

PROVINCIAL GOVERNMENT WESTERN CAPE
TRANSVERSAL HUMAN RESOURCE MANAGEMENT POLICY DOCUMENT



PROVINCIAL GOVERNMENT WESTERN CAPE:

**POLICY STATEMENT ON THE MANAGEMENT OF THE EMPLOYMENT,
DEVELOPMENT AND CAREER PROGRESSION OF PEOPLE WITH
DISABILITIES IN THE PROVINCIAL GOVERNMENT WESTERN CAPE**

Adopted by Co-ordinating Chamber of the PSCBC for the Western Cape Province on 30 September 2004

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POLICY STATEMENT ON THE MANAGEMENT OF THE EMPLOYMENT, DEVELOPMENT AND CAREER PROGRESSION OF PEOPLE WITH DISABILITIES IN THE PROVINCIAL GOVERNMENT WESTERN CAPE

1. Preamble

The Employment Equity Act, No 55, 1998 constitutes one of the key legislative and policy interventions within the ethos of South Africa's new Constitution, giving effect to the removal of policies that resulted in inequalities within the country. Specific emphasis is placed on ensuring equity, the right to equal protection and benefit of the law, *inter alia*, by people with disabilities.

The Code of Good Practice on the Employment of People with Disabilities was promulgated in the Government Gazette during 2002. This forms part of a broader agenda towards equality for people with disabilities to have their rights recognised in the labour market. The Code is supported by the Technical Assistance Guidelines on the Employment of People with Disabilities.

People with Disabilities experience high levels of unemployment, often remain in low-status jobs and are often excluded from training and development exercises. Where opportunities and reasonable accommodation are provided, people with disabilities have proved that they can contribute valuable skills and abilities to every workplace, and contribute to the economy. The management of disability should be seen from a human rights and developmental perspective and that it is not merely a health or welfare issue.

This policy statement has an **internal focus** only, being directed at the employment of people with disabilities in departments of the Provincial Government Western Cape (PGWC) and must be read in conjunction with the Policy Framework on Affirmative Action within the PGWC. This policy statement also advocates that the allocation of resources be made mandatory, to ensure that people with disabilities have equal opportunities for participation in the workplace.

2. Policy Issue

General policy statement on the employment of people with disabilities in the PGWC identifying concomitant responsibilities of the PGWC as employer.

3. Legal Mandate

This policy statement draws its legal and general mandate from the following legislation, legal principles, relevant workplace policies, and collective agreements, as amended from time to time, including but not limited to the following:

- Constitution of the Republic of South Africa, 1996
- Constitution of the Western Cape, 1997
- Labour Relations Act, 1998, as amended
- Employment Equity Act, 1998

- International Labour Organisation Convention (111) [undersigned by South Africa]
- Promotion of Equality and Prevention of Unfair Discrimination Act, 2000
- Public Service Act, 1994, as amended (applicable to Public Service Act personnel)
- Public Service Regulations, 2001, as amended (applicable to Public Service Act personnel)
- Employment of Educators Act, 1998, as amended (applicable to CS Educators)
- Personnel Administration Measures (applicable to CS Educators)
- Skills Development Act, 1998
- South African Qualifications Authority Act, 1995
- Basic Conditions of Employment Act, 1997, as amended
- Occupational Health and Safety Act, 1993
- Promotion of Administrative Justice Act, 2000
- Public Finance Management Act (PFMA), 1999
- Treasury Regulations for Departments, Constitutional Institutions, and Public Entities, 2001
- Compensation for Occupational Injuries and Diseases Amendment Act, 1997
- Building Standards Act, 1977
- National Building Regulations and SABS 0400 Code of Practice
- By-law relating to Community Fire Safety, Western Cape Gazette (5832), 2002
- Public Service Co-ordinating Bargaining Council Resolutions 10/99 and 12/99
- Provincial Collective Agreement P1/2000 (SPMS)
- Various Collective Agreements at National and Provincial level
- Code of Good Practice on the Employment of People with Disabilities, 2002
- Technical Assistance Guidelines on the Employment of People with Disabilities, 2003
- Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans, 1999
- Integrated Provincial Disability Strategy (IPDS), Western Cape, 2001
- White Paper on the Transformation of the Public Service, 1997¹
- White Paper on Transforming Service Delivery (Batho Pele), 1997¹
- White Paper on Human Resource Management in the Public Service, 1997¹
- White Paper on Affirmative Action in the Public Service, 1998¹.
- White Paper on Public Service Training and Development, 1998¹
- White Paper on Integrated National Disability Strategy, 2001¹
- Towards the 21st Century Public Works White Paper¹
- Transport White Paper¹
- White Paper on Sports and Recreation¹

4. Implementation of the Integrated Provincial Disability Strategy

The Integrated Provincial Disability Strategy (IPDS) for the PGWC was approved by the Provincial Cabinet on 8 May 2002 and forms the basis for co-ordinated approaches and actions towards achieving total equality of opportunities for people with disabilities within the entire Western Cape. This strategy has both an *external and internal* focus that places disability on the main agenda of all departments in the PGWC, with an own budget allocation and timeframes in line with the IPDS. This implies the integration of disability issues within all government development strategies, planning and programmes, including participation in decision-making at the highest levels.

¹ White papers have no legal status, but serve as broad policy background and assist in an understanding of the vision of the new management framework. They become mandatory when included as prescripts in legislation/regulations.

The Policy Statement on the Management of the Employment, Development and Career Progression of People with disabilities within the PGWC will rely on the IPDS regarding the *internal aspects* relating to the employment of people with disabilities, and the support and interaction required with external partners in support of said employees within the PGWC.

5. Policy Objectives

The objectives of this policy statement are to ensure that:

- 5.1. appropriate measures are in place to prevent and eradicate unfair discrimination practices and employment barriers regarding the employment of people with disabilities in the PGWC and to promote, amongst employees, awareness, understanding, and acceptance of both people with and without disabilities on an equal basis, through the promotion of mutual respect, dignity and worth, based solely on ability and promoting a safe and healthy workplace for all its employees;
- 5.2. appropriate provision is made to provide reasonable accommodation and support for the needs and advancement of people with disabilities, so as to ensure that they enjoy equal opportunities and are equitably represented in the workforce of the PGWC at all levels, including management;
- 5.3. appropriate provision is made for an integrated internally focused management system for the co-ordination of disability equity planning, implementation and transversal monitoring across departments and at the various line functions within all spheres of individual departments;
- 5.4. appropriate capacity-building strategies are provided for people with disabilities employed within the PGWC (including provision of bursaries, ABET programmes or internships for possible future employees), in order to enhance their potential, ability and skills at all levels and functions of the PGWC; and
- 5.5. job retention of employees, who acquire a disability whilst employed within the PGWC, is facilitated.

6. Policy Principles

The following principles will underpin the approach to manage the employment of people with disabilities within the PGWC:

- Accountability and cost effectiveness.
- Communication and access to information.
- Equality.
- Fairness and respect.
- Human Dignity and adherence to Human Rights.
- Integrated, barrier-free access.
- Integration of disability equity into departmental developmental strategies, planning and programmes.
- Integration with Human Resource Management and Development.

- Participation and mainstreaming disability issues in policies and programmes.
- Productivity and improved service delivery.
- Transparency.

7. Policy Statement

To enable departments to implement strategies to ensure disability equity and equality by addressing the representation of people with disabilities at all levels in the workforce of the PGWC and to implement appropriate measures towards the balanced employment, training and promotion of employees from this group, without prejudice.

8. Implementation

8.1 SCOPE OF APPLICATION

The provisions of this policy statement are applicable to all departments of the PGWC as employer and all staff of said departments.

8.2 ALIGNMENT WITH OTHER POLICY FRAMEWORKS

This policy statement should be aligned to and complement other employment equity and skills development frameworks and departmental plans, *inter alia*:

- Affirmative Action Framework(s)/plans and programmes.
- Employment Equity Plans.
- Framework on the Management of Incapacity.
- Human Resource Management Plans.
- Leave Policy with specific reference to special leave and incapacity leave.
- Skills Development Frameworks/Plans (fast tracking, mentoring, etc.).
- Staff Performance Management System (SPMS) and Performance Management and Development System for Senior Management Service (PMDS).
- Transversal Policy on HIV and Aids in the Provincial Government: Western Cape.

8.3 DEFINITIONS AND TERMINOLOGY

A list of definitions and terminology is attached as Annexure A. This forms an integral part of this policy statement with specific reference to the definition of Person with a Disability. A list of preferred language terminology is attached as Annexure B.

8.4 RESPONSIBILITIES AND ROLES

Various stakeholders are responsible for fulfilling roles regarding the implementation, development and advocacy of issues relating to the employment, development and career progression of people with disabilities in the PGWC.

Stakeholders are listed below and their respective roles are discussed in more detail in Annexure C, which forms an integral part of this policy statement.

8.4.1 State institutions supporting constitutional democracy and administration.

8.4.2 Strategic and transversal level within the PGWC:

- a. Premier and Cabinet.
- b. Cabinet Cluster System.
- c. Director-General.
- d. Provincial Top Management (PTM).
- e. Directorate Human Rights Programmes (Provincial Office on the Status of Disabled Persons).
- f. Corporate Services:
Directorate: Personnel Management (Chief Directorate Human Resource Management).
Directorate Labour Relations (Chief Directorate Human Resource Management).
Cape Administrative Academy (Chief Directorate: Provincial Training).
Directorate: Organisation Development (Chief Directorate: Operational Support).
Directorate: Support Services (Chief Directorate: Operational Support)
- g. Information and Communication Technology (ICT) and related fields.
- h. Health Risk Manager (Incapacity Management).

8.4.3 Departmental level:

- a. Provincial Ministers and Heads of Department (HoD).
- b. Chief Financial Officers (CFO).
- c. Employment Equity Managers.
- d. Employment Equity Consultative Forum.
- e. Disability Focal Persons.
- f. Skills Development Facilitator (SDF).
- g. Internal Training Sections.
- h. Human Resource Manager (HR Manager).
- i. Labour Relations Manager.
- j. Line Manager/Supervisor.
- k. Occupational Health and Safety Co-ordinator.
- l. Employees.
- m. Employee Organisations (Labour Unions).

8.4.4 Other provincial departments as service providers:

- a. Department of Cultural Affairs and Sport.
- b. Department of Social Services and Poverty Alleviation and Department of Health.
- c. Department of Transport and Public Works.
- d. Department of Education.
- e. Provincial Treasury.

8.4.5 External stakeholders.

8.5 PREVALENCE AND DISTRIBUTION OF PEOPLE WITH DISABILITIES IN THE WESTERN CAPE PROVINCE

Annexure D reflects the prevalence and distribution of people with disabilities in the Western Cape Province, whilst Annexure E indicates the current distribution of people with disabilities within departments of the PGWC. Annexure F contains an extract from the Report on Disability Equity in the South African Public Service (February 2002) and is included as additional and supporting information to this policy statement.

8.6 RECRUITMENT AND EMPLOYMENT

The PGWC recognises the principle that people with disabilities must be empowered to exercise their human rights, particularly in the field of employment. Reasonable accommodation, where applicable, will be provided and the CAP recognises that the only way to justify discrimination against a person with disabilities is on the basis of an inherent job requirement.

