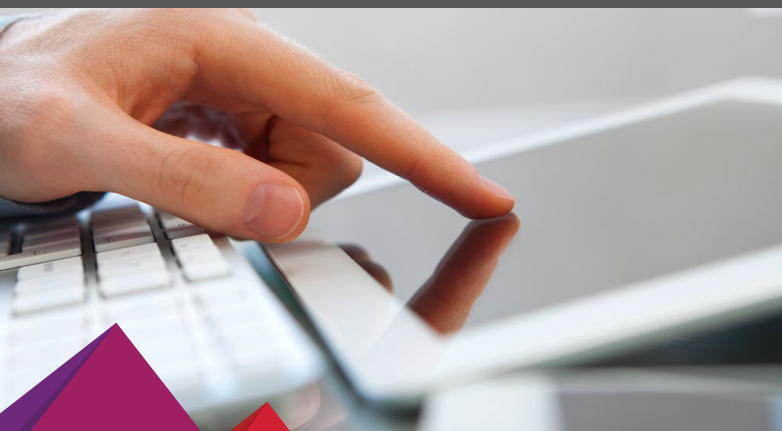
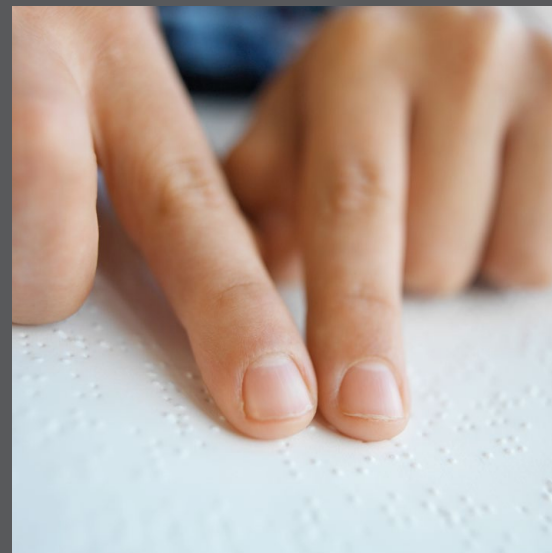




AUSTRALIAN
NETWORK
ON DISABILITY

Sharing and Monitoring Disability Information in your Workforce

A Guide for Employers
May 2016



IN COLLABORATION WITH

Business
Council of
Australia



ABOUT THIS GUIDE

Nearly one in five Australians - over four million people - identified as having a disability in 2012.

Over two million people of working age (16-65 years) have disability, and over one million are already working. This means that almost 10 per cent of the workforce are already people with disability.¹ Disability is likely to be present in your workplace and it may well be invisible. Many Australian employers are unsure about how to ask people about their disability status. A recent survey of members by the Business Council of Australia² found that concerns about seeming discriminatory, invading privacy, not knowing how to ask and lack of internal know-how prevented companies from asking employees or applicants if they had disability.

The purpose of this guide is to:

- help you prepare before you ask;
- when to ask; and
- what to ask.

The advice is designed to help you get a higher response rate when you ask. We have consulted with the Australian Human Rights Commission during the preparation of this guide. The aim of the guide is to assist you to seek information from employees while complying with the Disability Discrimination Act.

¹ ABS 4430.0, Survey of Disability, Ageing and Carers, 2012.

² Business Council of Australia, Recognising Ability: Business and the Employment of People with Disability, 29th October 2015.

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WHY ASK

- People with disability are likely to be working in your organisation even if you don't know it. Not knowing means they may not be receiving the workplace adjustments they need to stay supported, healthy and productive.
- Many of your existing workforce may also acquire illness, injury or disability as they age. The earlier the question is posed, the more likely that successful adjustments will be made, you can retain experienced and valuable staff, and avoid complaints about possible breaches of discrimination law.
- Knowing means you can measure diversity progress over time. Demonstrating that you are making progress to increase the number of employees with disability increases the chances you will attract the widest talent pool, including those with disability.

WHAT GETS IN THE WAY AND WHAT HELPS

Some applicants or employees choose not to share information about their disability because they do not need a workplace adjustment or they believe their disability does not impact on their ability to perform the inherent requirements of the job. Others may choose not to share information, even if they require a workplace adjustment, for fear of negative repercussions.

Surveys undertaken in Australia, the US and UK consistently report fear of discrimination as a major reason for why people with disability choose not to share information³.

REASONS EMPLOYEES SHARE THEIR PERSONAL INFORMATION

Require an adjustment to achieve their optimal productivity

Workplace adjustment process was clearly communicated

Trust their manager

A trusted intermediary said it was OK to share

REASONS EMPLOYEES DON'T SHARE THEIR PERSONAL INFORMATION

Disability does not impact on their work

Concern that disability is not well understood by manager and/or co-workers

Worry that they will be seen less favourably by their manager or overlooked for promotion or other development opportunities

Unsure why they were being asked/how the information would be used

³ See for example Shrader, Malzer, Erikson, Bruyere, Emerging Employment Issues for People with Disabilities, Cornell University, ILR School, Employment and Disability Institute, December 2011. SANE Research Bulletin 14: Working life and mental illness, August 2011.

