

**Policy** Workplace Adjustments for Employees & the Commissioner

<b>Purpose</b>	1.1	<p>The Victorian Legal Services Board and Commissioner (VLSB+C) are committed to employment practices that are fair, equitable and inclusive. The VLSB+C are also committed to improving their capacity to employ, develop and retain people with disabilities and to creating a barrier-free workplace.</p> <p>A reasonable workplace adjustment describes any change that is made so that a person with disability can have equality of access, employment and advancement opportunities. This policy is intended to ensure all prospective applicants and current employees have reasonable opportunities to achieve their potential and that they are not disadvantaged as a result of disability.</p>
<b>Application</b>	2.1	<p>This policy applies to all workplace participants. For the purpose of this policy, this includes: employees, contractors<sup>1</sup>, consultants and any individuals or groups undertaking activity for or on behalf of the VLSB+C referred to in this policy as employees unless otherwise specified.</p>
	2.2	<p>This policy also applies to the Commissioner in the exercising of their statutory powers and in their role as the Chief Executive Officer to the Victorian Legal Services Board (the Board).</p>
<b>Legislative Framework</b>	3.1	<p>The <i>Victorian Equal Opportunity Act</i> 2010 requires employers to make workplace adjustments for a person with disability who:</p> <ul style="list-style-type: none"> <li>• applies for a job, is offered employment, or is an employee; and</li> <li>• requires the adjustments in order to participate in the recruitment process or perform the genuine and reasonable requirements of the job.</li> </ul> <p>The employer must make workplace adjustments unless the person or employee could not or cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made.</p>
	3.2	<p>The <i>Disability Discrimination Act</i> 1992 (Cth) (Disability Discrimination Act) states that organisations have an explicit duty to make workplace adjustments unless that adjustment would result in unjustifiable hardship. This Act expressly stipulates that the failure to make workplace adjustments may constitute either direct or indirect discrimination.</p>
	3.3	<p>One of the objectives of Chapter 3 (rights and responsibilities of employees, employers, organisations etc.) of the <i>Fair Work Act</i> 2009 (the Fair Work Act) is to provide protection from workplace discrimination (s.336).</p>

<sup>1</sup> Note the application of clause 1.4 of the Code of Conduct for Victorian public sector employees to the engagement of contractors and consultants. Contractors and consultants are only bound by the code if explicitly required by their contract for services.

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3.4 Clause 7 of the *Victorian Public Service Enterprise Agreement 2016* (the Agreement) stipulates it is the intention of parties covered in the Agreement to achieve the objective set out in section 336 of the Fair Work Act through respecting and valuing the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of race, sex, sexual preference, age, physical or mental disability, marital status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

**Policy Principles**

4.1 The VLSB+C are committed to and will uphold the following principles in applying this policy.

4.2 **Demonstrating Respect**

The Commissioner and all VLSB+C employees have a duty to demonstrate respect for colleagues, other public officials and members of the Victorian community by treating them fairly and objectively and ensuring freedom from discrimination, harassment and bullying (see section 7 of the *Public Administration Act 2004* (PA Act)).

4.3 **Human Rights**

The Commissioner and all VLSB+C employees are accountable for respecting and promoting the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* by making decisions and providing advice consistent with human rights, and by actively implementing, promoting and supporting human rights (see section 7 of the PA Act).

**Key definitions**

5.1 **Access** refers to the ease with which people are able to use services and/or resources. This includes access to buildings, car park spaces, facilities, resources, services and programs, equipment, signs, information and training programs.

5.2 **Disability**: this policy adopts the broad definition of disability used in the Disability Discrimination Act, which, in the context of employment, can be summed up as a condition either caused by accident, trauma, injury genetics or disease that may restrict a person’s mental, sensory or mobility functions to undertake or perform a job in the same way as a person who does not have disability. This includes physical, sensory, intellectual, mental health, neurological and learning disabilities, as well as physical disfigurement and serious illnesses. Disability may be temporary or permanent, total or partial, lifelong or acquired.