Recruitment, selection and advertising practices within the PGWC will, at all times, be aligned to employment practices that take cognisance of fairness and reasonableness, are non-discriminatory and free from 'subtle forms' of marginalising practices. Recruitment and selection methods will be sensitive to the specific requirements of gender and disabilities.

8.6.1 Employment equity plans

(Annexure G reflects a checklist of issues identified to establish whether or not a department is in compliance with key employment equity and skills development issues)

- a. Individual Departments within the Administration are committed to comply with a minimum target of 2% of the department's staff complement to consist of people with disabilities by the end of 2005 (national target and legislative requirement). Any future change to the nationally required target or target period, and future inclusions to EE Plans that may exceed the current 2% target, are to be read as automatically included in this document.
- b. All employees with disabilities in the PGWC are to be correctly identified in terms of the definition of 'person with a disability' and accordingly recorded on the PERSAL system as the database for EE Plans and targets.
- c. EE Plans and reports in this regard will reflect the correct data, as recruitment is to be conducted in terms thereof.

8.6.2 Inherent job requirements

- a. All posts are regarded as suitable for the employment of people with disabilities, having due regard to reasonable accommodation (paragraphs 8.6 and 8.11), unless inherent job requirements exclude people with disabilities or specific disabilities.
- b. In respect of the policies regarding recruitment and selection, the inherent requirements and essential functions of the vacant position are to be identified and the required skills and capabilities of the job are to be clearly described.
- c. It is not unfair to discriminate, distinguish, exclude or prefer any person on the basis of an inherent requirement of a post. This may be appropriate when certain physical requirements of a job make it necessary for employees to have certain physical characteristics and applies to essential job duties (i.e. where physiological differences may result in occupational hazards, or unjustifiable hardships, etc).
- d. The Line Manager, OH&S Co-ordinators and Organisation Development Specialist (Job analyst) will address issues of inherent job requirements and redesign of jobs (where applicable), to ensure that people with disabilities have access to all posts or classes of posts unless fair discrimination can be justified.
- e. The Directorate: Organisation Development (Corporate Services) will ensure that posts or post classes that preclude classification as 'open or closed' to people with a broad range of disabilities are identified and will advise departments in this regard.
- f. The personal preferences of co-workers, supervisors, clients or customers will not be regarded as valid inherent job requirements.

8.6.3 Recruitment advertising

a. Recruitment advertising is done in line with the policies on recruitment and selection in the PGWC. Additional to the general guidelines on recruitment, the following practical guidelines are, *inter alia*, applicable:

- Post advertisements will be linked to the target group in terms of the Departmental EE plan and will be placed in those media that attract the targeted group in terms of the EE plans/affirmative action plans.
- Advertising will be disability sensitive; e.g. where applicable, ensure that the logo/insignia (disability sign) is shown on the advertisement.
- Advertisements should be accessible to people with disabilities and where practicable, circulated to organisations that represent the interests of people with disabilities, including e-recruitment, placement in disability magazines and headhunting (skills searching) via agencies specialising in the recruitment and placement of people with disabilities.
- Notices and advertisements will be provided, on request and if reasonable and practicable, in a format appropriate to people with disabilities.
- Where necessary, **special measures** (affirmative action) will be applied to attract people with physical and/or non-physical disabilities, either exclusively or in general, for employment in departments, in order to achieve the constitutional goal of representivity in public administration and therefore in the PGWC.

b. Departments will:

- ensure that people with disabilities are actively encouraged to seek employment within the full spectrum of posts in the PGWC departments, unless the specific inherent post requirements prohibit people with specified disabilities from executing the job;
- make reasonable accommodation for people with disabilities, both in terms of infrastructure and job requirement, in order to ensure that they enjoy equal opportunities and are equitably represented within the PGWC;
- supply detailed information, *inter alia*, in profiles and job advertisements to people with disabilities applying for posts/appointment within the PGWC, in a readily accessible communication medium;
- provide the necessary education and training to employees of the PGWC and specifically human resource practitioners, and those in training and other related fields, regarding the rights and special needs of people with disabilities;
- develop creative recruitment and selection systems to ensure maximum inclusion and benefits (e.g. development or outsourcing of a database of job-seeking people with disabilities, that will assist human resources personnel in the attainment of targets); and
- forge partnerships with professional organisations/bodies/forums that can assist with 'head-hunting' of competent staff and/or the placement of learnerships/internships.

[Additional information on advertising procedures is reflected in Annexure H.]

8.6.4 Selection processes and interviews

a. General selection processes are directed by the policies on recruitment and selection. The following additional/general principles will apply during staffing processes:

- All selection criteria in the PGWC will be reviewed to ensure that inappropriate barriers that tend to exclude people with disabilities are removed.
- Recruitment and selection tools (assessment instruments) will be culturally fair; non-discriminatory in its terminology; make provision for the discrepancies in academic background of our society; and focus on intrinsic factors relating to the potential of the incumbent to meet the required KRAs of the post.
- Selection processes will be carefully documented to ensure that the employer is in a position to prove that no discrimination took place against applicants with disabilities.
- When assessing whether an applicant is suitably qualified or during reference checking, no information on an actual or perceived disability may be requested from a previous employer or third party, unless this is done with the written consent of the applicant.
- Selection interviews will be objective, unbiased and sensitive towards the needs of people with disabilities. Interviewers will avoid assumptions about people with disabilities. Additional information on selection procedures is reflected in Annexure H.
- Recruitment and selection panels will, where possible, include people with disabilities in the recruiting, selection and staffing processes in order to ensure representivity.

b. Selection of people with disabilities may be conducted in one of the following ways:

‘Normal selection processes’:

[Selection not based on affirmative action processes and favourable consideration on the grounds of a disability]

- The purpose of selection is to assess whether or not an applicant is suitably qualified (Employment Equity Act, section 20(3)). The same criteria as applied to other applicants will apply when assessing the ability of people with disabilities, although it may be deemed necessary during the interview to accommodate applicants who have disabilities.
- This may require the following two-stage process should an applicant have a disability.
 - Determine whether an applicant is suitably qualified.
 - Determine whether a ‘suitably qualified applicant’ requires any special accommodation to be able to perform the inherent requirements or essential functions of the applicable job.
- Applicants with self-evident or disclosed disabilities will be given the opportunity to provide, in advance, information on their requirements for reasonable accommodation during the interview.
- Interviewers should ask applicants (who have disclosed a disability or have a self-evident disability) to indicate how they would perform the essential functions of the post and if accommodation is required. During this process the focus will be on identifying whether the person meets the inherent requirements of the job. No further detailed discussion of the need or cost for reasonable accommodation should take place during the pre-selection phase of an interview.

- After concluding the recruitment phase, and should the person (with disabilities) be selected, the next step may be to make a conditional job offer to the selected candidate (paragraph 8.6.5).
- Only once the conditional job offer (conditional on medical and/or functional testing to determine the applicant's actual potential to perform the essential functions of a specific post) has been made, may a discussion follow on how her/his disability substantially limits the performance of the essential functions of the job and what reasonable accommodation is necessary. The conditional job offer should indicate that the employer may withdraw the offer should the employer's needs in terms of medical and/or functional testing not be met.
- Should reasonable accommodation be discussed before the job offer is made, and in any other detail than what is indicated above, it may be difficult to prove that there was no discrimination on the basis of disability. More specifically, if an employer discusses with a potential employee her/his accommodation requirements before a conditional job offer is made and the offer is then withdrawn, the withdrawal may be seen to relate to the employer's possible reluctance to provide reasonable accommodation. The Courts could regard such reluctance as discrimination on the basis of the person's disability.

Affirmative action recruitment (specifically targeted interventions):

[Selection based on Affirmative Action processes/strategies (as underpinned by their EE plan) and favourable consideration on the grounds of a disability]

- Individual departments will have an affirmative action programme (not only a policy), as provided for in their EE Plan, and through which affirmative action of this designated group is to be effected. This will be designed on the basis of objective criteria, and only on this basis can a specific post be 'earmarked' exclusively for filling by a candidate that will promote representivity of people with disabilities.
- Transversal projects/strategies/interventions may also be launched in consultation with individual departments.
- Under the objectives of such an exclusively targeted affirmative action plan directed at people with disabilities, only people with disabilities will be short listed for the selection process to the earmarked post, as advertised.

The general information under paragraph 8.6.4 (a) and (b) is also applicable to these affirmative action selection processes, with the distinct difference that the disability, in this instance, must always be disclosed during the recruitment phase and the selection be based on favourable consideration on the grounds of a disability.

Selection based on Employment Equity plans:

[Selection based on an EE plans and favourable consideration on the grounds of representivity of all target groups, including people with disabilities]

- Individual departments may advertise posts indicating that the department supports the principles of employment equity and shall have an EE Plan that addresses the selection of people who represent the three target groups (females, black people and people with disabilities).
- EE Plans will also include 'disability-friendly recruitment and selection' as one of the objectives, in order to promote representivity of people with disabilities.

- Once again, the general information under paragraph 8.6.4 (a) and (b) is also applicable to these employment equity selection processes.
- The purpose of selection is to assess whether or not an applicant is suitably qualified and the same criteria as applied to other applicants will apply when assessing the ability of people with disabilities, although it may be deemed necessary during the interview to accommodate applicants who have disabilities.
- Favourable consideration, in this case, is not exclusively reserved for people with disabilities, but the department may consider the objectives as stated in the EE Plan in order to ensure representivity for people with disabilities.

8.6.5 Conditional job offers subject to medical or functional testing

- a. Should an applicant with a disability be suitably qualified, a conditional job offer subject to medical or functional testing may be made. Medical testing will comply with the statutory requirements as listed in paragraph 8.6.6 and be consistent with measuring whether the applicant is able to perform the essential functions of a specific job, with or without reasonable accommodation.
- b. The purpose of medical testing is not to assess the medical condition or the nature of the disability.
- c. Functional testing will be done against the inherent job requirements of the specific post.
- d. Should the testing show that accommodation requirements would create unjustifiable hardship or that there is an objective justification that relates to the inherent requirements of the job or to health and safety, the job offer may be withdrawn.

8.6.6 Medical and psychometric testing

Section 7 of the Employment Equity Act, 1998, prohibits the medical testing of an employee unless legislation requires or permits the testing, or the testing is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employees benefits or the inherent requirements of a job.

- a. Medical testing
 - i. Tests will be relevant and appropriate to the kind of work and the necessary fitness criteria for the job, the workplace and its hazards.
 - ii. Tests will be established in such a way that they do not unfairly exclude people with disabilities, and are not biased in how or when they are applied, assessed or interpreted.
 - iii. Tests to establish the health of an applicant or employee must be distinguished from tests that assess the ability to perform essential job functions or duties.
 - iv. Health testing should therefore only be carried out after it has been established that the person is in fact competent to perform the essential job functions or duties.
 - v. Should a person be required to undergo any medical, health screening or safety test, then the PGWC department as the employer must bear the costs of the test(s).
- b. Testing after illness or injury
 - i. Should an employee have been ill or injured and it appears that the employee is not able to perform the inherent job requirements, the employee may then be required to agree to a functional determination of disability.

