



**A FRAMEWORK STRATEGY AND IMPLEMENTATION PLAN
FOR DEALING WITH DISABILITY IN THE
LEGISLATIVE SECTOR**

FINAL REPORT

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LIST OF ABBREVIATIONS

CAP	Computer/Electronic Accommodations Programme
CEE	Commission for Employment Equity
CRC	Convention on the Rights of the Child
DICAG	Disabled Children's Action Group
DOC	Department of Communication
DOE	Department of Education
DPO	Disabled People's Organisation
DPASA	Disabled People South Africa
EEA	Employment Equity Act
GDP	Gross Domestic Product
ICASA	Independent Communications Authority of South Africa
ICT	Information Communication Technology
IDASA	Institute for Democracy in South Africa
INDS	Integrated National Disability Strategy
IPDS	Integrated Provincial Disability Strategies
IYDP	International Year of the Disabled Person
KSAs	Knowledge, Skills and Abilities
LSP	Legislative Support Programme
MPLs	Members of Provincial Legislatures
MPs	Members of Parliament
MTEF	Medium Term Expenditure Framework
NCESS	National Committee on Educational Support Services
NCOP	National Council of Provinces
NCSNET	National Commission on Special Needs in Education and Training
NPA	National Plan of Action
NQF	National Qualifications Framework
NRF	National Research Foundation
NSDS	National Skills Development Strategy
NSF	National Skills Fund
NSFAS	National Student Financial Aid Scheme
OSDP	Office on the Status of Disabled Persons
OVI	Objectively Verifiable Indicator
PMU	Policy Management Unit
RDP	Reconstruction and Development Programme
SABC	South African Broadcasting Corporation
SABS	South African Bureau of Standards
SAPD	South African Post Office
TDD	Telecommunications Device for the Deaf
UN	United Nations

A. INTRODUCTION

The Legislative Support Programme (LSP) advertised a tender for the appointment of a service provider to develop a framework strategy and implementation plan for dealing with disability in Parliament and provincial legislatures.

The process involved the implementation of a situation analysis exercise prior to the development of a policy framework and an implementation plan.

At the time of writing this draft report, consultations had been carried out in all but one province (Gauteng) and consultations with the national legislature were still to take place.

The need for a policy framework and implementation plan in the field of disability for Parliament and provincial legislatures comes against a background where South Africa has taken a leading role in the development of disability policies and legislation that guarantees the rights and needs of disabled persons.

The situation analysis exercise has focused on two key aspects:

- a. An exploration of the implementation of the new policies and pieces of legislation by Parliament and provincial legislatures;
- b. An examination in detail the oversight role of the legislatures with regard to the implementation of policies and legislation that includes disability components.

This report provides a summary of the situation analysis exercise and presents a strategic framework that will enable Parliament and provincial legislatures with the means to fulfil its obligations with regards to disability policy and legislative provisions.

I. Overall objectives

The objective is to ensure that Parliament and the nine provincial legislatures have a strategic document with practical implementation plan for dealing with disability. ¹

II. Purpose

¹ Annexure II: Terms of Reference

The purpose of the framework strategy is to ensure that legislatures as institutions are not only compliant in so far as disability policy implementation is concerned but that they also lead the process as agents of change and policy enforcement.²

B. PREAMBLE

I. Key strengths

This policy framework is premised on the human rights approach to disability and was designed with the active involvement of disabled persons, legislatures and other stakeholders. Its strength lies in its:

- a. recognition of disability as a cross-cutting issue located in all sectors of government and Parliament and provincial legislatures,
- b. articulation of a strong vision and principles,
- c. recognition of the principles of mainstreaming, inclusion and equal rights,
- d. specification of concrete policy measures with clear indication of the need to formulate funded plans of action within Parliament and provincial legislatures,
- e. active promotion of the principles outlined in the United Nations (UN) and other policy instruments,
- f. location within the core business of Parliament and provincial legislatures with implementation, oversight and coordination strategies,
- g. promotion of the active involvement and participation of disabled persons within the legislative environment, as employees and active role players,
- h. emphasis on the improvement in human resources and employment of disabled persons as part of enforcement and implementation of policies and legislation.

² Ibid.

C. FINDINGS FROM SITUATION ANALYSIS

A situation analysis exercise was conducted as part of developing this policy and strategic framework. The overall purpose of the situation analysis was to determine the status quo on disability policy, practices and structures within the South African Parliament and provincial legislatures. The focus of this study is two-fold:

- To understand the ways in which the legislatures conduct their core business with respect to disability issues, and
- To examine the legislatures as employers in relation to the laws that they have passed.

Some of the key findings of this study were:

1. All members of provincial legislatures (MPLs) interviewed agreed that they had had insufficient or non-existent induction and sensitisation toward disability, but felt that this would add value to their ability to monitor disability issues. They did not demonstrate a high awareness of disability legislation or how disability issues can be mainstreamed in policy, monitoring and oversight.
2. Only four of the legislatures interviewed have a disability policy in place, either in draft or approved format, and only one has a disability strategy that has been endorsed by top management. The legislatures differ significantly on who the policy is aimed at (employees, members or the citizens of the province), as well as the areas that they consider. There was general agreement that there is a need for a disability policy to access budgets, to obtain a shared understanding of disability and to plan for active recruitment and skills development.
3. Legislatures employ one or two disabled people out of a between 100 and 150 employees. It is clear that disabled people are seriously underrepresented in the workforce.
4. In terms of reasonable accommodations, the most common ones cited are ramps, lifts and toilets for disabled people. Overall, the understanding of reasonable accommodation was fairly superficial without recognition that accommodations can change over time and situations.

5. Disabled employees gave a relatively high rating of the legislature as an employer compared to other employers. They also stated that they have all received training within the legislature through generalised programmes, but feel that there should be more focus on disability issues and skills development as well as a more coherent planning of skills development.
6. Disabled employees noted that they did not feel that they were always treated as competent and responsible in their own right. The recommendations made by employees constitute a plea to management to take disability issues seriously through developing appropriate policies and implementing them.

The following themes emerged:

Theme 1: Disability policy needs to be operationalised

It is incumbent upon the legislatures to be exemplary in their practice so that they can lead the way in implementing the very laws that they have passed.

Theme 2: Disability is not a priority

Throughout all the interviews there was a sense that disability is not a priority, given other pressing matters that need to be dealt with in the legislature.

Theme 3: Difficulties in implementation

While there is acknowledgement that policies are not in place and that where they are they are not seen as a priority, there are also difficulties with implementation of prioritised, developed policies.

Theme 4: Whose problem is it?

The issues under this theme relate to whose responsibility it is to ensure that the needs of people with disabilities are met. How far must the employer go in recruiting, training and accommodating people with disabilities?

Theme 5: Equity as numbers or as process

The national target for employment equity of people with disabilities is 2% of the workforce, reflecting provincial demographics. The first danger here is that this is a minimum

requirement and should not be seen as the end of the line. It is merely a start. Secondly, the pursuit of target numbers can lead to tokenism with negative consequences for the employees so appointed.

Theme 6: Understanding of disability

There is good will toward people with disability and recognition of their right to redress and full participation in South African society, but there are still numerous misconceptions around the capabilities of the person with a disability. Access issues are seen to relate mainly to physical disability and the provision of lifts. However, there is no understanding of the needs of Deaf people or those with an intellectual disability. Reasonable accommodations are seen as once-off issues, but in fact they are sometimes ongoing for employees with a disability and also for politicians. At a social level there are either certain things that are seen as not being for people with disabilities, or arrangements are made that do not take their disabilities into account.

The recommendations presented here are those that were given by the respondents and will be augmented by the consultants with a policy review.

- There needs to be a disability policy that is developed at legislature level, with an accompanying strategy.
- Disability issues need to be made a priority in the lawmaking, oversight and employment processes. There will never be redress of past injustice if this does not happen.
- Implementation needs to be budgeted for and personnel allocated to the task.
- There should be an ongoing campaign to enhance awareness and understanding of disability in the legislatures. This could entail workshops, information sharing and disability days.
- There should be active recruiting of people with disabilities through targeted advertisements, liaison with disabled people's organisations (DPOs) and the Office on the Status of Disabled People (OSDP), and through a process of skills development.
- There should be a drive to reach, and then exceed, equity targets and bring in other types of disability, not only physical disability.
- Disability should be mainstreamed in all policies and laws made in the legislatures.
- Constituency work should be accessible to disabled members of Parliament and legislatures and for people with disabilities.

The policy and strategic framework should be philosophy-led and adhere to human-rights-oriented principles.

D. PHILOSOPHY AND PRINCIPLES

The preamble to the UN Convention on the Rights of Persons with Disabilities articulates principles that are related to the current line of thinking with regard to disability policies, philosophy and principles. These principles include:

- the need to relate policies and legislation to the proclamations in the charter of the United Nations;
- the universality, indivisibility interdependence **and interrelatedness**³ of all human rights and fundamental freedoms and the needs of disabled persons;
- the need to recognise that disability is an evolving concept which results from the interaction between persons with impairments and attitudinal and environmental barriers which hinders their full and effective participation in society on an equal basis with others;
- the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities;
- the importance of mainstreaming disability;
- the fact that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person;
- the need to promote and protect the human rights of all disabled persons.

As in the UN convention, this policy recognises that women and girls with disabilities are often at greater risk of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, both within and outside the home. Furthermore, the policy mirrors the provisions that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children.

The importance of accessibility, within Parliament and provincial legislatures, to the physical, social, economic and cultural environment, to health and education and to information and

³ Consistency with the terminology of the Vienna Declaration, most recently confirmed in Summit Outcome, para. 13: "We reaffirm the universality, indivisibility, interdependence and interrelatedness of all human rights."

communication, in enabling disabled persons to fully enjoy all human rights and fundamental freedoms is articulated in both the convention and this policy.

The purpose of the policy is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all disabled persons, and to promote respect for their inherent dignity.

The general principles that underpin this disability policy are:

- equality and non-discrimination,
- the need to promote and protect the needs and interests of women with disabilities and children with disabilities using Parliament and provincial legislatures' oversight roles and policy compliance obligations,
- prioritising awareness-raising within Parliament and provincial legislatures and the general political environment,
- access, on an equal basis with others, to the physical environment, transportation, information and communications with Parliament and provincial legislatures,
- using existing laws and policies within South Africa, and provincial legislatures and parliaments' oversight role, to ensure the protection and safety of disabled persons in situations of risk or vulnerability, including, humanitarian emergencies and the occurrence of natural disasters,
- as Parliament and legislatures, to protect, through oversight and law enforcement, the equal right of all disabled persons to live in the community, with choices equal to others, and the need for effective and appropriate measures to facilitate full enjoyment by disabled persons of this right and their full inclusion and participation in the community,
- through their law enforcement and oversight role, to ensure that the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others is protected,
- protection of the right of disabled persons to education and the enjoyment of the highest attainable standard of health without discrimination on the basis of disability;
- protecting and enforcing the right of disabled persons to work, on an equal basis with others,
- enforcing and providing oversight to ensure the protection of the right of disabled persons to take part on an equal basis with others in cultural life, recreational, leisure and sporting activities,

- calling on the collection of appropriate information, including statistical and research data, to facilitate formulation and implementation of policies and legislation by Parliament and provincial legislatures and government,
- the establishment or designation of select committees with mandates on disability and a coordination mechanism or caucus within each legislature to facilitate disability-related action in different sectors and at different levels.

The policy framework also takes into account provincial legislatures' and parliaments' oversight and enforcement roles within other key areas of life for disabled persons. Some of these factors are part and parcel of current policy objectives outlined in the new Convention on the Rights of Persons with Disabilities. Some of these areas of work are:

- the inherent right to life,
- effective access to justice for disabled persons on an equal basis with others,
- the right to liberty and security of person,
- freedom from torture or to cruel, inhuman or degrading treatment or punishment,
- protection of disabled persons, both within and outside the home, from all forms of exploitation, violence and abuse, including gender based aspects,
- the need for disabled persons to effectively and fully participate in political and public life on an equal basis with others.

E. THE POLICY AND LEGISLATIVE FRAMEWORK

In each section of this discussion, a brief overview of the specific structures, functions, laws and policies that fall under the ambit of Parliament and provincial legislatures will be presented in relation to disability issues. This will be followed by recommendations as how the current functioning can be aligned within the disability framework for maximum effect on the lives of disabled persons in South Africa.

Supportive legislation and policies include the following:

- a. The Constitution of the Republic of South Africa, 1996
- b. Joint Rules of Parliament, 1999
- c. Facilities for members of the National Assembly and Permanent Delegates of the National Council of Provinces (generally referred to as L19)
- d. Promotion of Access to Information Act (No. 2 of 2000)
- e. Employment Equity Act (No. 55 of 1998)

- f. Promotions of Equality and Prevention of Unfair Discrimination Act, 2000
- g. Integrated National Disability Strategy
- h. South African Bureau of Standards (SABS) Code of Practice, environmental accessibility
- i. Human rights Commission Act (No. 54 of 1994)
- j. Skills Development Act (No. 97 of 1998)
- k. Occupational Health and Safety Act (No.85 of 1993)
- l. Basic Conditions of Employment Act (No. 75 of 1997)
- m. Building Standard Act (No. 103 of 1997)
- n. United Nations Rules on the Equalisation of Opportunities for People With Disabilities,
- o. Technical Assistance Guide and Code of Good Practice⁴.

I. General policy and legislative environment

South Africa occupies 1,227,200 square kilometres at the southern tip of Africa. It has nine provinces which are: Eastern Cape, Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, Northern Province, North West, Free State and Western Cape.

In accordance with the Constitution, each of the nine provinces has its own legislature. The number of members is determined in terms of a formula set out in national legislation. The members are elected in terms of proportional representation. The Executive Council of a province consists of a Premier and a number of members.

The legislature, executive and judiciary are the main organs into which the governance of South Africa is divided. According to the Constitution, the structure of South Africa's Parliament is as follows⁵:

1. Parliament is made up of –
 - a. The National Assembly; and
 - b. The National Council of Provinces.

2. These two structures participate in the legislative process as per the Constitution.

⁴ This section is based on a draft policy guideline being discussed in Parliament entitled “Draft Policy on Facilities for (Disabled) Members”.

⁵ Hulme, *The Legislature, Executive and Judiciary – Introduction*.

3. The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action. As such, disability issues are considered of national importance; hence the need to capacitate structures that are charged with oversight and implementation of policies within Parliament and provincial legislatures⁶.
4. The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative processes and by providing a national forum for public consideration of issues affecting the provinces. As a policy position, it is essential that the manner in which disability is handled in provinces and within the National Council of Provinces (NCOP) adds value to the processes of policy implementation⁷.

While it is true to say that the main function of a legislature is to enact laws, this is a gross over-simplification, and making law is just one of its functions. The legislature also has the function of appointing certain officials, the oversight of the legislature and finally, linking citizens with the legislature and government⁸.

This disability policy framework presents mechanisms for mainstreaming disability in the structures and core business of Parliament and provincial legislatures. Of particular importance is the implementation of disability-inclusive policies and legislation.

II. Committees as enforcement mechanisms

Parliament and provincial legislatures do their work in plenary sessions (where members of a house meet in one group), in joint sittings (in the case of Parliament – where both houses meet as one group), and in committees (smaller groups of members).

Most of the work of Parliament and provincial legislatures is done by committees. The committee system provides for division of labour and specialisation. This creates a level of expertise that does not exist at plenary level. The committees generally reflect government departments (Portfolio) and debate the subject matter for which each department is

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

responsible. There are also ad hoc committees arranged for a special purpose. Some are formed temporarily to deal with a particular problem but others are “standing” or permanent committees that do not correspond to government departments. Within the business and structures of committees, it is essential that disability be well represented and mainstreamed as a cross-cutting issue that is relevant to all key government sectors⁹.

Committees are the places where disabled persons and other members of the public can express their opinions directly and try to influence the outcome of Parliament's or legislatures' decisions. It is essential for Parliament and provincial legislatures to create an environment where disabled persons can actively participate and provide inputs into policy debates.

III. Role within the disability framework

Working in committees on disability mainstreaming will allow Parliament and provincial legislatures to:

- a. achieve objectives related to disability mainstreaming,
- b. debate disability issues in more depth than is possible in plenary sessions,
- c. increase the participation of members of Parliament (MPs) in discussions that relate to disability mainstreaming (members of a group can participate more fully when the group is small),
- d. enable MPs to develop expertise and in-depth knowledge of disability work, theory and practice,
- e. provide a forum for disabled persons and the public to present their views directly to MPs, something which is not possible in a plenary sitting of Parliament,
- i. provide a forum for Parliament to hear evidence and collect documents which are relevant to the mainstreaming agenda and work of the specific committee.

IV. The work of committees¹⁰

Different kinds of committees have one or more of the following functions:

- They monitor and oversee the work of national government departments and hold them accountable.
- They oversee the accounts of national government departments and state institutions.

⁹ Hulme, *The Legislature, Executive and Judiciary – Introduction*.

¹⁰ Hulme, *The Legislature, Executive and Judiciary – Introduction*.

- They take care of domestic parliamentary issues.
- They examine specific areas of public life or matters of public interest.
- They consider Bills and amend them, and may initiate Bills.
- They consider private members' and provincial legislative proposals and special petitions.
- They consider international treaties and agreements.

