



DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION: THE BUSINESS CASE

October 2021

Introduction

Diversity and inclusion are practices that make sound economic sense for law firms and other organisations.

Research suggests that organisations that value diversity and have a culture of inclusion are able to recruit and retain high performing staff, improve productivity and performance and increase organisational competitiveness and growth. This is the first comprehensive business case for diversity and inclusion for law firms and organisations that employ legal practitioners in NSW.

This business case provides a rationale for why diversity and inclusion are important and identifies specific areas in which having a diverse and inclusive culture can improve the performance of your law firm or organisation. It also provides practical tips for your firm or organisation to consider when adopting a strategy for enhancing diversity and inclusion. Understanding the case for diversity and inclusion and implementing practical changes will see your business reap the benefits.

This business case is aimed at law firms and organisations of all sizes across NSW. The Law Society recognises that in regional areas it can be difficult for law firms and organisations to recruit people at all levels regardless of factors such as age, gender or cultural background. This business case provides all practices with ideas about how to make their workplace more attractive to potential employees, ensuring that all law firms and organisations are well placed to attract the best available staff.

WHAT IS DIVERSITY?

Diversity refers to the differences between people and how they identify in relation to key areas including, but not limited to, gender, ethnicity, religion, sexuality, age and disability.

WHAT IS INCLUSION?

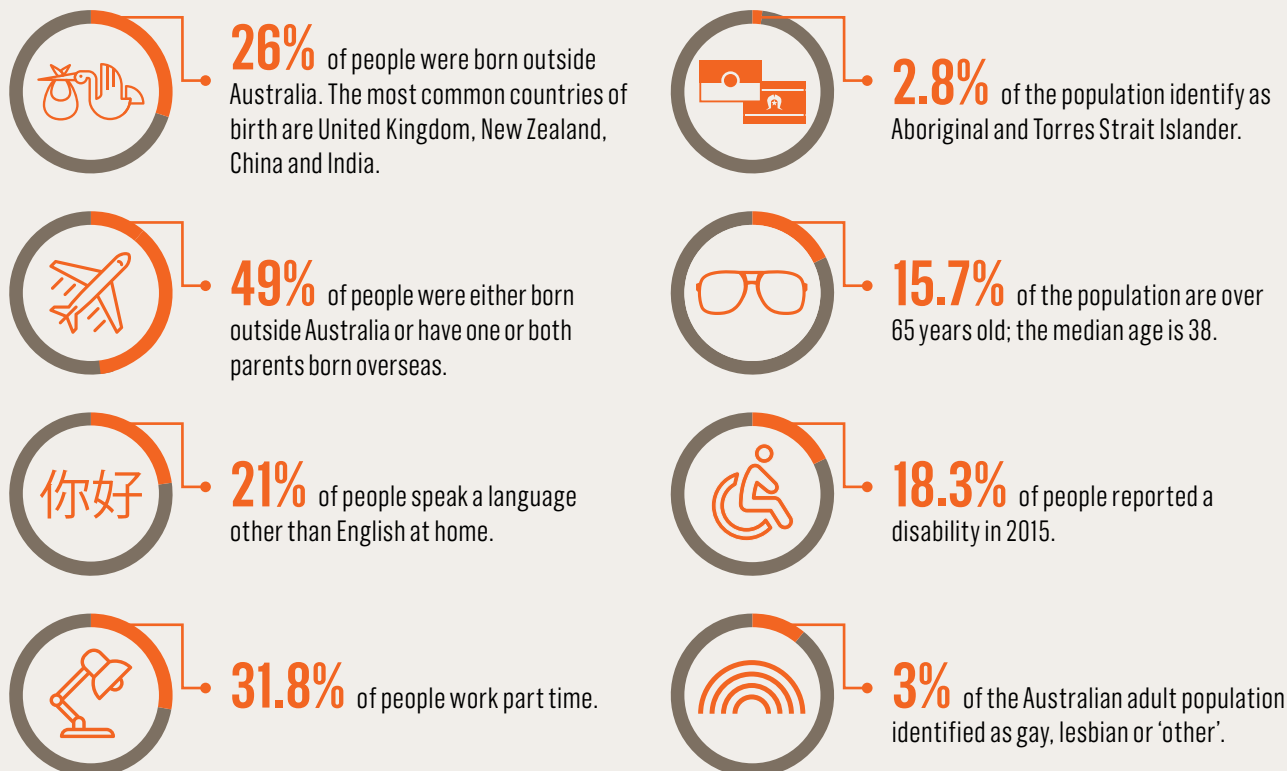
Inclusion occurs when people feel valued and respected, with equitable access to opportunities and resources and where each individual has the opportunity to contribute meaningfully to their organisation. Inclusion is critical in realising the benefits of diversity.



