

# Employing people with disability using rule 26 of the Government Sector Employment (General) Rules 2014

## Key points

- The best way for NSW Government agencies to employ people with disability is to have inclusive and positive workplace cultures where all recruitment and selection processes promote equal employment opportunity.
- Your agency may wish to engage a specialist Disability Employment Services (DES) provider to source candidates for jobs (e.g. through [Job Active](#)).
- [Rule 26](#) of the [Government Sector Employment \(General\) Rules 2014](#) (GSE Rules) is designed to assist government sector agencies to employ people who experience disadvantage in employment. People with disability are defined as 'eligible persons' under this rule.

This guidance is designed to assist government sector agencies to use positive measures to attract and employ people with disability using rule 26 of the GSE Rules (rule 26). For the purposes of this rule, "government sector agencies" includes State owned corporations but not universities. The rule applies to non-executive roles. It does not apply to senior executive roles.

## Legal requirements

[Section 63 \(3\)](#) of the [Government Sector Employment Act 2013](#) (GSE Act) provides that the GSE rules may deal with workforce diversity in any government sector agency. The head of the agency is to ensure that the agency's obligations under those rules are complied with.

[Section 63 \(5\)](#) of the GSE Act provides that the obligations of GSE rules dealing with workforce diversity prevail over any inconsistent obligations under the [Anti-Discrimination Act 1977](#) (ADA).

Rule 26 allows a government sector agency head to employ an 'eligible person' in a non-executive role. The agency head must be satisfied that the 'eligible person' employed in a role under rule 26 is suitable for the role, and has the greatest merit of the 'eligible persons' seeking to be employed in the role.

[Section 4](#) of the ADA defines what is meant by 'disability'.

## Employing people with disability using rule 26

People with disability can and do compete for public sector jobs on the open employment market. However, some people require coordinated pathways into the sector.

One way of facilitating the employment of people with disability is by establishing a 'targeted role'. Another option is to modify recruitment practices to simplify the process for gaining employment.



## Government sector agency other than a Public Service agency

[Rule 26 \(3A\)](#) allows a government sector agency other than a Public Service agency to modify its recruitment and selection policies or procedures (except in the case of those policies and procedures required by law) as are necessary to facilitate employment of an `eligible persons' in non-executive roles within the agency.

[Rule 26 \(2\)](#) provides that agency head must be satisfied that the `eligible person' employed in a role is suitable for the role and has the greatest merit of the eligible persons seeking to be employed in the role.

## Using rule 26 to employ people with disability in the Public Service

Rule 26(3) allows a Public Service agency to modify, as necessary, the requirements for merit-based employment set out in [Part 3](#) of the GSE Rules to facilitate the employment of people with disability. Part 3 of the GSE Rules sets out provisions for merit-based employment.

### Merit-based employment requirements for the Public Service

Rule 16 of the GSE Rules sets out the merit principles that apply to employment decisions in the Public Service. Table 1 shows the advertising and assessment requirements for ongoing and temporary employment in the Public Service.

Table 1: Requirements for Public Service employment

GSE rule	Kind of employment	Advertising requirement	Assessment requirement
<a href="#">20</a>	Ongoing employment	External advertising	Comparative assessment
<a href="#">21</a>	Temporary employment (up to 12 months)	No requirement	Suitability assessment or comparative assessment
<a href="#">22</a>	Temporary employment (12 months – 4 years)	Advertising across the Public Service	Comparative assessment

The requirements for comparative assessment are set out in Rule 17 of the GSE Rules and for suitability assessment in rule 18 of the GSE Rules.

### Modifying recruitment processes

Agencies have the discretion to modify the recruitment process to employ people with disability but must be satisfied that the modifications are necessary to facilitate employment. Modifications can generally be made to advertising requirements and assessment processes.



## Targeted roles

The purpose of a targeted role is to help people from specific diversity groups who experience disadvantage to access equal opportunity in employment. It also allows agencies to influence the diversity of their workforce in a direct way.

Public Service agencies can use rule 26 to designate a role as a 'targeted role' for people with disability. This means that it is targeted and advertised for people with disability. The employment decision is made on the basis that the person to be employed is suitable for the role and has the greatest merit of the 'eligible persons' seeking to be employed in the role.

Agencies may still need to modify recruitment processes to facilitate the employment of people with disability in targeted roles.

## Modifying advertising

Modifying advertising requirements usually means that targeted advertising or no advertising is used. For example, to employ a person in ongoing employment or temporary employment over 12 months you could:

1. Engage a specialist Disability Employment Services (DES) provider to source candidates for jobs (e.g. through [Job Active](#)). Using a DES provider is a proactive way of attracting candidates with disability who have been supported to become 'job ready'. Providers also offer advice on promoting job vacancies, shortlisting candidates and interviewing people with disability.
2. Advertise on a specialist disability employment job board to attract candidates with disability to your role. This is useful for a disability 'targeted role'.
3. If you become aware of a person or people with disability who you think may be suitable for a role you are filling, you could invite them to participate in an assessment process.

## Modifying assessments

Modifying the requirements for comparative assessment or suitability assessment may help you to employ people with disability. The main requirement in making modifications is that at least one capability-based assessment is used to assess the capabilities of the person against the pre-established standards for the role.

Note: Before deciding to modify an assessment process, you should consider whether a reasonable adjustment can be made to allow people with disability to complete the required number of capability-based assessments for a comparative or suitability assessment. A reasonable adjustment is a change to a work process, procedure or environment that allows a candidate or employee to have equal opportunity in a recruitment process. Reasonable adjustments must be based on individual needs, so it is best to ask each person how best to meet their needs.



Here are some examples of modifying an assessment process:

- **Reduce the number of capability-based assessments**

Reducing the number of capability-based assessments may help to encourage people with disability to participate in a recruitment process. For example, you could use one of the following assessments to assess a person's capability against the pre-established standards for the role as a modification to a comparative assessment or suitability assessment:

- an interview
- a work sample exercise.

See the PSC's [Recruitment and selection guide](#) for more information about selecting fit-for-purpose assessments.

- **Remove the requirement for an application**

Comparative assessment requires a review of an application and resume. You could modify this by requiring candidates to submit a resume. This would allow you to examine the person's suitability for the role at the screening stage without them having to prepare an application.

- **Use one assessor**

Using multiple assessors can increase objectivity in a recruitment process. However, situations like a panel interview can be daunting and may cause anxiety for candidates. You could modify the requirements for comparative assessment by using one assessor for an interview. If you are concerned about the objectivity of the process, you could have a second, perhaps informal, interview with a different assessor.

- **Modifying bulk recruitment processes**

Using external advertising helps to attract large fields of candidates, including people from different diversity groups. This is beneficial for bulk recruitment processes where you have multiple roles to fill.

For a bulk recruitment process you could use external advertising to attract a broad field of candidates. You could then use a modified assessment process specifically for those candidates who have disclosed they have disability. You should first ask candidates their preference for being part of the mainstream process or the modified process.



New South Wales

Government Sector Employment Act  
2013 No 40

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