

INTRODUCTION

Southern Cross University (SCU) has a well-established commitment to the principles and practices of equal opportunity and to the development of staff diversity in the workforce. These principles of equal opportunity ensure that fairness, equity, transparency and consideration of merit apply to all aspects of employment-related decisions, including the recruitment, selection, promotion and treatment of staff at the University.

SCU's commitment to the employment and support of staff with disabilities is embedded in its strategic objectives and policies, such as the [Equal Employment Opportunity Policy](#), [Employees with Disabilities Policy](#) and the [Recruitment and Selection Policy](#). In alignment with the University's [Strategic Plan](#), the University developed the [Equity and Diversity Plan](#) to establish a framework with specific strategies to respond to key components of equity and diversity matters at SCU.

In particular, the University aims to:

- eliminate, as far as possible, discrimination against persons on the grounds of disability in the area of employment and to encourage staff with disabilities to enhance their skills and qualifications; and
- ensure the provision of services necessary to enable staff and students with disabilities to achieve their maximum potential as members of the University community.

THE LEGISLATIVE FRAMEWORK

Extensive federal and state legislation renders it unlawful to discriminate, either directly or indirectly, against a person because of an actual or inferred disability or impairment whether past, present or future, or because of their association with someone who has a disability. The legislation imposes specific responsibilities on employers not to discriminate against potential or current staff members who have disabilities. The [Commonwealth Disability Discrimination Act \(1992\)](#) ("the DDA") is the key legislation covering disability and employment in Australia and applies to a wide range of areas including employment, access to premises, education and the provision of goods, services and facilities.

The University's policies and procedures incorporate these legislative requirements and provide a framework for staff and students to create an environment that is free of unlawful discrimination.

DEFINING DISABILITY

Disability defined under the DDA

The DDA defines disability, in relation to a person, as:

- total or partial loss of the person's bodily or mental functions; or
- total or partial loss of a part of the body; or
- the presence in the body of organisms causing disease or illness; or
- the presence in the body of organisms capable of causing disease or illness; or
- the malfunction, malformation or disfigurement of a part of the person's body; or
- a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- presently exists; or
- previously existed but no longer exists; or
- may exist in the future (including because of a genetic predisposition to that disability); or
- is imputed to a person.

A **disability** that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the [disability](#).

RECRUITING AND SELECTING STAFF WITH DISABILITIES

To ensure compliance with legislation and SCU's policies, it is important that the equal opportunity principles of fairness, inclusiveness and transparency apply to each step of the recruitment and selection process. In terms of the [Recruitment and Selection Policy](#), supervisors are required to take into account the particular needs of applicants from equity groups during the recruitment, selection and appointment process. When inviting applicants to attend an interview, it is advisable for all applicants to be asked about their access and participation needs in the interview process.

The position description

The development of clear and concise position descriptions with key selection criteria is the first step to attracting a diverse pool of candidates and requires a good understanding of the inherent requirements of the job.

In the development of the key selection criteria, supervisors need to consider:

- do they relate to the skills and abilities needed to do the job?;
- are they described in inclusive and non-discriminatory language?; and
- do they relate to the inherent requirements of the job? If not, could they constitute indirect discrimination?

What is meant by the 'inherent requirements' of the job?

Inherent requirements of the job are those activities, conditions and practices that are essential to the job. In determining the inherent requirements of a job to be performed by an applicant with a disability, supervisors should consider whether the person could perform the inherent requirements if reasonable adjustments were made to the work environment. For example, could a person with vision impairment perform a clerical job with voice-activated computer software?

The DDA states that in some circumstances it is not unlawful for an employer to refuse employment to a person who is unable to perform the inherent requirements of a position. This would usually occur in situations where:

- no appropriate or effective adjustments can be made; or
- where it is not reasonably practicable to amend the inherent requirements of the position.

Supervisors may seek advice from HR Services to clarify the inherent requirements of a particular position and ensure that the position description and key selection criteria do not discriminate unlawfully against people with disabilities.

Advertising the position

Attracting a diverse pool of candidates requires adopting appropriate advertising and search strategies that effectively communicate information to different groups and people in different locations and communities. For example, it may be appropriate to be able to provide information about the position, when requested, in an appropriate format such as large print or electronic format.