Within these roles, whether individually or collectively:

- Disability dimensions, provisions and issues must be covered, articulated or mainstreamed as part of normal procedure.
- Opportunities exist for disabled persons as individuals and groups to interact with this process and actively contribute to the law making processes at national and provincial levels.
- A capacity building programme that facilitates this process and that is owned and championed by Parliament and provincial legislatures is strongly recommended.
- Domestic committees provide opportunities to address the needs of members of Parliament and the NCOP with disabilities in their day to day work.
- To date, research has proved that the implementation of disability policies by all government departments at national and provincial levels is lagging behind. Portfolio committees present opportunities for oversight with regard to the mainstreaming of disability in the different government departments and ensuring that policies and legislation are implemented by the different government departments. The select and joint monitoring committees charged with coordination and monitoring disability mainstreaming and legislative compliance should be capacitated (in terms of personnel, systems and expertise) to enable them to play their oversight role effectively, efficiently and in consultation with the disability sector.
- The Standing Committee on Public Accounts has a role to play in terms of monitoring and enforcement of disability expenditure targets. It is essential that members of the committee be conscientised of budget allocations for service delivery that includes disabled persons as beneficiaries or standalone disability budgets with the different government departments.
- The process of legislative proposals and petitions presents opportunities for disability-related or inclusive Draft Bills to be prepared and tabled in the National Assembly, NCOP and the provincial legislatures.

The process and opportunities of appointing ad hoc committees makes it possible for specific disability issues and matters to be addressed. In addition, joint committees present an opportunity to deal with disability using an inter-sectoral approach.

Persons with disabilities should be informed and conscientised on how to use or contact members of committees in order to present their proposals, submissions and other inputs.

Plenary sessions present an opportunity to present motions and initiate discussions on key issue related to disability.

F. POST 1994 LEGISLATIVE SCENARIO

I. Introduction and background

In South Africa, the period 1994–2004 produced legislation, policies, interventions, and programmes that were formulated with the aim of influencing the environment for addressing equity goals over the medium- to long-term and also for addressing immediate goals in increasing the number of disabled persons with access to government services.

The Constitution provides for several independent commissions that monitor developments in their respective purviews. These include: the Human Rights Commission, the Commission for Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Pan South African Language Board, and the Independent Broadcasting Authority. The Public Protector (resembling the Ombudsman in other democratic states) is empowered to investigate “impropriety or prejudice” in any sphere of government and to take appropriate remedial action.¹¹

The Preamble to our Constitution records our commitment to the attainment of social justice and the improvement of the quality of life for everyone. The Constitution declares the founding values of our society to be "human dignity, the achievement of equality and the advancement of human rights and freedoms"¹².

¹¹ SA, 2002.

¹² Constitution of the Republic of South Africa.

The Bill of Rights (Chapter 2 of the Constitution) highlights equality of all persons, specifically mentioning the right to equality and non-discrimination against persons on the grounds of disability (Section 9(2–3)).

Section 9(2) states that equality includes the full and equal enjoyment of all rights and freedoms and to promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.

Section 9(3) states that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

These rights and values provide the mandate and basis for legislatures to prioritise the area of disability for action within Parliament and the nine provincial legislatures.

The government of South Africa during the post-apartheid period (i.e. post-1994) has developed a number of useful policies. Initially, the majority of these policies were disability exclusive, indicating a slow pace of commitment by all government departments to integrate disabled persons into mainstream society.

Essential policies with disability components include:

- the Employment Equity Act
- the Labour Relations Act
- the Telecommunications Act
- Amendments to the Social Security Act
- Education White Paper 6: Special Needs Education
- the Disability Action Plan for Business and Jobs, and
- the Economic Empowerment Programme as a whole.

In November 1997, the government of South Africa adopted the White Paper on an Integrated National Disability Strategy (INDS) which is premised on the social model of disability. The INDS represents a paradigm shift in the conceptualisation of disability from the

medical or welfare model of disability, which views disabled persons as ill, different from their non-disabled peers, unable to be productive and in need of care¹³.

The focus of the medical model is on limitations of disabled persons and their medical needs, resulting in the neglect of their wider social needs which in turn promotes severe isolation of disabled persons and their exclusion from mainstream society. Consequently, disabled persons experience difficulty in accessing their fundamental rights and in participating fully and equally in all aspects of life.

The social model, which is a human rights approach to disability, places emphasis on the shortcomings of society and its inability to accommodate diversity instead of viewing disability as a welfare concern only.

The human rights approach to disability thus focuses on the removal of barriers to equal participation and on the elimination of discrimination based on disability. The broad objective of the social model is thus to integrate disabled persons into the mainstream of society.

The Integrated National Disability Strategy (INDS) is the overarching strategic tool to guide all departments to break with the discrimination of the past. Departmental implementation of the INDS is not yet sufficiently measured which can result in a loss of focus, impact, and synergy of all departmental interventions.

II. Relevance within the disability framework

The country has some of the most comprehensive legislation and policy protecting and promoting the rights of disabled people in the world and disabled people are involved at all levels of government. The positive policy environment in South Africa presents unique opportunities for disabled people to address issues such as:

- poverty alleviation
- high levels of unemployment
- education of children and youth with disabilities
- improved access to social security and assistive devices
- access to housing, public health services and transport.

¹³ SMDS et al., 2006.

III. Policies and legislation for implementation by the legislative sector as an employer

While support for the formulation and adoption of disability policies has been excellent, policy implementation remains a challenge. Of particular note is the fact that there are capacity constraints at programmatic level that limit the effective implementation of policy. Policy implementation issues are not addressed consistently for various reasons at different levels of government. These reasons include limited conceptual understanding, poor championing, inadequate or inappropriate institutional arrangements, and a general lack of capacity¹⁴.

Other factors that have contributed to the poor implementation of legislation and policies are that the definition and nature of disabled people's participation have not been adequately reviewed and articulated; and the policy requirements for disability mainstreaming are not adequately linked to performance management, thereby undermining commitment to implementation¹⁵.

In addition, legislation and policies are not implemented due to a lack of allocated fiscal resources and commitment. A pertinent example is the Policy on Inclusive Education – the Education White Paper 6 was released in 2001 and yet implementation remains fragmented.

The key policies that are relevant to Parliament and provincial legislatures are presented in **Appendix A**. This is not an exhaustive list of policies or legislation relevant to Parliament and provincial legislatures; rather a sample of essential pieces of legislation and policy that should be implemented if disability targets are to be achieved.

IV. Policies and legislation where legislative sector play an oversight role

The oversight role of Parliament and the provincial legislatures, with regard to disability, can be played through the following methods that are available to the legislature:

- **Question time**
- **Special plenary debates**
- **Other methods of oversight include:**
 - consideration of committee reports in plenary sessions,
 - annual budget process,

¹⁴ SA, 2004.

¹⁵ Ibid.

- scrutinising of departmental reports.

Parliament and the provincial legislatures have an oversight role on all the policies and pieces of legislation with disability components, including, but not limited to the ones listed in Appendix A.

V. Relevance of policy and legislation for a disability framework

1. The positive policy environment in South Africa presents unique opportunities for Parliament and provincial legislatures to take a leading role in terms of implementation and enforcement. For Parliament and provincial legislatures, implementation entails:
 - making provision for support to disabled members of Parliament,
 - providing for the accessibility and other needs of the visiting public,
 - providing for the needs of disabled employees in the sector,
 - ensuring that Parliament and the legislative play their oversight role effectively.
2. However, unless Parliament and provincial legislatures play their oversight and monitoring roles effectively, disability will not be mainstreamed effectively with resources for implementation of strategies.
3. For instance, current legislation, in the form of the Employment Equity Act, Social Assistance Act, Skills Development Act, and others, has helped create a new sense of awareness of the needs of disabled people. However, with the exception of a few policies such as the Social Assistance Act, the implementation of these policies has had marginal impact on the lives of a majority of disabled people in South Africa. Problems associated with, among other things lack of budgetary allocations, ignorance of civil servants charged with the responsibility of implementing these policies and procedural bottlenecks, have been identified as some of the main causes of “policy evaporation” within the South African context.
4. It is clear that the **impact of the Employment Equity Act (EEA) has been minimal.**

5. Furthermore, according to the Commission for Employment Equity¹⁶ (CEE) when reporting on disabled employees, large employers are required to report the number of disabled employees in each occupational category and level, while small employers are only required to report the totals. According to the CEE, all employers reported a total of 26,539 disabled employees in 2002. This represented 1% of all employees included in the 2002 employment equity reports.
6. This study found that the employment of disabled people, apart from being confined to low levels and involving little decision-making and authority also tended to be male biased, thus further marginalising women with disabilities.
7. A critical look at how employers and training providers have provided education, training, and work experience in the past indicates that education and training provision for disabled persons has not always been responsive to the demands of the economy nor has it always linked theory and practice.
8. The vast majority of disabled people are often unskilled, with low levels of education.
9. A recent development at provincial level has been the establishment of provincial versions of the Integrated National Disability Strategy (INDS), termed, in some provinces, the Integrated Provincial Disability Strategy (IPDS). Parliament and provincial legislatures have a responsibility to ensure that these strategies are implemented with adequate resources.
10. Generally, the development of disability policies within Parliament and provincial legislatures and government departments at both national and provincial levels is at an infant stage with the majority of legislatures and departments having only draft policies. Such policies are generally not backed up by funded strategies hence no meaningful implementation of these policies has occurred. The role of Parliament and provincial legislatures is to ensure that sector-specific policies mainstream disability through policy and strategy development/implementation.

¹⁶ Commission for Employment Equity *Annual Report 2002–2003*.

G. INTERNAL POLICY GUIDELINES

The fact that people with disabilities are marginalised and discriminated against has created an environment with a range of factors such as physical, psychological, social, cultural, political and economic inequalities of the past contributing to the high prevalence of disability. It is exacerbated by other obstacles that prevented disabled persons from taking part in family life and the community on the same footing as very one else. It is a diverse phenomenon with a variety of needs experienced not only by disabled persons but also their families and broader communities.

Majority of disabled persons have been excluded from the mainstream of society and prevented from accessing fundamental social, political and economic rights. The policy guideline is aimed at addressing some of these negative factors by addressing disability at three key levels, namely:

- inclusion of disabilities in human resource policies of Parliament and provincial legislatures,
- support to members of Parliament that require specific needs,
- setting up objectives and indicators to assist Parliament and provincial legislatures to effectively mainstream disability.

H. SCOPE OF APPLICATION

1. The policy shall be applicable to Parliament and provincial legislatures.
2. The policy applies to disabled members, employees and disabled persons in general.

I. PRINCIPLES

The following general principles underpin Parliament and provincial legislatures' approach to the management of disability within their internal environments. Parliament and provincial legislatures commit themselves to:

- a. respect human dignity of disabled persons;

- b. ensure that disabled persons are afforded accessible transport and have access to essential needs including assistive devices;
- c. facilitate networking among all departments, structures, directorates and the Disability Forums within Parliament and provincial legislatures;
- d. provide the widest possible economic and social opportunities to disabled persons
- e. ensure access to education and training in the mainstream;
- f. provide resources needed to realise the highest potential of disabled employees in Parliament and provincial legislatures and disabled people in general;
- g. commit to the eradication of discrimination in employment practices and to barrier-free buildings;
- h. fight poverty and the HIV/AIDS pandemic.

In addition to the above, Parliament and provincial legislatures uphold the principles that:

- a. people with disabilities have the same rights and privileges as all other employees. The potential of each individual employee will be recognised to ensure continued growth and development within their chosen career;
- b. disability-related issues within the workplace cannot be addressed in isolation, but form an integral part of Parliament and provincial legislatures' human resources management and development planning;
- c. disability can be addressed by creating a barrier-free work environment through the removal of employment and other barriers in human resource policies and practices which limit or exclude the participation and advancement of disabled persons;
- d. communication and training should be accessible to all employees.

J. STRATEGIC AREAS AND PRIORITIES

I. Roles and responsibilities

The Speaker of each provincial legislature and parliament shall take ownership and cause the implementation of the provision of this guideline.

At Parliament, and with regard to the policy on the provision of facilities, the following key roles are listed in the draft policy guideline being discussed in Parliament entitled “Draft Policy on Facilities for (Disabled) Members”¹⁷:

- a. All disabled members and relevant implementing employees of Parliament share the responsibility of adhering to and enforcing this policy.
- b. All disabled members must inform in writing their Chief Whip or the most senior Whip of their party of their special needs.
- c. The Chief Whips or most senior Whips must in writing request the Secretary to Parliament to provide the affected members with the necessary facilities, accommodation and support.
- d. The Secretary to Parliament is responsible to ensure that the facilities prescribed by this policy are provided at the cost of Parliament.
- e. The members facilities unit is responsible for implementing this policy.
- f. Political parties are responsible for the recruitment and selection of assistants and SASL interpreters.
- g. The safety, health and environment unit is responsible for health standards and environmental monitoring with regard to safety and hygiene¹⁸.

II. Priority interventions

Arising from the situation analysis and challenges, Parliament and provincial legislatures will give priority to the following key interventions:

- a. Ensuring that disabled employees have support based on their individual and collective needs;
- b. Providing an effective oversight role that cuts across all sectors of government and internally within the legislatures;
- c. Support and improve awareness of disability through workshops and awareness campaigns targeted at key structures within Parliament and provincial legislatures;
- d. Ensure that this comprehensive policy is fully and coherently applied at provincial levels;
- e. Setting up planning, implementation, and evaluation and research capacity including monitoring and oversight systems to obtain statistics, information on disability mainstreaming and to assess impact.

¹⁷ This section is based on a draft policy guideline being discussed in Parliament entitled “Draft Policy on Facilities for (Disabled) Members”.

¹⁸ Ibid.

K. REASONABLE ACCOMMODATION FOR DISABLED MEMBERS

A separate policy for disabled members of the provincial legislatures and parliaments shall be designed and implemented in each province.

Disabled members of Parliament and provincial legislatures shall be fully consulted and involved during the design, implementation and evaluation of policies that address their needs. Such policies shall be mainstreamed into the broader policies of all members of the provincial legislatures and parliaments.

A guideline on reasonable accommodation for different disabilities is provided in Appendix B.

L. EMPLOYMENT POLICY

Parliament and provincial legislatures shall maintain an environment that supports and enables disabled persons to fulfil their maximum potential. This environment will ensure that disabled persons are not discriminated against and are provided with equal access to opportunities.

I. Access to the workplace

Parliament and provincial legislatures shall in consultation with stakeholders and the owners of buildings ensure that in all buildings which are occupied by the sector, architectural barriers be removed and ensure among other things that the schedule of reasonable adjustments and accommodations in Appendix B is implemented.

Modern rehabilitation techniques and accessibility accommodations mean well-trained, capable people with disabilities enter the workplace environment every day. While in the workplace, disabled people want equal treatment rather than special treatment.

Any routes that include a gradient are potentially hazardous and exhausting to people with limited mobility. It is essential to consider slope together with distance as sometimes a

slightly steeper gradient over a shorter length may be preferred to a very long ramp. It is essential that any design meets current building regulations.

The schedule includes, but is not limited to:

Access ramps

- Use textured surfaces on the approaches to ramps to provide warnings to people with visual impairments.
- Handrails should be provided on both sides. Low kerbs, minimum 40mm height, should be incorporated along the sides of ramps as wheel stops.
- If used after dark, ramps should be lit.
- Select materials that provide a firm, level surface and are non-slip when wet or dry.
- Ramps should have a slight cross-fall to shed water.
- Regular maintenance is essential to ensure that ramps remain usable and safe. In particular debris should be removed and there should be clearance of slippery substances.

Outdoor access

- Materials for paths and hard surfaces should be carefully chosen to ensure safe and comfortable access for ambulant disabled people and wheelchair users. Surfaces should be well constructed and should give firm, non-slip, level access. Loose materials, such as gravel, are unsuitable and should not be used for main circulation routes.
- Provide handrails for steps, ramps, abrupt changes in level or where people with walking difficulties are likely to require extra support. Handrails should be provided on both sides for people limited to the use of one arm.
- Handrails must be securely anchored and continuous throughout their run, to include any level resting places. Choose handrails that are easy and comfortable to grasp – a round or oval section is best. The ends should be rounded off or turned into the wall for safety. For entrance steps or ramps, extend the rail to the door.

II. Work environment

1. Parliament and provincial legislatures shall take all reasonable steps to ensure that a supportive work environment is created to enable disabled persons to perform their duties and to realise their potential.
2. The disabled employee shall be consulted on any proposed changes to the working environment. For example, in the case of an employee who is visually impaired, such an employee should receive orientation training related to any change in the environment.
3. Parliament and provincial legislatures will reasonably accommodate the needs of disabled persons. The aim of the accommodation is to reduce the impact of the impairment of the person's capacity to fulfil the essential functions of a job.
4. Parliament and provincial legislatures will consider means within reasonable costs that are consistent with effectively removing barriers to a person being able to perform the job, and to enjoy equal access to the benefits and opportunities of employment.
5. Reasonable accommodation applies to applicants and disabled employees and may be required:
 - *during the recruitment and selection processes,*
 - *in the work environment,*
 - *in the way work is usually done and evaluated and rewarded, and*
 - *in the benefits and privileges of employment.*
6. 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.
7. Parliament and provincial legislatures will accommodate employees when work or the work environment changes or impairment varies which affects the employee's ability to perform the essential functions of the job.
8. Parliament and provincial legislatures, will consult the employee and, where practicable, technical experts to establish appropriate mechanisms to accommodate the employee.