BEFORE YOU ASK

Make it safe and easy for employees to share information – things to do:

Disability confidence: create a trusted, inclusive workplace and demonstrate you are disability aware

Sharing disability status is strongly tied to employee's perception of the workplace generally - a more open and inclusive workplace is likely to build trust and create higher rates of disability information sharing.

“Communicate the fact that you expect ‘difference’ in the workplace – it is to be celebrated.”

Disability confidence involves having the right behaviours, attitudes, systems and knowledge to welcome and support employees with disability. It can be demonstrated by:

- Inviting people with disability to apply for positions
- Including disability in your diversity statement on your website and in other materials
- Regularly reporting on the proportion of people with disability in your workforce
- Creating accessible workplaces
- Providing flexible workplace policies
- Having fair systems to address complaints
- Regularly reminding staff of the internal and external resources available (your workplace adjustments policy, your Employee Assistance Provider and links to JobAccess and BeyondBlue).
- Providing access to disability awareness training for staff, including managers
- Fostering supportive supervisor-staff relationships



- Setting up a disability employee network within your organisation, preferably with a senior sponsor
- Profile employees with disability on your intranet or website, including senior managers
- Developing an Access and Inclusion or Disability Action Plan
- Celebrating significant days such as 3 December, the United Nations International Day of Persons with Disabilities.

For support on becoming disability aware and confident, see:
AND www.and.org.au
Job Access www.jobaccess.gov.au.

Build capability to make workplace adjustments

Facilitating adjustments for people with disability will make it easier for you to respond to your workforce as a whole and allow them to perform to the best of their ability. You should clearly promote the fact that you are making adjustments for people with disability. Workplace adjustments may include relocating someone closer to an accessible bathroom, installing a particular type of software or offering flexible work practices such as earlier start and finish times.

A US study of nearly 2000 employers found that 57 per cent said the accommodations or workplace adjustments cost absolutely nothing yet the benefits included improving retention of a qualified employee, increasing the worker's productivity, and eliminating the costs of training a new employee.⁴

Reasonable workplace adjustments are explained in the Meeting Your Legal Obligations section below. Support to assess and provide help to make these adjustments is provided by the Federal Government via JobAccess. The Employment Assistance Fund helps people with disability by providing financial assistance to purchase a range of work related modifications and services. Assistance is available for people who are about to start a job or who are currently working, as well as those who require assistance to find and prepare for work. Contact them on 1800 464 800 or visit www.jobaccess.gov.au.

Brief and educate managers about disability

The managers role is crucial. US research shows that employees were at least 60 per cent more likely to share the fact they had a disability with a supervisor than the HR Department.⁵ Support managers to be disability aware and train them to confidently welcome and work alongside people with disability. Offer access to expert information, advice and support.⁶

Be clear about why you are asking: Understand the difference between monitoring for workforce data and assisting individuals with workplace adjustment

Workforce diversity data can be gathered as part of a regular staff engagement survey or a specific survey. Such surveys are usually anonymous (nothing on the form can be used to identify the person who completes it) and

are likely to lead to a higher response rate. The survey should provide enough information to monitor broad trends over time. Have systems set up to capture data and quickly report the results back to your workforce, the steps you are undertaking as a result, and the timeframe for implementing them. If you don't have these in place, don't ask.

Non-anonymous monitoring (e.g. asking employees to record they have a disability in the HR system) can provide more information to track progress over time such as participation in training, career progression and retention; and the proportion of staff with disability in different business units or divisions.

Both forms of asking must stress that participation is voluntary and confidentiality will be assured. Both may lead to individual requests for a workplace adjustment – and organisations need to be ready to respond to them.

Many larger organisations will use both and may well separately record and report on the proportion of employees with a workplace adjustment.

Communicate reasons widely

Tell employees why you are asking – reiterate the purpose is to encourage employees who need an adjustment to ask for it and to monitor your progress on disability and diversity. (See form of words in message from the CEO in What to Ask below).

Profile employees (including senior staff) who have been open with their information and what the benefits have been (e.g. they were able to ask for an adjustment to take part in a learning and development opportunity which later led to a promotion).

⁴ US Job Accommodation Network, Workplace Accommodations: Low Cost, High Impact, 1 September 2014.

⁵ Suzanne Bruyere, Disability Disclosure in the Workplace: Building a Climate of Inclusion, AND conference, 19 May 2015.

