENDATION 5A BARRIER-FREE ACCESS: GUIDELINES

It is recommended that the Department of Public Works, in consultation with the National Environmental Accessibility Programme (NEAP) and other stakeholders, develop national guidelines and minimum norms and standards with regard to barrier-free access, including:

- (a) the inclusion of barrier-free design norms and standards in the Public Sector Briefing document;
- (b) barrier-free design of all buildings leased by the department, including the development of a barrier-free clause for all lease agreements;
- (c) the possible introduction of tax incentives to owners of existing private sector buildings that require upgrading, and
- (d) the development of a broad spectrum of barrier-free design expertise within the department at national, provincial and local level.

RECOMMENDATION 5B BARRIER-FREE ACCESS: LEGISLATION

It is recommended that the Department of Public Works, in consultation with the Department of Constitutional Development and Provincial Affairs, the Department of Justice, National Environmental Accessibility Programme (NEAP) and the South African Bureau of Standards (SABS), facilitate a process for the:

- (a) review of existing barrier-free access legislation;
- (b) effective implementation and administration of existing and new legislation, especially at local government level, and

- (c) development of appropriate and effective monitoring mechanism, especially at local level.

RECOMMENDATION 5C BARRIER-FREE ACCESS: TRAINING

It is recommended that the Department of Public Works, in consultation with professional bodies in the design and construction industries, universities and other relevant tertiary institutions and National Environmental Accessibility Programme (NEAP), facilitate a process for the development of:

- (a) appropriate curricula and updating of handbooks focusing on integrated and barrier-free design as a part of the professional training of architects, town planners and engineers, and
- (b) adequate supplementary training of professionals and workers.

RECOMMENDATION 11C HUMAN RESOURCES DEVELOPMENT: TRAINING

It is recommended that the National Training Board, in consultation with the South African Qualifications Authority (SAQA), the Department of Labour and Education, the South African Federal Council on Disability (SAFCD) and other stakeholders, facilitate the integration of national norms and standards for the training, testing and certification of people with disabilities (where these might differ slightly from standards applied in the general vocation training system) into the National Qualifications Framework and Industry Training Boards.

RECOMMENDATION 16 LEGISLATION

It is recommended that the Department of Justice, in consultation with the Office on the Status of Disabled Persons, Office of the Deputy President, the South African Federal Council on Disability (SAFCD) and the South African Law Commission, facilitate a legislative task team to:

- (a) develop and consider recommendations on anti-discriminatory legislation as it affects people with disabilities, and

- (b) review existing legislation with a view to eliminating discrimination on the statute books, as well as regulations that result in discriminatory practices.

RECOMMENDATION 18 INTER-GOVERNMENTAL COLLABORATION: PROVINCIAL DISABILITY PROGRAMMES

It is recommended that the Provincial Premiers establish Disability Programme in each Province in order to ensure the implementation of disability policy in all departments.

RECOMMENDATION 20A BUDGETING FOR DISABILITY PROGRAMMES: ALLOCATION OF FUNDS BY GOVERNMENT DEPARTMENTS

It is noted that the following departments make provision for specific disability related programmes: Health, Welfare and Population Development; Education; Labour; Environment Affairs and Tourism, and Public Works.

It is noted further that departments which need to include disability related programmes in their functions include: Arts, Culture, Science and Technology; Housing; Sport and Recreation; Justice; Public Service and Administration; Trade and Industry; Communications; Transport, and Provincial Affairs and Constitutional Development.

In order to ensure that the necessary financial and personnel resources are allocated and integrated within departmental budgets, it is recommended that:

- (a) provision is made that for specific disability related programmes by government departments which have not yet done so;
- (b) the Office of the Deputy President negotiate key performance indicators (time frames, performance review mechanisms, departmental policy, programmes, budgets, staff and staff training) with these departments to ensure the optimal use of the necessary resources and that, in this regard,

- (c) priority be given to the Departments of Health, Labour, Housing, Trade and Industry and Transport.

7 RESPONSIBILITIES

The following are structures that may be involved in monitoring disability on National, Provincial and Departmental level.

7.1 NATIONAL

- ◆ Office on the Status of Disabled Persons, Office of the Deputy President
- ◆ South African Human Rights Commission
- ◆ The Public Protector
- ◆ The Commission on Gender Equality
- ◆ The National Youth Commission
- ◆ The Consumer Council
- ◆ Public Service Commission
- ◆ Commission for Conciliation, Mediation and Arbitration (CCMA)
- ◆ The Constitutional Court
- ◆ Industrial Court
- ◆ National Economic Development Labour Council (NEDLAC)
- ◆ Commission for the Protection of Cultural, Linguistic and Religious Communities
- ◆ Disabled People's Organisation
- ◆ Other NGOs

7.2 PROVINCIAL

- ◆ Office on the Status of Disabled Persons, Office of the Premier

7.3 DEPARTMENTAL

7.3.1 HOD

- Ensure that all employees comply with this departmental policy.
- Ensure the availability of budget for programmes targeted to disabled people.

7.3.2 SENIOR MANAGERS

- Ensure that employees (including disabled persons) enjoy working together (no discrimination).
- Ensure that employees perform well in the workplace environment
- Ensure that all resources are accessible to all employees.

7.3.4 HRD

- Ensure people with disability improve their standard of living and quality of life in the workplace.
- Ensure that all employees attend training (inclusive of specialised training for disabled persons).
- Ensure that bursaries to further education, training and development are accessible to all employees.

7.3.5 INDIVIDUAL EMPLOYEE

- Ensure that there is improved performance, communication and co-operation with co-workers.
- Comply with these policy rules.

7.3.6 EMPLOYMENT EQUITY FORUM

- The Equity Forum must ensure that interests of disabled people within the Department are promoted / considered.
- The Forum should consist of people who have interest in disabled people
- The Forum should include one or two people living with disabilities in the Executive.

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SENIOR MANAGER: POLICY AND HRM

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HEAD OF DEPARTMENT

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