

An organisation may make a case for unjustifiable hardship. However it cannot refute the need to provide reasonable accommodation measures by comparing service users with disabilities to other non-disabled service users, or the expense in itself; without due consideration to the overall size of the organisation. This is a particularly important measure for government and its agencies.

Expense on its own cannot be used as a shield against providing reasonable accommodation, due to the right of access created in the Promotion of Equality and Prevention of Unfair Discrimination Act, as well as the Consumer Protection Act and Promotion of Access to Information Act. It may be that, depending on the size and gross income of the organisation, the type of reasonable accommodation measure and the extent to which it is provided, is different for different organisations.

### **1.8 Legal interpretation of limitations and exceptions**

This framework must be read in conjunction with sections 10 and 28 of the Promotion of Equality and Prevention of Unfair Discrimination Act, and its amendment (No. 4 of 2000 and 52 of 2002) to avoid grey areas where the needs of persons with disabilities are not adequately covered by policies, laws and regulations that are not in line with the Constitution and Bill of Rights.

Any policy, Act or legal document on reasonable accommodation is dependent on a common understanding of the meaning of reasonable accommodation as prescribed by this framework, within reason; for the protection of unjustifiable hardship (see below).

The actual experience of the rights-holder for which reasonable accommodation measures were provided, must be the ultimate litmus test as to determine the adequacy of the support provisions. If a rights-holder remains aggrieved due to his/her perception or experience that support measures are inadequate and therefore hinder equitable access and full participation, he/she may institute a grievance on the basis of inadequate accommodation through the Consumer Protection Act, the Promotion of Equality and Prevention of Unfair Discrimination Act, or the Equity Act, whichever is relevant in the specific context.

## **Chapter 2**

### **REASONABLE ACCOMMODATION WITHIN THE RIGHTS PERSPECTIVE**

#### **2.1. Problem statement**

Persons with disabilities throughout their life-cycle continue to experience marginalisation and exclusion, as well as risk to their personal safety and well-being