9. The particular accommodation will depend on the individual, the impairment and its effect on the person, as well as on the job and the work environment.

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

11. Examples of universal design and reasonable accommodation include but are not limited to:

For visual access:

- graphics or videos with descriptions in html,
- having information in an accessible format such as html, not just in portable document format (pdf),
- well marked-up tables that enable technology to link the table text to the appropriate heading,
- avoiding the use of frames for lay-up as they cause problems for assistive technologies,
- keyboard support (access keys that comply with e-government standards),
- screen reader compatibility.

For hearing access:

- captioning for audio,
- supplemental illustration for text.

Physical, speech:

- keyboard or single-switch support for menu commands,
- alternatives for speech input on voice portals,
- links of a size that enables a user with mobility problems, such as Parkinson syndrome, to activate them .

Cognitive, neurological:

- consistent navigation,
- well-structured presentation,
- appropriate language level,
- illustrations,
- no flickering or strobing designs.

Multi-modality supports visual, auditory, tactile access. This simply means presenting the same information in a variety of ways which can be used by a variety of users. Multi-modality also increases the usability of websites in different situations:

- Low bandwidth (images are slow to download)
- Noisy environments (difficult to hear the audio)
- Screen-glare (difficult to see the screen).

Redundant text, audio or video (that is, the same material presented in different ways) can support:

- different learning styles
- low literacy levels
- second-language access.

1. Parliament and provincial legislatures may evaluate work performance against the same standards as other employees but the nature of the disability may require the employer to adapt the way performance is measured.
2. Parliament and provincial legislatures will ensure the development and provision of facilities, including devices, equipment, programmes and training to assist disabled persons to increase their level of independence and efficiency in the performance of their duties. To this end, the following **criteria** will serve as a guideline when assisting aids are to be procured for disabled employees:
 - The impairment should be substantially limiting with overt symptoms.
 - The absence of reasonable accommodation would make the employee either totally or partially unable to perform the inherent requirements (essential functions) of the job.
 - Impairments that are easily controlled corrected or lessened so that they have no limiting effects, for example an employee who wears spectacles or contact lenses the employee's vision is substantially impaired. The same applies in the case of hearing aids.
 - The principle of reasonable accommodation as provided for in the Employment Equity Act, will be applied.
 - Ensure that facilities used by employees are readily accessible and used by individuals with disabilities; and
 - Create barrier-free buildings that include:
 - accessible entrance into the facility,

- access to rest rooms, and
- any other necessary measures, e.g. Braille in lifts, warning lights for deaf people in case of emergency, etc.

III. Recruitment and selection

Recruitment

1. Recruitment and selection of disabled persons shall be in line with Parliament and provincial legislatures' recruitment and selection policies. Care must be taken that job requirements, including job description, focus on the inherent requirements of a job. Recruitment should also include positions within internships.
2. Organisations that represent the interest of disabled persons should be utilised to recruit disabled persons.
3. Advertisements should include sufficient detail about the essential functions and duties of the job so that potential applicants with disabilities can make an informed decision if they meet the inherent requirements of the job.
4. In order to give disabled persons a fair chance to compete for jobs, Parliament and provincial legislatures will send its job adverts to national organisations that represent the interests of disabled persons. Such bodies will then distribute the adverts to their members and/or affiliate organisations.
5. Candidates will be encouraged to state in advance any special arrangements they may require in order to attend interviews. Parliament and provincial legislatures will thus be in a position to reasonably accommodate such candidates for an effective interview.
6. Members of the interview panels will be given ongoing sensitisation and guidance on the interview and selection process of disabled persons to eliminate stereotypes and subjectivity against disabled persons.
7. The recruitment process will be adjusted to take account of the special needs of job seekers with disabilities; the rationale for such adjustments shall be communicated to disabled candidates and employees.

8. Parliament and provincial legislatures will ensure that in offering a job to a disabled person any disability-related adjustments to the working environment or workstation is discussed and agreed to with the candidate.
9. Parliament and provincial legislatures will regularly review the effectiveness of recruitment and selection measures for disabled persons and adopt appropriate remedial steps to ensure its effectiveness.
10. When recruiting:
 - identify the inherent requirements and essential functions of the vacant position;
 - describe clearly the necessary skills and capabilities for the job;
 - set reasonable criteria for selection, preferably in writing, for job applicants for vacant positions.
11. The inherent requirements of the job are the purposes for which the job exists. The essential functions and duties of the job are what are necessary to get the job done.
12. Application forms should focus on identifying an applicant's ability to perform the essential functions of the job.
13. Parliament and provincial legislatures will not include functions that are not essential to performing the inherent requirements of the job because selection based on non-essential functions may exclude disabled persons unfairly.
14. On request, and if reasonably practicable, advertisements should be provided in a format appropriate to disabled persons, such as large print, Braille, or audiotape.

Selection

1. Parliament and provincial legislatures will apply the same criteria to test the ability of disabled persons that are applied to other applicants, although it may be necessary to accommodate applicants who have disabilities.
2. The purpose of the selection process is to assess whether or not an applicant meets the requirements for the post.

3. The employer shall not request information about actual or perceived disability from a previous employer or third party.
4. Parliament and provincial legislatures will review the selection criteria on a regular basis to ensure that inappropriate barriers to disabled persons are removed.
5. Selection interviews should be sensitive, objective and unbiased to disabled persons. Interviewers must avoid assumptions about disabled persons.
6. If an applicant has disclosed a disability or has a self-evident disability, Parliament and provincial legislatures, will focus on the applicant's qualifications for the work rather than any actual or presumed disability but may inquire and assess if the applicant would, but for the disability, be suitably qualified.
7. Interviewers should ask all applicants to indicate how they would accomplish the inherent requirements of the job and perform its essential functions and if accommodation is required.

IV. Training and career advancement

1. Parliament and provincial legislatures will consult with disabled employee so as to advance their skills and experience.
2. Parliament and provincial legislatures will make available information on career development to disabled employees and will take into account the specific needs of disabled persons in developing their career goals.
3. When training is offered, Parliament and provincial legislatures will ensure that the specific disability needs of disabled persons are catered for.

V. Job retention

Parliament and provincial legislatures shall ensure that when an employee acquires disability while in its employment the following process is followed to retain the skills and experience of such an employee:

- a. Early intervention and referral to rehabilitation services;
- b. Work with competent authorities to assess the ability of an employee to continue with the same job or make some changes to the job profile or working environment;
- c. Exploring measures for gradual resumption of work;
- d. Keeping in touch with the employee and where practicable, encouraging early return to work. This may require vocational rehabilitation, transitional work programmes, and where appropriate, temporary or permanent flexible working time.

VI. Termination of employment

1. If an employee becomes disabled, Parliament and provincial legislatures shall consult the employee to assess if the disability can be reasonably accommodated.
2. If not, Parliament and provincial legislatures shall consult the employee to explore the possibility of alternative employment appropriate to the employee's capacity.
3. If the employee is unable to be accommodated or there is not appropriate alternative employment, Parliament and provincial legislatures may terminate the employment relationship.
4. Subject to the preceding provision above, Parliament and provincial legislatures shall in consultation with such an employee facilitate arrangements for disability benefits
5. Parliament and provincial legislatures shall provide full information of disability benefits to ensure that employees are fairly advised before they apply for the benefits available and before resigning from employment due to medical conditions.

VII. Health and safety

1. Parliament and provincial legislatures shall maintain a working environment that is safe to all employees. As part of an ongoing health and safety audit, the needs of disabled employees shall be included.

2. The procedures for evacuation shall take into account any specific or additional measures to ensure that an employee with a disability is safely evacuated from a building or work site during emergencies

VIII. Performance management and rewarding of performance

1. Disabled employees shall be only measured on essential job functions and as such systems and practices to evaluate work performance should clearly identify, fairly measure and reward performance of the essential functions of the job.
2. Performance may be evaluated on the same standards as other employees, but the nature of the disability may require adapting the way performance is measured.
3. In line with the constitutional principle of equality, no special lowering of standards (degrading and a possible unfair labour practice because it is unfairly discriminatory) should be made for disabled persons. The key is that they meet the minimum inherent requirements of the job, or they are suitably qualified.
4. For unacceptably poor performance, the provisions of the Code of Good Practice regarding dismissal relating to the termination of services for incapacity due to ill-health or injury needs to be carefully applied. A good dose of extra patience and support would greatly reduce the risk of losing a case of alleged unfair dismissal.

IX. Assessments and medical testing

1. Medical and psychological testing and other similar assessments should be relevant, appropriate to the kind of work for which the employee is being tested, as well as free of bias, should be valued and reliable.
2. Reasonable accommodation shall be made for applicants with disabilities where assessment of certain skills is imperative without compromising the inherent requirements of the job.

X. Confidentiality and disclosure of status on disability

1. Although not compulsory, it is imperative that employees having a disability should disclose their status to their managers or the relevant person designated to handle such matter in order to enable Parliament and provincial legislatures to reasonably accommodate them.
2. A status disclosed shall be kept confidential unless the employee decides to go public with his or her status.
3. A person with a disability may disclose their disability at any time, even if there is no immediate need for reasonable accommodation.
4. If the disability is not self-evident Parliament and provincial legislatures may require the employee to disclose sufficient information to confirm the disability or the accommodation needs
5. If on reasonable grounds Parliament and provincial legislatures does not believe that the employee is disabled, or that the employee requires accommodation, it shall request the employee to be tested to determine the employee's ability or disability, at the expense of the employer.
6. As information about disability may be technical, the manager or official concerned should ensure that a competent person interprets the information.
7. Further information may be required based on its relevancy to a specific job and essential functions.
8. An employee's disability shall only be disclosed if required for the health or safety of the disabled person
9. The disability status shall not be disclosed without the written consent of the employee concerned unless this is required by law.

10. If accommodating the employee requires the cooperation 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.
11. Parliament and provincial legislatures, may, after consulting the person with a disability, advise relevant staff that the employee requires 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 persons.
12. The employer must protect the confidentiality of the information that has been disclosed and must take care to keep records of private information relating to the disability of applicants and employees confidential and separate from general personnel records.
13. When Parliament and provincial legislatures, no longer requires the information, it must be returned to the employee or be destroyed or returned anonymous.

XI. Terms and conditions of employment

1. Parliament and provincial legislatures will not employ disabled persons on less favourable terms and conditions for reasons connected with the disability.
2. Inclusive accommodation for disabled employees will be considered where necessary. In all other cases, staff with disabilities shall be subject to the same conditions of employment, disciplinary code and contractual obligations as other employees
3. No person may harass an employee on the ground of disability. Such harassment may include teasing, ridicule and offensive remarks.

XII. Access to information and communication

1. Parliament and provincial legislatures will make provision for the following:
 - a. Equal opportunities for access to information for people who have communication disabilities;
 - b. Information services and documents must be accessible for different groups of disabled persons;

- c. Appropriate assisting aids must be available for people who have visual impairments, e.g. Braille, tape services, large print, acoustic devices and other appropriate technologies; and
- d. Appropriate technologies to have access to audio information for people who have auditory impairments.

2. Consideration will also be given to the following:

a. Sign language and tactile interpreters:

The employer will provide sign language and tactile-and-sign-language interpreter services to facilitate communication between deaf people, deaf-blind persons and other employees and the needs of people with other communication disabilities.

b. Social barriers:

Parliament and provincial legislatures shall eliminate prejudice, stereotypes and ignorance of disability and sensitive employee's negative attitudes and stereotypes that limit advancement of disabled persons. Inaccessible and unsupportive work environments should be attended to in order to assist disabled persons to gain advancement in their employment.

M. STRATEGIC FRAMEWORK

I. Introduction

In order to effectively address the needs of disabled persons, Parliament and provincial legislatures should, among other things, undertake to:

- provide for the needs of disabled members of Parliament.
- integrate disability components into budgets, programmes, policies, legislation and strategies of Parliament and provincial legislatures.
- implement programmes related to awareness and educational campaigns within Parliament and provincial legislatures targeted at political and other internal structures.
- establish disability focal points, with built in capacity and appraisal systems.

The consultative process so far has facilitated the identification of disability entry points and stakeholders and to identify potential areas to integrate disability, reflecting on ways of ensuring that disability is integrated into key activities, and potential areas of engagement for Parliament and provincial legislatures.

The process included identifying the core functions of Parliament and provincial legislatures and possible disability entry points; and creating unanimous consensus on the need to follow a twin-track approach involving the development of specific disability objectives and outputs that could also be mainstreamed in the normal core business of Parliament and provincial legislatures.

II. Rationale and justification

A paradigm shift

There is wide acceptance that the principle of equal rights for the disabled people and those that are non-disabled implies that the needs of each and every individual are of equal importance, that these needs must be made the basis for the planning of societies, and that all resources must be employed in such a way as to ensure, for every individual, equal opportunity for participation. However, disability policies do not as yet ensure the access of the disabled people to all community services.

Lack of information about disability is one of the biggest problems for disabled persons. Without information about rights, services, technical aids and health care disabled persons are excluded from their communities.

The subject of disability is usually ignored by the media. When it is discussed, more often than not, disabled persons are seen as “different” and “tragic” and in need of charity. Disabled persons are rarely shown as being part of the community or able to talk about their own lives.

Many disabled persons are denied the opportunity to participate fully in society because of a lack of services and programmes which include them and meet their needs. For example:

- Most technical aids are expensive and not easily available.
- Community-based rehabilitation is not widely available outside big towns and cities.
- Opportunities for education are scarce and expensive.
- Aid and development agencies only spend a small fraction of their funding on projects which include disabled persons.

One of the important recommendations of the Standard Rules is to encourage United Nations member states to introduce anti-discrimination legislation to promote the rights of disabled persons. The key issues in legislation of this kind are:

- an enforcement structure – making sure that the law is kept;
- a duty on the state and private sector to keep the law and to make public places and businesses accessible to disabled persons;
- support for disabled persons to get their rights.

Disability is a poverty issue

A compelling analysis of the causes of poverty is offered by Robert Chambers. He describes an interlocking web of five factors each of which feeds off and exacerbates the others. The factors are **poverty itself, physical weakness, isolation, vulnerability, and powerlessness**. To Chambers' list two other factors should be added: **environmental variable and gender discrimination**.

The pattern of policy, planning, and programmes has been gradually undergoing change since the International Year of the Disabled Person (IYDP) initiative in 1981. Today emphasis is of **government responsibility: for all categories of disability, for equality of**

opportunities, for facilitating access to mainstream services and careers, and for involving disabled persons, through their organisations, at every stage of development.

The following sections of this policy framework present a vision, mission and purpose of this policy framework. The sections also provide details of key objectives, outputs, indicators and activities that will assist in implementing this policy framework.

III. Vision

The vision is that of a society for all, by creating an environment encompassing human diversity and the development of all human potential.

IV. Mission

The mission is to integrate and mainstream disability through strategies that sustain non-discriminatory attitudes and foster inclusiveness throughout Parliament and provincial legislatures in line with the Batho Pele principles.

V. Purpose

The purpose of this policy is to set out guidelines for Parliament and provincial legislatures to ensure that:

- the needs of disabled persons including disabled members of Parliament and employees are addressed in line with the mandate of Parliament and provincial legislatures;
- the interests and needs of disabled persons are taken into account through the provision of accessible and equitable services using Parliament's and provincial legislatures' oversight, monitoring and implementation roles as mechanisms for achieving policy objectives.

VI. Overall objective

By the end of March 2009, the National Parliament and nine provincial legislatures would have planned and implemented activities linked to this policy framework in order to address the socio-economic and political needs of disabled persons and disabled employees.

This will be verified by, among other things, the statistics of the then and now in terms of:

- a diverse workforce incorporating disabled persons with access to and receiving support, reasonable adjustments and accommodations;
- an increased number of disabled persons actively participating in the affairs of Parliament and provincial legislatures;
- disabled employees in Parliament and provincial legislatures with access to increased number of opportunities within a barrier-free environment.

The tables presented below highlight the main objectives and outputs. Note that the outputs presented below are for Parliament and provincial legislatures and each entity should select and implement activities according to identified priorities. Once approved, the planned activities outlined below (and accompanying budget to be worked out in each province) must be included in each legislature's annual budgets and medium-term expenditure frameworks.

The activities below should be mainstreamed in the performance management contracts of senior management in Parliament and provincial legislatures.

VII. Breach of policy

Any breach of this policy by employees of legislatures should lead to disciplinary hearings and other internal redress procedures.

VIII. Dispute resolution

The Speaker of the provincial legislature shall utilise internal dispute resolution procedures to deal with any disputes arising from the implementation of this policy.

IX. Communication and roll-out

- a. Each provincial legislature and parliament will adapt this policy to local needs and priorities.
- b. A provincial implementation plan and budget must be incorporated into the main budget and annual plans of legislatures.

- c. Each provincial legislature and parliament will roll out the implementation process on an incremental basis in all future annual plans and medium-term expenditure frameworks.

X. Review of policy

This policy and strategic framework must be reviewed annually or whenever the need arises during the course of a given year.

XI. Date of effect

This policy comes into effect upon signing by the Speaker of the provincial legislature.

XII. Monitoring and evaluation

- a. The policy management unit (PMU) must monitor the implementation the impact of this policy.
- b. A monitoring and framework for this policy and strategic framework must be designed and implemented within three months of the acceptance of this policy document.
- c. An externally facilitated participatory evaluation exercise must be implemented every year.