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- 5.3 **Disclosure** refers to a personal decision to tell a person or institution about one's disability. There is no legal obligation for a job applicant or employee to disclose their disability unless it is likely to affect their capacity to meet the inherent requirements of the job (including ensuring the safety of themselves and others).
- 5.4 **Discrimination:** the Disability Discrimination Act identifies two types of discrimination in relation to people with disability. **Direct discrimination** is when someone with disability receives less favourable treatment than a person without disability in the same circumstances. **Indirect discrimination** is when a policy, practice or requirement is applied equally but has a discriminatory effect on people with disability.
- 5.5 **Inherent requirements** are the essential activities and tasks that must be carried out in order to get a job done. Inherent requirements relate to results, or *what* must be accomplished rather than means, or *how* it is accomplished.
- 5.6 **Merit principle** means the selection and advancement of employees according to their relative abilities, knowledge and skills under fair and open competition.
- 5.7 **Workplace adjustment** refers to the administrative, environmental or procedural alterations required to enable a person with disability to work effectively and enjoy equal opportunity with others. By law, employers are required to provide workplace adjustments wherever it is necessary, reasonable and possible to do so (i.e. when a workplace adjustment does not constitute an unjustifiable hardship for the employer). Workplace adjustments may include:
- provision of appropriate equipment or assistance to ensure there is no barrier in the selection process;
  - job redesign;
  - training or retraining;
  - providing essential information in suitable formats;
  - modifications to equipment or the supply of specialised equipment, furniture or work related aids;
  - flexible work arrangements; or
  - alterations to premises or work areas.

See Section 6.10 of this policy for specific examples of workplace adjustments.

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5.8 **Unjustifiable hardship** – employers are obligated to provide workplace adjustments unless such an adjustment would result in unjustifiable hardship to the employer. This is generally determined by considering:

- the cost of the adjustment in light of the organisation's financial situation; and
- the extent to which the adjustment will result in substantial benefits or detriments to other employees, including those who do not have a disability.

'Reasonable' is defined by whether or not the adjustment would create 'unjustifiable hardship' to the whole organisation. It is never defined by a particular manager's opinion of what is reasonable.

The VLSB+C's capacity to make the adjustment will also be considered as there may be some adjustments that cannot be made because they are within the control of the building manager.

**Communicating the availability of workplace adjustments**

6.1

**Current employees**

*Human Resources Business Partner* is responsible for:

- ensuring that information concerning the workplace adjustment policy is shared during the induction of new employees; and
- referring people for whom a workplace adjustment might be appropriate to the Group Manager, Corporate Operations.

*Managers* are responsible for:

- advising employees of the workplace adjustment policy and procedure upon job commencement and during performance reviews where necessary;
- explaining the workplace adjustment procedure and either contacting the Group Manager, Corporate Operations when approached by an employee requesting an adjustment or assisting the employee to contact the Group Manager, Corporate Operations; and
- navigating through the workplace adjustment procedure when appropriate.

If an employee requires an adjustment, they should discuss this with their manager and/or make a written request and describe:

- adjustment/s they propose;
- reason for the required adjustment (potentially with medical certification), and any relevant details of their circumstances; and
- any recommendations (e.g. from a medical practitioner or support service).

Design of workplace adjustments should be made in collaboration between employees and managers.

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6.2 **Job Applicants**

*Human Resources Business Partner* is responsible for:

- ensuring that all applicants invited for interviews are notified that they can request workplace adjustments for their disability for the interview process and informed of the procedure for making an adjustment request.
- ensuring the following paragraph its equivalent is added to any application forms and interview correspondence:

*“It is the policy of the VLSB+C to provide workplace adjustments for qualified persons with disabilities who are employees or applicants for employment. If you need assistance or adjustments to fully participate in the application/interview process, please contact the VLSB+C Human Resources Business Partner. Employment opportunities will not be denied to anyone because of the need to make workplace adjustment for a person’s disability.”*

- where interviews are scheduled by telephone, ensuring all applicants are informed about the availability of workplace adjustments in the interview process by asking if the applicant requires any special arrangements to enable him or her to equitably participate in the interview.

