



Health Questionnaires And Assessments

Health questionnaires and assessments may be a standard procedure implemented by certain organisations for all employees. These procedures **should only** be implemented if the organisation has conducted a health analysis of each position of employment. If health questionnaires and assessments are conducted without a health analysis of each position, this may be deemed unlawful discrimination (refer to employer responsibilities on this page for further information).

Health questionnaires can be presented at a job interview or when the position of employment is offered. Health assessments tend to occur when the position of employment has been offered and the offer is conditional on the outcome of the assessment.

Health questionnaires and assessments may ask specific disability questions. These questions can be asked, provided it is for a legitimate **purpose** and that the health questionnaire and assessment are a reasonable way to achieve that purpose.

The purpose of health questionnaires and assessments is to:

1. identify whether the chosen applicant(s) can meet the inherent health requirements of the position of employment (if there are any)
2. help the employer and nominee to identify any work related adjustments that may be required and to make a recommendation. However it should be kept in mind that this is only a recommendation as the decision path in identifying work related adjustments is the direct communication between the employer and nominee.

Pre-employment medical information sought either by medical examination or questioning should be tailored to identify **only** those conditions essential to satisfactory performance of the inherent requirements of the position. **Evidence of a disability is an inadequate ground for not appointing someone, unless it can be demonstrated that the disability limits the satisfactory performance of the inherent (health) requirements of the position(1).**

The collection of health information requires employment organisations to take reasonable steps, at the time, or as soon as practicable afterwards, to make employees aware of the collection process. A statement or supporting letter from the organisation tends to be placed on forms that require confidential information that outlines:

- why the organisation is collecting the information;
- who and where the information will go to and how to contact them;
- any consequences if the employee does not provide the information
- what other organisations the information may be given to and
- that the employee can access personal information held about them by the institution.

It is important to obtain for an employee with a disability to obtain this information **before** deciding to disclose disability information on any medical forms. The statement should provide sufficient information for the employee to know to whom they are going to disclose to and how the information will be used within the organisation.

To obtain information about the health assessment process, employees may wish to speak with the health assessment provider when they attend the assessment. Alternatively, prior to the assessment contact identified staff within the organisation such as equal employment officers, diversity or equity officers or external disability support services for advice.



The requirements for organisations to inform employees about the collection of personal information is fully set out in the Federal Privacy Act National Privacy Principles (for private organisations) or the Information Privacy Principles (Federal and ACT government organisations) or relevant state privacy legislation. Refer to the [Privacy and Confidentiality document in this Resource](#) or the Privacy website at <http://www.privacy.gov.au/>.

Should Disclosure Occur?

Employees may have a choice as to whether disclosure should occur on health questionnaires and/or assessments. However, this choice **may be limited when**:

- health assessments are a standard organisational procedure and therefore part of the condition of offer. **All** potential employees would therefore be required to complete this procedure if they wished to fulfill the conditions of offer and accept the position of employment where a health assessment is required.
- where a health assessment is required, employees must answer truthfully the questions in the assessment. *There are implied obligations of an employee in that an employee must truthfully answer questions of the employer that are within the scope of the employment. A breach of this obligation will constitute a breach of the employment contract and may justify the termination of employment(2)* .
If an employee does not answer the questions/assessment truthfully, this may also impact on their relationship with their employer i.e. breach of trust.

An employer may make inquiries, assessments or examinations or do any act that is reasonably necessary to decide if:

- an employee can do the inherent requirements of the job
- an employee can comply with other job related requirements that do not involve unlawful discrimination
- an employee needs an appropriate adjustment and what that would be
- making an appropriate adjustment will cause the employer unjustifiable hardship
- any superannuation, insurance or workers compensation entitlements that you or the employee may have; or
- any distinction, exclusion or limitation to insurance or superannuation that is reasonable and lawful under Section 46 of the Disability Discrimination Act (DDA) 1992.

Why an Employee may Choose to Disclose their Disability on a Health Questionnaire And/ Or Assessment

Therese has decided to disclose her disability on the medical questionnaire that all employees are asked to complete. She is aware that she will need to negotiate some work related adjustments in order to undertake her role and she is comfortable with disclosing her disability in order to achieve this.

An employee may choose to disclose their disability on a health questionnaire and/or assessment to:

- fulfill the organisational requirement for all prospective employees to attend a health assessment in order to obtain a formal offer of employment
- enable work related adjustments to be identified and implemented
- have their disability information placed on record should future work related adjustments be required.



Why An Employee May Choose NOT To Disclose Their Disability On A Health Questionnaire And/Or Assessment

Damien has chosen not to disclose his disability because he believes it will not impact on his position, given that he has developed appropriate strategies for managing his disability. He also has a very good work history in which his disability has had no negative impact on his performance.

