

1.5.2 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 rights of persons with disabilities are not adequately covered by policies, laws and regulations, or where these are not in line with the Constitution.

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

Rights-holders have recourse when their rights as citizens, residents, consumers, workers, business people or learners have been violated regardless of whether duty-bearers believe they have complied with the guidelines provided by this Framework and/or national minimum standards. Rights-holder may instituting a grievance against the duty-bearer on the grounds that the service was not universally accessible through, among others, the Consumer Protection Act, The Promotion of Equality and Prevention of Unfair Discrimination Act, the Health and Safety at Work Act, and the Employment Equity Act.

1.5.3 Unjustifiable hardship

(i) Definition

Unjustifiable hardship is legally defined as “*an action that requires significant or considerable difficulty or expense.*”¹⁵ This involves considering, among others, the effectiveness of universally accessible service provision and the extent to which it would seriously disrupt the operation of the business, not consideration of the actual cost of any required measures alone.

An organisation may make a case for unjustifiable hardship. However it cannot refute

The need to provide a universally accessible service (by comparing service users with disabilities to service users without disabilities) without acknowledging equality of outcome,

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 reason for not providing a universally accessible service 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 of the

¹⁵ Employment Equity Act (Act 55 of 1998)