

BUILDING A DIVERSE IN-HOUSE LEGAL TEAM – INCLUDING LAWYERS WITH DISABILITIES



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The societal and economic benefits of diverse and inclusive work environments are well documented. In-house lawyers are leading the way in the profession for gender inclusion, with women now making up more than half of our segment and leading more than half of all in-house legal teams.

Gender is not the only focus of the work being done by many people in the diversity and inclusion space. We recently spoke to a number of lawyers with disabilities, as well as disability advocates, to learn whether the characteristics that have made in-house departments attractive to women, might likewise make them attractive to lawyers with disabilities. Our observations may arm the in-house profession with insights to help pave the way to welcome more lawyers with disabilities to our ecosystem and model flexibility for the greater inclusion of persons with disabilities across organisations. It is not enough to know that disability discrimination in the employment context breaches the law – and it can be confronting to deal with something you know little or nothing about – so what we are aiming to now do is help break down those barriers and discuss ways to maximise disability inclusion.

First, some facts. According to the Australian Network on Disability (“AND”), one in five people in Australia have a physical or mental disability; this includes 2.1 million Australians of working age¹. Some disabilities are obvious, such as impaired sight or hearing, or the need to use a wheelchair or crutches; others are less obvious, such as diabetes, cancer survival, dyslexia, immunological diseases, depression, or anxiety. Non-disabled employees can become disabled due to accident or illness and the likelihood of becoming disabled increases with age. More than 30% of all people between the ages of 55-64 have a disability, and thus there are likely already employees with disabilities in almost every workplace.² Thirty-four percent of employees with a disability work as professionals or managers.³

Despite the high prevalence of disability in the general population, we were told that a number of employers struggle to picture how a disabled applicant can be successful, or at least as successful as a non-disabled

employee. An employer's presumptions about the capability of an applicant with a disability may very well be incorrect, yet it creates an entry barrier. This experience was validated by each of the lawyers and advocates we spoke to, who agreed that the first hurdle, namely of getting in the door, was the highest. We spoke to Suzanne Colbert AM at AND who told us that graduates with a disability took more than 50% longer than other graduates to get a job. Despite having conquered all of the hurdles to get a university degree or other qualification in the first place, many lawyers with disabilities struggled to even be considered for a law firm clerkship, the first step to employment that most of us have travelled.

Today AND is seeing a disproportionately high number of disabled students studying law compared to any other profession.

Darren Fittler, a partner at Gilbert & Tobin, has been legally blind since childhood. Fittler's undergraduate years saw him regularly waiting on the availability of volunteers from Vision Australia to voice record his law school materials before he could study them. Similarly, the lawyers with hearing impairments with whom we spoke described needing the assistance of interpreters and note takers to get them through lectures. While technological advancements have improved dramatically over recent years, adjusting to a new technology takes time and this in itself can disrupt education.

Having broken down these sorts of barriers to obtain a qualification, the lawyers we spoke to all agreed that many employers had little understanding of how relatively small work changes and an open mind could offer a disabled employee an opportunity to succeed at work. Over its twelve years of operation AND has created and refined an internship program, “stepping Into,” for disabled university students, that is focused on breaking down the barriers that prevent disabled graduates from securing roles. These internships are very often the first opportunity to level the

playing field. Student participants are given training and support to assist them in the interview process. And employers are given assistance with appropriate and reasonable workplace adjustments. In AND's experience, adjustments of a technical or physical nature cost, on average, less than \$500 per person. Companies such as Stockland, Westpac, PwC and Telstra, as well as a number of government departments, are some of the almost 40 in-house teams working with AND's almost 200 current students.

A reasonable adjustment is defined as "an adjustment to be made by (the employer)... unless making the adjustment would pose an unjustifiable hardship on the (employer)."⁴ The process can, and should be, a collaborative and iterative one. The first step is having a clear understanding of the essential job functions – for an in-house lawyer those are pretty straightforward, such as a practicing certificate, legal nous, and an ability to communicate. The next step is to determine what, if any, reasonable adjustment is then required in the work place. The employee living with the disability, perhaps for their entire life, is the obvious first stop on this line of inquiry. The reasonable adjustment may be as simple as obtaining a technology with which the employee is comfortable, or the knowledge of what schedule or flexibility works for them.

The biggest obstacle perhaps is to presume. Many of those we spoke to told us that avoiding presumptions is the key to determining what reasonable adjustments fit with an employee's personal preferences and their particular needs. To illustrate, Darren Fittler doesn't use an assistance dog and he doesn't rely on braille. Instead, his iPhone's SIRI app is his personal assistant and he uses it to take notes, remind him of meetings, and help him telephone his clients. The lawyers with hearing impairments we spoke to preferred different methods to communicate than over the phone. Michelle Willetts, a lawyer for the Victorian Department of Environment, Land, Water & Planning, relies on lip-reading, and therefore Skype and Facetime are her preferred tools. Calvin Shaw of Herbert Smith Freehills uses dictation software that converts speech into writing. The research we undertook in relation to employees with psychological disabilities pointed to less technical adjustments and more practical ones, such as adjustments to commute times or working hours or location. There are a number of external resources available to provide information about the sort of adjustments that are available – e.g. www.and.org.au, accessiblebusiness.com.au. Organisations such as these can help point out barriers – does the new kitchen microwave or conference room have

touchscreens that can't be operated by a vision-impaired user? Can a wheelchair user reach the sink? A simple adjustment to move a tap to the side of a bench instead of at the back may make all the difference to a disabled employee.