- ii. Such medical or other appropriate test shall be to assess whether the employee can safely perform the job and identify possible reasonable accommodation for the employee.
- c. Health screening and safety
- i. The PGWC is obliged to provide and maintain a working environment that is safe and without risk to the health of employees (section 8(1) of the Occupational Health and Safety Act No 85 of 1993).
 - ii. A person will not be employed if it can be demonstrated that the person with a disability would represent an actual direct risk of substantial harm to her/his own or other people's safety that can not be eliminated or reduced by applicable reasonable accommodation.
 - iii. The PGWC may, or need not, retain an employee with a disability or may withdraw a conditional job offer, should any objective assessment show that even with reasonable accommodation, the work would nevertheless still expose the applicable employee or others to substantial health risk and that there is no reasonable accommodation available to mitigate that risk.
- d. Psychometric testing
- i. Psychometric and other similar assessments of employees are prohibited unless the test or assessment has been scientifically shown to be valid and reliable, it can be applied fairly to all employees and that the test or assessment is not biased against any employee or group of employees.
 - ii. Applicants for employment are also protected. This means that psychometric testing can only be applied as part of a selection process if that test complies with the requirements as set out in par 50(a) 1 (section 8) of the Employment Equity Act.

8.6.7 Terms and conditions of employment

People with disabilities will not be employed on less favourable terms and conditions for reasons connected with the disability.

- a. Placement
- i. Placement involves the orientation and initial training of a new employee. New employees with disabilities will be treated equally to employees who do not have disabilities, subject to the aspects of reasonable accommodation.
 - ii. Induction, orientation, initial training, as well as mentoring, will be accessible, responsive and accommodate the needs of employees who have disabilities.
- b. Retaining people with disabilities
- i. Employees who become disabled during employment will, where practicable, be re-integrated into work (Schedule 8 of the Labour Relations Act 66 of 1995).
 - ii. Should an employee be, or become disabled, contact with the employee during the period of absence from work is encouraged. Where practicable, early return-to-work will be facilitated by accommodating the disability/addressing possible handicaps in the environment.

- iii. Should an employee be frequently absent from work for reasons of illness or injury, the employee will be consulted to assess if the cause of the illness or injury is a disability that requires accommodation (incapacity procedures).
 - iv. If practicable, alternative work with reduced or flexible work placement will be offered, so that employees are not compelled nor encouraged to apply for benefits should they, with reasonable accommodation, be able to continue in employment and thus contribute to the retention of valuable skills for the employer.
- c. Termination of employment

In accordance with the termination of employment, the conditions of the Labour Relations Act, 1995, with specific reference to Schedule 8 (Code of Good Practice: Dismissal), Public Service Co-ordinating Bargaining Council Resolution 10/99 (Incapacity) and 12/99 (Ill health) (or any consecutive Collective Agreement at national, sectoral or provincial level) dealing with incapacity, shall be adhered to in the following manner:

- i. Should an employee become disabled, the employee will be consulted to assess if the disability can be reasonably accommodated.
- ii. If not, the employee will be consulted to explore the possibility of alternative employment appropriate to the employee's capacity.
- iii. Should the employee be unable to be accommodated or should there be no appropriate alternative employment, the employment relationship may be terminated.
- iv. When employees with disabilities are dismissed for organisational requirements, it will be ensured that any selection criteria (to identify a possible target group) do not directly or indirectly unfairly discriminate against people with disabilities.

8.7 CONFIDENTIALITY AND DISCLOSURE OF DISABILITY

Departments of the PGWC (including health and medical services personnel) may gather private information relating to employees only if it is necessary to achieve a legitimate purpose. The following rules and guiding principles will apply:

- 8.7.1. The confidentiality of information that has been disclosed will be protected. Records of private information relating to the disability of applicants and employees will be kept confidential and separate from general personnel records.
- 8.7.2. When the information is no longer required (i.e. to ensure the implementation of non-discrimination and affirmative action measures) it would be returned to the employee or be destroyed or rendered anonymous, as appropriate.
- 8.7.3. Any information relating to a person's disability may not be disclosed without the written consent of the person concerned.
- 8.7.4. People with disabilities are entitled to keep their disability status confidential. However, should the PGWC not be aware of the disability or the need to be accommodated, the PGWC is not obliged to provide for this.
- 8.7.5. Should the disability not be self-evident, it may be required that the employee disclose sufficient information to confirm the disability or the accommodation needs.
- 8.7.6. Should the employer dispute an employee's status as a person with disabilities, or that she/he requires reasonable accommodation, the HoD is entitled to request the employee to

undergo a functional assessment of a specific job-related disability, at the expense of the employer.

- 8.7.7. As information about a disability may be technical, employers will ensure that a competent person interprets the information. Competent vocational and occupational personnel with expertise, from within or outside the PGWC, will be used to obtain the required information.
- 8.7.8. Should further information be required, such information will be relevant to a specific job and its essential functions.
- 8.7.9. Should accommodating the employee require the co-operation of other employees, it may be necessary to reveal the fact of a person's disability if it is not otherwise obvious, to some of the person's colleagues, particularly a supervisor or manager.
- 8.7.10. The employer may, after consulting the person with the disability, advise relevant staff that the employee requires reasonable accommodation, without disclosing the nature of the disability, unless this is required for the health or safety of the person with the disability or other people.

8.8 HUMAN RESOURCE DEVELOPMENT

The majority of people with disabilities have, historically, been excluded from mainstream education and thus prevented from accessing their fundamental rights in society. The effects of continued marginalisation and rejection in places of learning over long periods often impact on the level of productivity, skills, motivation and socialisation of applicants and employees who are people with disabilities.

Human Resource Development (HRD) and Human Resource Management (HRM) are vital to the success of the affirmation of people with disabilities in the PGWC. The management and development of human resources is also central to the success of employment practices. Training for people with disabilities will be accelerated to improve their skills base and increase their competency in the workplace.

Assisted by the Chief Directorate: Provincial Training and other training institutions/role-players in the PGWC departments will:

- 8.8.1. Facilitate equal access to training and development opportunities through its training institutions. The inclusion of a *minimum* learner target of 2% in all training opportunities in the PGWC must be ensured in order to accommodate nominees from this target group (unless no nominations are received). Skills Development Facilitators must ensure that all requirements for training of this target group are included in the workplace skills plan.
- 8.8.2. Training and development equity for people with disabilities implies the availability of additional support mechanisms within an inclusive learning and training environment, which will be based on the specific needs of the individual person with disabilities. This entails the following:
 - Appropriate technology, training tools, materials, processes, interpreter services and sign language instruction.
 - Flexible curricula, respect and understanding of diversity and human rights, equipped teachers and a barrier-free environment.
- 8.8.3. Facilitate the special needs of people with disabilities in the training environment, which include the enhancement of induction, orientation, training, mentoring and other human resource development programmes for people with disabilities. Included are the tailoring of these to individual needs, and the provision of assistive devices and specialised equipment,

where applicable. Partnerships with NGOs, Setas and service providers on the terrain of 'disability specific training' may contribute towards research in this field.

- 8.8.4. Consult with employees with disabilities, in order to develop specific career advancement programmes responsive to their needs and circumstances. Specifically targeted mentoring, coaching (and where applicable, fast tracking development in terms of approved affirmative action programmes) should be available within the line function and support training environment. A mentoring and fast-tracking framework will address this aspect as part of the transversal affirmative action interventions.
- 8.8.5. Ensure that training and the necessary resources for human resource development are made available and that line managers support participation in such programmes. Partnerships with NGOs and private service providers can also be incorporated to supply specifically targeted support regarding different disabilities, as well as learnerships to enhance skills development.
- 8.8.6. Ensure that supervisors and managers are trained to undertake their responsibilities towards the career development of their employees with disabilities and that they liaise with the relevant stakeholders to ensure that training provided relates to the competencies required for enhancing job performance.
- 8.8.7. Provide the necessary education and training to employees of the PGWC and specifically to Human Resource Functionaries, training and other related fields, concerning the rights of people with disabilities.
- 8.8.8. Ensure that bursary schemes in various departments are also available to all employees with disabilities and for studies at formal training institutions. The allocation of bursaries to students/prospective students with disabilities will also be included in policy frameworks on the allocation of bursaries.
- 8.8.9. Ensure that the training and education of people with disabilities contribute meaningfully to their career development.
- 8.8.10. Ensure that an internship programme is available together with a mentorship programme (through the Chief Directorate: Provincial Training). These programmes will be adapted regularly to include the latest training trends and also address 'unique disability aspects' as part of the mainstream programme.
- 8.8.11. Ensure that pre- and in-service programmes are developed by line managers for the orientation and training of vocational instructors regarding disability-related matters and employees.

8.9 PERFORMANCE MANAGEMENT

The Performance Management and Development System (PMDS) for members of the Senior Management Service (SMS) and the Staff Performance Management System (SPMS) and tools utilised within the Administration will be equally applicable to people with disabilities. The same standards of productivity and performance (taking into account reasonable accommodation) apply to people with disabilities as counterparts who perform similar duties. Development needs shall be reflected in the Individual Performance and Development Plans (IPDPs) and Individual Development Plans (IDPs).

Systems and practices to assess work performance will clearly identify and fairly measure and reward performance relating to the inherent requirements or essential functions of the job.

8.10 PREVENTION OF DISABILITIES IN THE WORKPLACE (OCCUPATIONAL HEALTH AND SAFETY)

Occupational Health and Safety plays an integral part in:

- the prevention of disabilities;
- the management of the work environment where people with disabilities are employed (physical environment and safe evacuation and emergency processes); and
- facilitating job retention by people who acquire a disability while employed within the PGWC.

8.11 REASONABLE ACCOMMODATION AND BARRIER FREE ACCESS

Aligned with the Legislative Framework, the affirmation of people with disabilities will eradicate the disadvantages caused by past discriminatory practices and enable them to benefit on a fair basis from the opportunities that an equitable PGWC offers them. The PGWC will, subject to available funding, offer an environment that is free of barriers to maximise access and eliminate prejudice and stereotypes in its practice and policies. The following applies:

a. The affirmation of people with disabilities²

To improve the status of people with disabilities within the PGWC it is critical to increase their representation overall and particularly at management levels, and to provide them with a range of employment opportunities aimed at meeting different needs and offering real possibilities for occupational choice, taking into consideration the aspect of an inherent job requirement.

The PGWC will:

- Provide development opportunities and appropriate resources for training, as reflected in paragraph 8.8 of this policy statement, unless the employer can prove unjustifiable hardship in terms of its core functions.
- Strive towards having 2% of the staff complement consisting of people with disabilities as minimum baseline. This will be measured against the Affirmative Action Principles and Employment Equity Plans (EEP) approved for individual departments (see paragraph 8.6.1).
- Develop specifically targeted recruitment and affirmative action programmes and projects to address the inlet for people with disabilities recruited from outside, as well as address the affirmation of people with disabilities who are already employees of the PGWC towards true representivity and participative management.
- Give specific attention to employees working in the personnel and recruitment environment of the PGWC to ensure that they understand the options available in the placement and promotion of job seekers and employees who are people with disabilities.

b. Reasonable accommodation for people with disabilities

The aim of reasonable accommodation is to reduce the impact of the impairment on the person's capacity to fulfil the essential functions of a job, through providing assistive devices and resources and where applicable, adjusting working times and leave, and changing training and assessment materials and systems.