Why diversity and inclusion matter

Diversity and inclusion are of increasing importance for the legal profession. Australian society is culturally and socially diverse and this is reflected in both the demographics of legal practitioners and their clients.

DIVERSITY IN AUSTRALIA



Figures from: Census of Population and Housing: Australia Revealed, 2016, <http://www.abs.gov.au/ausstats/abs@nsf/mf2024.0>; Labour Force Australia, May 2017, [http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0D4D41579F9548D10CA25813F008223F9/\\$File/62020_may_2017.pdf](http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0D4D41579F9548D10CA25813F008223F9/$File/62020_may_2017.pdf); "Media release: over 28% of Australians born overseas", Migration, Australia, 2015-16, <http://www.abs.gov.au/ausstats/abs@nsf/lookup/3412.0Media%20Release12015-16>; "Census reveals a fast changing, culturally diverse nation", 2016 Census: Multicultural, June 2017, <http://www.abs.gov.au/ausstats/abs@nsf/lookup/Media%20release3>; 2016 Census QuickStats – Age, http://www.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/036; Disability Ageing and Carers, Australia: Summary of Findings, 2015, <http://www.abs.gov.au/ausstats/abs@nsf/0/C258C88A7AA5A87ECA2568A9001393E8?OpenDocument>. The above statistic on sexual orientation is taken from Australian Bureau of Statistics General Social Survey: Summary Results, Australia, 2014. The Law Society notes that the Australian Human Rights Commission report 'Face the facts: Lesbian, gay, bisexual, trans and intersex people, 2014' states that 'up to 11% of Australians are of diverse sexual orientation, sex or gender identity'.