All of our readers know of the legal obligation to provide a safe workplace for employees, including those with a disability. We learned that disabled employees on average have a low incidence of workplace injury, and so the requirements they need are often quite simple to ensure a safe environment.⁵ For example, Alastair McEwin, the Australian Disability Discrimination Commissioner, who was born profoundly deaf, has a light in his office that flashes in the event of an emergency.

Another engagement strategy is mentoring, which may in fact be even more critical for employees with disabilities who may feel isolated and not able to experience all of the subtleties present in a conversation, or the political cues in how an office lives and breathes. ACC Australia's mentoring program can be particularly helpful to lawyers who are in small legal teams and may not have an opportunity for mentoring within your company. In larger companies, affinity groups may create networks to help employees with disabilities create connections and have a bigger voice. As an illustration, multi-national law firm Herbert Smith Freehills launched





an Ability Network in 2016, which provides a forum for employees with disabilities and has an active role in working on reasonable adjustments. They are one of the leaders in this space in building awareness and support for lawyers with disabilities. Calvin Shaw's move within HSF to Dubai from Sydney earlier this year is a case on point. The Ability Network helped break down barriers which might have otherwise prevented him from taking an international assignment. We heard from Shaw a few weeks after his move, and he was excited to report that, "from a disability point of view, my supervising partner here in Dubai is always ensuring that I am able to participate (e.g., giving me copies of transcripts of speeches he has prepared and arranging for a secretary to type up notes of conference calls so I am able to follow)." And in return, Shaw's commitment to HSF is unquestionable – he credits his success to his employer's support and their willingness to sit down with him and listen to his needs. Even though he has moved from a country with a developed framework of reasonable adjustment to one which provides very little such rights to people with disabilities, HSF recognised the benefit to both the firm and the employee by providing Shaw with what he needed.

Increasing employment of disabled people is one of Alastair McEwin's priorities during his 4 year term as the Disability Discrimination Commissioner. As an example of the innovative ways that companies can integrate disabled workers, he told us about the Dandelion Program which utilised changes in organisational structure to enable employees with autism to work highly effectively in the technology sector.⁶ McEwin encourages

employers to use goals and targets to promote disability hiring and inclusion, and to be on the lookout for hidden barriers to success within their workplace. McEwin advocates for a holistic approach when encouraging or requiring diversity in supply chains.

Jim Merklinger, the Vice President and chief legal officer of ACC, believes that his challenges (being an individual with Tourette Syndrome), as well as the unique challenges other employees with disabilities experience, may make them more qualified on the job. People with disabilities have arguably cleared more hurdles before they get to their desk in the morning than the average person, which seems to propel them to make even greater strides in the workplace. Merklinger believes that people with disabilities often view what others consider to be disabilities as responsibilities, which they have accepted and are able to channel positively into their lives.⁷

So how can you now access this "under-tapped" population of qualified and motivated lawyers? Our suggestions include:

1. Educate yourself and your company on disability – arm your managers with information and attitudes to foster and improve the experiences of people with disabilities and lessen the role of unconscious bias. The Australian Network on Disability Access and Inclusion Index Benchmark Report 2016 is a great place to start.⁸ Similarly, the Australian Human Rights Commission fact sheet provides a quick overview of employer requirements.⁹ If your organisation is a member of the Diversity Council Australia

it can access their detailed training materials and seminars.

2. Review your recruiting process. Is it accessible to applicants with disabilities? Does it ask applicants if they need a reasonable adjustment to access the process itself?
3. Create an inclusive environment. Consider reviewing your flexibility policies – these may benefit disabled and non-disabled alike. Provide training in your workplace for managers and employees who may not know how to engage with disabled employees. Encourage affinity groups and inclusive policies.
4. Consider sponsoring an AND intern and participating in the Stepping Into program.
5. Show your support and commitment by signing on to the ACC Australia Diversity Charter. ^a

Footnotes

- 1 Australian Network on Disability, 'Disability Statistics', 2017 < <https://www.and.org.au/pages/disability-statistics.html>>, viewed 14 July 2017.
- 2 *Ibid.*
- 3 *Ibid.*
- 4 Disability Discrimination Act 1992 (Cth) s 4.
- 5 Australian Network on Disability, 'Disability Inclusion Makes Good Business Sense', <https://www.and.org.au/data/Info_Sharing/AND_Infographic_2016_without_marks.pdf>, viewed on 15 July 2017.
- 6 Australian Network on Disability, '2016 Access and Inclusion Benchmark Report', May 2017, < <https://www.and.org.au/pages/2016-access-and-inclusion-benchmark-report.html>>, viewed 15 July 2017.
- 7 Australian Human Rights Commission, 'Disability Discrimination', < <https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/disability-discrimination>>, viewed 15 July 2017.

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