² The processes and procedures reflected in the Management Framework on Affirmative Action within the PGWC is applicable and will be read in conjunction with this policy statement.

Reasonable accommodation applies to applicants and employees with disabilities and may be required during the recruitment and staffing processes, in the working environment, in the way work is usually done, evaluated, rewarded, and in the benefits and privileges of employment. This may imply restructuring jobs so that non-essential functions are re-assigned. The obligation to make reasonable accommodation may arise when an applicant or employee voluntarily discloses a disability-related accommodation need or when such a need is reasonably self-evident to the employer.

Departments of the PGWC will also accommodate employees when work and/or the work environments change or impairments vary in a way that affects the employee's ability to perform the essential functions of the job.

The employer will consult the employee and where practicable, technical experts to establish appropriate mechanisms to accommodate the employee. The particular accommodation will depend on the individual, the impairment and its effect on the person, as well as on the job and the working environment.

Reasonable accommodation may be temporary or permanent, depending on the nature and extent of the disability.

Departments/components need not accommodate a qualified applicant or an employee with a disability if this would impose an unjustifiable hardship on core-function(s). The onus of proof, however, lies with the employer.

c. Access to the physical environment ³

Environmental scanning in terms of non-discriminatory practices, diversity management and accessibility audits of buildings will be conducted in partnership with the Department of Transport and Public Works.

- i. Departments of the PGWC shall initiate measures and programmes to remove the structural barriers in the built physical environment.
- ii. The PGWC, through the Department of Transport and Public Works, will ensure not only barrier-free access, but also an integrated universal design to allow both employees with and without disabilities (and clients) to use PGWC facilities simultaneously.
- iii. Examples of reasonable accommodation are adapting existing facilities and re-organising workstations to make them accessible; and measures aimed at designing and adapting workplaces/work premise in such a way that they become accessible to people with various disabilities.

d. Assistive devices

Departments will ensure the development and supply of support services for people with disabilities within their departments. This includes:

- Assistive devices and equipment according to the special needs and requirements based on an individual approach, to assist them to increase their level of independence in the working environment and to exercise their rights.

³ The Department of Labour has developed a Technical Manual flowing from the Code of Good Practice concerning the Employment of People with disabilities. This manual will be incorporated in departmental planning.

- Adapting existing equipment or acquiring new equipment, including computer hardware and software. Support the use of new technologies and assistive devices, tools and equipment and measures to facilitate access to such devices and equipment for people with disabilities to enable them to gain and maintain employment.
- Financial accessibility to obtain the correct devices required.
- The distribution and servicing of assistive devices and equipment and the dissemination of knowledge about them. This includes interpreter services, according to the needs of people with disabilities, as important measures to achieve the equalisation of opportunities.
- The development of a database (Logis/Finance) for the approval, allocation and location of all assistive devices issued to people with disabilities in the PGWC.

e. Transport

Accessible transport is a basic human right for people with disabilities. The lack of accessible transport is a serious barrier to the full integration of people with disabilities into the PGWC working environment. People with disabilities often face problems such as accessible public transportation to get them to work. Departments will market the available 'Dial a Ride' initiative by the Department of Transport and Public Works in partnership with the Unicity, as a support mechanism. People with disabilities should have the same opportunities to travel as their able-bodied colleagues relating to PGWC work, sport and recreation purposes. Departments in the PGWC and Managers will provide people with disabilities with accessible transport for official purposes (courses and other work-related activities). Transport policies and operational guidelines are to be developed and maintained by the applicable stakeholders.

f. Sport and recreation

People with disabilities experience the same need for sport, including competitive sport, and recreation as their non-disabled peers. Sport is one of the vital components in the integration of people with disabilities in the PGWC and employees within the workplace and is critical for the development of physical qualities, as well as for the development of self-esteem, courage and endurance of people with disabilities.

The Department of Cultural Affairs and Sport and other service providers to employees will promote the development and extension of the WCPA's sporting activities to include people with disabilities in both the mainstream and special facilities, so that they can participate in sport for both recreational and competitive purposes. Provision, however, will take place within the prescripts contained in the Public Service Act and Employment of Educators Act (and the applicable Personnel Administration Measures).

The development and familiarising of existing trainers and administrators is essential regarding aspects relating to the coaching of sportsmen/women with disabilities, as well as the training of trainers specialising in sport for people with disabilities. Sport days and other occasions will also include employees who are people with disabilities in the planning and participation on the day. PGWC sport facilities will be accessible to sportsmen/women who are people with disabilities. The PGWC will ensure not only barrier-free access, but also an integrated universal design to allow both sportsmen/women with and without disabilities to use the same facilities simultaneously.

g. Employee assistance programme(s) and support with rehabilitation

Any Employee Assistance Programme within the PGWC will be fully inclusive to people with disabilities, to ensure the early identification of employees at risk and the successful referral for assistance/interventions/rehabilitation, in order to ensure productivity.

Departments may also develop such programmes that should be based on the actual individual needs of people with disabilities and on the principles of full participation and equality. Partnerships with Non Government Organisations (NGOs) may prove fruitful in this regard. Other alternatives, i.e. learnerships via SETA's, Private institution or NGOs may also be considered.

Rehabilitation programmes providing support to employees include a wide range of activities, such as basic skills training to improve or compensate for an affected function, counselling of people with disabilities, developing self-reliance and occasional services such as assessment and guidance. The above programmes should also include measures to provide and restore functions, or compensate for the loss of absence of a function or for a functional limitation. The rehabilitation process does not involve initial medical care. This includes a wide range of measures and activities, from more basic and general rehabilitation to goal-oriented activities, for instance, vocational rehabilitation.

The employees of PGWC departments who are people with disabilities have equal access to medical and support structures within the Province. It is important to note that the costs of disability, including medication and adapting the home environment to be fully accessible, are mostly borne by the individual over and above the ordinary costs of living.

Departments will ensure that these employees are granted the opportunity to attend rehabilitation/time-off as per the Special Leave Policy to attend to the acquisition of and fitting of assistive devices, guide dog training, etc.

h. Access to information and communication

Employees with disabilities will have access to full information on diagnosis, rights and available services and programmes, at all stages. Such information will be presented in forms accessible to people with disabilities.

Strategies and programmes will be developed to make information services and documentation accessible to different groups of people with disabilities. Braille, tape services, large print and other appropriate technologies will be used to provide access to written information and documentation to employees with visual impairments. Similarly, appropriate technologies will be used to provide access to verbal information to people with auditory impairments or comprehension difficulties.

The use of Sign Language in the education and training of people with auditory impairments in the PGWC is to be encouraged and provided. Sign Language interpretation services will also be provided to facilitate the communication between Deaf people and others. Consideration will also be given to the needs of people with other communication disabilities. PGWC printed and electronic media will consider making their services accessible based on individual disability needs.

i. Data information and research

In order to assume the ultimate responsibility for the collection and dissemination of data and information on the working conditions of people with disabilities in the PGWC, comprehensive research on all aspects, including obstacles that affect the working environment and lives of people with disabilities will be done. In order to facilitate planning, implementation and monitoring on the management of disability-specific programmes and information in the PGWC, an accurate database on the PERSAL system that caters for information on employees with disabilities will have to be established.

Research programmes will be initiated in individual departments (i.e. Departments of Health, Social Services and Poverty Alleviation, Transport and Public Works, Cultural affairs and Sport, Corporate Services Branch (PAWC) and the Directorate: Human Rights Programmes, etc.) on different aspects in the working environment that may have an impact on people with disabilities. Specific attention regarding the research process needs to be given to both qualitative and participatory components in research methods to ensure that the different dimensions of disability are not ignored. Such research will also include the availability and efficiency of existing policies, plans and programmes in the PGWC and the need for the development and evaluation of services and support measures. People with disabilities will, as far as possible, be included in these processes.

8.12 PARTNERSHIPS

The PGWC is committed to form new, and sustain existing effective partnerships, with organisations for people with disabilities, non-governmental organisations, as well as the private sector, with regard to:

- General service delivery to PGWC employees with disabilities and their families as per the IPDS and in particular in the area of employment equity.
- Disability-specific training for public officials – to achieve and sustain an environment that acknowledges and responds effectively to diversity and to ensure that the skills base of people with disabilities is improved.
- Learnerships and internships that will enhance the skills base of people with disabilities in the workplace.
- Disability-specific policy and programme development.

8.13 AWARENESS RAISING AND SENSITISING

Reasonable accommodation on its own is not enough to ensure that people with disabilities can be productive and will be retained. Their fellow colleagues need to understand how to relate appropriately to their colleagues with disabilities. One of the greatest hurdles people with disabilities face when trying to access PGWC programmes and services (courses, jobs, etc.) is negative attitudes. It is these attitudes that lead to the exclusion and marginalisation of people with disabilities in the PGWC.

The changing of the prevailing attitudes of PGWC employees is not something that happens automatically or spontaneously. Attitude changing is a complex process, which involves shifting, in a series of stages, from one set of attitudes to another.

Departments of the PGWC will take action to:

- Initiate and support awareness-raising campaigns in the working environment, designed to overcome negative attitudes and prejudices concerning employees with disabilities in the workplace, their rights, their needs, their potential and their contributions. This could, *inter alia*, be done through diversity management programmes, seminars, posters, newsletters and workshops to internalise the issues.
- Ensure disability specific training for public officials – to achieve and sustain an environment that acknowledges and responds effectively to diversity.
- Ensure that responsible authorities distribute up-to-date information on available programmes and services to people with disabilities in the PGWC.

- Initiate and support information campaigns (internally and externally where applicable) concerning people with disabilities and participate in commemoration of International Day for Disabled Persons.
- Initiate and promote programmes aimed at raising the level of awareness of people with disabilities concerning their rights and potential. These programmes will empower and increase the self-reliance of people with disabilities in order for them to take advantage of the opportunities available to them.

8.14 FINANCIAL IMPLICATIONS

Departments of the PGWC will make provision for every aspect relating to the financial and budgetary requirements pertaining to the affirmation and promotion of disability equity, to ensure that policies and practices and budgeting advance the cause of people with disabilities. These financial and budgetary requirements will be cost effective and in line with the department's strategic and operational plans and available budget. Reasonable accommodation strategies and estimated costs will be specified for different disabilities.

The following types of expenditure and budgetary requirements regarding people with disabilities in the PGWC will, particularly, require close scrutiny:

- Training and development activities: To ensure that there is adequate funding for the enhancement of opportunities for people with disabilities in terms of identified needs.
- Working accommodation, facilities and equipment: To ensure that these include adequate provision for people with disabilities.

Provincial Treasury will be sensitive in budgeting processes in ensuring that departmental budgets also reflect a targeted focus on addressing employment equity (including people with disabilities).

9. Co-ordination and Reporting Structures

Co-ordination structures at national and provincial level impact on both the external and internal focus of disability management in the province. These structures are reflected in the Integrated National Disability Strategy (INDS), as well as the Integrated Provincial Disability Strategy (IPDS). The Directorate Human Rights Programmes (OSDP) plays a leading, directing and advisory role in co-ordination, evaluation and reporting on the IPDS.