It may be appropriate to contact an external employment agency that specialises in employment diversity. Supervisors seeking to extend the pool of candidates or proactively recruit people with disabilities to their work unit, can obtain assistance and advice from HR Services.

The selection panel

The University's [Recruitment and Selection Policy](#) and the [Information for Selection Panel Members](#) have been developed to support a fair and equitable recruitment process. According to the policy and guidelines, panel members must be trained in the University's selection process and anti-discrimination policies and procedures. Training in staff selection is provided by HR Services.

Where an applicant has disclosed that they have a disability, it is recommended that a panel member with an awareness of disability issues and how these might be managed in the workplace is represented on the panel.

Invitation to attend the Interview

The University will take into consideration ways of enabling applicants to participate and perform at interviews on an equal basis with other applicants. When inviting an applicant to attend an interview, it is recommended to inquire whether they may need any assistance to participate fully in the interview. Requests for access to the interview may include:

- changing the interview location to one accessible to a wheelchair user;
- employing a sign language interpreter; or
- providing information in an alternative format for applicants with a vision impairment.

Conducting the Interview

All applicants should be assessed on merit and their capacity to meet the key selection criteria. The selection panel is responsible for ensuring that questions at interview focus on an applicant's ability to perform the inherent requirements of the job. An applicant with a disability must be considered against the same criteria as an applicant without a disability.

The selection panel is required to not make any assumptions about the capacities of people with disabilities. Instead, it is recommended that an applicant is asked directly about their capacity to meet specific selection criteria because of an apparent or declared disability.

Questioning applicants with disabilities

Questions at interview need to be prepared using inclusive language and focusing on the applicant's ability to perform the inherent requirements of the job. If the applicant has a declared or apparent disability the selection panel may ask them to describe how they would perform a certain job function if it is an inherent part of the job, but not ask them questions about their disability or how they may have developed the disability.

For example:

Inappropriate interview question: "I notice that you have some difficulty walking and I wonder what caused it and how you get around?"

Appropriate interview question: "This position will require the staff member to drive a University vehicle on a regular basis. This is one of the inherent requirements of the position that we need to check with all applicants. Do you have a current driver's licence and are you able to meet this criterion?"

Other appropriate questions may relate to what reasonable adjustments are needed in order to perform the job and to establish rights and obligations regarding superannuation, workers' compensation and other insurance. All these types of questions need to be framed and asked with the utmost sensitivity to avoid causing humiliation or distract the process from the real purpose of the interview - to establish whether the applicant is the best person to do the job.

The selection decision

If a particular applicant is unable to meet the inherent requirements of the job due to a particular disability, a decision to not employ this applicant can lawfully be made provided the application of the inherent job requirements are applied in good faith and relate objectively to the individual's ability to perform essential aspects of the position description. This decision can only be made after genuine consideration as to whether the provision of reasonable adjustments could have enabled the applicant's ability to meet the inherent requirements of the job.

The use of medical examinations in the selection process

A job offer to a successful applicant may be conditional on the results of a medical examination provided:

- all applicants, with or without disabilities, who apply for the same or similar jobs, have been required to undertake a medical examination;
- it is relevant to assessing an applicant's ability to meet the inherent requirements of the job; and
- it is effective for this purpose.

MAKING REASONABLE ADJUSTMENTS

In addition to accommodating the needs of staff members with disabilities who are recruited, supervisors are required to make reasonable adjustments for staff members who develop a disability during their employment. This ensures that supervisors are compliant with legislation and SCU's policies and procedures and protects supervisors and the University from claims of unlawful discrimination on the ground of disability.

What are 'reasonable adjustments'?

'Reasonable adjustments' are workplace changes that enable a staff member with a disability to perform their job effectively and enjoy equal employment opportunity. The legislation states that these workplace changes need only be made if necessary, possible and reasonable to do so without imposing unjustifiable hardship on the organisation.