An employee may choose NOT to disclose their disability on a health questionnaire and/or assessment because:

- they can meet the inherent requirements of the position without having to disclose their disability
- their disability may be in remission and therefore not considered relevant to the process
- they may not consider their condition as a disability
- disability information may not be requested on the questionnaire or in the assessment.

What To Disclose

It is important to address the questions and provide the relevant health information required, provided a clear statement is made available outlining the reason for the collection of the information and how the information will be used by the organisation. The information should be presented in a clear and concise manner and relevant to the questions asked in the health questionnaire or assessment. It is not relevant to discuss or write a long history of the disability, nor any other personal information.

To Whom Should Disclosure Occur

When disclosing a disability on a health questionnaire and/or assessment, the information tends to be made available to departments such as human resources or employee relations. Employment nominees may choose to disclose to a health assessment provider employed or contracted by the organisation to implement health assessments. A health examination should only be performed by a qualified health assessment provider.

Employee : Rights And Responsibilities

An employment nominee with a disability has the right to:

- disclose their disability without fear of negative or discriminatory attitudes and actions
- know, as prescribed by the Privacy Act 1988 and other state privacy legislation;
 - why the organisation is collecting the information;
 - who and where the information will go to and how to contact them;
 - any consequences if the employee does not provide the information
 - what other organisations the information may be given to and
 - that the employee can access personal information held about them by the institution.
- have their disability taken into account where, and only where, it is relevant and fair to do so. The Disability Discrimination Act (DDA) 1992 makes discrimination unlawful at all stages of the employment process, from recruitment and selection to discrimination during employment or in dismissal.
- disclose their disability without fear of being excluded from the position, provided that they have met the inherent requirements of the position. Note: This can be challenged if the employer is unable to provide the work related adjustments required due to 'unjustifiable hardship' (Refer to the [Disability Discrimination Act in this resource](#) or the [Human Rights and Equal Opportunity website](#)).



Responsibilities:

- if an applicant has disclosed their disability in a health questionnaire or assessment to highlight the need for work related adjustments in the workplace, it is their responsibility to be prepared to discuss this when it is addressed, either in the interview, when the position is offered or when employed in the position
- if an applicant is not truthful in disclosing required information on the health questionnaires and assessment, this may breach their employment contract, and affect the employee's rights under any superannuation, insurance or workers compensation entitlements that the employee or employer may have.

Employer: Role And Responsibilities

It is the role of the employer or selection committee convener:

- to make clear the purpose for which they request or require disability information, to reduce misunderstandings, which might lead to fears of discrimination
- under State and Federal Privacy legislation, to provide a statement on any form requesting personal information, indicating how the information will be used
- to ensure that the interview process is conducted in a fair and equitable manner, regardless of knowledge about an applicant's health information.

Responsibilities:

- employers need to ensure that
 - they know why they are collecting health information about their employees
 - the collection of health information is for a legitimate purpose
 - the collected health information is only used for the purposes for which it was properly collected and is protected against improper access or disclosure
 - they are able to have accurate information to enable work related adjustments to be provided in the workplace
- Where they require health assessments, that the information on an employee's health status is correct to enable any superannuation, insurance or workers compensation entitlements to be valid and available to the employee or employer
- it is lawful for an employer to collect information relating to an employee's disability, but it is unlawful to:
 - obtain the information in an invasive manner that impacts on the person's privacy
 - use that information for discriminatory purposes e.g. an employer may ask whether there is any preexisting health condition but it would be unlawful for the employer to withdraw an offer of employment unless they could demonstrate the employee was unable to fulfill the inherent requirements of that position, or they could demonstrate unjustifiable hardship
- a requirement for health information or assessment may be seen to be discriminatory IF;
 - the process does not effectively determine whether the applicant can meet the inherent requirements of the job and
 - the process does not meet the purpose of the activity to identify the employees ability to meet the inherent requirements of the job.
Note: it is not discrimination to exclude a person whose disability in fact prevents him or her performing the inherent requirements of the job. For example, a person with severe penicillin allergy may be unable to work in a pharmaceutical packing factory
- employers need to ensure that the inherent requirements of the position are reasonable and accurate and ensure that they do not disproportionately exclude people with a disability.

Footnotes

(1) Equal Opportunity of South Australia (2003) Successful Selection URL [Equal Opportunity Commission \(SA\) :: Disability](#)

(2) Jebb, B. Resignation, Retirement and Abandonment in Australian Master Human Resources Guide 2002 CCH 2001 p.984