CREATING A DISABILITY INCLUSIVE WORKPLACE

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THE LAW SOCIETY
OF NEW SOUTH WALES

OMNIUM JURA DEFENDIMUS

CONTEXT

The Law Society of New South Wales recognises the importance of fostering a safe, equitable and accessible workplace for persons with disability, for the legal profession and the community at large. Employers who adopt diversity and inclusion best practice give all persons the opportunity to realise their potential, which can bring about positive business outcomes for law firms and other employer organisations alike. The purpose of this document is to provide some practical assistance to the legal profession in respect of creating a disability friendly workplace.

Both NSW[1] and Commonwealth[2] legislation prohibit discrimination on the basis of past, present or future disability, actual or presumed disability, or physical, intellectual or psychiatric disability. For more guidelines and examples of workplace disability discrimination, see the Law Society of NSW's 'Workplace Guide and Model Discrimination and Harassment Policies'.[3]

There is still much work to be done to achieve workplace equality for people with disability. In 2019, 48% of Australian workers with disability reported an experience of discrimination within the last twelve months, according to a nationally representative survey of 3000 workers.[4] In 2018-2019, 36% of employment-related complaints to the Australian Human Rights Commission were received under the *Disability Discrimination Act*.[5]

WeThe15, an organisation that aims to provide education on the social model of disability,[6] estimates that 1.2 billion people live with a disability, being approximately 15 per cent of the world's population.[7] The Law Society recognises that, as a matter of principle, society should change in order to accommodate people living with impairment; rather than changing people who live with impairment to accommodate society. People with a disability are a fundamental part of society. As such,

making changes to the workplace environment is expected and generally reasonable. In Australia, 4.4 million people, or nearly one in five, have a disability.[8] Of the 4.4 million Australians with disability, over three-quarters (76.8%) reported a physical disorder as their main condition, and almost one-quarter (23.2%) reported a mental or behavioural disorder as their main condition.[9] Six percent of the legal profession identified as having a disability or long-term illness in 2020.[10]

There are many types and causes of disability, including those which impact on a person's senses, mobility, and bodily and mental functions. Disability may be genetic, but it may also be caused by disease, trauma, accident or injury, leading to total or partial, temporary or permanent, lifelong or acquired impairments or conditions. Often, disability is not perceptible to others.[11]

1 in 5 Australians have reported a disability

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RECRUITMENT

Increasing workplace diversity and inclusion starts with recruitment. Every aspect of the recruitment process provides an opportunity to make positions accessible to the best candidates, including people with disability: from advertising vacancies using the digital content guidelines below, to providing reasonable adjustments to the interview process, to addressing unconscious bias in the candidate selection process.

The following strategies provide some ways of improving your firm's recruitment process:

- In recruitment, explicitly state that your firm values diversity and inclusion, and encourage all applicants to apply, including those with disability.

- Make early-career recruiting more accessible for people with disabilities. The 'Stepping Into' program administered by the Australian Network on Disability is an alternative four-week internship, where talented university students with disability are partnered with Australian businesses.[12]

- Consider candidates' achievements in their personal context. Companies like the Rare Contextual Recruitment System[13] confidentially capture the diverse personal circumstances of applicants, to highlight how these experiences make them resilient, strong candidates.

- Make an avenue for people to raise their individual needs in the recruitment process and ongoing employment without affecting their recruitment or promotion prospects.

- Promote the availability of assistive technology in the recruitment process, by noting the free Government service 'Job Access'. The Employment Assistance Fund, for example, provides financial support to employees with disability to purchase workplace related modifications, Auslan services and support.[14] While a person must be employed to access the Fund, promoting this service signals that candidates with disability will be treated with respect and support.

- Become a disability confident recruiter through the Australian Network on Disability. See the website for more resources.[15]

BUILDING A DISABILITY INCLUSIVE WORKPLACE ENVIRONMENT

Diverse and inclusive workplaces experience better outcomes.[16] In particular, disability inclusive practices in recruitment and accessible work environments can produce myriad benefits, including:

- A highly skilled workforce by drawing from a larger recruitment pool;

- A competitive edge in the recruitment market with a firm culture that respects and values its employees;

- Reduced staff turnover and the associated cost of losing talented and/or experienced employees, losing clients from relationship disruption, and work transfer and duplication in the transition period of recruiting replacement staff;

- Improved productivity and performance, owing to diverse skills and employee loyalty; and

- Greater innovation, problem solving and client service, from diverse experiences and perspectives.[17]

Reasonable Adjustments

A reasonable adjustment is a change to an environment, practice, or policy that enables all employees to perform their jobs to the best of their ability. We note that the term 'adjustment' can imply a burden upon an employer to change the environment as opposed to harnessing the unique skills of an employee with a disability. We use the term 'reasonable adjustments' to denote how the practice should be implemented by way of common practice, such as accessible bathrooms and entry points, or offering flexible work arrangements as far as practicable.