The legislation does not define what types of adjustments need to be made to prevent discrimination against staff members with disabilities. Each case needs to be considered on its own merit. In addition, supervisors should not assume that all people with a disability require an adjustment as often, little or no adjustment is needed or and adjustment can be made with minimal cost.

The Australian Human Rights Commission guidelines suggest the following adjustments:

- adjustment to workplace or work related premises or facilities, for example, installing ramps or modifying toilets;
- adjustment to work related communications or information, including the format in which information is available;
- adjustment to recruitment and selection procedures;
- adjustment to work methods such as making changes to job design, work schedules or other work practices, for example, swapping some duties among staff or allowing regular meal breaks for a person with diabetes;
- modifying of equipment, for example, lowering a workbench or providing an enlarged computer screen;
- provision of interpreters, readers, attendants or other work related assistance; and
- providing training or other assistance to afford staff with a disability the opportunity to demonstrate and develop capacity in their roles.

Reasonable adjustments do not include:

- eliminating a key component of a job;
- lowering performance standards that are applied to all other staff members;
- providing items such as prosthetic limbs, wheelchairs, eyeglasses or hearing aids; and/or
- changes causing "unjustifiable hardship" to the work unit or University.

How should supervisors respond to a request for an adjustment or modification?

Supervisors are required to consider all requests for an adjustment when made on the basis of a person's disability. These requests are to be discussed with the staff member in the first instance to establish the nature and extent of their abilities and disabilities and the kinds of adjustments that will be needed to perform their role.

Where the need for particular adjustments is unclear, supervisors are required to obtain advice from HR Services.

Refusing a request to make reasonable adjustments on the basis of 'unjustifiable hardship'

It is important to note that an employer may lawfully refuse to employ, transfer or promote a person to a job or lawfully terminate a person's employment in a job if the person cannot meet the 'inherent requirements' of the job and this cannot be remedied by making a 'reasonable adjustment'.

The DDA also does not require workplace changes to be made if these changes will result in major difficulties or unreasonable costs to an organisation. This is called 'unjustifiable hardship'. However, the DDA does require that a genuine process of assessment and consultation is conducted by supervisors to determine whether these adjustments are unjustified. If adjustments cause hardship the evidential onus is on the employer to show that these adjustments were unjustified.

In defending a claim of discrimination on the grounds of disability, an employer may argue that a particular adjustment cannot be provided if it:

- costs more than alternatives that are equally effective;
- requires extensive and disruptive renovations;
- may have a significant and negative effect on other staff members or students; and
- prevents the organisation from complying with other relevant laws such as Work Health and Safety legislation.

The Australian Human Rights Commission stipulates that the following factors will be taken into account when determining whether an adjustment constitutes an unjustifiable hardship for an organisation:

- cost and nature of the adjustment;
- financial resources of the work unit;
- financial resources of the University; and
- impact of the adjustment on the operation of the work unit.

Accordingly, a work unit's insufficient budget allocation or resources to make a particular adjustment do not singularly constitute 'undue hardship.' Supervisors should contact HR Services if adjustments are necessary.

RESPONSIBILITIES OF SUPERVISORS

Supervisors' obligations under legislation and policy extend to all aspects of employment-related decisions, including:

- the recruitment and selection process (including advertising, provision of job;
- information, application forms, interview arrangements, selection tests, examinations and other inquiries);
- the terms or conditions on which someone is employed (including wages or other payments, duties performed and performance requirements, conduct and attendance requirements, the work environment and occupational health and safety protection, equipment and facilities, information and communication, supervisory and management arrangements, leave and superannuation entitlements, and workers' compensation);
- opportunities for promotion, transfer or training and any other benefits associated with employment; and
- dismissal of an employee or other termination of employment.

In terms of principles of equal opportunity, Supervisors are obliged:

- not to discriminate directly by less favorable treatment;
- not to discriminate indirectly by treatment which is less favorable in its impact;
- to make 'reasonable adjustments' where required for a person with a disability to perform the 'inherent requirements' of a position; and
- genuinely consider how 'reasonable adjustments' might be made.

What is direct discrimination?

'Direct discrimination' occurs when a person with an impairment or disability is treated less favourably than a person without that impairment or disability would be treated in the same or similar circumstances. A person is treated 'less favourably' by treatment which is:

- different; and
- disadvantageous or can reasonably be regarded by that person to be disadvantageous.