N. STRATEGIC FRAMEWORK MATRIX

IMMEDIATE OBJECTIVE 1	KEY PERFORMANCE/IMPACT INDICATORS	MEANS OF VERIFICATION	ASSUMPTIONS
To integrate disabled persons into workforce of Parliament and provincial legislatures by the end of March 2009.	Available staff positions, including middle and senior management allocated to disabled persons by March 2009.	<ul style="list-style-type: none"> • Employment equity reports • Fiscal plans • Skills audit reports. 	That disabled applicants will apply for vacant/advertised posts.
	Output 1.1 Persons with disabilities employed within Parliament and provincial legislatures as per the Employment Equity Act and other relevant legislation by March 2009.	At least 5% of staff positions, including middle and senior management allocated to disabled persons with adequate provisions for reasonable accommodation, all-round accessibility and skill enhancement opportunities using existing legislation, technical manuals and Code of Good Practice as a guide by March 2009.	
2007			
Office or Division	Budget per entity	Apr-08	2008
Activities	Activities	Activities	2009
Office or Division	Budget per entity	Office or Division	Office or Division
Activities	Activities	Activities	Budget per entity

<ul style="list-style-type: none"> • Advertise available posts and other positions and distribute to disability sector. • Plan and implement briefing sessions for the disability sector. 	Human Resources (using their policy as a guide)	R140 000	Advertise available posts and other positions and distribute to disability sector. Plan and implement briefing sessions for the disability sector.	Human Resources	R142 000	Advertise available posts and other positions and distribute to disability sector. Plan and implement briefing sessions for the disability sector.	Human Resources	R144 000
<ul style="list-style-type: none"> • * Interview and appoint disabled persons to suitable positions including senior management positions. 	Human Resources	R350 000	Interview and appoint disabled persons to suitable positions including senior management positions.	Human Resources	R410 000	Interview and appoint disabled persons to suitable positions including senior management positions.	Human Resources	R560 000
<ul style="list-style-type: none"> • Provide reasonable accommodation (where necessary). 	Human Resources	R160 000	Provide reasonable accommodation (where necessary).	Human Resources	R290 000	Provide reasonable accommodation (where necessary).	Human Resources	R450 000
<ul style="list-style-type: none"> • Ensure that both intellectual and physical accessibility is provided for. • Enforce building regulations on accessibility. 	Human Resources	R160 000	Ensure that both intellectual and physical accessibility is provided for. Enforce building regulations on accessibility.	Human Resources	R290 000	Ensure that both intellectual and physical accessibility is provided for. Enforce building regulations on accessibility.	Human Resources	R450 000

	<ul style="list-style-type: none"> • Provide on the job training opportunities. 	Human Resources	R100 000	Provide on the job training and apprenticeship opportunities.	Human Resources	R110 000	Provide on the job training and apprenticeship opportunities.	Human Resources	R120 000
	<ul style="list-style-type: none"> • Conduct internal disability awareness raising campaigns and training for staff the legislature. 	Human Resources	R340 000		Human Resources	R380 000			R450 000

IMMEDIATE OBJECTIVE 2	KEY PERFORMANCE/IMPACT INDICATORS	MEANS OF VERIFICATION	ASSUMPTIONS
<p>To mainstream disability in core business of committees in line with Parliament and provincial legislatures' monitoring and oversight roles, raising awareness and achieving policy utilisation, through a proactive information and educational campaign on available laws and about human-rights-oriented disability policy instruments by March 2009.</p> <p>Output 2.1</p> <p>Members of committees of Parliament and provincial legislatures, particularly portfolio and select committees with capacity to plan, monitor, evaluate and report on achievement of strategic disability objectives of mainstreamed laws by March 2009.</p>	<ul style="list-style-type: none"> Members of Parliament and legislatures able to monitor and play an oversight role on disability components in mainstream legislation in South Africa by March 2009. Committees enforce the provisions of existing disability mainstreamed legislation and ensure inclusion of disability is new laws. Members of committees of Parliament and provincial legislatures, particularly portfolio and select committees, able to play an effective oversight role and call government departments to account for implementation of disability policy/legislation that relates to disabled persons by March 2009. Enforcement mechanisms for passed pieces of legislation that mainstream disability developed and implemented by March 2009. 	<ul style="list-style-type: none"> Select committee minutes and report Parliamentary reports Evaluation report. Reports of select committees Evaluation and other parliamentary or legislative reports. 	<p>Present political will in support of disability work will continue.</p> <p>There will be unity of purpose among and within members of select committees and stakeholders.</p>

2007			2008			2009		
Office or Division	Budget for each entity	Apr-08	Office or Division	Budget for each entity	Activities	Office or Division	Budget for each entity	Activities
Activities								
Conduct a situation analysis on policy utilisation and how to improve the effectiveness of oversight role of select committees for Parliament and provincial legislatures.	R280 000	<ul style="list-style-type: none"> Update situation analysis on policy utilisation and effectiveness of oversight role of Parliament and provincial legislatures. Facilitate production of monitoring reports by sectors. 		R388 000	<ul style="list-style-type: none"> Update a situation analysis on policy utilisation and effectiveness of oversight role of Parliament and provincial legislatures. Facilitate production and distribution of sectoral reports on performance and extent of mainstreaming. Plan targets for next phase of the MTEF. 		R496 000	

ACTIVITIES

<p>Based on the findings of the situation analysis, plan and implement enforcement and oversight mechanisms. (incl. motions, debates, Bills, etc.).</p> <p>Implement comprehensive awareness raising programmes aimed at educating disabled persons themselves about how to make submission to select committees and policies/legislation of benefit to them.</p>		<p>R320 000</p>	<p>Based on the findings of the situation analysis, plan and implement enforcement and oversight mechanisms.</p> <p>Implement comprehensive awareness raising programmes on how to make submission to select committees and on policies/legislation of benefit to them.</p>		<p>R322 000</p>	<p>Based on the findings of the situation analysis, plan and implement enforcement and oversight mechanisms.</p> <p>Implement comprehensive awareness raising programmes aimed at educating disabled persons themselves about how to make submission to select committees and policies/legislation of benefit to them.</p>		<p>R344 000</p> <p>R720 000</p>
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	<p>Conduct awareness raising work around disability policies and legislation, particularly in relation to implementation and enforcement strategies for the benefit of members of Parliament provincial legislatures and civil society organisations.</p>		R450 000	<p>Conduct awareness raising work around disability policies and legislation, particularly in relation to implementation and enforcement strategies for the members of Parliament and provincial legislatures and civil society organisations.</p>		R520 000	<p>Conduct awareness raising work around disability policies and legislation, particularly in relation to implementation and enforcement strategies for the members of Parliament provincial legislatures and civil society organisations.</p>		R644 000
	<p>Plan and implement internal awareness of sectoral needs of specific disability groups for members of committees using the disability sector as a resource.</p>		R290 000	<p>Plan and implement internal awareness campaigns for members of committees using the disability sector as a resource of sectoral needs of specific disability groups.</p>		R399 000	<p>Plan and implement internal awareness campaigns for members of committees using the disability sector as a resource of sectoral needs of specific disability groups.</p>		R480 000

Plan and implement joint training/implementation workshops between members of select committees and senior departmental officials linked to disability policy/legislative provisions of government.	R550 000	Plan and implement joint training/implementation workshops between members of select committees and senior departmental officials linked to disability policy/legislative provisions of government.	R682 000	Plan and implement joint training workshops/implementation between members of select committees and senior departmental officials linked to disability policy/legislative provisions of government.	R794 000
Implement events to create awareness and commemorate special Disability Days.	R550 000	Implement events to create awareness and commemorate special Disability Days.	R665 000	Implement events to create awareness and commemorate special Disability Days.	R780 000
Plan and implement sign language appreciation session for Parliament and provincial legislatures personnel.	R190 000	Plan and implement sign language appreciation session for Parliament and provincial legislatures personnel.	R199 000	Plan and implement sign language appreciation session for Parliament and provincial legislatures personnel.	R208 000

Materials, including newsletters, pamphlets and research results on disability policy/legislative provisions simplified and produced for dissemination in accessible formats.		R390 000	Materials, including newsletters, pamphlets and research results on disability policy/legislative provisions simplified and produced for dissemination in accessible formats.		R410 000	Materials, including newsletters, pamphlets and research results on disability policy/legislative provisions simplified and produced for dissemination in accessible formats.	R520 000
Establish an oversight, monitoring and evaluation framework for each government department that relates to relevant disability policy provisions.		R640 000 (for different sectors of government)	Establish an oversight, monitoring and evaluation framework for each government department that relates to relevant disability policy provisions.		R666 000 (for different sectors of government)	Establish an oversight, monitoring and evaluation framework for each government department that relates to relevant disability policy provisions.	R772 000 (for different sectors of government)
Identify, engage and include all stakeholders, including government and civil society organisations interested in the monitoring and evaluation process.		R225 000	Identify, engage and include all stakeholders, including government and civil society organisations interested in the monitoring and evaluation process.		R330 000	Identify, engage and include all stakeholders, including government and civil society organisations interested in the monitoring and evaluation process.	R435 000

Facilitate acquisition of knowledge through, among other strategies, research and conducting learning exchange visits to or from other countries for members of portfolio committees on key strategic areas related to the oversight, monitoring and evaluation roles in relation to mainstreamed disability programmes.		R620 000	Facilitate acquisition of knowledge through, among other strategies, research and conducting learning exchange visits to or from other countries for members of portfolio committees on key strategic areas related to the oversight, monitoring and evaluation roles in relation to mainstreamed disability programmes.		R732 000	Facilitate acquisition of knowledge through, among other strategies, research and conducting learning exchange visits to or from other countries for members of portfolio committees on key strategic areas related to the oversight, monitoring and evaluation roles in relation to mainstreamed disability programmes.	R844 000
Parliament and provincial legislatures will mobilise financial and other resources for the implementation of monitoring and evaluation frameworks for this disability policy and capacity building plans.		R470 000	Parliament and provincial legislatures will mobilise financial and other resources for the implementation of monitoring and evaluation frameworks for this disability policy and capacity building plans.		R577 000	Parliament and provincial legislatures will mobilise financial and other resources for the implementation of monitoring and evaluation frameworks for this disability policy and capacity building plans.	R684 000

IMMEDIATE OBJECTIVE 3		OBJECTIVELY VERIFIABLE INDICATORS (OVIs)	MEANS OF VERIFICATION	ASSUMPTIONS
To ensure that budgetary allocations to disability work are utilised efficiently and effectively by March 2008.		<ul style="list-style-type: none"> Disability budgetary allocations adequate to implement all phases of this policy by March 2009. Efficient, effective and appropriate use of funding allocated for disability work. 	<ul style="list-style-type: none"> Audit reports. Financial reports of projects. 	<ul style="list-style-type: none"> Disability will continue to be a priority during budgeting process. Development aid is secured from funding partners.
Output 3.1: Budget		<ul style="list-style-type: none"> Financial resources allocated to the implementation of the disability policy framework by Parliament and provincial legislatures for mainstreamed disability components. 	<ul style="list-style-type: none"> Select committee reports Audit reports. 	
This disability policy with adequate budgets for agreed priority activities by March 2008.				
2007				
ACT	Activities	Budget	Activities	2008
	Office or Division	Budget	Office or Division	2009
				Office or Division
				Budget

	<ul style="list-style-type: none"> Study all aspects and components of the disability policy framework to determine budgets needs. 	R60 000	<ul style="list-style-type: none"> Review all aspects and components of the disability policy framework to determine budgets needs. 	R80 000	<ul style="list-style-type: none"> Review all aspects and components of the disability policy framework to determine budgets needs. 	R90 000
	<ul style="list-style-type: none"> Allocate budgets to agreed priorities. Monitor through financial reports and audits. Evaluate effectiveness and efficiency in utilisation of budgets. 	R20 000	<ul style="list-style-type: none"> Allocate budgets to agreed priorities. Monitor through financial reports and audits. Evaluate effectiveness and efficiency in utilisation of budgets. 	R22 000	<ul style="list-style-type: none"> Allocate budgets to agreed priorities. Monitor through financial reports and audits. Evaluate effectiveness and efficiency in utilisation of budgets. 	R24 000
		R25 000		R27 500		R30 000
	<ul style="list-style-type: none"> Allocate budgets to agreed priorities. Monitor through financial reports and audits. Evaluate effectiveness and efficiency in utilisation of budgets. 				<ul style="list-style-type: none"> Allocate budgets to agreed priorities. Monitor through financial reports and audits. Evaluate effectiveness and efficiency in utilisation of budgets. 	
	<ul style="list-style-type: none"> Allocate budgets to agreed priorities. Monitor through financial reports and audits. Evaluate effectiveness and efficiency in utilisation of budgets. 				<ul style="list-style-type: none"> Allocate budgets to agreed priorities. Monitor through financial reports and audits. Evaluate effectiveness and efficiency in utilisation of budgets. 	

IMMEDIATE OBJECTIVE 4	KEY PERFORMANCE/IMPACT INDICATORS	MEANS OF VERIFICATION	ASSUMPTIONS
<p>To ensure and provide for physical and other intellectual accessibility within the legislative environment for disabled members of Parliament/legislatures disabled employees and the visiting public by March 2009.</p>	<ul style="list-style-type: none"> • Legislative environment with buildings and other facilities that are accessible to persons with different disabilities members of Parliament/legislatures and by March 2009 • Improved access to sign and tactile interpretations services • Improved access to information in Braille, tapes and other accessible formats • Policy on support to disabled members implemented. 	<ul style="list-style-type: none"> • Select committee minutes and report • Parliamentary reports • Evaluation report. 	<p>The Department of Public Works and other owners of buildings and facilities cooperate and effect adaptations and provisions.</p>
<p>Output 4.1</p>			
<p>Policy on support to disabled members of Parliament incorporates provisions for disabled employees and members of the public and is implemented on an ongoing basis by March 2008.</p>	<ul style="list-style-type: none"> • An inclusive policy on support to members that articulates their needs and that is inclusive of provisions of benefit to disabled employees and visiting public by March 2008. 	<ul style="list-style-type: none"> • Revised policy document • Provisions incorporated into the policy framework. 	<ul style="list-style-type: none"> • Budgetary allocations will be made for support services and reasonable adjustments/accommodation.
	<p>2007</p>	<p>2008</p>	<p>2009</p>

Activities	Office or Division	Budget	Activities	Office or Division	Budget	Activities	Office or Division	Budget
<ul style="list-style-type: none"> Formulate objectives and outputs of policy of support to members. Integrate policy of support to members in the main disability policy framework for the legislative sector. 	Secretary to Parliament and provincial legislatures.		<ul style="list-style-type: none"> Integrate policy of support to members in the main disability policy framework for the legislative sector. Provision of access to disabled MPs, employees and visiting public. 	Secretary to Parliament and provincial legislatures.	R400 000	<ul style="list-style-type: none"> Integrate policy of support to members in the main disability policy framework for the legislative sector. Provision of access to disabled MPs, employees and visiting public. 	Secretary to Parliament and provincial legislatures.	R430 000

ACTIVITIES

	<ul style="list-style-type: none"> • Provision of access to disabled MPs, employees and visiting public. • Provision of reasonable access, accommodations and facilities. • Access provided in and out of the: <ul style="list-style-type: none"> ○ Houses ○ parliamentary villages ○ parliamentary precincts. 		R350000	<ul style="list-style-type: none"> • Provision of reasonable access, accommodations and facilities. • Access provided in and out of the: <ul style="list-style-type: none"> ○ Houses ○ parliamentary villages ○ parliamentary precincts. 		<ul style="list-style-type: none"> • Provision of reasonable access, accommodations and facilities. • Access provided in and out of the: <ul style="list-style-type: none"> ○ Houses ○ parliamentary villages ○ parliamentary precincts. 		
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	<ul style="list-style-type: none"> Facilities and support services include, for all disability categories: <ul style="list-style-type: none"> training assistive technology devices transport furniture, etc. as per attached schedule. 			<ul style="list-style-type: none"> Facilities and support services include, for all disability categories: <ul style="list-style-type: none"> training assistive technology devices transport furniture, etc. as per attached schedule. 			<ul style="list-style-type: none"> Facilities and support services include, for all disability categories: <ul style="list-style-type: none"> training assistive technology devices transport furniture, etc. as per attached schedule. 		
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	<ul style="list-style-type: none"> Reasonable adjustments to include constituency work. Ensure that the overall disability policy framework is available in accessible formats. Awareness raising programmes for all employees of Parliament and provincial legislatures. 		R180 000	<ul style="list-style-type: none"> Reasonable adjustments to include constituency work. Ensure that the overall disability policy framework is available in accessible formats. Awareness raising programmes for all employees of Parliament and provincial legislatures. 		R200 000	<ul style="list-style-type: none"> Reasonable adjustments to include constituency work. Ensure that the overall disability policy framework is available in accessible formats. Awareness raising programmes for all employees of Parliament and provincial legislatures. 		R210 000
		R80 000			R10 000			R12 000	
		R250 000			R310 000				

<p>Output 4.2</p> <p>All existing and new buildings, information and at least 2% of transport fleet owned by Parliament and provincial legislatures made accessible to disabled persons by 31 March 2005.</p>	<ul style="list-style-type: none"> Renovated and accessible buildings. Adapted transport for disabled people made more available for utilisation by disabled people such as vehicles. Accessibility extended to all categories of disability by March 2009. 	<ul style="list-style-type: none"> Reports of select committees Evaluation and other parliamentary or legislative reports. Reports on site Inspection Research from disabled persons. 	<ul style="list-style-type: none"> Funding and interpretation resources are provided on time. There will be demand for accessibility and access to information.
2007			
Activities	Office or Division	Budget	Activities
Conduct a situation analysis on the need for accessibility of buildings and facilities (if necessary).		R180 000	Update situation analysis and assessment of intellectual accessibility and needs of members of Parliament/provincial legislatures, disabled employees and visiting public.
2008			
Activities	Office or Division	Budget	Activities
		R288 000	Update a situation analysis and assessments and needs of members of Parliament/provincial legislatures, disabled employees and visiting public.
2009			
Activities	Office or Division	Budget	Activities
		R326 000	

	<p>Based on the findings of the situation analysis, get the Department of Public Works or owners of facilities to make environment accessible.</p> <ul style="list-style-type: none"> • Provide reasonable adjustments and accommodation. • Facilitate provision of interpretation services • Facilitate Braille and other user-friendly formats • Building of ramps, lifts and upgrading of toilets. • Easy operated entry points e.g. electric doors and lifts. • Provision of clearly identified parking for disabled people. 		R620 000	<ul style="list-style-type: none"> • Make environment accessible. • Facilitate provision of interpretation services • Facilitate Braille and other user-friendly formats • Building of ramps, lifts and upgrading of toilets. • Easy operated entry points e.g. electric doors • Provide reasonable adjustments/accommodation. 		R722 000	<ul style="list-style-type: none"> • Make environment accessible. • Facilitate provision of interpretation services. • Facilitate Braille and other user-friendly formats • Building of ramps, lifts and upgrading of toilets. • Easy operated entry points e.g. electric doors. • Provide reasonable adjustments/accommodation based on needs. 		R844 000
	<ul style="list-style-type: none"> • 								

O. CONCLUSION

This disability policy and strategic framework is aimed at mainstreaming disability in the core business and internal operations of Parliament and provincial legislatures. The framework presents policy provisions and a strategy for inclusion of disability.