Reasonable adjustments are essential considerations for employee safety, satisfaction and equal opportunity in career progression. They can reduce staff turnover and support all employees to perform to their full potential. To make reasonable adjustments, employers should proactively consider whether their practices, procedures or work environment present hurdles to staff with disability. Many reasonable adjustments can be made easily, at very little time and cost to employers.

Examples of important workplace adjustments include:

- Offering alternative working arrangements, modes of transport, access to materials, modes for event attendance, methods of recruitment and performance assessment;

- Reviewing emergency procedures e.g. alarms and announcements for persons with hearing impairment, fire escapes for persons with reduced mobility;

- Providing a larger monitor and magnification or zoom-in software;

- Closed captions on all video materials, and transcripts for all audio materials;

- Wheelchair ramps and elevators;

- Braille on signs, such as at doorways and inside elevators;

- Accessible bathrooms, parking, kitchens, service desks and building entry points;

- Height-adjustable or standing desks;

- Universal design in exterior and interior design, as well as materials and publications e.g. door handles which do not require a grip, large and high contrast colours and fonts.[18]

Digital Content

A disability friendly workplace also considers whether its online content is accessible, meaning that it is easy to understand and navigate. This is critical in the context of the pandemic, where working from home has become the norm for many offices.

The Australian Network on Disability provides these best practice tips to make digital content accessible:[19]

- Content should be short, concise, well organised and written in plain English:
  - Include commonly used words and language;
  - Use less acronyms, and always define acronyms where they first appear in the text;
  - Use headings and bullet point lists to assist screen readers;
  - Consider sans-serif fonts like Arial or Verdana, greater than 11 pixels in font size; and
  - Avoid excessive use of text that is bolded, italicised, underlined and capitalised.
- Describe hyperlinks clearly so users know what document or website the link is to. Avoid vague or ambiguous descriptions like 'read more';
- Make videos accessible for people with vision or hearing requirements;
  - Provide transcripts of videos;
  - Provide an audio description or summary of the video; and
  - Make subtitles available;
- Make images accessible for people with low vision:
  - Use alternative text (known as 'alt-text') which describes the content and purpose of an image in words. Screen readers read alt-text aloud.

Language

Workplace language, from company policies to casual office conversation, shapes the experience of people with disability at work. All staff can have a positive impact on workplace inclusivity when they speak with care and consideration. This section provides guidance on how to speak about disability with respect.

Where possible, shift the focus to increasing accessibility. For example, a policy could be named 'Access and Inclusion Plan' rather than 'Disability Access Plan'. When speaking about disability directly, use person-first language to focus on the person before the disability. For instance, the term "person with disability" is preferred to "disabled person".[21] Using this language prevents labelling or defining a person by their disability. To use Person First language, simply use the pronoun first, followed by the appropriate verb and then state the name of the disability.[22] For example:

- Person who is deaf;
- People who have low vision;
- People who are living with disability; and
- People with lived experience of disability.

It is not acceptable to refer to a person with disability by a series of pervasive colloquial terms with a derogatory and discriminatory history, the use of which is often synonymous with prejudicial slurs. Other uses of inherently neutral terms for disabilities are also inappropriate and unnecessary in many workplace contexts, as in self-deprecating humour by persons without disability, where offence may not be intended.

If in doubt, the guiding principle of inclusive communication is to never assume and always ask the person directly how they wish to be described. A person's experience of disability is individual and may be vastly different from even that of another person with the same disability.