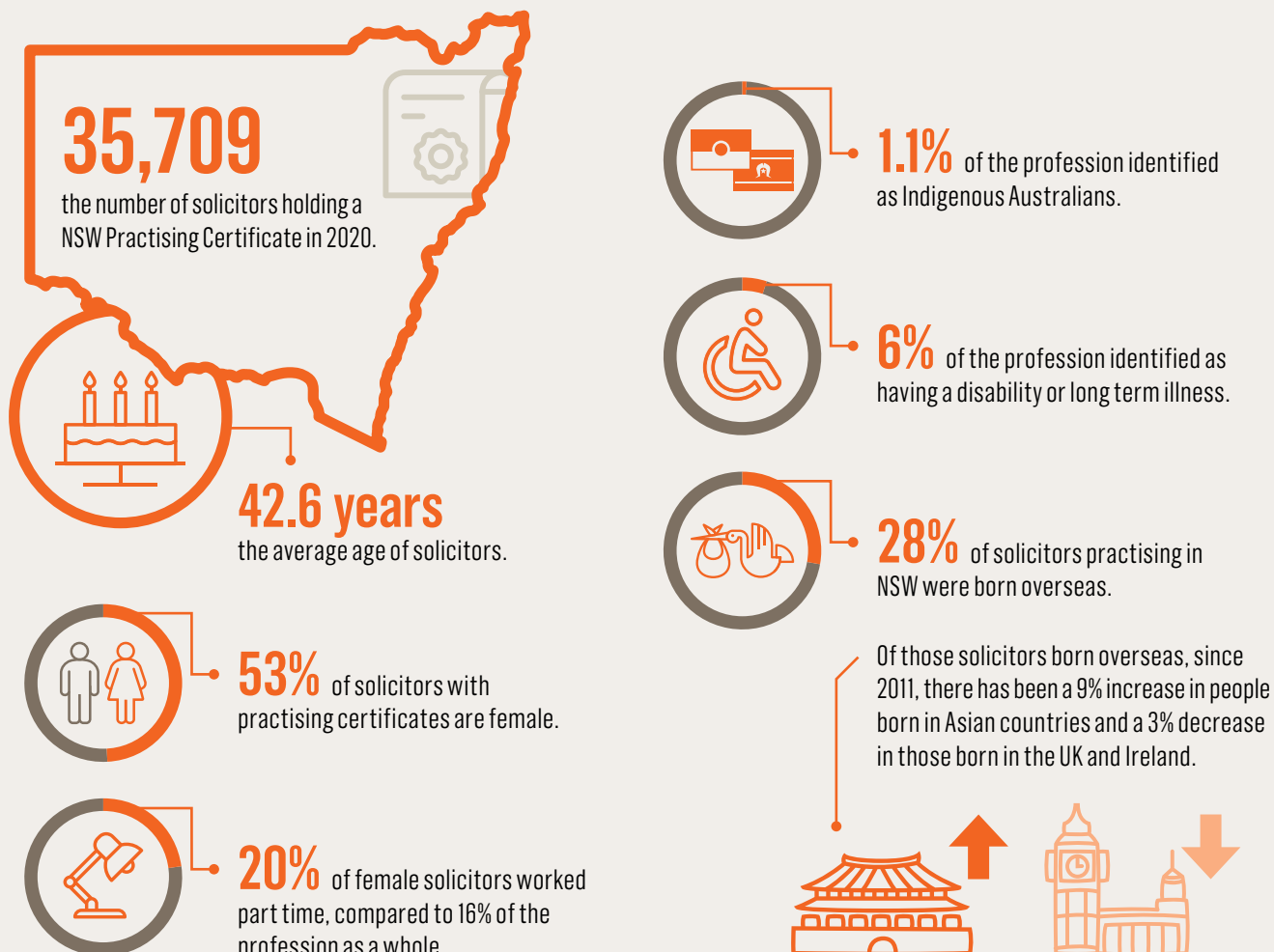
Australia is becoming increasingly diverse, as demonstrated by the below statistics. Notable exceptions to this are the gender divide, which has remained stable at around 50% male and 50% female since before 2001, and the percentage of Australian residents with a disability, which has remained around 18% since 2009.

AUSTRALIAN CENSUS DATA (ESTIMATE, AS A PERCENTAGE OF THE POPULATION)¹

	2001	2006	2011	2016
People born outside Australia	27.4	29.1	30.2	26.0
Have one or both parents who were born outside Australia	–	43.9	46.2	49.0
Speak a language other than English at home	20.0	21.5	23.2	21.0
Work part time	26.4	27.9	28.7	31.9
Median age	35.0	37.0	37.0	38.0
Aboriginal and Torres Strait Islander	2.2	2.3	2.5	2.8

Why diversity and inclusion matter

DIVERSITY AMONGST NSW SOLICITORS



Figures drawn from the 2020 Profile of the Solicitors of NSW: Final Report; National Profile of Solicitors 2020 Report available at www.lawsociety.com.au/resources/surveysandstatistics; and Practising Certificate Survey 2020-21: Final Report, December 2020, available to members on request.

Diversity amongst solicitors in NSW has also been changing over time, as shown below.