END OF FRAMEWORK

POLICIES AND ACTS OF PARLIAMENT RELEVANT TO DISABILITY**1. Analysis of policies and legislation where Parliament and legislatures have an implementation role****(a) The Employment Equity Act (EEA), 1998****i. Achieving the disability equity targets**

During 2002–03, South Africa had a working population of 27,98 million²⁰, of which:

- 15,86 million were economically active
- 11 million were employed
- 4,8 million were unemployed²¹.

Out of the 12 million who were economically **inactive**:

- 4,9 million were full-time scholars
- 1,1 million were full-time home-makers
- 1,2 million were disabled people or chronically ill
- 0,2 million were retired persons.

Equal employment opportunities enable disabled people to participate actively in the economy. But it is estimated that as many as 99% of South Africans with disabilities are not meaningfully employed²².

The current positive policy and legislative environment has created unprecedented employment opportunities for disabled people, as South African employers, for the first

¹⁹ Samaita-Maita, Nyameka & Associates and DPSA, Report On The Situational Analysis Of Disability Mainstreaming In The Department And State Owned Enterprises, 2007.

²⁰ Labour Force Survey, September 2002. Statistical release PO210, Statistics SA, 25 March 2003.

²¹ Ibid.

²² Du Toit, 2005.

time, actively seek to employ disabled people.²³ Despite this positive policy environment, talented and qualified disabled people face unemployment. Until they gain access to meaningful career opportunities they cannot truly become full participating members of our society.²⁴

The EEA has two principle purposes, namely:

- to implement positive measures to eliminate discrimination in employment; and
- to provide guidelines for companies to promote occupational equity by encouraging the equitable representation of employees in terms of race, gender as well as of disabled persons.

The EEA protects disabled people against unfair discrimination on the grounds of their disability and entitles them to affirmative action measures. Disabled people are defined as *"people who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in, employment"*²⁵.

In terms of the EEA, employers may not unfairly discriminate against employees or applicants for employment, because the employer suspects or believes, whether the belief or suspicion is correct or not, that the applicant or employee has an impairment that amounts to a disability, or that they have been disabled, or they are, or have been, associated with other people who are, or have been, disabled. People in a relationship, or association with, or those who have responsibility for, a person with a disability, have, under the Act, rights to protection against unfair discrimination in term of Chapter 2 of the Act but not affirmative action protections as envisaged in Chapter 3 of the same Act²⁶.

Employment equity cannot succeed without a national education and training system that supports the development of every individual in society. A critical look at how employers and training providers have provided education, training, and work experience in the past

²³ Ibid.

²⁴ Imperato, 2001.

²⁵ The Employment Equity Act, 1998.

²⁶ Ibid.

indicates that education and training provision for disabled persons has not always been responsive to the demands of the economy nor has it always linked theory and practice²⁷.

Employment equity centres on a ban on unfair discrimination of any kind in hiring, promotion, training, pay, benefits, and retrenchment, in line with constitutional requirements. In addition, employment equity entails introducing measures to encourage employers to undertake organisational transformation to remove unjustified barriers to employment for all South Africans, and to accelerate training and promotion for individuals from historically disadvantaged groups.

Achieving employment equity objectives means confronting a legacy of unequal education, job reservation, racism and discrimination in the workplace. The Department of Labour estimates that only **1% of persons with disabilities are employed** in the formal sector of the economy. The Act recommends that at least 2% of all employees in companies and more than 50 workers should be persons with disabilities.

In 2002 a final draft of the Code of Good Practice for the Employment of Persons with Disabilities was published. In 2004, the Technical Assistance Guide to the employment of Persons with Disabilities was released. These codes aim to assist employers in the recruitment of disabled people.

Some provincial legislatures have achieved the 2% target while the majority is still lagging behind. Furthermore, the situation analysis reveals that a focus on numbers and targets does not fully address the employment issues of people with disabilities.

(b) Skills Development Act, 1998

The current legislation in the form of the Skills Development Act (No. 97 of 1998) has been enacted in order to implement structures and processes to transform skills development in South Africa.

²⁷ Commission for Employment Equity Annual Report 2002–2003.

One of the purposes of the Skills Development Act is to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education. In this regard, persons with disabilities in particular, among other disadvantaged groups, will be targeted. The Act offers persons with disabilities various forms of assistance, namely:

- i. A more efficient and effective departmental employment service, capable of informing disabled persons of the various support measures that are available. Expansion of the quality and reach of these services is planned.
- ii. An expanded number and range of learnerships [courses and skills training] geared to meet the needs of community development as well as industry are planned. Special measures will be in place to ensure that the most vulnerable have access to these opportunities. Some of these learnerships will be designed to help persons with disabilities find work in the formal sector. Others will aim to empower persons with disabilities to become self-employed and self-sufficient. A network of support measures will be established to address the needs of persons with disabilities after they have qualified, to give them a better chance to attain employment.
- iii. By bringing learning and working opportunities closer to social and economic development needs, the divide between those with work and those without work will diminish. Everyone will have his or her skills recognised via the National Qualifications Framework and hence will be able to sell his or her skills and services in the same market place. People who are able to earn their own income will enjoy the self-respect that such independence brings as well as the sense of achievement that signifies true empowerment.

According to the National Skills Development Strategy Implementation Report²⁸, equity targets underpin every objective of the National Skills Development Strategy (NSDS). These targets state that the beneficiaries of the strategy should be 85% black, 54% female,

²⁸ Department of Labour, April 2002–March 2003.

and 4% people with disabilities. This is a very important aspect of the strategy and is seen as fundamental to its overall success. Equity is an essential principle for the transformation of economic relations broadly, and education and training in particular. Addressing equity in skills development is critical to eliminating the skills constraints that are faced by the South African economy.

The Integrated National Disability Strategy highlights the fact that education has traditionally concentrated on years spent at school and, to a lesser degree, on tertiary education. Links with the world of work and training have been weak. Changes in educational policy are of particular importance to the future economic empowerment of people with disabilities²⁹.

The implementation of the NSDS has not resulted in the achievement of set targets for disabled people. For instance, in 2003–04, in total 87% of those who participated in National Qualifications Framework (NQF) level one learning programmes during this period were black, 33% were female and 0.1% were people with disabilities. The disability figure was a slight increase compared to the 2002–03. Thus, although targets have not been met, there was a marked improvement in the number of workers who achieved NQF level one³⁰. This is also reflected in the situation analysis where learnerships for people with disabilities were not identified in the legislatures.

The key points are:

- There is still some lagging behind on the equity targets for those who have completed structured training, when considering percentages of total. Total figures are presented for 2002–03, with 54.49% of the workers who completed structured learning being black, 40.54% being women, and 0.08% being disabled.
- The National Skills Fund (NSF) has taken a further step to consolidate its bursary scheme: Bursaries for people with disabilities were managed as of the 2004 academic

²⁹ White Paper: Integrated National Disability Strategy, 1997.

³⁰ National Skills Development Strategy Implementation Report, April 2003 – March 2004.

year through the National Student Financial Aid Scheme (NSFAS) and National Research Foundation (NRF). A total amount of R18 272 600 (US\$2 685 353) was made available to the two institutions for awarding bursaries to people with disabilities for the 2004 academic year³¹.

- During 2002–03, disability equity targets with regard to social development initiatives were met in six of the 10 provinces (Gauteng is divided into Gauteng South and Gauteng North). The highest attainment was in Limpopo, followed by North West, Mpumalanga and Northern Cape. The lowest attainment was in KwaZulu-Natal. The overall average attainment for all provinces was 2,81%³².
- During the year 2003–04, provinces collectively achieved only 1,27%³³. Part of the reason for this sharp decline could be the fact that no people with disabilities benefited from social development projects in KwaZulu-Natal; and both North West and Mpumalanga provinces recorded very low levels of attainment with regard to social development initiatives. The best performing provinces during 2003–04 were Eastern Cape, Gauteng, Limpopo, and Western Cape. During the same period, the least performing provinces were Mpumalanga, Northern Cape and KwaZulu-Natal.
- When comparing statistical data for the four years projected to the end of March 2005, it was noted that there was a substantial growth in the number of Blacks, females, and people with disabilities entering learner ship programmes. Data indicates that the numbers of Blacks grew from 6% to 59% in 2004, the female numbers grew from 4% in 2002 to 29% in 2004 and the numbers of people with disabilities from 1% in 2002 to 2% in 2004.

A facilitated focus group discussion as part of the research into NSDS implementation explored some of the reasons why government targets have largely remained unmet. The participants in the discussion identified the following factors:

³¹ Ibid.

³² Ibid.

³³ Ibid.

- Disability unemployment is a function of low level skills among disabled people.
- There is lack of initiative by the private and public sector.
- Negative employer attitudes exist towards disabled persons.
- Special and mainstreamed schools are in disarray with learning standards dropping to unacceptable levels.
- Individual efforts by the disability sector are fragmented and ineffective.

An important issue is that the disability policies might not correlate with the disability reality³⁴. The disability sector first got disability into the Employment Equity Act, and thereafter also ensured a disability component in the learnership programmes. However, reality has shown that many disabled people might not even qualify for these learnerships, hence the need for a pre-learnerships programme.

Data from the Public Service Commission and the Commission for Employment Equality shows that the general trend is that disabled people tend to be employed in the lower employment levels, with very few disabled people employed at management levels.

In terms of the current situation analysis, it would appear that skills development is an underutilised strategy for ensuring employment equity.

The current situation analysis indicates that the legislatures are not actively developing people with disabilities, although this does feature as a recommendation where one human resource manager notes that the:

“Skills Development Act could make provision for learnerships and internships – we could make people with minimum requirements prepared for the workplace. To recruit people with disability we could make efforts to invite people with disability and examine the job to see whether there would be any impediments to their function.”

(c) Promotion of Equality and Prevention of Unfair Discrimination Act of 2000

³⁴ Dr William Rowland, Thabo Mbeki Development Trust for Disabled People.

One of the most important pieces of legislation for disabled people arising from this constitutional framework is the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000. The legislation is especially important in recognising the way in which discrimination is manifest in our society and most importantly, the need to put in place concrete mechanisms to address discrimination and promote equality. Disabled People South Africa (DPSA) explains:

*“[The Act] recognises the existence of systemic discrimination and inequalities, particularly in respect of race, gender and disability in all spheres of life as a result of past and present unfair discrimination, as well as the need to take measures at all levels to eliminate such discrimination and inequalities”.*³⁵

The Act deals with prevention, prohibition and elimination of unfair discrimination, hate speech and harassment and states that neither the State nor any person may unfairly discriminate against any person on the ground of disability, including:

- denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;
- contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility;
- failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.

Under the Act, the South African Human Rights Commission and other relevant constitutional institutions may, in addition to any other obligation, in terms of the Constitution or any law, request any other component falling within the definition of the state or any person to supply information on any measures relating to the achievement of equality including, where appropriate, on legislative and executive action and compliance with legislation, codes of practice and programmes.

³⁵ DPSA, 1998.

In addition to the powers and functions of the constitutional legal structures, these institutions are also competent to:³⁶

- assist complainants in instituting proceedings in an equality court, particularly complainants who are disadvantaged;
- conduct investigations into cases and make recommendations as directed by the court regarding persistent contraventions of this Act or cases of unfair discrimination, hate speech or harassment referred to them by an equality court;
- request from the department, in the prescribed manner, regular reports regarding the number of cases and the nature and outcome thereof.

Special measures to promote equality with regard to race, gender and disability provide that:

- (1) If it is proved in the prosecution of any offence that unfair discrimination on the grounds of race, gender or disability played a part in the commission of the offence, this must be regarded as an aggravating circumstance for purposes of sentence.
- (2) The South African Human Rights Commission must, in its report referred to in Section 15 of the Human Rights Commission Act (No. 54 of 1994), include an assessment on the extent to which unfair discrimination on the grounds of race, gender and disability persists in the Republic, the effects thereof and recommendations on how best to address the problems.
- (3) The state, institutions performing public functions and all persons have a duty and responsibility, in particular to:
 - eliminate discrimination on the grounds of race, gender and disability;
 - promote equality in respect of race, gender and disability.

Within Parliament and provincial legislatures, it is essential that measures to promote equality and remove barriers be implemented as a matter of urgency.

³⁶ Promotion of Equality and Prevention of Unfair Discrimination Act of 2000.

(d) White Paper for Affirmative Action (1998)

The need for administrative transformation

On its accession to power, the Government of National Unity inherited a society marked by deep social and economic inequalities, as well as by serious racial, political, and social divisions. Guided by the principle of national reconciliation, the new South African Government adopted the Reconstruction and Development Programme (RDP) to reorient and reunite society towards a common purpose, that of a socially coherent and economically equitable society.

In forging ahead with the processes of reconciliation, reconstruction, and development, the South African public service had a major role to play as the executive arm of government. To fulfil this role effectively, the service needed to be transformed into a coherent, representative, competent, and democratic instrument for implementing government policies and meeting the needs of all South Africans.

The Government took a first step in this direction with the introduction of the Public Service Act of 1994 (Procl. 103/1994). This act created the basis for integrating the fragmented system of state administrations inherited from the apartheid era into a unified national public service. Much more needs to be done, however, to transform the public service into an agency that is coherent and representative, as well as capable of achieving the crucial goals set for it by the people and government of South Africa.

In the situation analysis it is clear that insufficient consideration has been given to selection and recruitment strategies that would promote the employment of people with disabilities. Human resource managers were generally very aware of this poor representation (of people with disabilities) and agreed that it was something that needed to be addressed.

The need for affirmative action

The steps outlined above, therefore, are unlikely by themselves to lead to major changes in the representation of disabled people the public service, particularly at the managerial levels, especially in the short term. A more proactive approach is therefore vital, and this will predominantly take the form of affirmative action.

Affirmative action can be defined as laws, programmes or activities designed to redress past imbalances and to ameliorate the conditions of individuals and groups who have been disadvantaged on the grounds of race, colour, gender, or disability³⁷.

The targets proposed in the White Paper on Affirmative Action are that within four years all departmental establishments must endeavour to be at least 50% black at management level. During the same period at least 30% of new recruits to the middle and senior management echelons should be women. **Within 10 years (by 2005), disabled people should comprise two per cent of public service personnel.** This target has generally not been met.

The situation analysis reveals that less than 1% overall across the legislatures are disabled employees.

The White Paper on Affirmative Action provides an opportunity for Parliament and provincial legislatures to include, among other things:

- an audit of the composition of departmental personnel according **disability**, at different levels and across occupational classes;
- goals, objectives and measurable targets and outcomes for the affirmative action process for the benefit of disabled people;
- strategies and time-frames for their achievement;

³⁷ White Paper for Affirmative Action, 1998.

- methods for the annual monitoring and evaluation of progress, including the production and use of accurate management information statistics highlighting the achievement of disability indicators and targets;
- the people and units designated as responsible within departments (including transformation units) for ensuring the effective implementation of affirmative action programmes for the benefit of disabled people;
- training programmes to promote affirmative action for disabled people;
- introduction of new recruitment and promotion procedures based on non-discriminatory criteria of competency and performance rather than on formal qualifications and traditionally valued forms of experience;
- awareness raising and training strategies designed to promote a positive view of disability, affirmative action and to discourage tokenism and the stereotyping of beneficiaries.

These policy targets present an opportunity to ensure that persons with disabilities are employed within Parliament and provincial legislatures

(e) Public Service Regulations, 2001

The new public service regulations stipulate that all forms of discrimination must be removed in the creation and filling of posts, as well as in the recruitment and selection process. This is in line with the spirit of the Employment Equity Act.