**Confidentiality**

7.1

At all times, the individual responsible or processing a request for a workplace adjustment or implementing a workplace adjustment will respect the privacy of the applicant or employee who has requested the adjustment. Information about the applicant or employee’s disability will only be disclosed to a third party with the consent of the applicant or employee.

However, in order to introduce an adjustment into the workplace, it will be necessary for information about the impact of the employee’s disability or condition on their work performance to be disclosed to the appropriate supervisor(s).

**Workplace adjustment procedure**

8.1

**Requests**

*Applicants* will make requests for adjustments to the contact person for the advertised position. If, upon being approach by an applicant, the contact person can easily and informally meet the request to the satisfaction of both parties, he/she will do so and the procedure will end. If not the contact person will, with the applicant’s permission, refer the request to the Group Manager, Corporate Operations on behalf of the applicant.

*Employees* will make requests for workplace adjustments to their manager or to the Group Manager, Corporate Operations directly.

If a manager thinks a workplace adjustment might be appropriate for an employee under his/her supervision, she/he will either approach the employee to discuss the matter or contact the Group Manager, Corporate Operations for advice.

If approached by an employee to discuss a workplace adjustment, a manager can easily and informally make the adjustment to the satisfaction of both parties, she/he will do so and the procedure will end. If not the manager will, with the employee's permission, refer the matter to the Group Manager, Corporate Operations on behalf of the employee.

The Group Manager, Corporate Operations will open a confidential workplace adjustment file to record the request and any information collected throughout the process in addressing it. The workplace adjustment file will be kept separate from the employee's personal records and will only be accessible to the applicant or employee and the Group Manager, Corporate Operations.

## 8.2 **Assess and reach a decision**

In consultation with the applicant or the employee, the Group Manager, Corporate Operations will evaluate the request and determine what, if any, adjustment is appropriate.

For a job applicant, the Group Manager, Corporate Operations is responsible for

- determining the recruitment-relevant limitation(s) created by the applicant's disability. Depending on their disability and the nature of the adjustment requested, the applicant may be required to provide documentary evidence about their disability and the functional limitations it involves. This evidence may be obtained from a medical practitioner, psychologist or other relevant professional.
- Identifying possible adjustments and assessing the effectiveness of each one in enabling the applicant to equitably participate in the recruitment process.
- Recommending the adjustment(s) that is most appropriate for both the applicant and the VLSB+C. Though the applicant's preference will be considered, the VLSB+C are free to choose among equally effective options.
- Considering whether the recommended adjustment constitutes an unjustifiable hardship for the VLSB+C
- On the basis of the above, making a decision as to whether the VLSB+C will supply the recommended adjustment.
- Communicating the decision to the applicant. If the request is not approved, the Group Manager Corporate Operations will inform the applicant of the decision and the reason for denial of the requested adjustment within 10 business days of the request.

**Note:** *If the request is denied on the basis that it constitutes an unjustifiable hardship for the VLSB+C, the Group Manager, Corporate Operations will seek a review of the decision from the Executive Director, Finance, Risk & Policy before notifying the applicant.*

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For a current employee (or an applicant who has received a job offer), the relevant steps taken by the Group Manager, Corporate Operations will be:

