



## SUPREME COURT OF TONGA

# DISABILITY POLICY

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## Introduction

1. Although the Kingdom of Tonga is not yet a party to the U.N. Convention on the Rights of Persons with Disabilities (CRPD) 2006, the Declaration of Rights enshrined in Part I of the Constitution recognises that all persons are equal before the law. Also, some legislative provisions recognise specific legal rights of persons with disabilities.<sup>1</sup>
2. To protect and give effect to those inalienable rights, it is incumbent on the Courts of Tonga (“the Courts”) to ensure, to the greatest extent practicable, that:
  - 2.1 all persons who are employed within and who come before and use the services of the Courts are not subjected to discrimination of any kind on the basis of disability;
  - 2.2 the physical and mental integrity of persons with disabilities is protected; and
  - 2.3 all persons have access to justice.

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<sup>1</sup> Education Act, Family Protection Act and the Public Health Act.

## Definitions

3. The term 'Disability' is an ever-changing concept. For the purposes of this policy, people with disabilities includes those who have physical, mental, intellectual or sensory impairments which when combined with various other barriers may hinder their full and effective participation in society on an equal basis with others.
4. 'Discrimination' means when someone is treated unfairly because they belong to a particular group of people or have a particular characteristic. Indirect discrimination occurs when there is a requirement or rule that is the same for everyone but in effect disadvantages people from a particular group more than people from other groups - unless the requirement is reasonable in the circumstances.
5. 'Reasonable adjustment' means the provision of, or changes to, special facilities or equipment or procedures required to enable a person with a disability to do their job or access the Courts' facilities. It does not include changing the inherent requirements of a job or procedure. An exception to reasonable adjustment is when 'unjustifiable hardship' can be proven.

## Purpose of this Policy

6. The purpose of this policy is to:
  - 6.1 demonstrate the commitment of the Courts to fostering, supporting and integrating equal opportunity for people with disabilities into its policies, procedures, decisions and operations;
  - 6.2 create greater awareness of the needs of people with disabilities within the Justice sector;
  - 6.3 provide a framework for establishing and maintaining strategies for identifying and eliminating obstacles and barriers which may hinder persons with disabilities from fully accessing justice;
  - 6.4 take into account the protection and promotion of the human rights of persons with disabilities in all Court policies and programs; and
  - 6.5 outline the policy and guidelines with respect to all interactions between the Courts and persons with disabilities.

## Application & Scope

7. This policy applies to:
  - 7.1 all members of the judiciary and staff of the Courts (whether full-time, part-time,

- casual, day labour, probation or temporary);
- 7.2 all persons contracted to work for the Courts (maintenance personnel, cleaners, ushers, security personnel, catering staff, drivers and visiting judges); and
- 7.3 all persons seeking and/or using the services of the Courts (lawyers, parties and their families, police, persons in custody, jury members, media personnel, and members of the public attending proceedings).

## Principles

- 8. The basic principles of access and equity are that no court staff member or user should be disadvantaged in proceedings before the Court or in understanding the procedures and conduct of court business, because of any disability barrier.
- 9. To that end, the Courts are committed to:
  - 9.1 ensuring that all court users and employees with disabilities are treated respectfully and equitably at all times;
  - 9.2 taking all reasonable steps to identify and eliminate discrimination towards any staff member or Court user on account of their disabilities;
  - 9.3 ensuring that all Court staff are aware of, trained and monitored in respect of their responsibilities under this policy;
  - 9.4 making reasonable adjustments to provide equal opportunity for people with disabilities within the Court precincts and in accessing the Courts' processes and procedures;
  - 9.5 liaising regularly with representatives of organisations and groups dedicated to protecting and enhancing the rights of persons with disabilities to ensure continual improvement in best practices being implemented within the Courts;
  - 9.6 ensuring all Court buildings facilities are accessible to people with disabilities through the ongoing review and upgrade to existing buildings and construction of new buildings and facilities to comply with appropriate domestic and/or international building standards for access to, and mobility within, court buildings;
  - 9.7 ensuring that all publicly available information as to the Courts' processes and procedures is accessible to people with disabilities;
  - 9.8 providing staff members with resources and training to reasonably adjust their workplace, where doing so will not cause unjustifiable hardship to the Courts;
  - 9.9 maintaining confidentiality of information provided by staff and/or users of the

Courts in relation to their respective disabilities. No one is required to disclose their disability unless they are seeking special accommodations or workplace adjustments. Detailed information may be required by the relevant Courts support services and/or external agencies in order to make adjustments and request specialised equipment;

- 9.10 continuing to plan, develop, implement and improve on strategies, programs, policies and guidelines that provide equality for all staff and users of the Courts; and
- 9.11 responding to any feedback or complaints in respect of the Courts' performance under this policy, in a timely and appropriate manner.