Parliament and provincial legislatures have a responsibility to implement these regulations in order to protect the dignity of persons with disabilities that are employed therein.

(f) Basic Conditions Of Employment Act (No. 75 of 1997)

Section 79(3) emphasises the fact that no person may favour, or promise to favour, an employee in exchange for that employee not exercising a right conferred in Part C. The latter is linked to Section (5) of the Employment Equity Act which states that every

employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment practice or policy.

This Act presents an opportunity for Parliament and provincial legislatures to employ persons with disabilities and to prevent unfair discrimination on the grounds of disability.

(g) The Occupational Health and Safety Act (No. 85 of 1993)

Among other things it outlines a programme for the rehabilitation of people with disabilities (those who have sustained fatal injuries) to ensure a successful return to work rate.

Relevance within the disability framework

All of the above laws and policies have a direct impact on the employment practices of the legislatures. Legislatures need to audit their performance with respect to compliance with this legislation, especially since Parliament and provincial legislatures should be exemplary of implementation of government policy.

2. Policies and legislation where legislative sector plays an oversight role

Parliament and the provincial legislatures have an oversight role on all the policies and pieces of legislation with disability components, including, but not limited to the ones listed above and below:

I. South African Schools Act, 1996

The South African Schools Act of 1996 provides for the inclusion of learners with special educational needs within mainstream schools. Public schools are required by law to admit all learners and provide the necessary educational requirements without discrimination. At the level of implementation these laws and policies have experienced many difficulties. The most apparent are the lack of both financial and human resources, particularly in the form of trained educators. This has meant that children with disabilities are still not fully integrated into the public school system.

Just because many disabled children attend primary school in the mainstream system does *not* in any way mean that inclusive education has been achieved or that disabled children have been catered for. As pointed out by the National Commission on Special Needs in Education and Training (NCSNET) and the National Committee on Educational Support Services (NCESS), this inclusion is ad hoc and does not deal with the issues of special educational needs or disability. It is simply that there are no other services and so children are generally “dumped” into mainstream schools by their parents or the education system³⁸. Until the proposed screening, identification, assessment and support strategies coupled with appropriate inclusive learning programmes³⁹ are fully implemented, inclusion in the mainstream and full access to education cannot be considered to have been achieved for children with disabilities.

II. Education White Paper 6 on Special Needs Education – Building an Inclusive Education and Training System (2001)

Inclusive education is a sector where the ravages of apartheid remain most evident. Here, the segregation of learners on the basis of race was extended to incorporate segregation on the basis of disability. Apartheid special schools were thus organised according to two segregating criteria: race and disability. In accordance with apartheid policy, schools that accommodated white disabled learners were extremely well resourced, while the few schools for black disabled learners were systematically under-resourced. Learners with disability experienced great difficulty in gaining access to education. Very few special schools existed and they were limited to admitting learners according to rigidly applied categories. Learners who experienced learning difficulties because of severe poverty did not qualify for educational support. The categorisation system allowed only those learners with organic, medical disabilities access to support programmes.

³⁸ Ibid.

³⁹ See Draft National Strategy for Screening, Identification, Assessment and Support. Pretoria: Department of Education, Guidelines for the Development of Inclusive Learning Programmes. Pretoria: Department of Education.

The impact of this policy was that only 20% of learners with disabilities were accommodated in special schools. The World Health Organisation has calculated that between 2.2 % and 2.6 % of learners in any school system could be identified as disabled or impaired. An application of these percentages to the South African school population would project an upper limit of about 400,000 disabled or impaired learners. Current statistics show that only about 64,200 learners with disabilities or impairments are accommodated in about 380 special schools. This indicates that, potentially, 280,000 learners with disabilities or impairments are unaccounted for⁴⁰.

However, White Paper 6 is most broadly about redress for those who have been excluded from learning and participation. Therefore excluded groups such as children affected by HIV/AIDS or children living on the street are just as important as children with disabilities. Accordingly, the White Paper adopts the use of the terminology “barriers to learning and development” and retains the internationally acceptable terms of “disability” and “impairments” when referring specifically to those learners whose barriers to learning and development are rooted in organic or medical causes⁴¹.

The White Paper outlines the Ministry of Education’s commitment to the provision of educational opportunities, in particular for those learners who experience or have experienced barriers to learning and development or who have dropped out of learning because of the inability of the education and training system to accommodate their learning needs.

Essentially, this White Paper says that current policy involves:

- systematically moving away from using segregation according to categories of disabilities as an organising principle for institutions;
- basing the provision of education for learners with disabilities on the intensity of support needed to overcome the debilitating impact of those disabilities;

⁴⁰ White Paper 6 on Special Needs Education, 2001.

⁴¹ White Paper 6 on Special Needs Education, 2001.

- placing an emphasis on supporting learners through full-service schools that will have a bias towards particular disabilities depending on need and support;
- directing how the initial facilities will be set up and how the additional resources required will be accessed;
- indicating how learners with disability will be identified, assessed and incorporated into special, full-service and ordinary schools in an incremental manner;
- introducing strategies and interventions that will assist educators to cope with a diversity of learning and teaching needs to ensure transitory learning difficulties are ameliorated;
- giving direction to the education support system.

Given the scale and complexity of the task of making the educational system fully inclusive, the Department of Education (DOE) has decided to phase in the resourcing of inclusivity in several stages. The short-term pilot phase of trying out the model of resource schools and full-service schools (60 in all) is in process. It is informed by several guideline documents:

- Conceptual and Operational Guidelines for the Implementation of Inclusive Education: District Based Support Teams
- Conceptual and Operational Guidelines for the Implementation of Inclusive Education: Full Service Schools
- Special Schools as Resource Centres
- Draft National Strategy for Screening, Identification, Assessment and Support.
- Guidelines for the Development of Inclusive Learning Programmes.

The information gathered from the pilot study will inform further implementation of the policy. This is necessitated by the complexity of the process in terms of changing attitudes and behaviours, retraining educators, principals, administrators and teacher educators, the effects on learners, parents and communities, and not least resource and capacity implications, all need to be researched, monitored and evaluated.

In an examination of the implementation of Education White Paper 6, the Institute for Democracy in South Africa (IDASA) points out that its success is under threat since it is a

policy that has not been budgeted for and is in fact losing ground relative to other aspects of education:

“Fiscal space that has opened up has been taken by early childhood development and further education and training, leaving special needs education with no real benefits from increased education budgets.” (p14)⁴²

They point out that, as education budgets are unlikely to increase substantially, provincial governments will be required to reformulate their funding in a pattern that is more favourably disposed toward special needs education budgets.

The current mismatch between needs and provision is a direct result of previous apartheid policies that allocated facilities on a racial and disability focused basis. These policies also centralised provision within the Western Cape and Gauteng so that, today, the vast majority of learners attend residential special schools in a province other than their own since no facilities are available in their province of residence⁴³. It is the intention of an inclusive education and training system to ensure that all children with disabilities should be accommodated within their own community and local school to the extent that appropriate support can be provided for the learner. This will vary according to the resources of the school and the support which they are able to access. In an inclusive education and training system, a wider spread of educational support services will be created in line with the requirements of learners with disabilities. Where the community school, cannot provide appropriate support, placement in a special school will be considered. The extent to which this support can be offered depends on the seriousness and commitment with which mainstream schools take up their responsibility to learners who experience barriers to learning. According to IDASA, this will require a closer working relationships between special and ordinary schools. At the same time the inclusive education policy should not remain the responsibility of the special needs or inclusive education directorates but should

⁴² Wildeman, R and Nomdo, C. 2007. Implementation of Inclusive Education: How far are we? Occasional Paper, IDASA Budget Information Service: <http://www.idasa.org.za>

⁴³ Ibid.

rather be situated at a transversal level such as the position of outcomes based education.

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III. The Labour Relations Act, 1998

The Labour Relations Act of 1998, provides for the regulation of unfair treatment in the workplace via a provision on unfair labour practices. The provision in the previous Act was very broadly defined; consequently, courts had wide discretion to decide which treatment constituted an unfair labour practice. The new Act has moved away from broad definitions of unfair labour practices and instead specifically lists the kinds of treatment that will be regarded as unfair. The Act defines four kinds of such treatment. Most applicable to persons with disabilities are stipulations on unfair discrimination.

Parliament and provincial legislatures can play an oversight role with regard to the implementation of this Act.

IV. Social Assistance Act (No. 59 of 1992)

The Social Assistance Act (No. 59 of 1992) provides for the rendering of social assistance to persons, national councils, and welfare organisations. The Act was amended in 1994 to further regulate the making of grants and financial awards to certain persons and bodies. The Welfare Laws Amendment Act, 1997 amended the Social Assistance Act, 1992 in order to provide for uniformity of, equality of access to, and effective regulation, of social assistance throughout South Africa, to introduce the child-support grant, to do away with capitation grants, to abolish maintenance grants subject to the phasing out of existing maintenance grants over a period not exceeding three years, to provide for the delegation of certain powers, and to extend the application of the provisions of the Act to all areas in the Republic. Disabled people benefit through disability grants.

⁴⁴ Wildeman, R. and Nomdo, C. 2007. Implementation of Inclusive Education: How far are we? Occasional Paper, IDASA Budget Information Service: <http://www.idasa.org.za>

The number of people receiving social grants has rocketed from 2,9 million in April 2000 to 7,9 million in April 2005. It is anticipated that this number will increase by more than 20% per annum⁴⁵. The provincial administrations paid out R37,1 billion (US\$5.5 billion) in grants in 2004 and this is expected to rise to R54,4 billion (US\$8.1 billion) by 2007.

As a share of the gross domestic product (GDP), the total value of everything the country produces, grants will rise from 2% in 2000 to an estimated 3,4% in 2007.

According to the National Treasury, since 2000–01 spending on disability grants has increased from R4,0 billion (US\$0.6 billion) to an estimated R10,3 billion (US\$1,5 billion) by 2003–04, an overall increase of more than R6,3 billion (US\$ 0,9 billion) over the period. In all provinces, except Northern Cape where coverage was already exceptionally high at the beginning of the period, disability spending more than or nearly doubled between 2000–01 and 2003–04. Spending grew particularly rapidly in Free State and KwaZulu-Natal⁴⁶.

Parliament and provincial legislatures' oversight requires a close monitoring of trends and ensuring that disabled people currently not receiving social security have access in line with the Constitution.

V. Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was ratified by the South African Government in 1995, and pertains to all children including children with disabilities. The National Plan of Action (NPA) for Children was drawn up to coordinate and implement the CRC.

The CRC has introduced and underlined the concept of children as people with rights, which in turn has begun transformation of public policy from one based on needs, to one based on rights. However it has had little effect on children, particularly children with

⁴⁵ National Treasury, 2005.

⁴⁶ National Treasury, 2005.

disabilities. The Disabled Children's Action Group (DICAG) ensures that disabled children are also involved in the NPA. The government has drawn up national and provincial plans of action, using the world goals as guidelines. The NPA has been launched under the Department of Health involving other departments.

Section 28(1) of the Constitution describes the right of children to basic nutrition, shelter, basic health care services, and social services. Section 28(2) goes further: "A child's best interests are of paramount importance in every matter concerning the child."⁴⁷ Section 28 requires the state to take steps to ensure that children's rights are observed. Legislation and the common law impose obligations upon parents to care for their children.

Article 23 of the Convention addresses the needs of the disabled child specifically:

"1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

"2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

"3. Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

⁴⁷ Section 28(1 and 2) of the Constitution.

“4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.”

VI. Policies and legislation specific to the communications sector⁴⁸

Some of the policies and legislation specific to the communications sector are outlined below with comments related to mainstreaming of disability therein.

The legislative framework for the work of the department is mainly contained in the following pieces of legislation:

- The Telecommunications Act (No. 103 of 1996)
- The Broadcasting Act (No. 44 of 1999)
- The Post Office Act (No. 44 of 1958).

Each of these Acts is briefly analysed below.

I. The Telecommunications Act (No. 103 of 1996) and Department of Communication (DOC) strategic plans

This Act specifically refers to disability in Section 2 where it states that:

“The primary object of this Act is to provide for the regulation and control of telecommunication matters in the public interest, and for that purpose to — ensure that the

⁴⁸ SMDS, 2007.

needs of disabled persons are taken into account in the provision of telecommunication services”

No further reference to disability is made in the Act. The role of the relevant portfolio committee is to monitor the implementation of this Act by the department. Parliament’s oversight role extends to other instruments such as the Information Communication Technology (ICT) Charter.

II. ICT Charter

The ICT Charter was formalised in November 2004. The objectives of the charter are⁴⁹ to:

- advance economic transformation in the ICT sector;
- provide an enabling environment for transparency, fairness and consistency when adjudicating on matters related to BEE in the ICT sector;
- promote and support the objectives of the Broad-based Black Economic Empowerment Act 53 of 2003;
- bridge the “*digital divide*” in our society by actively promoting access to ICTs and supporting skills development and training initiatives in the ICT sector;
- stimulate and support growth in the ICT sector and contribute towards the reduction in the high unemployment rate and the alleviation of poverty; and
- foster equity and address the legitimate economic expectations of all South Africans occasioned by the changed political landscape.

The charter has a limited definition of disability:

“— ‘Disabled persons’ or ‘people with disabilities’ means black persons who have a long-term recurring mental or physical impairment which, inter alia, limits their ability to engage in economic activity” (Source: ICT Charter)

⁴⁹ ICT Empowerment Charter Final Document, November 2004.

Thus persons with sensory disability are not included. Thus the portfolio committee needs to play an oversight role to ensure that the charter does not entrench discrimination and that it is effectively implemented for the benefit of disabled people.

Disabled persons or disability is mainstreamed in a number of sections, including those dealing with bonus points that are aimed at *incentivising* enterprises to broaden the effect of their transformation programmes. For instance, in enterprise development, preferential procurement, equity ownership, management and control, bonus points are capped at 10% of total score gained by including disabled persons with minimum 5% equity participation.

Another area where disability is mainstreamed is skills development.

On paper, the ICT Charter reflects key disability priorities that are well-mainstreamed. However, data on the implementation to date could not be obtained before the production of this report. Information obtained from interviews with stakeholders and indicate that the charter is yet to be implemented.

In the situation analysis conducted it was apparent that none of the legislatures interviewed had an ICT policy in operation that considered the needs of people with disabilities and there was limited adaptation of ICT.

III. Electronic Communications Act (No. 36 of 2005)

The purpose of this Act⁵⁰ is:

- to promote convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors and to provide the legal framework for convergence of these sectors;
- to make new provision for the regulation of electronic communications services, electronic communications network services and broadcasting services;
- to provide for the granting of new licences and new social obligations;

⁵⁰ Electronic Communications Act (No. 36 of 2005).

- to provide for the control of the radio frequency spectrum;
- to provide for the continued existence of the Universal Service Agency and the Universal Service Fund; and
- to provide for matters incidental thereto.

One of the objectives of the Act is to ensure that broadcasting services, viewed collectively, cater for a broad range of services and specifically for the programming needs of children, women, the youth and disabled persons.

There is no further reference to disability mainstreaming in any of the provisions of the Act. The portfolio committee has an oversight responsibility to ensure that the needs of disabled people are well-centred for using this Act.

IV. South African Broadcasting Corporation (SABC) and Broadcasting Act No. 4 of 1999 [Assented to 23 April, 1999]

The SABC is South Africa's national public broadcaster. Almost 24,4 million adults tune in to the SABC's network of 18 radio stations everyday and 19,1 million adults watch the three free-to-air television channels⁵¹.

In terms of the Broadcasting Charter, which is set out in the Broadcasting Act, the objectives of the SABC are among others⁵²:

- to make its services available throughout the Republic;
- to provide sound and television broadcasting services, by analogue or digitally, and to provide sound and television programmes of information, education and entertainment funded by advertisements, subscription, sponsorship, licence fees or any other means of finance;

⁵¹ SABC Annual Report, March 2005.

⁵² Ibid.

- to acquire from time to time a licence or licences for such period and subject to such regulations, provisions and licence conditions as may be prescribed by the Independent Communications Authority of South Africa (ICASA);
- to provide, in its public broadcasting services, radio and television programming that informs, educates and entertains.

The main objectives of Broadcasting Act No. 4 of 1999 [Assented to 23 April, 1999] are to repeal the Broadcasting Act No. 73 of 1976 so as to establish a new broadcasting policy for the Republic; to amend certain provisions of the Independent Broadcasting Authority Act (No. 153 of 1993); to clarify the powers of the Minister in regard to policy formulation and ICASA’s powers with respect to the regulation and licensing of the broadcasting system; and to provide for classes of broadcasting activities in the public interest and for that purpose.

The Act mentions disability in two areas, namely with regard to:

Article 2(e) where it states that the Act will:

“cater for a broad range of services and specifically for the programming needs in respect of children, women, the youth and the disabled”

and in Section 10(g) where it states that service must:

“strive to offer a broad range of services targeting, particularly, children, women, the youth and the disabled” (Source: Broadcasting Authority Act No. 153 of 1993)

The relevant portfolio committee should as part of its oversight roles, determine to what extent disability is mainstreamed as anticipated by the Act.