- Establishing whether the employee has disability. Here the employee may be required to provide documentary evidence about their disability and the functional limitations it involves. This evidence may be obtained from a medical practitioner, psychologist or other relevant professional.
- Accessing information about the inherent requirements of the particular job involved.
- Determining any job-relevant limitation(s) created by the employee's disability.
- Identifying possible adjustments and assessing the effectiveness of each one in enabling the employee to perform the inherent requirements of the job.
- Recommending the adjustment that is most appropriate for both the employee and the VLSB+C. Though the employee's preference will be considered, the VLSB+C are free to choose among equally effective options.
- Considering whether the recommended adjustment constitutes an unjustifiable hardship for the VLSB+C.
- On the basis of the above, making a decision as to whether the VLSB+C will supply the recommended adjustment.
- Communicating the decision to the employee. If the request is not approved, the Group Manager, Corporate Operations will inform the employee of the decision and the reason for denial of the requested adjustment within ten (10) business days of the request

Note: If the request is denied on the basis that it constitutes an unjustifiable hardship for the VLSB+C, the Group Manager, Corporate Operations will seek a review of the decision from the Executive Director, Finance, Risk & Policy before notifying the employee.

Where further supporting documentation is sought from the applicant or the employee, the grant or denial of a request for workplace adjustment will be made within 10 business days from the receipt of the appropriate documentation.

Application and interview timeframes will be extended to accommodate delays due to the processing and implementation of requests for workplace adjustments.

**8.3 Consultation with experts**

Where further evaluation is required to reach an informed decision about the adjustment request of an applicant or employee, the Group Manager, Corporate Operations will obtain additional information from, and/or liaise with, the following (as appropriate, and with the consent of the applicant or employee):

- the employee's manager;
- the VLSB+C Workplace Health and Safety Committee;
- a medical practitioner;
- an occupational therapist or other allied health provider;
- disability service provider;
- IT specialists.

**8.4 Implementing Adjustments**

Where an adjustment will be provided, the Group Manager, Corporate Operations, will arrange the provision or implementation of the adjustment.

Once a decision to implement a workplace adjustment for an employee has been made, the Group Manager, Corporate Operations will discuss the implementation of the adjustment with the employee and the employee's manager before arranging for implementation of the adjustment.

Where the provision or implementation of a workplace adjustment will take longer than 10 business days, the steps taken to order, secure or carry out the adjustment will be documented and discussed with the applicant or employee.

Where the adjustment involves rehabilitation due to an extended absence from work, the Human Resources Business Partner will design an appropriate return to work plan.

Where alterations are required to buildings or facilities, the Group Manager, Corporate Operations will negotiate with relevant personnel to carry out the alterations. A record of alterations should be held on the workplace adjustment file.

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8.5 **Monitoring Adjustments**

The Group Manager, Corporate Operations will check with the employee and manager to assess the appropriateness and effectiveness of the implemented adjustment approximately four weeks from the date the adjustment process was concluded. The results of this action should be documented in the workplace adjustment file.

If no further follow-up or monitoring is required, the Group Manager, Corporate Operations will close the workplace adjustment file.

Otherwise, monitoring will continue according to an appropriate schedule. The Group Manager, Corporate Operations has responsibility for evaluating, monitoring and reporting on the workplace adjustment process.

8.6 **Appeals**

An employee who has had a request denied on the basis that it constitutes an unjustifiable hardship for the VLSB+C may appeal to the Commissioner for a review of the decision within 10 business days of receiving notification of the decision.

**Examples of workplace adjustments**

9.1 **Recruitment**

Examples of workplace adjustments during recruitment may include:

- Making all materials related to the recruitment process (including position descriptions, selection criteria, application forms) available in preferred formats on request.
- Agreeing to the presence of readers, attendants or other assistants during interviews.

9.2 **Job Re-design/sharing**

*Job re-design* includes any changes in working conditions (e.g. scheduling, work environment, team culture) that improves the employee's ability to do the job and may include:

- Allowing time off for counselling or other medical appointments (e.g. rehabilitation, assessment or treatment).
- Allowing home-based work.
- Allowing longer breaks.
- Exchanging one task in a job for another (e.g. exchanging telephone duties with filing duties for a hearing impaired person).
- Modifying performance agreement expectations.