PROFILE OF THE PROFESSION DATA (AS A PERCENTAGE OF SOLICITORS)²

	2001	2006	2015	2016	2020
Gender (male/female)	64.2/35.8	57.6/42.4	50.8/49.2	50.0/50.0	47.0/53.0
Solicitors born overseas	22.5	25.1	27.2	27.5	28.0
Solicitors working part time (both male and female)	9.0	13.0	16.4	18.4	16.0
Female solicitors working part time	15.9	19.0	22.1	22.8	20.0
Male solicitors working part time	-	8.0	10.8	14.1	11.0
Average age	40.2	41.1	42.5	42.8	42.6
Disability	-	-	4.8	6.3	6.0

The value of diversity and inclusion in the legal profession

“Employees who feel valued and respected by their organisation are likely to remain in their role for a longer period of time.”



Recruitment and retention of highly skilled staff

Employers that have diverse and inclusive work cultures, policies and practices attract more people and are able to draw from a larger recruitment pool. These employers are likely to have a competitive edge when recruiting as applicants can see the benefits of working in a diverse and inclusive workplace. This allows law firms and other organisations to build a highly skilled workforce that can meet their needs and leads to an enhanced ability to deal with complexity and innovation.³

A major issue that can face law firms and other organisations is retention of staff. Staff turnover can be expensive. As well as the opportunity cost of losing talented staff, there are costs associated with recruiting and replacing staff, and a potential loss of clients. The total costs associated with all these processes have been estimated to cost between 90% and 200% of the annual salary of the position.⁴ Other estimates place the cost at between 200-500% of the annual salary.⁵

Diverse and inclusive work cultures can be related to increased staff retention.⁶ Employees who feel valued and respected by their organisation are likely to remain in their role for a longer period of time. Both men and women may be more likely to remain with an organisation where there is a proactive diversity ‘climate’ as they may perceive a tangible benefit to being in an environment that they view as fair.⁷

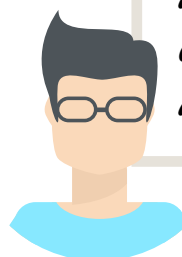
Improved productivity and performance

Diversity and inclusion across a law firm or organisation can result in improvements in productivity and performance. At a staff level this can include higher staff morale and reduced absenteeism of employees. Data from one organisation suggests that if just 10% more employees feel included, the company will increase work attendance by almost one day per year (6.5 hours) per employee.⁸

More holistically, inclusive environments are associated with improved job and/or team performance and higher returns on productivity.⁹ Diverse workforces that include people with global experience and multicultural identities display more creativity, are better problem solvers and are more likely to create new businesses and products.¹⁰ Some modelling concludes that diverse groups are in fact better at decision-making and better equipped for solving difficult problems,¹¹ which can lead to improved financial performance.¹²

Further, employees are 80% more likely to assess that they work in a high performing organisation when they feel that their organisation is highly committed to, and supportive of, diversity than if they perceive low support and commitment for diversity and low inclusion.¹³ This employee perspective on how high performing the business is can contribute to the overall effectiveness of a law firm or organisation.

“Diverse workforces that include people with global experience and multicultural identities display more creativity, are better problem solvers and more likely to create new businesses and products.”



The value of diversity and inclusion in the legal profession

Increased competitiveness and growth

Firms and solicitors with diverse and inclusive workplaces and practices can expect to benefit from an enhanced reputation in the broader community and improved access to an increasingly diverse client base.

This applies not only to the increased diversity of Australian clients, but also to work done for international organisations and in overseas markets. A diverse workforce has knowledge of communities and sectors that they represent and can help your organisation expand beyond traditional markets and customers, promoting itself in a culturally appropriate way. A law firm or organisation that demonstrates diversity has a competitive edge and this enables the firm to succeed and grow. This also creates opportunities for employees to progress and expand their roles.

Conversely, complaints or findings of discrimination or harassment can cause serious reputational damage to a law firm or organisation, reducing your ability to attract and retain clients and adversely impacting business outcomes.

“A law firm or organisation that demonstrates diversity has a competitive edge and this enables the firm to succeed and grow.”