V. South African Post Office and Postal Services Act (No. 124 of 1998)

The South African Post Office (SAPO) has an exclusive mandate to conduct postal services in the country. The mandate is granted by the Postal Services Act (No. 124 of 1998), which provides new provisions for the regulation of postal services; for the operational functions of the postal company, including its universal service obligations; for structural matters relating to postal services as well as the operation of the Postbank and national savings certificates; and to consolidate certain provisions relating to the postal company and amend or repeal others; and to provide for matters connected therewith.

Article 2(h) provides, as one of the objectives of the Act, a provision that ensures that the needs of disabled persons are taken into account in the provision of postal services. This is the only reference to disability in the Act.

Within all these policies and pieces of legislation, Parliament and provincial legislatures play a crucial monitoring and oversight role which should include checking and enforcing disability mainstreaming.

**REASONABLE ACCOMMODATION AND ACCESSIBILITY FOR
PEOPLE WITH DISABILITY**

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LIST OF ABBREVIATIONS

KSAs	Knowledge Skills and Abilities
CAP	Computer/Electronic Accommodations Programme
TDD	Telecommunications Device for the Deaf

PART ONE – BASIC PROVISIONS

A. OBLIGATION

Reasonable accommodation is required in at least three aspects of employment. (Note that the following is a partial list of examples and is not intended to be considered complete):

1. To ensure equal opportunity in the application process.

- Provide applications in large print, computer disk or other alternative formats.
- Relocate any tests to an accessible area if needed.
- Allow someone to assist the applicant to complete the necessary forms.
- Allow the application to be taken home.

2. To enable a qualified individual with a disability to perform the essential functions of a job.

- Change work hours or schedules: i.e. allowing a diabetic employee to take regular meal breaks during a shift.
- Modifications of job tasks: i.e. allow a blind office worker to substitute transcription and duplicating duties for proofreading and filing.
- Division of tasks among employees: i.e. allow a bookkeeper who is deaf to trade phone duties with another employee in exchange for filing duties.
- Provide large-button touch-tone telephone for someone who has low vision or poor hand coordination.

3. To enable an employee with a disability to enjoy benefits and privileges of employment.

- Pathway to work: Remove shrubbery and signs that obstruct walkways.
- Provide accessible break rooms, lunch rooms, and training rooms.
- At the workstation, lower shelves or raising the desk.
- Replace small knobs and switches with larger, easier-to-grasp handles.
- Install Braille or large, raised lettered directional signs and elevator controls.
- Reserve extra-wide parking spaces near building entrances.

B. DEFINITIONS

- **Commuting area:** The defined geographic area in which people live and from which they reasonably can be expected to travel to and from on a daily basis for employment purposes.⁵³
- **Decision makers:** Individuals responsible for making decisions regarding various aspects of the reasonable accommodation process. Possible decision makers include an interviewing official, an employee's supervisor or manager, a medical officer, the disability employment programme coordinator or manager, or a human resources specialist.⁵⁴
- **Disability – the debate on definition:**

⁵³ FSIS, Reasonable Accommodation and Accessibility for People with Disability, FSIS 4306.2

⁵⁴ Ibid.

- There is no consensus on the definition of disability.
- There are different definitions of disability in South Africa and internationally. These are:

1. UN Convention 2006

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others⁵⁵.

2. Disability Movement

The Disability Movement defines disability as the disadvantage or the restriction of activity caused by a society which takes little or no account of people who have impairments and thus excludes them from mainstream activity.

3. DPSA Constitution 2006

Disability: Is a social construct (and not a description of a medical condition in the individual) that represents the outcome of the interaction between impairments and the negative environmental impacts on the individual, in recognition that society is constructed, both through the characteristic of its build environment and functioning, on the one hand and the prevailing attitudes and assumptions on the other, which results in restricted opportunities for disabled people to participate on an equal basis, and failure of society to adapt to and accommodate their needs; and the term “disabled” has a corresponding meaning⁵⁶.

4. Department of Social Development

Disability means moderate to severe limitations in a person’s ability to function or ability to perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment⁵⁷

5. Department of Labour

“Disabled people” means people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into or advancement in employment⁵⁸.

- **Essential job function:** A duty so fundamental to a position that an employee cannot do the job without being able to perform it. The manager or supervisor may consider a job function essential for any of several reasons, including, but not limited to:
 1. The position exists primarily to perform that function.
 2. The function is specialised and the employee was hired for the ability to perform it.
 3. The function is required and cannot be assigned to another employee⁵⁹
- **Impairment:** Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological,

⁵⁵ United Nations, Draft Convention on the Rights of Persons with Disabilities, 2006.

⁵⁶ Disabled People South Africa (DPSA) Constitution, 2006.

⁵⁷ Department of Social Development quoted in Samaita-Maita, Nyameka & Associates and DPSA, Report on the Situational Analysis of Disability Mainstreaming in the Department and State Owned Enterprises, 2007.

⁵⁸ Department of Labour (ibid.).

⁵⁹ USDA, Reasonable Accommodation and Accessibility for People with Disability, FSIS Directive 4306.2

musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental disability, and specific learning disabilities.⁶⁰

- **Interactive process:** An informal communication process between the provincial legislature or parliament officials and the employee or applicant in which they discuss a reasonable accommodation request, especially if the need for the accommodation is not obvious. The interactive process helps identify what type of accommodation might best help the person apply for a job or perform the essential functions of a job. Officials may offer alternative suggestions for reasonable accommodations during this process.⁶¹
- **Major life activities:** Functions that the average person in the general population can perform with little or no difficulty, including but not limited to: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, sitting, standing, lifting, reaching, thinking, concentrating, and interacting with others.⁶²
- **Qualified person with a disability:** A person with a disability who, with or without reasonable accommodation, meets the qualification requirements for the position, and can perform the essential functions of the position without endangering self or others. (**Example:** must meet the education or experience and other essential requirements of the position.)⁶³
- **Substantially limiting:** The degree to which an impairment prevents someone from performing a major life activity that the average person in the general population can perform, or significantly restricts the condition, manner, or duration under which someone can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity. To determine if an impairment is substantially limiting, consider the nature, severity, duration, and the permanent or long-term impact resulting from the impairment.⁶⁴

C. RESPONSIBILITIES⁶⁵

Employees: Employees, or their representatives:

- Advise appropriate provincial legislature or parliament officials that they have a disability that requires an accommodation.
- Provide requested supporting documentation.
- Participate in the interactive process.

Management officials: Managers and supervisors and provincial legislature or parliament staff:

- Actively pursue possibilities for reasonable accommodation.
- Participate in the interactive process.

⁶⁰ FSIS, Reasonable Accommodation and Accessibility for People with Disability, FSIS 4306.2

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

- Ensure provincial legislature or parliament compliance with its obligations to provide reasonable accommodation.
- Develop policy and programme initiatives for provincial legislature or parliament wide implementation.
- Maintain up-to-date knowledge of auxiliary aids and devices available for reasonable accommodation.
- Work with provincial legislature or parliament employees to identify needs and plan for reasonable accommodation.
- Record accommodation requests and decisions for tracking purposes.

PART TWO – REASONABLE ACCOMMODATION

A. GENERAL PROVISIONS

Although many people with disabilities can apply for and perform jobs without any need for reasonable accommodations, there are workplace barriers that keep others from performing jobs, which they could do with some form of accommodation. These barriers may be physical obstacles such as inaccessible facilities or equipment, or they may be procedures or rules such as procedures concerning when work is performed, or how essential or marginal functions are performed.⁶⁶

A reasonable accommodation is any modification or adjustment to a job, an employment practice, the work environment, or the manner or circumstances under which a job is customarily done that makes it possible for an individual with a disability to enjoy an equal employment opportunity.⁶⁷ An equal employment opportunity means an opportunity to reach the same level of performance or to enjoy the same benefits and privileges of employment as those that are available to an average employee without a disability working in the same situation. When we are talking about something at work, a reasonable accommodation is a request to make some kind of change on the job. The change needs to allow someone with a disability to get the job done. If the disability makes work hard for an individual and a change will help get the job done, this is called a reasonable accommodation. The obligation to provide a reasonable accommodation applies to all aspects of the employment process, and can arise any time a person's disability or job changes.⁶⁸

Reasonable accommodation is a means of overcoming unnecessary barriers that prevent or restrict employment opportunities for individuals with disabilities who are otherwise qualified for such employment. These barriers can be physical barriers that make it difficult to get into and around a work site or to use necessary work equipment, barriers in the way people communicate with each other, or barriers in other people's minds such as unfounded fears, stereotypes, presumptions, and misconceptions about job performance, safety, absenteeism, costs, or acceptance by co-workers and customers.⁶⁹

Meeting the obligation to provide a reasonable accommodation does not, however, have to be difficult or costly. Reasonable accommodation can be as simple as permitting use of accrued paid leave or unpaid leave for necessary treatment, allowing for a part-time or modified work schedule, altering when or how an essential job function is performed, or reassignment to a vacant position that the person is qualified for. The cost of providing an accommodation can also be inexpensive.⁷⁰

Reasonable accommodation is an interactive process through which the employer and employee can explore options and develop solutions in order to find ways to allow the employee to be productive. It is a problem-solving process, and, if done correctly, can lead to solutions that will enable individuals with disabilities to be able to meet the requirements of the job. In many cases, an appropriate accommodation will be obvious, and the employer should always consult the person with the disability as the first step in considering an accommodation. This means engaging in an informal dialogue to clarify what the individual needs and identifying the appropriate reasonable

⁶⁶ <http://worklifecenter.doe.gov/disabilityServices.htm>

⁶⁷ NSA , Reasonable Accommodation for Individuals with Disabilities.

⁶⁸ Job Accommodation Network (JAN).

⁶⁹ Ibid.

⁷⁰ Ibid.

accommodation to meet that need. Being able to identify the problems posed by the workplace barrier and getting suggestions from the individual with a disability can go a long way in assisting the employer in determining the type of reasonable accommodation to provide.⁷¹

When a qualified individual with a disability requests an accommodation, the provincial legislature or parliament should make a good faith effort to provide an accommodation that is effective for the individual. Accommodations must be made on a case-by-case basis because the nature and extent of a disabling condition and the requirements of the job may vary. In many cases, an accommodation will be obvious and can be made without difficulty and at little or no cost. The department or unit should consult with the employee as it considers the reasonableness of the requested accommodation.

B. FORMS OF REASONABLE ACCOMMODATION⁷²

There are many different kinds of reasonable accommodations. They can include:

- job restructuring, which can include eliminating, re-delegating, exchanging, or redesigning those job functions and procedures that are non-essential;
- modifying work schedules to include part-time or modified work schedules;
- making physical facilities accessible by removing architectural barriers in both those areas that need to be accessible for an employee to be able to perform the essential functions of the job, and in those non-work areas used by employees for other purposes (e.g. the break room, lunch room or lounge, training rooms, restrooms, gymnasiums, auditoriums, and employer-provided transportation);
- acquiring or modifying equipment or devices such as adaptive hardware and software for computers, electronic visual aids, and audio recordings for persons who are blind or visually impaired, or telephone handset amplifiers, telephones compatible with hearing aids, and telecommunications devices for persons who are deaf or hard of hearing;
- providing qualified readers, interpreters, and assistants;
- reassignment to a vacant position for which the person is qualified; and
- reassignment to a light-duty position for an injured worker with a disability if one is available that the worker is qualified for.
- making necessary changes for a qualified person with a disability to perform the essential functions of the job, such as:
 - providing sign language interpreters, readers, or personal assistants;
 - proving leave as appropriate;
 - modifying nonessential duties;
 - modifying the work schedule (**example:** Alternative work schedules);

⁷¹ Job Accommodation Network (JAN).

⁷² <http://www.salaries.wa.gov/reasonableAccommodations/default.htm>

- acquiring or modifying equipment, or providing auxiliary aids and devices (**examples:** telephone amplifiers, Braille devices, adapted hardware and software for computers);
- making the work environment accessible and usable;
- permitting tele-work or telecommuting;
- reassigning an employee to a vacant position at the same grade level with further promotion potential;
- modifying examinations, training materials or policies;
- making changes for employees with disabilities to enjoy equal employment benefits and privileges (**example:** removing physical barriers in a cafeteria).

In some circumstances, equipment that otherwise would be considered "personal" may be required as a reasonable accommodation if it is specifically designed or required to meet job-related rather than personal needs. For example, an employer might be required to provide a person with severe vision impairment with glasses that are specifically needed to use a computer monitor.

However, the provincial legislature or parliament are not required to:

- change the essential functions of a position to provide accommodation for someone with a disability;
- provide accommodation, if it will cause an undue hardship on programme operations. Undue hardship means that an accommodation would be unduly costly, extensive, substantial, disruptive, or would fundamentally alter the nature or operation of the department or unit. Among the factors to be considered in determining whether an accommodation would pose an undue hardship are the costs of the accommodation, the employer's overall size, overall financial resources, and the nature and structure of its operation. If a particular accommodation would pose an undue hardship, you must try to identify another accommodation that will not pose such a hardship.

C. APPLICABILITY⁷³

Reasonable accommodation:

1. applies to people who meet the definition of disability above;
2. applies to a returning employee who incurred or aggravated a disability during uniformed service or after an on-the-job injury;
3. does not apply to people with a relationship or association with a person with a disability.

D. GENERAL ACCOMMODATION CRITERIA⁷⁴

a. Guidelines

- Determine reasonable accommodation using the facts of each case; not generalisations, perceptions or stereotypes about a disability. Each person's limitations from a disability are unique; therefore evaluate each accommodation request on its own merits. What is

⁷³ Reasonable Accommodation and Accessibility for People with Disability, FSIS 4306.2

⁷⁴ Reasonable Accommodation and Accessibility for People with Disability, FSIS 4306.2

“reasonable” in one situation may not be reasonable in another, or in the same situation at a different time.

- Supervisors must use good judgment and a fair, common sense approach to make the decision.
- Employees are usually the best source of information about the accommodation, and should discuss their needs with the supervisor so that the request is clearly understood.
- If several accommodations are proposed, the decision maker is not required to select the employee’s first choice, as long as the accommodation selected provides a means for the person to perform the essential job functions.

b. Specific factors to consider

The decision maker must consider the following to determine whether an accommodation can be made:

- Employee’s disability and resulting limitations as they relate to the job requirements
- Essential job functions
- Work environment
- How the accommodation will impact programme or business operations.

E. IDENTIFYING A REASONABLE ACCOMMODATION⁷⁵

In many cases, an appropriate accommodation will be obvious, and you should always consult the person with the disability as the first step in considering an accommodation. However, in some cases, the appropriate accommodation may not be so easy to identify. In such cases, the employer and the individual with a disability should work together to identify the appropriate accommodation. The four-step informal, interactive process below can be used to find an effective accommodation that will enable an individual with a disability to perform the essential functions of a job, as well as to identify accommodations for job applicants and to provide equal benefits and privileges of employment. The four steps include:

- ◆ looking at the particular job involved. What are its purpose and its essential functions?
- ◆ consulting with the individual with a disability to find out his or her specific physical or mental abilities and limitations as they relate to the essential functions of the job. Look at the barriers to job performance and assess how they can be overcome with an accommodation.
- ◆ In consultation with the individual, identifying potential accommodations and assessing how effective each would be in enabling the individual to perform the essential job functions.
- ◆ if more than one accommodation would be effective for providing an equal employment opportunity, considering the preference of the individual with a disability and selecting the accommodation that best meets the needs of the individual and the employer.

⁷⁵ Job Accommodation Network (JAN).

F. TIMEFRAMES FOR PROCESSING REQUESTS AND PROVIDING REASONABLE ACCOMMODATION⁷⁶

General timeframes: Many accommodation decisions can be made and the accommodation provided within a few days. Since special circumstances may influence timing of this process, follow these timelines.

1. The accommodation request consideration process should begin as soon as the appropriate official receives an oral or written request from a person or representative. However, the process begins no more than five business days from the date of the oral or written request.
2. When the person has an obvious or previously documented condition that qualifies as a disability and the accommodation requested is related to limitations caused by that condition, the first line supervisor determines if the accommodation is effective. If so, the supervisor provides the accommodation in no more than 30 business days from the date of the written or oral request.
3. When the person does not have an obvious or previously documented condition that qualifies as a disability, the provincial legislature or parliament should requests for any additional evidence, or consult with a physician, as necessary, and makes a decision on whether or not the employee has a disability.
4. When documentation is necessary, the 30-business-day period for the supervisor or manager to respond to the accommodation request begins on the date the provincial legislature or parliament issues the decision identified in 3 above.

Extensions: It may be necessary to extend the processing timeframes due to extenuating circumstances.

- a. Some examples of extenuating circumstances are that:
 - equipment purchase may take longer than 30 days.
 - the employee with a disability needs to try out equipment before purchase can be made.
 - new staff must be hired or contracted, or
 - an accommodation involves removing architectural barriers.
- b. The supervisor notifies the employee of the reason for a delay, and the approximate date on which a decision or provision of the reasonable accommodation is expected.
- c. The supervisor investigates whether temporary measures can be taken to assist the employee. The supervisor may also use a temporary measure while the provincial legislature or parliament is obtaining or evaluating documentation to determine if the employee has a covered disability.

⁷⁶ Reasonable Accommodation and Accessibility for People with Disability, FSIS 4306.2

G. VACANCY ANNOUNCEMENT⁷⁷

The vacancy announcement will:

- be accessible to all potential applicants.
- indicate that people with disabilities may be appointed.
- contain non-discrimination statement
- contain a reasonable accommodation statement. **Example:** “The provincial legislature or parliament provides reasonable accommodations to applicants with disabilities. If you need a reasonable accommodation for any part of the application and hiring process, please notify us.”

