

Approaching conversations about disability

People with disability have the right to share, or not to share, information about disability status.

There is no legal obligation for an employee to share information about disability with an employer unless it affects an employee's ability to do the tasks that must be carried out to get the job done.

For people with a visible disability, sharing disability information is usually not optional. Individuals with disabilities that are not visible have a choice about whether to share disability information. When information about the disability is shared, it is important to treat the individual with respect and dignity and focus on the person and not the disability.

▶ Collecting and sharing information in the APS

Health information about an employee, including information about a disability, is 'sensitive information' for the purposes of the *Privacy Act 1988*. This sensitive information has a higher level of protection and requires the person's consent¹ to the information being collected. The collection of sensitive information should only be undertaken if it is necessary for agency's functions or activities.

The Australian Privacy Principles provide that an agency can only use or disclose sensitive information for the purpose it was collected. Privacy legislation requires managers and HR practitioners to obtain consent from an individual to share the information about their disability with other people within your agency.

Employers have a legal obligation to provide 'reasonable adjustments' to allow people with disability equal participation or equal performance at work². Usually it is not necessary to tell another member of staff the reason for an adjustment, simply that it is required in order for the individual to do their job. If the adjustment does cause discussion among the team it is important to talk to the individual with the adjustment about what information they might like to share, if any.

Regulation 9.2³ of the *Public Service Regulations 1999* allows agency heads to use or disclose personal information in circumstances where the use or disclosure is necessary to the performance or exercise of employer powers. Additional information is at www.apsc.gov.au/publications-and-media/current-publications/values-and-conduct/managing-information.

An individual who believes an agency has disclosed their personal information unlawfully should first raise the matter with the HR area. If they are not satisfied with the agency's response, they may complain to the Office of the Australian Information Commissioner.

TIPS

- a. The *Privacy Act 1988* sets out how to collect, use and disclose information about an individual's disability.
- b. The Office of the Australian Information Commissioner has published Guidelines which provide information on how to comply with the Australian Privacy Principles.

¹ The four key elements of consent are the individual is adequately informed before giving consent; gives consent voluntarily, the consent is current and specific; and the individual has the capacity to understand and communicate their consent.

² *Disability Discrimination Act 1992*

³ Public Service Regulation 9.2 provides an exception to the use and disclosure provisions of the Australian Privacy Principles by providing authority for the use and disclosure of personal information.



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Resources

- a. The Australian Human Rights Commission has a practical guide for managers who manage an employee with mental illness—see www.humanrights.gov.au/our-work/disability-rights/publications/2010-workers-mental-illness-practical-guide-managers.
- b. The Australian Public Service Commission and Comcare jointly released a mental health guide for managers in 2013—see *Working Together: Promoting mental health and wellbeing at work*. The guide aims to empower managers and employees to work together to build inclusive workplace cultures and effective systems for promoting mental health in the APS.
- c. The Australian Network on Disability provides guidance on how to ask people about their disability status. The guidance assists an employer to prepare before asking questions, when to ask and what to ask—see *Sharing and Monitoring Disability Information in your Workforce*.
- d. Heads Up www.headsup.org.au has a tool to help employees with disabilities consider the pros and cons of sharing disability information.
- e. JobAccess outlines the rights and responsibilities for the employer, staff and applicants on:
 - Ensuring conversations are appropriate
 - Supporting staff to disclose a disability
 - Talking to others about your disability

Pulse Check

- I understand there is no legal responsibility for a person to share information about their disability unless they are unable to perform the inherent requirements of the job or there is a risk to safety.
 - I know I can ask about the support a person may require to get the job done.
 - I feel ready to respond to an employee who shares information about their disability.
 - I am aware that the *Privacy Act 1988* imposes additional obligations in relation to the handling of 'sensitive information', including information relating to a disability.
 - I know there is support available if I need more help.
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