Some rules of thumb on language to avoid include:

- Reference to a person's disability where it is irrelevant;
- Derogatory language: e.g. 'midget', 'handicapped', 'retarded', 'dumb', 'crippled', etc. Use should be avoided altogether except where necessary in direct quotes;
- Inaccurate or inappropriate use of medical terms: e.g. 'autistic', 'deaf-mute', 'demented', etc. Use should be avoided, except where accurate, relevant and person-first: e.g. 'person with dementia';
- Diminishing or victimising verbs: e.g., 'afflicted with', 'suffering from', 'victim of', 'stricken with' etc. should be replaced with 'experiencing', 'with', or 'living with' and
- Hero-language, suggesting that a person is inspirational or courageous simply for living with disability.[23]

Culture

An inclusive culture is vital to respect and equality in the workplace, where all employees feel welcomed, valued, and safe. Employers can foster a workplace that respects and celebrates diversity by providing:[20]

- Awareness training;
- Policies that expressly prohibit discrimination;
- Anonymous and independent complaints processes, with multiple avenues for employees to raise concerns;
- Providing mentoring and support programs for early-career employees with disability;
- Monitoring the career progression of persons with disability;
- Inviting people with disability to speak at conferences and meetings;
- Ensuring employees with disability can speak and contribute without interruption;
- Encouraging speaking up when you encounter casual discrimination in the workplace;
- Trauma-informed, disability-conscious workplace practices.

CASE STUDIES

The following case studies explore the methods and success of various organisations improving accessibility and inclusivity.


Department of Communities and Justice

Since 2010, the Department of Communities and Justice, then known as the Department of Justice and Attorney General, has offered and promoted reasonable adjustments throughout recruitment and employment.[24] Candidates can request a reasonable adjustment at any time, including prior to and during interviews, and have access to a range of adjustments such as job re-design. For example, a person who is experiencing hearing difficulties might answer email inquiries, while employees without disability might answer phone calls. Exchanging tasks between employees to maximise their individual potential ensures business needs are met without excluding persons with disability.

PwC's Holistic Approach to Inclusion

PwC's Access and Inclusion Plan for 2019-2020 aims to improve inclusion for people with disability by reviewing all aspects of the organisation.[25] The organisation acknowledges that disability can result from trauma such as domestic and family violence, launching unlimited paid leave for employees experiencing violence, and 10 days paid leave for employees supporting a friend or family member experiencing violence. The 'All Roles Flex' policy means that all types of employment in the firm can be negotiated to account for the individual circumstances of persons with disability. Finally, PwC reviews the success of their policies by periodically surveying employees. They are supported by education and training, and auditing salary discrepancies to identify inequity.
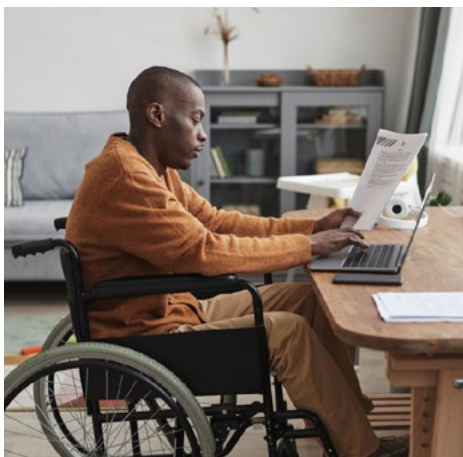
Westpac's Hybrid Workplace Arrangements

Westpac used the demands of the COVID-19 pandemic as an opportunity to improve workplace adjustments for employees with disability. The company provided an equipment checklist that allowed employees to order the resources they needed to work from home comfortably, safely and productively, like specialist keyboards, larger screens and assistive software. This process was supported by dedicated teams. Reliable, accessible and frequent communication throughout all levels of the company facilitated trust and loyalty.[26]

Endnotes

1   *Anti-Discrimination Act 1977* (NSW) ss 49A–49D.

2   See, eg, *Disability Discrimination Act 1992* (Cth) ss 4, 15.

3   Law Society of NSW, 'Workplace Guide and Model Discrimination and Harassment Policies' (May 2021) <https://www.lawsociety.com.au/sites/default/files/2021-05/LS3498_PAP_Workplace-guide_2021-05-13.pdf>.

4   Disability Council Australia, *DCA-Suncorp Inclusion@Work Index 2019–2020* (Synopsis Report, 2019) 18 <https://www.dca.org.au/inclusion-at-work-index>.