## Roles and Responsibilities

- 10. All Court staff are responsible for:
  - 10.1 observing, and giving effect to, the principles of this Policy;
  - 10.2 notifying their Supervisors if any reasonable adjustment to the Courts' facilities, their work environment or procedures is considered necessary to address any issue arising under this Policy.
- 11. Senior staff members, as nominated by the Chief Justice or the Registrar of the Supreme Court, or the Chief Magistrate of the Magistrates Court, are responsible for:
  - 11.1 ensuring that staff are familiar with and give effect to the provisions of this Policy;
  - 11.2 providing regular training in the principles of this Policy and practical measures for implementing it;
  - 11.3 maintaining a system for receiving, gathering and recording information from staff members and Court users concerning any issues arising from or related to this Policy;
  - 11.4 responding to any requests, feedback or complaints from staff or Court users with disabilities arising from the Courts' performance under this Policy;
  - 11.5 proposing reasonable adjustments to existing Courts facilities and/or changes to Court procedures in order to address any issues arising from or related to this Policy;
  - 11.6 integrating the provisions of this Policy into other Court personnel policies and practices;
  - 11.7 regularly liaising with community and government agencies involved in the

representation and support of persons with disabilities for the purpose of exchanging information on the Courts' performance under this Policy and how that performance might reasonably be improved.

## Reasonable Adjustment

12. Reasonable adjustments may be environmental, administrative or procedural and may include:
  - 12.1 adjustments to the Courts' premises, equipment or facilities;
  - 12.2 adjustments to available information being provided in an accessible form or format;
  - 12.3 adjustments to work methods or Court procedures;
  - 12.4 access to training or higher duties positions or other forms of opportunity to demonstrate or develop capacity in a position;
  - 12.5 provision of suitably qualified communicators for the visually, hearing or vocally impaired during Court proceedings;
  - 12.6 provision of, or permitting a person to use, equipment or assistance for a person with disability;
  - 12.7 assessment, appraisal and training for staff on measures to better implement the principles of this Policy.
13. Limitations on the obligation to provide reasonable adjustments include:
  - 13.1 those for which funding is not presently available;
  - 13.2 adjustments which would impose an unjustifiable hardship on the Courts;
  - 13.3 changing the inherent requirements of the Courts' processes or staff responsibilities;
  - 13.4 assigning performance of some inherent requirements of the job to another employee;
  - 13.5 creating a new or different job; or
  - 13.6 promotion or transfer to a different job.

## Regular assessment

14. Senior Courts staff, under the direction of the Chief Justice, will undertake regular (no less than annually) assessments and analyses of the Courts' facilities, practices and

procedures to ensure reasonable compliance with this Policy, including in respect of:

- 14.1 buildings, office spaces and other facilities;
- 14.2 human resource policies and practices;
- 14.3 recruitment processes;
- 14.4 accommodation allowing persons with disabilities to work in the Courts;
- 14.5 information and communication systems;
- 14.6 the Courts' website; and
- 14.7 availability of sign language or similar interpretation services.

## Feedback and complaints

- 15. The Court registries will ensure that a hard copy of this Policy is made available upon request or where staff consider it necessary and that it is uploaded and maintained on the Supreme Court website.
- 16. Both registries will ensure that users with disabilities are offered any assistance reasonably available in accordance with this Policy.
- 17. Users with disabilities will be encouraged to make known any need for, and request, any assistance provided for by this Policy.
- 18. To ensure that they are adequately assisted, Court staff and users with disabilities are encouraged to provide feedback to the Courts on the standard of facilities and services provided pursuant to this Policy.
- 19. Where a complaint is received, the complaints officer shall respond to the person submitting the complaint in accordance with standard complaints handling procedures.

## Version Control and Change History

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