This policy statement supports the availing of **internal aspects** that form part of, and are reported on, these structures. Departments are required to refer to the IPDS for the Western Cape for compliance requirements in his regard. Additional details are reflected in Annexure I to this policy statement.

The PGWC requires structures and dedicated personnel to ensure the implementation and execution of programmes and projects directed at the internal focus of this policy statement. However, the aim of these structures and the role of these individuals is not to 'segregate disability issues', but to ensure that they are mainstreamed in all processes. Structures may also accommodate the need to address matters relating to the management of incapacity/health risk management that may result in the permanent disability of employees. Additional details are reflected in Annexure J to this policy statement.

10. Grievances and Disputes

Any person who has a grievance or dispute against another within the PGWC concerning unfair discrimination on the grounds of disability, as defined in this policy statement, shall have normal recourse to the prescribed Grievance Rules and Collective Agreements, as well as any other right they have by law. Should such grievance remain unresolved, the aggrieved person may take the matter further by way of the prescribed dispute resolution mechanisms.

Any individual who registers a complaint against any other individual or group, alleging unfair discrimination on grounds of disability, shall not be prejudiced, intimidated, threatened or penalised in any way. This provision shall also apply to any witness who may be called upon to furnish information to any such and like investigations. Formal charges will be made where applicable.

When disciplinary action is initiated against a person with a disability, the manager will gather all relevant facts and factors in order to rule out unfair discrimination. Reasonable accommodation may be relevant. Complaints regarding unfair discrimination on grounds of disability will be assumed to have been made in good faith. If, however, an accusation against any person or group is found to have been made maliciously, disciplinary action will be taken against the person making a false or malicious complaint. Appropriate action shall be taken at all times by members of the management echelon of the PGWC, when allegations of unfair discrimination towards people with disabilities are brought to their attention. All allegations shall be dealt with in accordance with the prescribed procedures and channels.

11. Procedure for Non-Compliance

State institutions supporting constitutional democracy and administration at national level play a strategic guidance and monitoring role and are mandated to address issues of non-compliance. Individual departments are required to report annually, or as otherwise required by legislation/parliament, on resources spent on the affirmation and equalisation process regarding people with disabilities in the PGWC. Failure to comply will be addressed in terms of the measures as outlined in the Employment Equity Act and other legislation reflected in this policy statement.

The Director-General reports annually to the PTM (or as requested by various national and provincial stakeholders) on issues relating to the transversal monitoring of employment equity and affirmative action status in departments. The Cabinet Cluster System and PTM, as applicable, ensure co-ordination, monitoring and implementation of government policies and priorities.

Employment Equity (and Affirmative Action) responsibilities are a Key Result Area (KRA) for members of the Senior Management Service (SMS), including Heads of Department and the DG as HoD. The PMDS and SPMS place procedures for addressing non-compliance by managers. The Premier, as Career Manager for HODs is responsible for addressing any non-compliance by a HoD.

Any person who has a grievance or dispute against another within the PGWC concerning unfair discrimination on grounds of disability, as defined in this policy statement, shall have recourse to the prescribed procedures as reflected in paragraph 10 on grievances and disputes. Appropriate action shall be taken at all times by the management echelon of the PGWC when allegations of unfair discrimination towards people with disabilities are brought to their attention. All allegations shall be dealt with in accordance with the prescribed procedures and channels. Disciplinary action will be taken against the person making a false or malicious complaint.

12. Sanctions for Non-Compliance

Sanctions for non-compliance will be addressed as follows:

12.1 Heads of Department:

- Address within the ambit of the Heads of Department's Performance Agreements (Key Result Areas (KRA) and Core Management Criteria (CMC), as applicable).
- As stipulated in the Employment Equity Act.
- Ministerial Directive: Disciplinary Code and Procedure for SMS, as applicable.

12.2 Senior Management Service:

- Address within the ambit of Performance Agreements (KRAs and CMCs, as applicable).
- Ministerial Directive: Disciplinary Code and Procedure for SMS applies, as applicable.

12.3 Chief Directorate Provincial Training:

- Non-compliance by a training component should be addressed within the Performance Agreements of HODs and the respective SMS members responsible for compliance.
- As stipulated in the Skills Development Act.

12.4 Supervisors and Employees:

- As contained in the PMDS/SPMS, Disciplinary Rules for the Public Service, and other Collective Agreements that may have a bearing on the management and sanction for non-compliance that flow from this policy statement.

13. Date of Decision (Approved)

30 September 2004

14. Date of Implementation (Enforcement)

Implementation date: 1 October 2004

Review date(s): Annual review on 1 April (or as required due to legislative impact)

DEFINITIONS AND TERMINOLOGY: POLICY STATEMENT ON THE MANAGEMENT OF THE EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE PROVINCIAL GOVERNMENT WESTERN CAPE

The following definitions are applicable to this Policy Statement:

1. Assistive device. Any device, mechanism and ergonomic equipment capable of reducing the handicap (in the environment) experienced by an individual; or strategy that lessens or limits a handicap and enables people with disabilities to maintain their dignity and to live independent lives within their communities or work environment. It may include personal assistance, assistive devices, and specialised equipment.
2. Disability. The term 'disability' summarises a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairments, or medical conditions or mental illnesses. Such impairments, conditions or illnesses may be permanent or transitory in nature.
3. Discrimination. Discrimination means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly imposes burdens, obligations or disadvantages on; or withholds benefits, opportunities or advantages from any person on one or more of the prohibited grounds, which includes disability. Distinction or preferences that may result from the application of special measures of protection and assistance taken to meet the particular requirements of people with disabilities are not considered discriminatory.
 - Fair discrimination: All selection procedures may make use only of fair discrimination in order to identify, select and employ candidates, including people with disabilities. Fair discrimination refers to discrimination that is based on a candidate's ability to satisfy the inherent job/post requirement as stipulated in the inherent post profile. The use of Unfair or Indirect Discrimination is not permitted.
 - Unfair discrimination: A distinction must be drawn between selection procedures, which make use of unfair discrimination versus those that make use of fair discrimination. Unfair discrimination is unconstitutional and does not conform to the legitimate requirements of the job or post, as derived from the authorised job description or approved legal requirement/programme. Such discrimination may be of a social, personal or institutional nature.
 - Indirect discrimination: Indirect discrimination implies that although the criterion used to distinguish may be neutral in form, it is discriminatory in effect or result. Indirect discrimination refers to rules, practices or procedures that appear to be consistent with the principles of equality, but implicitly reduce the mobility of specific groups within the PGWC because of self-perpetuating organisational rules, which restrict development. Such discrimination occurs when a requirement or condition is applied equally to all employees, but the requirement or condition cannot be shown to be objectively justifiable, irrespective of race, disability, gender, sex, ethnicity, social origin, sexual orientation, colour religion, belief, culture, language or birth and exists to the detriment of the person concerned because she/he cannot comply with it.
4. Equality. Equality includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes *de jure* and *de facto* equality and equality in terms of outcomes.

5. Equal opportunity. Equal opportunity refers to the right of all people to participate equally in, and benefit from programmes and activities for which they are qualified.
6. Equity. Equity refers to the end state of being equal, the right to equal protection and benefit of the law, *inter alia*, by people with disabilities.
7. Employee. Employee refers to an individual appointed in terms of the Public Service Act or the Employment of Educators Act, in any of the individual departments of the WCPA. It includes applicants for advertised posts as it relates to the processes of filling posts.
8. Employer. Employer refers to the departments of the PGWC as juristic entities (as well as the Premier as Employer).
9. Environmental accessibility. The term encompasses both accessibility of the built environment and accessibility in terms of access to communication, for example:
 - Design of buildings, walkways and urban and rural infrastructure that will ensure inclusive use by all employees, including wheelchair users.
 - Use of technology that will ensure inclusive use by all employees, for example the use of sign language on television and training videos, availability of documents in Braille and/or cassette.
10. Health risk manager refers to an independent legal persona or body appointed to give advice or recommendations to the Head of Department on the granting of incapacity leave and ill-health retirement of employees. This process is managed in terms of the 'Incapacity Policy' for the public service.
11. Inherent job requirement. An inherent job requirement refers to a fair approach to discriminate against, *inter alia*, a person with disabilities. It is not unfair to discriminate, distinguish, exclude, or prefer any person based on an inherent requirement of a job.
12. Job content. The adaptation or redesign of tools, machines, workstations and the work environment to an individual's needs. It can also include adjustments in work schedules, sequences of work and in breaking down work tasks to their basic elements.
13. Job design. Where applicable, redesigning jobs to accommodate people with disabilities is recommended whereby tasks can be reorganised to create new jobs. This can be done by combining duties from different jobs into a newly defined job or redesigning one (out of a group of posts) to accommodate such a person.
14. Job retention. Job retention by people who acquire a disability while employed within the PGWC implies remaining with the same employer, with the same or different duties or conditions of employment, including return after a period of absence.
15. Occupational hazard. Occupational hazard means a potential source of or exposure to danger in any premises or place where a person performs work in the course of her/his employment.
16. Occupational Health and Safety Manager (OH&S). Health services, which essentially have a preventive function and which are responsible for advising the employer, as well as the workers and their representatives, on the requirements for establishing and maintaining a safe and healthy working environment to facilitate optimal physical and mental health in relation to work. The OH&S Manager also provides advice on the adaptation of work to the capacities of workers in light of their physical and mental health.

17. Reasonable accommodation. Reasonable accommodation means any modification or adjustment to a job or to the working environment that will enable a person from a designated group, including people with disabilities, to have reasonable access to or participate or advance in employment. This may include adjustment or modification of the physical environment, machinery and equipment and/or modification of the job content, work organisation and working time to facilitate the employment of individuals with disabilities.
18. Rehabilitation. Rehabilitation refers to a process aimed at enabling people with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric, and/or social functioning levels, thus providing them with the tools to change their lives towards a higher level of independence. Rehabilitation will include measures to provide and/or restore functions, or compensate for the loss or absence of a function or for a functional limitation. The rehabilitation process does not involve initial medical care. It includes a wide range of measures and activities from more basic and general rehabilitation to goal-oriented activities, for instance vocational rehabilitation.
19. Specifically targeted recruitment. A *directed initiative* or specifically targeted recruitment initiative may be launched to effect special measures for recruiting to ensure representivity within the Administration/Departments. This special Affirmative Action measure is applied to attract people from disadvantaged groups, such as people with physical and/or non-physical disabilities, to be employed in occupations/posts from which they were previously excluded, in order to achieve the constitutional goal of representivity in public administration. Posts will thus be identified; post profiles will be drafted that are inclusive to people with disabilities and special measures will be applied for the exclusive recruiting target groups (e.g. people with disabilities).
20. Unjustifiable hardship. Unjustifiable hardship is an action that requires significant or considerable difficulty or expense and that would substantially harm the viability of the organisation. This involves considering, *inter alia*, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation.
21. Vocational rehabilitation. A process that enables people with disabilities to secure, retain and advance in suitable employment and that thereby furthers their integration or reintegration into society. Vocational rehabilitation refers to that part of the continuous and co-ordinated process of rehabilitation that involves the provision of vocational services, such as vocational guidance, vocational training and selective placement, designed to secure and retain suitable employment.