Compliance with legal obligations

Commonwealth and NSW anti-discrimination laws make it unlawful to discriminate, harass, victimise or vilify anyone in certain areas of public life on the basis of specific characteristics.¹⁴ It is also unlawful to bully someone in the workplace.¹⁵

The consequences of breaching these laws can be significant. The NSW Anti-Discrimination Tribunal (now the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal) has estimated the costs of resolving the average ‘in-house’ serious or complex complaint to be \$35,000, including wages and lost productivity for the parties involved.¹⁶ The average cost of a serious external grievance is around \$125,000.¹⁷

Solicitors may also be personally liable for breaches of Commonwealth or NSW legislation, liable as accessories¹⁸ or subject to disciplinary conduct under the *Legal Profession Uniform Law*.¹⁹ Principals or partners of law firms may face additional liability.²⁰

If your law firm or organisation promotes diversity and inclusion, both internally and in the way that you engage with clients, the risk of breaching existing legislation is dramatically reduced. This reduces the risk of costly liability for the organisation and individuals.

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Promoting diversity and inclusion in the legal profession

There are a number of practical ways in which law firms and organisations can advance diversity and inclusion individually, in their workplaces, and throughout the profession.

Interpersonal skills and awareness

Diversity and inclusion can start with improving the interpersonal skills and awareness of all staff. Increased team leader and team member awareness of diversity factors, including culture, sexuality and disability, can improve the capacity of all members of the team to contribute.

It may be useful for firms and organisations to consider putting into place an equal opportunity policy that supports diversity and inclusion, to the extent that these are not already covered in existing policies. The underlying principles of diversity and inclusion should also be expressed in other firm or organisational policies, including grievance handling and any policies on harassment or workplace bullying.

Firms may also wish to look at developing mentoring opportunities in relation to diversity areas. This may include either developing an internal mentoring program or linking with external programs available in your area.

Recruitment and promotion practices

Many job seekers from diverse backgrounds can be disadvantaged in recruitment processes as a result of overt or explicit prejudice as well as unconscious bias. A study conducted by the Australian National University found that job applicants with non-Anglo names had to submit more resumes to be offered an interview.²¹

Similarly, a study involving American law firms suggests there are substantial biases related to social class and gender that skew employment opportunities toward men from privileged backgrounds.²² Given this, it is important for your law firm or organisation to consider whether applicants are being ruled out at an early stage of the recruitment process because of their name or (perceived) background. Your firm or organisation may wish to consider implementing an anonymous shortlisting process when applications are received, which makes it more likely that candidates are shortlisted based on skills or qualifications.

This “unconscious bias” that may apply to reviews of resumes can also express itself in interview situations. At times, interviewers will describe an applicant as “not a good fit” to explain a decision based on vague feelings that often reflects unconscious bias. Instead, organisations should establish strict and transparent criteria for assessing “a good fit” based on the organisation’s values.²³ It may also be useful for lawyers and other law firm staff to undertake unconscious bias training. The Law Society of NSW offers this training as part of its Rule 6.1 mandatory training package.

The same rationale applies to determining eligibility of existing staff for a promotion. Law firms should promote employees on the basis of merit and not take into account irrelevant characteristics. The crucial factor is whether the person applying for promotion is the best person for the position. The more open and transparent the process for promotions, the more likely employees will be satisfied that the process has not been influenced by factors other than merit.

HOW MANY MORE APPLICATIONS MUST BE SUBMITTED TO GET THE SAME NUMBER OF INTERVIEWS AS AN APPLICANT WITH AN ANGLO-SAXON NAME



See: Australian National University, 'Minorities find it harder to get jobs', 18 June 2009

Promoting diversity and inclusion in the legal profession

Diversity and inclusion action plans

In addition to considering how the processes and systems in your law firm or organisation may be unintentionally hindering diversity and inclusion, it is also useful to ask yourself the following question: How does my firm/organisation recognise and value diversity? This creates scope for your law firm or organisation to take proactive steps in recognising the value of diversity.

