

Essential requirements factsheet

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Essential requirements for a role are those factors that are needed for successful performance in the role from day one.

Legal requirements

GSE rule 17 sets out the process required for **comparative assessment** including screening for essential requirements such as a qualification or licence.

GSE rule 18 sets out the process required for **suitability assessment** including screening for essential requirements such as a qualification or licence.

The **Anti-Discrimination Act 1977** protects people who are seeking or are in employment against discrimination. The **Disability Discrimination Act 1992** (Cth) provides protection for everyone in Australia against discrimination based on disability.

About inherent requirements and essential requirements

The following principles on inherent requirements can be applied when deciding on essential requirements and focus capabilities for roles in the NSW Public Service.

Inherent requirements relate to the core parts of the role without which it would not be possible to fulfil the functions of the role. The **Australian Human Rights Commission's** view of inherent requirements is that they will vary depending on what the role is, and may include:

- the ability to perform tasks which are essential to perform a job productively and to the required quality
- the ability to work effectively in a team or other organisation
- the ability to work safely.

Inherent requirements relate to results, or what must be accomplished, rather than the means, or how it is accomplished.¹ They should also relate to the specific role and its context.

Inherent requirements and employment decisions

Employers should offer equal employment opportunities to everyone. This means that if a person with disability can do the inherent requirements of a role, he or she should have just as much chance to do that role as anyone else. However, in situations where the person is unable to carry out the 'inherent requirements' of the particular role, or would require services or facilities, legislation provides an exception of 'unjustifiable hardship' for the employer. For information, visit the **Australian Human Rights Commission's guide on unjustifiable hardship**.

Before concluding that 'unjustifiable hardship' applies, an employer should:

- thoroughly consider how access might be provided or adjustments made
- discuss the issues directly with the person involved
- consult relevant sources of advice.

Unjustifiable hardship is, in broad terms, based on an assessment of what is fair and reasonable in the circumstances. If the proposed adjustments are likely to cause hardship, it is up to the employer to show that they are unjustified.

The **Disability Discrimination Act 1992** (Cth) and the **Anti-Discrimination Act 1977** contain a list of factors to consider when determining whether a person is able to carry out the inherent requirements of particular work, which are:

- the person's past training, qualifications and experience relevant to the particular work;

- if the person already works for the employer – the person’s performance in working for the employer; and
- other factors that are reasonable to take into account.

See: [Australian Human Rights Commission: A brief guide to the Disability Discrimination Act and Anti-Discrimination Board of NSW – Anti-discrimination law and employers](#)

Deciding on essential requirements

Essential requirements are those factors that are needed for successful performance in a role from day one. [GSE rule 17](#) and [GSE rule 18](#) give the example of a qualification or licence.

Citizenship or residency requirements must also be considered for employment in the Public Service.

It is up to the employer to decide on the essential requirements for a role. Knowledge and experience are different from essential requirements and have a separate section in the role description in recognition of this. The [Role description development guidelines](#) have for more information about including knowledge and experience in the role description.

Examples of what are and are not essential requirements

Essential requirements include:

- citizenship or residency requirements
- qualifications or certifications (where needed to practice or to deliver the outcomes of the role)
- employment screening checks (eg. criminal records checks or working with children checks)
- licencing or registration requirements (where absolutely necessary to deliver the outcomes of the role)
- health assessments and fitness requirements
- identification with a specific group where this is an occupational qualification (eg. identifying as an Aboriginal for an Aboriginal identified role)

Essential requirements are not:

- written to suit a preferred candidate
- a re-statement of the capabilities
- knowledge and experience
- desirable criteria
- a replacement for “selection criteria”

Role analysis

Essential requirements for a role should be determined during the role analysis. When deciding on whether something is an essential requirement of the role you need to be satisfied that it is absolutely necessary to deliver the required outcomes. Consideration should be given to whether outcomes can be achieved in another way or with workplace modifications.

See: [Role analysis](#)

Role description and job advertisement

You need to be able to justify for each role why something has been included as an essential requirement. If you are using a similar role description or advertisement, you need to consider whether the inclusion of an essential requirement is defensible (even if it was used in the past).

When advertising a role, the essential requirements should be clearly set out in the advertisement and/or role description.

Examples of essential requirements

The following examples show different circumstances where essential requirements should and should not be used.

Driver's licence

Example for bus driver

Essential requirements for NSW Government bus drivers include holding a valid Australian driver's licence in the appropriate class and holding a clearance for working with children. Without these it would not be possible to perform the core functions of the role of transporting customers safely to their destination.

Example for community worker

A community worker role in a regional area involves travelling long distances by car to meet with clients. There are no other suitable transport alternatives, such as public transport, and it would place an unjustifiable hardship on the employer for the caseworker to use taxis or have a driver.

Driving a car is therefore the only viable option for effectively performing this role and is therefore an essential requirement.

For community worker roles in the Sydney CBD this scenario may not be defensible with a range of cost-effective transport options more readily available.

Citizenship or residency requirements

Citizenship or residency requirements must be complied with for all ongoing, temporary, term or casual employment in the NSW Public Service.

Legal requirements

Section 54 of the GSE Act sets the framework for imposing conditions of engagement in the GSE rules, including for citizenship or residency requirements.

GSE rule 6 sets out the requirements for citizenship or residency of NSW Public Service employees.

Verifying citizenship or residency

You need to ensure that prospective candidates meet the requirements in **GSE rule 6** when offering ongoing, temporary, term or casual employment in the Public Service.

Verification of citizenship or residency must be completed as a condition of engagement and to ensure compliance with Commonwealth migration law.

In making this verification, it is important that you consider the terms of the visa and whether it permits a person to work for a specified period only. In such cases, you should consider the length of employment being offered and whether the visa is valid for the entire period.

Note: While a temporary visa may provide a pathway towards a permanent visa, there is no guarantee that a permanent visa will be granted within the expected timeframe or be granted at all.

Ongoing employment

GSE rule 6(1) requires that any visa must be current and allow the person to work in Australia.

Accordingly, if ongoing employment in the Public Service is offered to a candidate who holds a temporary visa, the offer should be subject to conditions (imposed under section 54 of the GSE Act) to ensure that the employment does not exceed any limitations (including time limits) in the candidate's visa. The effect of the condition would be that, if the person ceases to hold a visa that permits the person to work in Australia, then the person's employment is immediately terminated.

Temporary employment

Temporary employment can be offered to a person listed in **GSE rule 6(1)**.

In offering temporary employment to a person listed in **GSE rule 6(1)(d)**, you should ensure the person's visa is valid for the entire period of their employment.

It is important in making judgments about eligibility of a person to be employed in temporary employment that you do not inadvertently discriminate against them. This would happen if a candidate was deemed ineligible on the basis of the terms of their visa when, in fact, their visa was valid for the entire period of employment being offered.

Resources

- **NSW Ministry of Health: Stepping up website** (recruitment resource for Aboriginal applicants and hiring managers)
- **Australian Human Rights Commission: Police checks**
- **Australian Human Rights Commission: Guidelines for the prevention of discrimination in employment on the basis of criminal record**
- **Australian Human Rights Commission: Determining the inherent requirements of a job** (criminal records and inherent requirements)

¹Australian Network on Disability (n.d.), Managing someone returning to work, viewed 21 September 2016,

www.and.org.au/pages/managing-someone-returning-to-work.html.