22. DEFINITION: PERSON WITH A DISABILITY

Person with a disability is defined as an individual whose prospects of securing and retaining suitable employment are substantially reduced as a result of physical or mental impairment.

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 people with disabilities once they have met with all the criteria in the following 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.

Impairment

- i) An impairment may either be physical or mental, or a combination of both.
- ii) **'Physical' impairment** 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.
- iii) **'Mental' impairment** means a clinically recognised condition or illness that affects a person's thought processes, judgement, or emotions.

Long-term or recurring

- i) **'Long-term'** means the impairment has lasted or is likely to persist for at least twelve months. A short-term or temporary illness or injury is not an impairment which gives rise to a disability.
- ii) **'Recurring impairment'** is one that is likely to happen again and to be substantially limiting (see below). It includes a constant chronic condition, even if its effects on a person fluctuate.
- iii) **'Progressive conditions'** are those that are likely to develop, change or recur. People living with progressive conditions or illnesses are considered as people with disabilities once the impairment starts to be substantially limiting. Progressive or recurring conditions which have no overt symptoms or which do not substantially limit a person are not disabilities.

Substantially limited

- i) 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 she/he is being considered.
- ii) 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.
- iii) An assessment to determine whether the effects of an impairment are substantially limiting must consider whether medical treatment or other devices could **control or correct** the impairment so that its adverse effects are prevented or removed.
- iv) 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.
- v) A suitably qualified person may do an assessment if there is uncertainty as to whether an impairment may be substantially limiting to people with disabilities and their management.

[The Technical Assistance Guideline on the Employment of People with Disabilities, issued by the Department of Labour can further be consulted for interpretation of the definition]

PREFERRED LANGUAGE TERMINOLOGY

Language reflects the social context in which it is developed and used. It therefore reflects the values and attitudes of that context, and plays an important role in reinforcing values and attitudes that lead to discrimination and segregation of particular groups in society. Language can therefore be used as a powerful tool to facilitate change and bring about new values, attitudes, and social integration. Herewith, a few examples of the preferred terminology relating to the English language:

- ❑ Although some people with disabilities prefer the terms 'physically challenged' or 'differently abled', these should generally not be used. The disability rights movement of South Africa accepts both the terms 'disabled person' and 'people with disabilities'.
- ❑ Avoid 'suffers from', 'afflicted with', or 'victim of', all of which cast disabilities as a negative. 'Suffers from' indicates ongoing pain and torment, which is no more the case for most people with disabilities as it is for most people without disabilities. 'Afflicted with' denotes a disease – and most disabilities are not. 'Victim of' implies that a crime is being committed on the person who has a disability.
- ❑ Do not use 'wheelchair-bound' or 'confined to a wheelchair'. People see their wheelchairs as a convenient mode of transportation, not prisons, and the 'bound or confined' phrase belies the fact that many people with motor disabilities engage in activities without their wheelchairs, including driving and sleeping. The proper phrase is 'uses a wheelchair'.
- ❑ Use 'disability', not 'handicap'. Other terms to avoid are 'physically or mentally challenged' and 'cripple/crippled'.
- ❑ Use 'able-bodied' or 'people without disabilities'. The terms 'normal' and 'whole' are inappropriate and inaccurate.
- ❑ Most disabilities are not a disease. Do not call a person with a disability a 'patient' unless referring to a hospital setting. In an occupational and physical therapy context, 'client' or 'customer' is preferred.
- ❑ By legal definition, some diseases are considered disabilities. Defining the person by the disease ('she is a diabetic or 'HIV/Aids victim') is inappropriate. Use 'person with diabetes' or 'people living with Aids'.
- ❑ People who consider themselves part of the deaf culture, refer to themselves as 'Deaf' with a capital 'D'. Because their culture derives from their language, they may be identified as you would other cultural entities, e.g. 'Shangaan'. Never use the terms Deaf-mute or Deaf and Dumb.
- ❑ Avoid 'deformed', 'deformity', and 'birth defect'. A person may be 'born without arms' or 'has a congenital disability', but is probably not defective.
- ❑ Use 'person with Down syndrome'. Avoid 'Mongol' or 'mongoloid'.
- ❑ Avoid 'mentally retarded', 'insane', 'slow learner', 'learning disabled', and 'brain damaged'. Use 'person with an intellectual disability', or 'person with a psychiatric disability'.
- ❑ Avoid 'cerebral palsied' and 'spastic'. Use 'person with cerebral palsy'.
- ❑ Use 'person with epilepsy' or 'person with a seizure disorder'. Avoid 'epileptic', either as noun or adjective. Use 'man with paraplegia' or 'She has quadriplegia'. Avoid 'paraplegic' or 'quadriplegic' as either a noun or adjective.
- ❑ Avoid 'dwarf' or 'midget'. Some groups prefer 'little or short', but its best to use 'person of short stature'.

Negative and patronising language produces negative and patronising images. Words are important, so make sure your words do not offend or reinforce negative stereotypes.

¹ Acknowledgement to Patricia Digh of Real Work Group, cited in the pocket guide on Disability Equity published by Disabled People South Africa's Parliamentary Office.

RESPONSIBILITIES AND ROLES

1. State institutions supporting constitutional democracy and administration

Strategic guidance and monitoring roles are vested in various stakeholders at national level, *inter alia*:

- Commission on Gender Equality.
- Department for Public Service and Administration.
- Department of Labour.
- Human Rights Commission.
- National Office on the Status of Disabled Persons.
- National Parliament (Standing Committee on Employment Equity).
- Public Service Commission.
- Youth Commission.

2. Strategic and Transversal Level within the PGWC

a. Premier and Cabinet:

In terms of section 125 of the Constitution the executive authority is vested in the Premier as Head of the Provincial Government. The Premier exercises this authority together with Cabinet by, *inter alia*, developing and implementing provincial policy, as well as co-ordinating the functions of the PGWC.

The Constitution of the Western Cape directs principles for provincial policy that include the adoption and implementation of policies aimed at achieving the protection and advancement of people, or categories of people disadvantaged by unfair discrimination (including people with disabilities).

b. Cabinet Cluster System:

The Cabinet Cluster System ensures co-ordination, monitoring and implementation of government policies and priorities, including mainstreaming of the disability aspect into all policies.

c. Director-General:

In accordance with section 7(3)(c) read with section 3(2)(a) of the Public Service Act, 1994, the Director-General as Head of the Provincial Administration is, *inter alia*, responsible for the giving of strategic direction, inter- and intra-governmental co-operation and co-ordination. The Director-General (DG) gives strategic direction on, *inter alia*, matters relating to employment, including the promotion of broader representivity.

The Chief Directorate: Human Resource Management (Corporate Services) supports the DG in her/his transversal monitoring and reporting role. Transversal monitoring serves as a source for strategic planning purposes, *inter alia*, on the terrain of affirmative action programmes with an internal focus. The Director-General may launch transversal projects to address issues of representivity in the workforce of the PGWC (in this case to address disability equity with an internal focus).

d. Provincial Top Management (PTM):

The PTM ensures co-ordination, monitoring and implementation of government policies and priorities, including mainstreaming of the disability aspect into all processes and procedures.

e. Directorate Human Rights Programmes (Provincial Office on the Status of Disabled Persons):

The functions of the Provincial Office on the Status of Disabled Persons (OSDP) are listed in the Integrated Provincial Disability Strategy (IPDS). This includes, *inter alia*, monitoring and reporting on the progress on the implementation of the IPDS and facilitating awareness programmes (including the internal focus on departments and employees of the PGWC). The development of a database of all people with disabilities in the Western Cape Province should also be addressed.

f. Corporate Services:

Directorate: Personnel Management (Chief Directorate Human Resource Management)

The Directorate Personnel Management (Corporate Services) supports the DG in her/his transversal monitoring and reporting role. The Directorate Personnel Management (D: PM) will facilitate transversal programmes/projects on behalf of the DG (in this case to address disability equity) in the PGWC. Such transversal programmes/specifically targeted interventions have to be consulted with all stakeholders and mandated by the PTM. The role of the D: PM, however, does not replace the responsibility of individual departments and Employment Equity Managers (EE Managers) who are responsible for the planning and execution of affirmative action programmes/projects in their own departments. Executing Authorities and Heads of Department (HoD) are ultimately accountable for employment equity in general (including the recruitment, management and employment of people with disabilities).

Directorate Labour Relations (Chief Directorate Human Resource Management)

The Directorate: Labour Relations (Corporate Services) supports the DG in her/his transversal monitoring and reporting role on Labour Relations in the PGWC. The Directorate: Labour Relations (D: LR), together with the various Labour Relations Practitioners within departments, is responsible for ensuring that fairness prevails during the management of processes directed at the employment of people with disabilities and to manage any grievances, disputes and complaints of unfair discrimination or disciplinary action that may originate from the implementation of this policy statement or programmes instituted in line with this document.

Cape Administrative Academy (Chief Directorate: Provincial Training)

The Chief Directorate: Provincial Training is responsible for the provision of management and other generic training to employees. All training facilities, courses and modules must be fully accommodating of people with disabilities. Training and development equity for people with disabilities implies the availability of additional support mechanisms within an inclusive learning and training environment, which will be based on the specific needs of the individual person with disabilities. Suitably standardised, as well as 'tailor made' mentor training programmes, must also be made available.

Directorate: Organisation Development (Chief Directorate: Operational Support)

The Directorate: Organisation Development is responsible for ensuring that:

- departments provide capacity to address 'special programme issues', including employment equity and affirmative action programmes;
- provincial policy on job design is inclusive of measures relating to people with disabilities;

- processes whereby jobs are created or redesigned, accommodate people with disabilities; and
- job description templates include sufficient details on occupational health and safety indicators and inherent job or post requirements.

Directorate: Support Services (Chief Directorate: Operational Support) (Occupational Health and Safety Manager)

Departments of the PGWC are obliged to provide and maintain a working environment that is safe and without risk to the health of employees. The Directorate: Support Service (Corporate Services) supports the DG in her/his transversal monitoring and reporting role.

g. Information and Communication Technology (ICT) and related fields:

The ICT and other electronic media components will ensure that systems and website(s) are accessible to people with disabilities. This includes advice given to departments and training institutions on how to best provide reasonable accommodation and supply assistive devices. Technical assistance with the development of a database of all people with disabilities in the Western Cape Province should also be available.

h. Health Risk Manager (Incapacity Management):

The management of incapacity, *et al*, is to be formalised within the WCPA. Any management framework (both regarding Public Service Act personnel and CS Educators) in this regard should address issues of disability. In terms of a 'Management Policy and Procedure on Incapacity Leave and Application for Ill Health Retirement for Public Service Employees', the Health Risk Manager should:

- assess and make recommendations on whether the incapacity is of a permanent nature; whether the impairment is long-term, recurring or limiting prospects; and
- based on the potential to perform alternative work, rehabilitation and re-skilling potential, whether the Head of Department (HoD) should investigate and consider alternate employment or whether the work circumstances/duties should be adapted, in order to accommodate the employee; or the employee should be retired on grounds of permanent incapacity.