It is important to celebrate the existing diversity within your law firm or organisation to make sure that you can gain all of the benefits to your business set out above. For example, it is important to ensure that everyone is able to share their ideas in a way that is comfortable for them. This may require you to provide a range of ways for people to share their achievements and ideas with the team, such as:

- introducing a regular mechanism for each team member to share what they are working on and their own achievements;²⁴ or
- when time permits, circulating any meeting agenda and key questions before the meeting and asking all participants to prepare a brief paragraph on their views.²⁵

Other options may be to celebrate cultural and religious dates, where appropriate, and allow staff to receive time off to celebrate cultural and religious dates. This may be enhanced by cross-cultural awareness training opportunities for all staff, including language and communication skills.

To determine which initiatives are most relevant to your firm or organisation, you may wish to undertake a survey of diversity and inclusion within the firm, gathering data about which diversity areas people identify with, which initiatives are important to them and how the firm or organisation is going in implementing existing strategies. However, it is essential to make sure that your employees understand why these surveys are being undertaken and how the data is going to be used and stored. Your law firm or organisation may risk breaching privacy or anti-discrimination laws if they collect information without consent or if the material is used in an unauthorised or inappropriate manner. It is also very important that staff do not feel that the collected information is limiting their opportunities for progression.

Your law firm or organisation may also wish to consider programs that favour a particular group of people, for example designated positions for Aboriginal or Torres Strait Islander people. If you are considering this, it is important that you investigate whether you need to obtain an exemption to the *Anti-Discrimination Act 1977* (NSW). More information on this is available from the Anti-Discrimination Board of NSW.²⁶

“It is important to ensure that everyone is able to share their ideas in a way that is comfortable for them, by providing a range of ways for people to share their achievements and ideas with the team.”



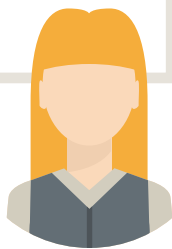
Additional resources

The Law Society of NSW has additional resources available on its website to assist your law firm or organisation to improve its workplace diversity and inclusion: www.lawsociety.com.au.

The following organisations also have a number of useful resources for employers and employees:

- Anti-Discrimination Board of NSW
- Asian Australian Lawyers Alliance
- Australian Human Rights Commission
- Australian Network on Disability
- Diversity Council of Australia
- Fair Work Commission
- Fair Work Ombudsman
- Law Council of Australia
- NSW EEO Practitioners' Association
- Pride in Diversity
- Women Lawyers Association of NSW
- Workplace Gender Equality Agency

“Understanding the case for diversity and inclusion and implementing practical changes will see your business reap the benefits.”



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ENDNOTES

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- 2 Urbis, 2001 Profile of the Solicitors of New South Wales; Urbis, 2006 Profile of the Solicitors of NSW: Final Report; Urbis, 2015 Profile of the Solicitors of NSW: Final Report; Urbis, 2016 Profile of the Solicitors of NSW: Final Report; Urbis, 2020 Profile of the Solicitors of NSW: Final Report all available at <https://www.lawsociety.com.au/>; and Practising Certificate Survey 2020-21: Final Report, February 2021, available to members upon request.
- 3 S Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies* (Princeton University Press, 2007).
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- 15 Fair Work Act 2009 (Cth).
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- 20 Legal Profession Uniform Law (NSW) ss 34 and 35; Partnership Act 1892 (NSW) s 9.
- 21 Australian National University, 'Minorities find it harder to get jobs', 18 June 2009.
- 22 L Rivera and A Tilcsik 'Research: How subtle class cues can backfire on your résumé' *Harvard Business Review* 21 December 2016.
- 23 Deloitte, *Waiter, is that an inclusion in my soup? A new recipe to improve business performance* (2013), 22.
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- 25 Deloitte, *Waiter, is that an inclusion in my soup? A new recipe to improve business performance* (2013), 22.
- 26 See www.antidiscrimination.justice.nsw.gov.au.



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