Fact sheet

### Inherent requirements and workplace adjustments

### What are inherent requirements?

Under anti-discrimination legislation, in most circumstances, an employer is required to provide reasonable workplace adjustments to facilitate a person to meet the requirements of their job. There are exceptions, such as, because of their disability, the person cannot perform the inherent requirements of the job, even with reasonable adjustments.

Inherent requirements are characteristics, elements or requirements that are essential to the performance of the particular employment.

Inherent requirements are determined by reference to the specific circumstances of the particular employment and role, including by reference to the terms of the employment contract and the nature of the work of the agency.

They should relate to the specific role to be done and the surrounding context of that role, and not the specific employee. For example, a person with low vision may not be able to meet the ‘inherent requirements’ of a job as a delivery driver if they cannot drive safely.

Inherent requirements will vary depending on what the job is, and may include the ability:

* to perform tasks which are necessary to perform a job productively and to the required quality
* to work effectively in a team or other organisation
* to work safely[[1]](#footnote-1).

Not all role activities or duties are considered inherent requirements. For example, occasionally covering for someone on a break by answering phone calls would generally not be an inherent requirement of a role.

The employer bears the onus of proving that an applicant or employee could not meet the inherent requirements for a role, whether or not reasonable adjustment were made.

## Determining the inherent requirements of a role

Both an employer and employee benefit from having a clear understanding of the inherent requirements of a role.

The employer is responsible for determining what is reasonable and practical in terms of how the inherent requirements are met. This should be considered on a case-by-case basis and may be different for each agency and role.

The best practice is for the employer or manager to ensure that there is a shared understanding with the employee of the inherent requirements of the role and the ways the employee can meet them. Some ways employers could outline the inherent requirements of a role include:

* clearly documenting inherent requirements in the role description and job advertisements for a role and/or a separate document
* making applicants and employees aware of inherent requirements for a role
* discussing inherent requirements with the employees to ensure shared understanding.

The [*Disability Discrimination Act 1992 (Cth)*](https://www.legislation.gov.au/Details/C2016C00763)and the [*Anti-Discrimination Act 1977*](http://legislation.nsw.gov.au/#/view/act/1977/48)list factors to consider when determining whether a person can carry out the inherent requirements of particular work. For the *Anti-Discrimination Act*, these are:

* the person’s past training, qualifications and experience relevant to the particular employment
* if the person already works for the employer – the person’s performance as an employee
* all other relevant factors that are reasonable to consider.

Refer to your agency workplace adjustment policy and HR, Legal or specialist internal team for more information on inherent requirements.

## What are essential requirements for a role?

Essential requirements are conditions of engagement or other pre-requisites that are required to be met by an applicant for the role and once employed, maintained by the employee. Role descriptions will often include information about a role’s essential requirements. These should not be confused with inherent requirements, which may or may not be documented in the role description.

Examples of essential requirements may include conditions of engagement such as:

* citizenship or residency requirements
* formal qualifications such as a certificate, licence, or registration (where needed to practice or to deliver the outcomes of the role)
* security and other clearances (e.g. criminal records checks or working with children checks)
* health clearances (e.g. health assessments and fitness requirements).

Essential requirements may also include identification with a specific group where this is an occupational qualification (e.g. identifying as an Aboriginal for an Aboriginal identified role) or being a person with a disability or other eligibility group for a workforce diversity role.

Visit the Office of the Public Service Commissioner’s website to read more about [essential requirements](https://www.psc.nsw.gov.au/workforce-management/recruitment/recruitment-and-selection-guide/filling-a-role/role-analysis/essential-requirements-factsheet#about-inherent-requirements-and-essential-requirements).

Where a manager has questions or concerns regarding the inherent requirements of a role, or a request for, or implementation of, workplace adjustments, they should seek advice from the relevant team in their agency. This may be HR, Legal or another specialist team. Remember that personal and health information about an employee may be subject to privacy and health legislation and may not be able to be shared without their consent unless authorised by law.

1. [Australian Human Rights Commission, Inherent Requirements](https://humanrights.gov.au/quick-guide/12052) [↑](#footnote-ref-1)