3. Departmental Level

a. Provincial Ministers and Heads of Department (HoD):

Provincial Ministers and HoD (including the Premier and DG for the Provincial Administration: Western Cape) are the designated employers in terms of the Employment Equity Act. The provincial Minister and HoD are, *inter alia*, responsible for:

- the implementation of affirmative action measures for people from designated groups, including people with disabilities, and the reporting thereon;
- the appointment of an Employment Equity Manager (EE Manager) to manage all internally focused employment equity aspects in the department and provide her/him with the authority and means to perform her/his functions;
- ensuring that appropriate budgetary allocations are made for the provision of accessibility, reasonable accommodation or technical assistance and assistive devices to sufficiently support and advance people with disabilities employed within the department; and

- giving effect to awareness-raising and true inclusivity of people with disabilities within the working environment.

b. Chief Financial Officers (CFO):

The CFO is responsible to the HoD for ensuring that the allocated budget for the provision of accessibility, reasonable accommodation or technical assistance and assistive devices is spent to the best advantage of the target group.

c. Employment Equity Managers:

The EE manager within an individual department is responsible for:

- managing the internally focused employment equity aspects within a department relating to people with disabilities; and
- the planning of affirmative action plans/programmes/projects to give effect to equal opportunities and equality for people with disabilities employed by or recruited to the department.

d. Employment Equity Consultative Forum:

The Employment Equity Consultative Forum plays a supportive, consultative and monitoring role in the department, in support of the EE Manager, whilst also representing the employees of the department. The Employment Equity Consultative Forum will, *inter alia*, represent the interests of employees from designated groups and should include employees with disabilities employed by the department.

e. Disability Focal Persons:

The Inter Departmental Co-ordination Committee (as indicated in the IPDS) has an external focus, aimed at service delivery by a department to people with disabilities, through their organisations and within its core business, as well as an internal focus (e.g. support information campaigns concerning people with disabilities and participate in commemoration events such as International Day for Disabled Persons, etc). This coordinating role within departments is performed by Disability Focal Persons, with responsibilities delegated by the HoD. Disability Focal Persons are not involved in human resource management, employment equity and related aspects that are the main focus of this document.

f. Skills Development Facilitator (SDF):

The SDF is responsible to ensure that the Skills Development Plan caters for training interventions that are accessible to people with disabilities and that skills development is also targeted to address special needs. The SDF is responsible for ensuring that training requirements are met and that supporting structures, *inter alia*, mentoring and coaching, are available.

g. Internal Training Sections:

All training provided (transversal and within a department) must be accessible and the special needs of people with disabilities in the training environment be catered for. Paragraph 8.8 of this policy statement indicates specific requirements that both the Chief Directorate: Provincial Training and internal training sections must address.

h. Human Resource Manager (HR Manager):

The Human Resource Manager (HR Manager) plays an important role, *inter alia*, regarding the employment, promotion, retention and development of people with disabilities. For example, the performance management tools utilised within the Administration should be so administered so that it does not act as a barrier for people with disabilities. An Employee Assistance Programme (EAP) is to be accessible to all employees, including people with disabilities.

Departments will pay serious attention to ensuring that their strategies regarding recruitment and selection are not acting as a barrier for people with disabilities and should continuously examine the possibility of using more innovative and creative recruitment mechanisms. The HR Manager plays an integral role to the processes outlined in this policy statement.

i. Labour Relations Manager:

The Labour Relations Manager within departments is responsible for ensuring that fairness prevails during the management of processes directed at the employment of people with disabilities. They should also manage any grievances, disputes and complaints of unfair discrimination or disciplinary action that may originate from the implementation of this policy statement, or programmes instituted in line with this document.

j. Line Manager/Supervisor:

The Line Manager and/or Supervisor play a pivotal role in the management of all aspects of employment of people with disabilities. From the initial stages of preparing a working environment, to aligning job descriptions, advertising, selection, appointment, development, performance management, promotion, support with assistive devices, managing health issues, mentoring and coaching, termination, etc. the supervisor is closely linked to the employee. The supervisor needs to be equipped to supply the necessary support in order to minimise the effect of handicaps that may present in the work environment.

k. Occupational Health and Safety Co-ordinator:

The Occupational Health and Safety (OH&S) Manager and Co-ordinator in the department play a pivotal role in the provision and maintenance of a working environment that is safe and without risk to the health of employees. She/he essentially has a preventive function and is responsible for advising the employer on how to adapt the work environment to the capacities of workers regarding their physical and mental health. The OH&S Co-ordinator is also responsible (together with the supervisor of the section) to identify modifications required to buildings and work areas.

l. Employees:

All employees have to respect and protect every person's dignity and rights as contained in the National Constitution. Thus, all employees will deal equitably with other employees and members of the public, including people with disabilities. People with disabilities who are employees of the department are responsible for managing their conditions/impairments at all times. They should be encouraged to disclose special requirements for accommodation, as they are also responsible for their own development, in conjunction with the supervisor. They are required to contribute to service delivery, have equal rights and will also have equal obligations.

m. Employee Organisations (Labour Unions):

Employee organisations (labour unions) have the responsibility to ensure that their members, who are people with disabilities, have equal access and are adequately represented during any disputes, grievances, etc. relating to any aspect in this policy statement. The normal communication channels and processes apply.

8.4.4 Other Provincial Departments as service providers

a. Department of Cultural Affairs and Sport: (sport)

The role in the accessibility of sport facilities and functions is reflected in paragraph 8.11(f) of this policy statement.

b. Department of Social Services and Poverty Alleviation and Department of Health: (support services)

The supportive role of the above-mentioned departments are closely linked to aspects of assistive devices, grants, rehabilitation, etc. for the employee who is a person with a disability. These aspects are reflected in paragraph 8.11(g) of this policy statement.

c. Department of Transport and Public Works: (transport and accessibility to workplace)

The role of the above-mentioned department is closely linked to aspects of environmental scanning, accessibility to buildings, work areas, transport to attend work-related interventions or in the execution of their tasks. These aspects are reflected in paragraphs 8.11(b) to (e) of this policy statement.

d. Department of Education: (development of learners for the labour market)

The role of the above-mentioned department is underpinned by their core deliverables in supplying skilled and competent learners with disabilities that are ready to enter the labour market. The PGWC departments as employers may also source future employees or students for the allocation of bursaries via the management structures of the Department of Education. The department should do further rollout on this terrain.

e. Provincial Treasury: (financial oversight)

Provincial Treasury will be sensitive in budgeting processes in ensuring that departmental budgets also reflect a targeted focus on addressing employment equity (including people with disabilities).

8.4.5 External stakeholders

Partnerships with Non-Government Organisations (NGOs) could play a crucial role in the orientation and ongoing support of people with disabilities. Private sector partners could contribute towards the distribution of up-to-date/additional/new skills in the management/support of people with disabilities to ensure that the public sector remains at the forefront of technological development and service enhancement. Universities and other training and research facilities can contribute to the development of skills and recruitment of skilled employees.

PREVALENCE AND DISTRIBUTION OF PEOPLE WITH DISABILITIES IN THE WESTERN CAPE PROVINCE

According to the 2001 census, the prevalence rate for people with disabilities (total population) in the Western Cape is 4.13%, which is lower than the national average of 5%. However, the percentage of people with disabilities in the economically active group is 2,44%.

DISTRIBUTION OF PEOPLE WITH DISABILITIES BY POPULATION GROUP

The Coloured group is the dominant population group in the Province and consequently the highest number of people with disabilities is from this group.

In accordance with Census 2001, the demographic comparisons of people with disabilities (economically active) in Western Cape is reflected as follows:

Race	Disability per Race as a percentage of the Total Population of the Western Cape Province	Disability per Race as a percentage of the Economically Active Population of the Western Cape Province	Race distribution of people with disabilities as percentage (of the 2.44% economically active group) in the Western Cape Province
African	1.02	0.84	34.31
Coloured	2.20	1.12	46.07
Indian	0.03	0.02	0.68
White	0.88	0.46	18.96
Total	4.13%	2.44%	100%

DISTRIBUTION OF DISABILITY BY TYPE

Census 2001 indicates comparison for people with disabilities (economically active) per type as follows:

Type of Disability	Percentage
Sight	28.06
Hearing	19.92
Physical	17.46
Intellectual	11.32
Multiple**	11.17
Emotional	8.88
Communication	3.19
Total	100

Note** People with more than one disability are only included in the category 'multiple'

PGWC DISABILITY DISTRIBUTION AS AT 1 JANUARY 2006

The PGWC has not yet been successful in achieving the 2% target in respect of people with disabilities (as per the national definition). People with disabilities also normally occupy the junior levels in departments, involving little decision-making and authority.

The current macro position of people with disabilities in the PGWC is reflected as follows:

Western Cape Economically Active group	National target by 2005	PGWC CURRENT POSITION	
		Total people	Percentages
2.44%	2%	165	0.24%

The current position of people with disabilities in departments of the PGWC is reflected on the Persal system, is as follows:

DEPARTMENT	Current Position	
	Total	%
Agriculture	2	0.24
Community Safety	1	0.14
Cultural Affairs and Sport	2	0.38
Economic Development and Tourism	0	0
Education (combined for both sectors)	46	0.12
Environmental Affairs and Development Planning	0	0
Health (including session workers)	90	0.38
Local Government and Housing	1	0.24
Department of the Premier	4	0.68
Provincial Treasury	2	1.00
Social Services and Poverty Alleviation	13	0.64
Transport and Public Works	4	0.26
Total	165	0.24

EXTRACT FROM THE PUBLIC SERVICE COMMISSION REPORT ON DISABILITY EQUITY IN THE SOUTH AFRICAN PUBLIC SERVICE (PGWC)

The Report on Disability Equity in the South African Public Service (February 2002) reports on the findings of the investigation into this aspect as part of the broader project undertaken by the Public Service Commission (PSC).

1. Progress against target

Limited progress had been made in enhancing the status and representivity of people with disabilities in the Public service. In 2002, people with disabilities comprised approximately 0.25% of the public service personnel, which is far short of the stated 2% target (PGWC reflects 0.21%). It is evident that, should the current pace continue, the target of ensuring a 2% representation of people with disabilities by 2005 would not be met.

A specific measure was adopted in the White Paper on the Transformation of the Public Service that within ten years (2005), people with disabilities should comprise 2% of the total public service personnel.

2. Employment distribution of people with disabilities

When comparing the employment figures of people with disabilities before the enactment of the Employment Equity Act (EEA), within the provinces, it would seem that the enactment of the Act in October 1998 has contributed to an increase. Although it is not possible to provide a definitive answer to the question, one can reasonably assume that the EEA has contributed to heightened awareness of employment equity, and at least brought the disability agenda to the fore.

The general outcome is that people with disabilities tend to be employed in the lower employment levels, with very few employees with disabilities at the management levels. This study found that the employment of people with disabilities, apart from being confined to low levels, involving little decision-making and authority, tended to be male biased, thus further marginalising women. When the statistics were desegregated by gender, women with disabilities are even worse off than their male counterparts, with African women who are people with disabilities being the worst off. The African women with disability thus have to contend with a double disadvantage, race and gender discrimination.