For example, although being assigned to less demanding work or a narrower range of duties might be perceived by some people as not disadvantageous, or even as preferential treatment, this could reasonably be regarded by a person with a disability as disadvantageous treatment, because of consequent reduced job satisfaction, opportunities for promotion and so on.

What is indirect discrimination?

'Indirect discrimination' occurs when a rule, requirement, condition, practice or other treatment is imposed which:

- has the effect of disadvantaging a person with a disability, compared to the effect which it has or would have on persons who do not have that disability; and
- is not reasonable irrespective of whether the rule, requirement, condition, practice or other treatment is or would be applied to persons without that disability.

For example, a requirement in a position description that the applicant must have a current driver's licence could have the effect of excluding people with a medical condition who are unable to have a driver's licence. If this

requirement could be seen as unreasonable (i.e. it is not part of the essential requirements of the job) then it could constitute indirect discrimination and a breach of the DDA.

What is meant by 'inherent requirements' and making 'reasonable adjustments'?

The University and its supervisors must make 'reasonable adjustments' where required for a person with a disability to perform the inherent requirements of a position. The requirement to provide reasonable adjustments applies to the appointment of new staff and to current staff who acquire a disability while in employment at the University.

What are the 'inherent requirements' of the position?

Inherent requirements are those activities, conditions and practices that are essential to the position. According to the Australian Human Rights Commission, the inherent requirements may include, for instance:

- 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, and/or
- the ability to work safely.

Distinguishing between inherent and desirable requirements of a position

Inherent requirements of a position are the essential requirements that a person must satisfy to be able to do the job. Desirable requirements of a position are the criteria those that would help the person to perform well in the job.

Distinguishing whether a requirement is a vital aspect of the job or simply a desirable one has particular relevance to the recruitment of people with disabilities and is discussed in more detail under section 6 of these guidelines.

A genuine process of assessment and consultation impacts liability

Before determining whether an adjustment to the workplace is unjustified, supervisors are required to:

- consider how an adjustment might be made;
- discuss this directly with the staff member involved; and
- consult relevant sources of advice.

Liability for compensation can be avoided if a supervisor has pursued a genuine process of consultation with the staff member. Further advice and support on whether adjustments can be made for job applicants and current staff members with disabilities is provided by HR Services.

DISCLOSURE OF DISABILITY AND CONFIDENTIALITY

In terms of Privacy legislation and SCU's *Privacy Management Plan*, personal information obtained from potential or existing staff members can only be used for the purpose it was collected and will be protected from inappropriate access or disclosure. If information about an impairment or condition is requested from job applicants or from existing staff members, supervisors are required to disclose why the information is needed and who will be able to access it.

Supervisors are also responsible for briefing staff members in a work unit on any arrangements made to accommodate a staff member with a disability. However, supervisors are required to consult first with the staff member in question regarding what personal information should be disclosed and in what manner. Disclosure of sensitive personal information regarding a person's disability to other staff members, without consent, may constitute discrimination if a detriment is suffered as a result.

FURTHER INFORMATION

Legislation

The Disability Discrimination Act (1992) (Cth)
Anti-Discrimination Act (1977) (NSW)
The Queensland Anti-Discrimination Act (1991)
Disability Services Act (1993)
Privacy Act and Personal Information Act

Human Rights and Equal Opportunity Commission Act (1986)

SCU Plans, Policies & Guidelines

Strategic Plan

Equity and Diversity Plan

Disability Action Plan

Privacy Management Plan

Code of Conduct

Equal Employment Opportunity Policy

Harassment, Bullying and Discrimination Prevention Policy

Complaints Policy - Staff

Employees with Disabilities Policy

Recruitment and Selection Policy

Sexual Harassment Guidelines

Inclusive Language Guidelines

Inclusive Curricula at SCU

Information for Selection Panel Members

Contacts and Committees

Disability Contact Officer – WHS Manager

HR Managers and Consultants

Equity and Diversity Contacts

Manager, Equity and Diversity

Student Access & Inclusion

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