5   Australian Human Rights Commission, 'Australian Human Rights Commission 2018-19 Complaint Statistics' (2018-2019).

6   For more information on the Social Model of Disability see People With Disability Australia, 'The Social Model of Disability' (webpage), <https://pwd.org.au/resources/disability-info/social-model-of-disability/>

7   See WeThe15, #WeThe15 (webpage), <https://www.wethe15.org/>

8   Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings* (Catalogue No 4430.0, 24 October 2019).

9   Ibid.

10   Law Society of NSW, 'Diversity and Inclusion in the Legal Profession: The Business Case' (2021).

11   See Australian Network on Disability, 'What is disability?' (Web Page) <https://www.and.org.au/resources/disability-statistics/what-is-disability>.

12   Australian Network on Disability, 'Stepping Into Internships' (Web Page) <https://www.and.org.au/students-jobseekers/start-an-internship/>.

13   Rare Contextual Recruitment System Australia and Allens Linklaters, 'Contextual Recruitment in Australia' (Report) 11 <https://www.rarerecruitment.co.uk/static/research/2016_Contextual_Recruitment_in_Australia.pdf>.

14   Australian Government, 'Employment Assistance Fund', Job Access: *Driving Disability Employment* (Web Page, 23 June 2021) <https://www.jobaccess.gov.au/employment-assistance-fund-eaf>.

15   Australian Network on Disability, 'Disability Confident Recruiter' (Web Page) <https://www.and.org.au/how-we-can-help-you/become-a-disability-confident-recruiter/>.

16   Law Society of NSW, 'Diversity and Inclusion in the Legal Profession: The Business Case' (2021).

17   See also Disability Council Australia, *DCA-Suncorp Inclusion@Work Index 2019–2020* (Synopsis Report, 2019) 15 <https://www.dca.org.au/sites/default/files/inclusion-at-work-index/dca_inclusive_index_2019_synopsis_online_new_accessible.pdf>.

18   See Australian Network on Disability, 'Provide an accessible and inclusive workplace'(Web Page) <https://www.and.org.au/how-we-can-help-you/provide-an-accessible-and-inclusive-workplace/>.

19   Australian Network on Disability, 'Is your content inclusive and accessible? Preparing for Global Accessibility Awareness Day' (Web Page, 27 April 2021).

20   Jennifer Brown, *How to be an Inclusive Leader: Your Role in Creating Cultures of Belonging Where Everyone Can Thrive* (Berrett-Koehler Publishers, 2019) 79-81.

21   Australian Network on Disability, 'Inclusive Language' (Web Page).

22   See Paul T. Jaeger and Cynthia Ann Bowman, *Understanding Disability: Inclusion, Access, Diversity, and Civil Rights* (Greenwood Publishing Group, 2005) ch 1.

23   See People with Disability Australia, 'Words To Describe People With Disability', Disability Information Language Guide (Web Page, 28 June 2018) <https://pwd.org.au/resources/disability-info/language-guide/words-to-describe-people-with-disability/>; Australian Federation of Disability Organisations, 'Language Guide' (Web Page) <https://www.afdo.org.au/news/language-guide/>; Arizona State University Walter Cronkite School of Journalism and Mass Communication, National Center on Disability and Journalism, 'NCDJ Disability Language Style Guide' (2018) <https://ncdj.org/wp-content/uploads/2018/10/NCDJ-styleguide-2018.pdf>; Arizona State University Walter Cronkite School of Journalism and Mass Communication, National Center on Disability and Journalism, 'Terms to Avoid When Writing About Disability', *National Center on Disability and Journalism* (Web Page, 12 September 2015) <https://ncdj.org/2015/09/terms-to-avoid-when-writing-about-disability/>; Australian Network on Disability, 'Inclusive Language' (Web Page).

24   Department of Justice and Attorney General NSW, 'Reasonable Adjustment Policy' (Policy Release, 21 July 2010) 5 <https://www.careers.justice.nsw.gov.au/Pages/our-roles/corrections-careers/candidate-info-pack/Employment-policies-and-information.aspx#ReasonableAdjustmentPolicy>.

25   PWC, *Reimaging Accessible Employment: PWC's Access and Inclusion Plan for 2020-2022* (Report, January 2020) 5 <https://www.pwc.com.au/publications/assets/pwc-australias-access-and-inclusion-plan-2020-2022.pdf>.

26   Australian Network on Disability, 'Changing Workplaces: Workplace Adjustments' (Web Page, 27 April 2021) <https://www.and.org.au/how-we-can-help-you/provide-an-accessible-and-inclusive-workplace/>.