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*Job sharing* involves two or more people sharing responsibilities for the same job, examples include:

- Allocating some of the employee's duties to another person.
- Having two people share a full-time job, for example, by having one person work Monday and Tuesday and the other work Wednesday, Thursday, and Friday.

9.3 **Co-worker supports**

- Training for co-workers as required.
- Recognition of co-worker support impact on performance expectations.

9.4 **Workplace modifications**

Workplace modifications may include:

- Improving physical accessibility:
  - Installing floor coverings, matting, carpet mats, and removing cords on floors or hanging plants.
  - Positioning an individual's workstation in an appropriate area that best meets their needs (e.g., nearer to rest rooms or behind sound reduction barriers).
  - Lowering control panels and emergency buttons/phones in lifts.
- Modifying work-site temperatures:
  - Providing work areas with temperature control.
  - Temporary air conditioners, fans, heaters or proper ventilation and redirecting vents.
- Providing ergonomic devices:
  - Specific seating (office chair, prop seats etc.), headsets, footstools backrests or cushions.
  - Computer monitor risers and document stands and ergonomic arms, ports or tilt-boards.
- Installing sound reducing devices, particularly for individuals with mental health issues, stress issues and hearing impairments:
  - Environmental sound machines - help block out extraneous noises that are often found to be distracting. They can reduce stress in the work environment.
  - Sound absorption panels.

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- Modifying lighting for eye sensitivity:
  - Anti-glare filters for computer screens to relieve eyestrain, fatigue, headaches and stress.
  - Place blinds on windows, flicker free lighting, full spectrum lighting, light filters for covering fluorescent lighting, lower wattage overhead lights, task lighting or other alternative lighting.
- Installing indoor air cleaning systems to remove allergens and pollutants.
- Providing time management and organisational devices:
  - Day planner, calendar, electronic organisers, and multi-set alarm wristwatch that beeps or vibrates.
  - Written instructions and checklists, voice-activated tape recorder for verbal instructions or instructional diagrams for office equipment.
- Changes to make work safer for all employees:
  - Safer manual handling practices.
  - Substitutes for manual handling.
- General training for co-workers or supervisors.
- Specific training and support for an employee with disability.
- Providing of additional equipment or facilities:
  - Providing TTY telephones.
  - Providing large screen computer monitors and/or keyboards.
  - Using tape recorders instead of memo pads to take and leave messages for the sight impaired.
- Provision of raised wooden platforms to photocopiers/fax/printers etc. for people of small stature.
- Provision of interpreters, readers, attendants or other work related assistance.
- Modifications to work related communications or information provision, including the form or format in which information is available.
- Permitting or facilitating a person to use equipment or assistance provided by the person with disability or by another person or organisation.
- Arranging temporary light duties: Duties can be temporarily altered to suit individuals who have a temporary mobility problem such as a broken leg or arm. Temporary changes can be made to duties whilst awaiting delivery of equipment, such as a TTY machine for the hearing impaired.

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	9.5	<p><b>Documentation</b></p> <p>At all times, the individual(s) responsible for processing a request for workplace adjustment or implementing a workplace adjustment will respect the privacy of the applicant or employee who has requested the adjustment. Any information collected must be done so in accordance with the <i>Privacy and Data Protection Act 2014</i>.</p>
<b>Authorisation</b>	10.1	This policy is issued under the authority of the VLSB+C and is subject to review every three years or sooner if recommended by the VLSB & VLSC Audit Committees in response to the practical application of the policy.
<b>Contacts for further information</b>	11.1	<p>Workplace adjustments are often specific to the individual. An employee who is unsure about a possible adjustments or the application of this policy, should ask their manager or the Group Manager, Corporate Operations for advice.</p> <p>Other related policies including the following:</p> <ul style="list-style-type: none"> <li>• VLSB+C Human Resources Policies &amp; Processes Handbook</li> <li>• Code of Conduct for Victorian Public Sector Employees</li> </ul>