3. Recommendations of the report

a. Work environment

The environment in the workplace within departments and provincial administrations needs to be made more supportive of employees with disabilities. This should include the provision of practical assistive devices and supportive accommodation. Departmental buildings should have basic accommodation and assistive devices such as ramps, toilets, Braille and voice prompt lifts. Funds should be allocated for the assessment and improvement of the environmental and collegial support needs of employees with disabilities.

b. Recruitment and selection

Departments must pay serious attention to reviewing their current strategies regarding recruitment and selection. They should examine the possibility of using more innovative and creative recruitment mechanisms so as to ensure that all prospective employees with disabilities are able to respond to vacancies within the Public Service. It should play a vital role in engaging with disability specific Civil Society organisations to set up a database of people with disabilities from which departments and provincial administrations can draw information. Advertising needs to be approached from a multi-faceted point of view, and where possible at least one person with a disability should become involved in selection panels.

c. Skills base

There is a need to improve the skills base and the level of education of people with disabilities. Skills development of people with disabilities, particularly women, needs to be seriously addressed, together with the possibility of fast tracking their development within the workplace.

The low literacy levels and lack of skills among many people with disabilities has a direct correlation. In addition, high levels of discriminatory attitudes and employment practices, inadequate and inaccessible rehabilitation and training opportunities, etc., have further contributed to this situation. This suggests that people with disabilities are stereotyped as suitable for employment in jobs with low skills levels.

d. Affirmative action plans

The Affirmative Action principle should be the starting point in assisting national departments and provincial administrations in the acceleration towards the attainment of the laid-down target. Affirmative Action Plans must be included in the annual departmental human resource planning, with specific reference to plans on redressing numeric targets for people with disabilities and supporting their advancement.

CHECKLIST OF ISSUES ON DISABILITIES (EMPLOYMENT EQUITY PLANS)

DEPARTMENT	EE MANAGER	DATE

All departments will devote a section of their Employment Equity Plans to disability issues that in turn need to be an integral part of the management of Human Resources in a department.

Below is a checklist of issues to establish whether or not departments comply with key employment equity and skills development issues:

No	Checklist questions	Yes	No
1	Does your affirmative action/employment equity plan have targets for the recruitment and promotion of people with disabilities?		
2	Does such a plan include targets for different levels of employees? Including the SMS?		
3	Does your equity planning process make provision for a review of whether you are achieving your targets, and if not, why?		
4	Does your affirmative action/equity plan make provision for the reasonable accommodation of people with disabilities at all stages of the employment cycle?		
5	Do your recruitment policies and practices accommodate the needs of people with disability?		
6	Have the employees in the department who have disabilities, been reasonably accommodated in accordance with/with due consideration to, the process outlined in the Code of Good Practice on Disability?		
7	Do you ensure that all employees are aware of and sensitised to the needs of employees with disabilities through diversity management programmes, seminars, posters, newsletters, etc.?		
8	Do you ensure that employees who are injured (including at work) are assisted in early, safe return to work, including rehabilitation?		
9	Do you have plans and targets for skills development of people with disabilities?		
10	Do the EAP service cater for people with disabilities?		

Notes by the Employment Equity Manager:


.....

Signature: EE Manager: ----- Date: -----

PRACTICAL GUIDELINES FOR ADVERTISING, RECRUITMENT, AND SELECTION PRACTICES IN ACCORDANCE WITH EMPLOYMENT EQUITY PRESCRIPTS

The following practical guidelines are based on the Code of Good Practice concerning the Employment of People with disabilities (Government Gazette No 23718; 19 August 2002) and will be read in conjunction with the approved policy framework on recruitment and selection within the PGWC and the Technical Assistance Guidelines on the Employment of People with Disabilities (TAG).

Practical guidelines on reasonable accommodation for people with disabilities in relation to advertisements:

1. Recruitment requirements are to be based on the inherent requirements of the job (indicating key functions and skills necessary to perform the job).
2. People with Disabilities are to be actively encouraged to be employed within the full spectrum of posts within the PGWC departments, unless the specific inherent post requirements prohibit people with specified disabilities from executing the job.
3. Job specifications are to be stated in clear, objective language. Non-essential functions of a job will not be included as it could unfairly exclude people with disabilities (Annexure B supplies further details on language preference).
4. The advertisement and job description are to include sufficient detail about the inherent requirements of the job so that the potential applicants with disabilities can make an informed decision.
5. On request, and where reasonable and practicable, advertisements will be provided in a format appropriate to people with communication difficulties, e.g. people with visual disabilities (large print, Braille or audiotapes will be considered depending on the needs of the person).
6. It will be indicated in all advertisements that people with disabilities are specifically targeted or welcome to apply, as appropriate. 
7. Departments will network with recruitment agencies and disability organisations within the Western Cape that specialise in recruitment and placement of candidates with disabilities. The Western Cape Office on the Status of Disabled Persons (OSDP) will assist in this regard.
8. Where appropriate, advertisements will be placed in the editorial sections of professional organisations/bodies that are proactive in the transformation/change arena.
9. Engage with Business Organisations and Non Government Organisations (NGOs) for advertising in their internal and local newsletters.
10. All vacancies are advertised internally and therefore current employees with disabilities will be considered for career development, where appropriate.
11. The development and placement of a central database of CVs of people with disabilities will be explored as a future project by the OSDP.
12. Encourage people with disabilities to focus on addressing their ability to perform the essential functions of a job in their Curriculum Vitae.

Practical guidelines on reasonable accommodation for people with disabilities in selection interviews

Reasonable accommodation in context means, *inter alia*, that certain concessions may be made by the employer to equalise the opportunity for people with disabilities to compete for advertised posts. This includes covering additional costs or making practical arrangements. The following guidelines are applicable:

1. Assumptions about people with disabilities e.g. that people with disabilities can only perform certain jobs, are to be avoided.
2. Interviews are to be objective and unbiased.
3. Where possible and appropriate, people with disabilities will be included in the recruiting, selection and staffing processes, specifically where people with disabilities are short-listed.
4. Suitable panellists could be obtained from other departments (provincial or national) or from outside the public service, should no suitable person with disabilities be readily available within the (own) department.
5. Treat people with disabilities the same way as people without disabilities during interviews and use exactly the same criteria to test their ability. However, make reasonable allowances where required (i.e. allow more time to read tasks if applicable or allocate more time for translation/interpretation where an interpreter is used).
6. Additional cost (i.e. covering travelling expenses for a guide dog, supporting person or allowing alternative travelling arrangements) should be covered. A support person may be allowed to attend the interview.
7. The venue should be accessible to accommodate wheelchairs, sign language interpreters, guide dogs, etc.
8. The use of a support person during the interview should not reflect on the candidate's assessment results, skills and competencies.
9. During your testing of ability refrain from requesting information about the person's disability as their abilities, qualification and experience are not linked to their disability.
10. Interviewers could consider asking all applicants for a specific post to indicate how they would accomplish the inherent requirements of the job and perform its essential functions and whether accommodation would be required.
11. People with disabilities know best what type of reasonable accommodation they would need in relation to the work environment. It is recommended that such information be obtained after the completion of the interview assessment period.
12. If an applicant has disclosed a disability prior to the interview or if the person has a self-evident disability, you should, if necessary, make reasonable accommodation during the interview. This may include providing an interpreter/sign language interpreter in the instance of a person who is Deaf; allowing a support person or a guide dog to attend the interview (including budget allowance where applicable); accommodating special transport arrangements; taking seating and light- sensitivity into account for a person with a visual impairment; etc.
13. Make sure that you understand disability etiquette, e.g. in the use of language, thus ensuring that your language use does not discriminate or insult (see Annexure B on correct language use).

14. Medical or functional testing should only be used to determine an applicant's actual or potential ability to perform the essential functions of a specific job with or without reasonable accommodation. (This will then assist the employer to determine the need for reasonable accommodation or not.)
15. A conditional job offer can only be made to one person at a time and not to all applicants with disabilities applying for the same job, as this could also lead to discrimination.
16. The employer can withdraw the job offer in certain circumstances (see the Code of Good Practice, section 7.4.5).
17. Should the employer choose any of these circumstances for not employing the person with disability, the burden of proof lies with the employer.
18. On issues of confidentiality and disclosure of disability, see section 14 of the above CODE.
19. Provide the necessary education and training to employees of the PGWC and specifically in the Human Resources, training and other related fields, concerning the rights of People with Disabilities.

[The Western Cape Office on the Status of Disabled Persons in the Directorate: Human Rights Programmes, Provincial Administration; Western Cape, assisted in compiling Annexure G.]

CO-ORDINATION AND REPORTING STRUCTURES AS PER THE INTEGRATED PROVINCIAL DISABILITY STRATEGY FOR THE WESTERN CAPE (IPDS)

At a national level the following co-ordinating structures currently exist:

- Inter-Provincial OSDP forum where the national OSDP and the nine Provincial OSDPs meet on a quarterly basis.
- Inter-departmental Collaboration Committee (IDCC) where all National Departments and the National OSDP meet.

At national level, the Inter-Departmental Collaboration Committee forms part of a multi-disciplinary approach between regular government departments to ensure collaboration between spheres of government on disability issues.

The PGWC (Office on the Status of People with Disability), as a member of the IDCC, is compelled to present and submit quarterly reports to the IDCC regarding the implementation of the principles of the Integrated National Disability Strategy and affirmation of people with disabilities.

The Directorate: Human Rights Programmes (Office on the Status of People with Disability) has been allocated the responsibility of facilitating the process of fair acknowledgement of the rights of people with disabilities at all levels in the PGWC working environment.

At provincial level the following co-ordinating structures currently exist:

- Inter-departmental Co-ordination Forum where departmental disability focal persons of all departments and the provincial OSDP meet on a quarterly or bi-monthly basis.
- Western Cape Network on Disability where all the major NGOs and DPOs representing the different disability sectors meet on a monthly basis.
- The Provincial Co-ordination Forum where the provincial OSDP and the two above-named structures meet on a quarterly basis. This provincial forum was established during June 2003. It is the intention to include District Municipalities on the forum during 2004.

CO-ORDINATION FORUM ON DISABILITY ISSUES: INTERNAL FOCUS

In support of the provincial co-ordinating structures, an Interdepartmental Disability Forum (IDF) will be formed under the auspices of the Human Resource Management Forum (HRM Forum). The IDF will meet at least bi-annually, to:

- ensure that internally focused disability matters be mainstreamed in the PGWC;
- discuss, co-ordinate and oversee transversal projects/programmes, as applicable;
- discuss implementation issues/challenges;
- share experiences;
- monitor progress; and
- address transversal issues of incapacity/disability regarding people employed in the PGWC.

This IDF will be composed of representatives from the provincial departments and co-ordinated by the Chief Director: Human Resource Management. The stakeholders to this IDF will include, *inter alia*, the:

- Chief Director: Human Resource Management (Corporate Services) Chairperson;
- Chief Director: Provincial Training; and
- Director: Human Rights Programmes (OSDP);
- Director: Organisation Development.
- Director: Support Services (OH&S Co-ordinator);
- Employment Equity Managers of individual departments (internal focus);
- Department of Health (a Medical Practitioner or medical-related staff, as appropriate and the provincial co-ordinator for HIV and Aids);
- Department of Transport and Public Works (handling transport and accessibility issues);
- Department of Education (Director: Specialised Education Support Services);
- Health Risk Manager for the Province (refer to Incapacity Management);

This structure may also accommodate the need to address matters relating to transversal incapacity/health risk management that may result in the permanent disability of employees.