H. REASONABLE ACCOMMODATION IN THE APPLICATION PROCESS⁷⁸

The provincial legislature or parliament will make reasonable accommodations at the applicant’s request. The provincial legislature or parliament will request only the supporting medical documentation necessary to determine the nature of the disability or how the accommodation will assist with the application process. Expedite requests for accommodation, since the application process is short.

I. INTERVIEWS⁷⁹

Reasonable accommodation for the interview: The interviewing official responds to accommodation requests for the interview and provides the accommodation, unless it will cause undue hardship.

Acceptable interview questions: A job interview gives the interviewer and the applicant an opportunity to assess the applicant’s qualifications in relation to the job requirements. The interviewer focuses on the applicant’s abilities, rather than disabilities.

1. The interviewer asks job-related questions that:
 - assess the applicant’s knowledge, skills and abilities (KSAs);
 - relate to the applicant’s ability to perform specific job functions, tasks, and duties.
2. The interviewer provides information to help the applicant determine the need for accommodation, such as:
 - providing information on the job requirements (tasks, duties, responsibilities and work schedule);
 - discussing the regular work hours, leave policies, and attendance requirements.
3. The interviewer asks if the applicant can meet work schedule and attendance requirements.

⁷⁷ Reasonable Accommodation and Accessibility for People with Disability, FSIS 4306.2

⁷⁸ Ibid.

⁷⁹ Ibid.

4. The interviewer asks how the applicant will perform a job. Questions may relate to any job activity and are not limited to the essential job functions. **Examples:**
 - a. After describing the job activities, the interviewer may ask, “Can you perform these tasks?”
 - b. Only when the applicant indicates the need for an accommodation may the interviewer ask, “How will you perform the tasks, and what accommodation is needed?”

Unacceptable interview questions: The interviewer may not ask questions about the disability or illness even if disability is visible. **Example:** The person uses a wheelchair or guide dog, has a missing limb, or has volunteered information about a disability. (Questions about illness may reveal the existence of a disability.) The interviewer may not ask questions regarding the:

1. Nature or severity. Examples:

- a) What is your disability? How did it occur?
- b) How severe is your condition?

2. Causing circumstances or conditions. Examples:

- a) Is your disability hereditary? Is it job-related?
- b) Have you ever been hospitalised? If so, for what?
- c) Have you had a major illness in the past year?

3. Prognosis or explanation. Examples:

- a) Will the disability improve or worsen?
- b) Is there any health-related reason why you may not be able to perform certain job functions?
- c) Do you have any disability or impairment that may affect your performance in this position?

4. Need for medical treatment or leave usage. Examples:

- a) How many days were you absent from work due to illness last year?
- b) How much leave do you estimate using?

5. Other disability-related factors. Examples:

- a) Have you ever been treated by a psychologist or psychiatrist? If so, for what condition?
- b) Have you ever been treated for any mental condition?
- c) Are you taking any prescribed drugs? If so, what?
- d) Have you ever been treated for drug addiction or alcoholism?
- e) Have you ever filed a worker’s compensation claim?

J. PRE- AND POST OFFER INQUIRIES AND MEDICAL EXAMINATIONS⁸⁰

⁸⁰ Reasonable Accommodation and Accessibility for People with Disability, FSIS 4306.2

Before an employment offer, the provincial legislature or parliament officials may not ask any disability-related questions or require any medical examinations, even if they are job-related.

EXCEPTION: Legislature and Parliament officials may ask questions in order to provide an accommodation when they realistically believe an accommodation is needed.

The Employment Equity Act states that an employer should not employ a person if the employer can demonstrate that a person with a disability would represent an actual risk to him or her or other people, which could not be eliminated or reduced by applicable reasonable accommodation.⁸¹

After an applicant is given a conditional job offer, but before employment, provincial legislature or parliament officials may make disability-related inquiries and require medical examinations, as long as it does so for **all** entering employees in the same job category. If an applicant is screened out because of a disability, the supervisor must document the exclusionary criterion is job-related and consistent with business necessity. The criterion must be based on objective evidence that the applicant will:

- be unable to perform the essential job functions because of a medical condition; or
- pose a direct threat because of a medical condition. This means the applicant would pose significant risk of substantial harm to self or others, and the risk cannot be reduced below the “direct threat” level through reasonable accommodation. The threat posed cannot be remote or vague.

K. REFERENCE CHECKS⁸²

A rating official may *not* ask previous employers or other sources for information regarding the applicant’s disability or illness.

A hiring official may ask an applicant’s previous employer for information regarding:

- job functions and tasks;
- quality and quantity of work;
- job performance;
- attendance record. A hiring official may not ask about an applicant’s attendance as it relates to illness or disability. This applies even if the applicant volunteered the information or the hiring official knows that the applicant has a disability (**example:** The hiring official may ask a previous employer, “Could you comment on the applicant’s attendance record while employed with you?”);
- other job-related issues that do not relate to disability;
- accommodations made by that employer, if the applicant has a known disability and indicate the ability to do a job with reasonable accommodation.

⁸¹ Employment Equity Act.

⁸² Reasonable Accommodation and Accessibility for People with Disability, FSIS 4306.2

L. ACCOMMODATION APPROVAL PROCESS⁸³

	<i>Employee/ representative</i>	<i>Supervisor</i>	<i>Senior manager</i>	<i>Medical officer</i>
i) Handling the request	<p>Requests, orally or in writing, for accommodation from the supervisor, manager or provincial legislature or parliament official proposing to take a performance or conduct action.</p> <p>Participates in the interactive process.</p>	<p>Receives and documents the reasonable accommodation request.</p> <p>Consults with and forwards the employee's request and documentation to the senior manager if assistance is needed in determining if the employee has a disability.</p> <p>Participates in the interactive process.</p> <p>Maintains confidentiality.</p> <p>Decides whether an accommodation will be made.</p>	<p>Responds to questions from the supervisor, employee or representative on the accommodation request.</p> <p>Consults with employee relations staff when an employee requests an accommodation because of an anticipated performance or conduct-based action.</p>	
ii) Documenting the impairment and making disability determination	<p>Provides documentation of the impairment to the decision maker.</p>	<p>Requests documentation of impairment, as necessary.</p>	<p>Reviews medical documentation or provides to medical officer.</p> <p>Makes determination of disability.</p>	<p>Reviews and interprets medical documentation to assist in determining if the person requesting accommodation has a disability.</p> <p>Provides results of review to senior manager.</p>
iii) Providing the accommodation		<p>On approval of the need for accommodation, the supervisor:</p> <ul style="list-style-type: none"> Decides how to accommodate the employee, using the interactive process. 	<p>Responds to questions from the supervisor, employee or representative on the accommodation process.</p>	

⁸³ Reasonable Accommodation and Accessibility for People with Disability, FSIS 4306.2

		<ul style="list-style-type: none"> ▪ Provides the accommodation according to the given timeframes. • Informs the senior manager of the accommodation. 	Recommends the use of CAP to provide assistive technology.	
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M. ACCOMMODATION DENIAL PROCESS⁸⁴

If an accommodation request is denied, the supervisor provides the employee valid and well-documented written reasons for why the request was denied. The final decision must describe one or more of the following:

1. Why the requested accommodation was ineffective.
2. Why the requested accommodation would cause undue hardship.
3. Why the medical documentation was inadequate.
4. Why the accommodation would require removing an essential function.
5. How the accommodation would require lowering performance or production standards.
6. Any other reason used to deny the accommodation.

If the requestor proposed one type of accommodation, which was denied, and the requestor rejected an alternative accommodation offer, the decision maker must explain the reason the original request was denied and explain how the alternative accommodation would be effective.

N. DENIAL RECONSIDERATION PROCESS⁸⁵

To request reconsideration of a denial decision, the employee may take the following steps:

- 1) Provide additional supporting information, and ask the decision maker to reconsider the denial.
- 2) If the employee’s supervisor does not reverse the denial, the employee may ask the senior manager to review the request.
- 3) If the decision maker is the senior manager, the employee may ask the Speaker to review the request.

O. REASSIGNMENT EFFORTS⁸⁶

When reassignment is considered: Consider reassigning an employee as a reasonable accommodation only after all efforts to accommodate the employee in the current position have failed. Also consider reassigning an employee when the employee is unable to perform the essential functions of the current position, even with reasonable accommodation.

⁸⁴ Reasonable Accommodation and Accessibility for People with Disability, FSIS 4306.2

⁸⁵ Ibid.

⁸⁶ Ibid.

- a. Consider the employee for appropriate vacancies that have promotion potential. This may involve placement across programme lines or in another departments.
- b. The employee must meet the qualification requirements for the vacant position and be able to perform the essential job functions with or without reasonable accommodation.
- c. Supervisors and managers should contact appropriate organisations of disabled people for assistance.

P. DOCUMENTING A MEDICAL CONDITION FOR AN ACCOMMODATION REQUEST⁸⁷

Determining the need for medical documentation: If the:

- person has an obvious or previously documented medical condition that qualifies as a disability and the accommodation requested is related to the known disability, and the accommodation request is considered immediately without further medical documentation.
- disability and the reason for accommodation are not obvious; the person may have to submit medical evidence to support an accommodation request.

Requesting medical documentation: To obtain appropriate and useful information, all requests for medical documentation should describe the nature of the job, the essential functions, and any other relevant information. The medical information requested must be current, obtained at the employer's expense, and describe:

1. the nature, severity and duration of the impairment,
2. the major life activities that the impairment limits,
3. how the accommodation will help.

Requesting additional information: The provincial legislature or parliament may request relevant supplemental information if the information submitted does not clearly explain the nature of the disability or need for reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee in performing the essential functions of the job or enjoy benefits and privileges of the workplace. The employer must explain why the information provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.

If the information is still insufficient to make a determination, the person may agree to sign a limited release, and the provincial legislature or parliament may submit a list of specific questions to the person's health care professional.

If, after a reasonable time, (**example:** 5–7 weeks after a request for additional information) there is still not sufficient information to demonstrate that the person has a disability and needs an accommodation, the decision maker may request that a physician chosen by the provincial legislature or parliament examine the person at the employer's expense.

Failure to provide appropriate documentation or cooperate in the employer's effort to obtain such documentation can result in a denial of the reasonable accommodation.

⁸⁷ Reasonable Accommodation and Accessibility for People with Disability.

P. MAINTAINING CONFIDENTIALITY OF MEDICAL INFORMATION⁸⁸

Keep medical information obtained for the reasonable accommodation process confidential. Whenever medical information is disclosed, inform the recipient of the confidentiality requirements. Any provincial legislature or parliament employee who obtains or receives medical information is strictly bound by the confidentiality requirements.

Subject to sections 7 and 18 of the Employment Equity Act, employers, including health and medical services personnel, may only gather private information relating to employees if it is necessary to achieve a **legitimate purpose**, with the written consent of the person.⁸⁹

Maintain all medical information, including information about functional limitations and reasonable accommodation needs regarding a request for reasonable accommodation, in files separate from the employee personnel file.

The relevant manager should maintain custody of all medical records obtained or created during the process of a reasonable accommodation request according to the confidentiality requirements. The manager may disclose information regarding the records, or any aspect of the process, only to:

- **senior managers** who need to know that an employee has a disability that necessitates restrictions on the work or duties and about any recommended accommodations. However, medical information should only be disclosed if strictly necessary;
- **first aid and safety personnel**, when appropriate, if the disability might require emergency treatment;
- **security personnel** who must assist people with disabilities during evacuation procedures;
- **parliamentarians**, when necessary to investigate the provincial legislature or parliament's compliance with universal accessibility;
- **physicians**, when consulting on the interpretation of medical documents.

⁸⁸ USDA, Reasonable Accommodation and Accessibility for People with Disability, FSIS Directive 4306.2

⁸⁹ Sections 7 and 18 of the Employment Equity Act.

Q. EXAMPLES OF DISABILITIES, POSSIBLE ACCESS ISSUES AND ACCOMMODATIONS⁹⁰

Disability	Possible access issues	Possible solutions
Blind and vision impaired (include not only those who are totally blind, but also those with limited vision)	<ul style="list-style-type: none"> • Path of travel • Displays of information • Controls with written directions • Elevators operating buttons • Completion of written forms 	<ul style="list-style-type: none"> • "Talking" computers, calculators • Labelling in Braille • Respond to questions orally • Air radio announcements • Avoid clutter in passageways • Use writing, drawing, optical aids (e.g. magnifiers)
Deaf and hearing impaired (including not only those persons who are totally deaf, but also those with limited hearing)	<p>Information obtained through:</p> <ul style="list-style-type: none"> • telephones • warning devices (e.g., fire alarms, public address systems) • equipment operating noises. 	<ul style="list-style-type: none"> • Use of amplification devices • Installations of Telecommunications device for the deaf (TDD) • Publication of written announcements • Allow mail-in-procedures to be used • Policy accommodating lip readers • Use visual cues for signage
Psychological disabilities	<p>Difficulty understanding:</p> <ol style="list-style-type: none"> 1. Signs 2. Controls 3. Operating instructions 4. Directions 	<p>Willingness of someone to assist and/or answer questions and provide directions</p>
Difficulty with upper body movement (including not only those persons who have limited use of arms, shoulder; persons who use wheelchairs or crutches; people of short stature; those who cannot perform certain hand movements, or have difficulty controlling movement)	<p>Difficulty operating (or locating or reaching) certain hardware:</p> <ol style="list-style-type: none"> 1. Hand controls on doors 2. Toilet room fixtures 3. Water fountains 4. Telephones 5. Vending machines 6. Light fixtures 	<ul style="list-style-type: none"> • Relocating a programme or service to accessible area • Use of adaptive equipment or modification of present hardware
Mobility impairments (including those persons having difficulties or stamina limitations, as well as those who use wheelchairs and crutches)	<ul style="list-style-type: none"> • No grasp bars, handrails, other supports • No designated parking spaces for disabled people • Distance from parking, public transportation stops • Route of travel <ul style="list-style-type: none"> ○ Curbs, walks, unlevelled surfaces ○ Carpeting, textured title supports • Entrances and doors • Restrooms, phones, water fountains • Location of controls, general hardware 	<ul style="list-style-type: none"> • Replace existing hardware, equipment • Make necessary structural changes to eliminate barriers: <ul style="list-style-type: none"> ○ Install ramps ○ Widen doorways

⁹⁰ ADA, 1990.

DEFINITION, TERMINOLOGY, CATEGORIES AND SITUATIONAL ANALYSIS OF DISABILITY

A. DISABILITY TERMINOLOGY

i. Impairment

In order to qualify for protection as a person with a disability, all the criteria of the definition must be satisfied. This refers to: “**long term**”, “**recurring impairment**”, “**physical or mental impairment**” and “**substantially limit**”.

ii. Long-term impairment

The impairment has lasted or is likely to persist for at least 12 months. A short term or temporary illness or injury is not an impairment which gives rise to disability.

iii. Recurring impairment

Is likely to recur and be substantially limiting regardless of whether the effect on a person fluctuates. Progressive conditions are deemed a disability once impairment starts to be substantially limiting. Progressive or recurring conditions, which have no overt symptoms or do not substantially limit individuals, are not considered disabilities.

iv. Impairment

This refers to the partial or total loss of a bodily function or part of the body. It includes sensory impairments such as being deaf, hearing or visually impaired and any combination of physical or mental impairments.

v. Mental impairment

This refers to clinically recognised conditions or illnesses that affects a person’s thought processes, judgment or emotion.

B. CATEGORIES OF DISABILITY

i. Physical disability

Refers to damage to muscles, nerves, skin or bones that leads to difficulties in moving around and performing activities in daily living.

Physical disabilities include the following:

- **Paraplegia:** A substantial loss of function in the lower part of the body.
- **Quadriplegia:** Substantial loss of function in all four limbs.
- **Hemiplegia:** Substantial loss of function on one side of the body, often due to a stroke
- **Cerebral palsy:** Damage to the brain that causes muscular incoordination.
- **Post-polio paralysis:** Weakness in some muscles, and underdevelopment of some limbs.

ii. Visual disability

Visual disability refers to the loss of sight that may be total or partial.

Visual disabilities include the following:

- **Blindness:** This refers to total loss of sight. A person might experience difficulty in moving around and knowing where things are.
- **Low vision:** A limited range of sight and focus that can easily be corrected with spectacles.

iii. Hearing disability

Hearing impairment refers to hearing loss that may be mild, severe or total.

Hearing disabilities include:

- **Deafness:** Hearing loss that usually results in difficulties in learning a spoken language.

iv. Mental disability

Mental disabilities include cognitive, psychiatric and learning disabilities as well as physical head trauma.

- **Intellectual disability:** People with intellectual disabilities find it difficult to learn and retain new information, and often struggle to adapt to new situations.
- **Psychiatric disability:** People living with a psychiatric or mental illness often experience difficulties in perceiving or interpreting reality and coping with some aspects of daily life.

v. Multiple Disabilities

Multiple disabilities means having more than two of the disabilities, for example, people who are both deaf and blind.

vi. Epilepsy

Epilepsy is a recurrence of seizures, and a seizure is an episode caused by a sudden disturbance in the brain.

Epilepsy is a chronic condition which can be controlled with medication, but, if not, can become a disability.

vii. Albinism

Albinism is an inherited disability where a person has absence of pigmentation of the skin and hair and is partially sighted.

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