⁶ See Australian Network on Disability Managers' Guide: Disability in the Workplace 2011 for more

WHEN TO ASK

Applications, recruitment and selection

The obligation to make adjustments to accommodate disability commences when you advertise a role.

Job advertising or postings should be accessible and state that people with disability are welcome to apply. State also that adjustments will be provided through the recruitment and selection process to ensure people with disability can compete on a level playing field.

Ask everyone who you invite to an interview if they need any adjustments to participate in or complete the recruitment and selection process (including any telephone or face to face interviews or assessment centres).

Pre-employment medicals and other tests

Medical examinations of job applicants or employees must directly relate to the inherent requirements of the job. Physical tests should relate directly to specific work duties, such as lifting a certain weight. Psychological or aptitude testing need to also relate to the inherent requirements of the job. Such tests must be given to all applicants, not just those perceived to have a disability or injury. Inherent requirements are explained in the Meeting Your Legal Obligations section.

Job Offer

In the Letter of Offer, ask if adjustments are required to accommodate the applicant's disability. If adjustments have been sought and confirmed, ensure they are in place from day one including any induction or training sessions.

Induction and Onboarding

Ask all new employees if they need any adjustments to learn or perform the job. They may have been unsure about requesting adjustments at the recruitment or offer phase or their circumstances may have changed. Failure to make reasonable adjustments once disability has been shared may trigger a disability discrimination complaint.

Performance Appraisal and Career Development

It's good practice for managers to remind all employees that their organisation makes reasonable workplace adjustments to accommodate illness, injury or disability. Reasonable workplace adjustments should enhance employee performance and adjustments should continue to be offered and made during learning and development, promotion or transfer. If an employee shares disability related information during a performance meeting and asks for adjustments related to their disability, it is important to commence a reasonable adjustment process prior to further performance evaluation.

Staff engagement surveys

Remember disability is not static. Incorporating questions about disability in your regular staff engagement surveys is the simplest way to monitor and to capture progress over time. As with any staff survey, ensure you time the release appropriately (not during a restructure, during school holidays, end of financial or calendar year, close to an important project delivery milestone or other major deadline).



WHAT TO ASK

Ensure your questions are presented in an accessible format ⁷

Example message from the CEO

We are committed to increasing the diversity of our workforce, including the number of employees with disability. These questions are voluntary and will help us make improvements over time and gauge how we are doing. We also want to ensure that people with disability are confident to make a request if they need a workplace adjustment to reduce a workplace barrier. You can find out more about our disability strategies and policies on our website (insert link to intranet or external site). The results will be published in our Annual Report and on our website so you will know our progress.

Additional paragraph introducing an anonymous workforce survey:

We invite you to answer these questions. Your answers are anonymous and the results will not be attributed to you individually.

However, if you would like to speak to anyone about this and/or to request a workplace adjustment which relates to your disability, please contact _____.

Additional paragraph introducing a request for employees to identify themselves as having disability:

We invite you to tell us if you have disability and would like this recorded in our HR system. If you would like to speak to anyone about your situation or to request a workplace adjustment which relates to your disability, please contact _____.

Sample Questions to include in Employee Survey

Do you have a disability?

Yes | No | Prefer not to say

Note: Disability includes physical, intellectual, psychiatric, sensory, neurological, learning disability, physical disfigurement and immunological - the presence in the body of disease causing organisms. Examples of disability include hearing speech or visual impairments (not corrected by wearing glasses or contact lenses); mental illness such as schizophrenia, depression and bipolar disorder; speech impairment such as stuttering; intellectual disability such as Down syndrome; others include arthritis, asthma, cancers, diabetes, dyslexia, epilepsy or facial disfigurement.

If yes, do you require adjustments to your working environment or arrangements?

Yes | No | Prefer not to say

(If you would like to speak to someone to request a workplace adjustment which relates to your disability, please contact _____.)

Note: Employers have a legal obligation to provide 'reasonable adjustments' to allow people with disability equal participation or equal performance at work. A reasonable adjustment is a necessary or appropriate modification or adjustment made to ensure or enable equal participation. It could be an adjustment to work hours, training or workplace equipment. For example an employee with physical disability may require modification of their desk/work area or an employee with vision impairment may require magnification of their computer screen.

Additional questions you may wish to ask

Have you already requested a workplace adjustment?

Yes | No

Have we made it?

Yes | No

Is it satisfactory?

Yes | No

Have you already nominated as an employee with disability in our HR system?

Yes | No

If no, what is the main reason for not recording?

- Does not impact on my work
- Concerned I may be treated differently
- Concern it may disadvantage me now or in the future
- Other _____
- Prefer not to say

Sample Questions to include in Application Materials

Do you have a disability?

Yes | No | Prefer not to say

If yes, do you require adjustments to the application and selection process?

Yes | No | Prefer not to say

Sample Questions to include in Letter of Offer, Induction Materials

Do you have a disability?

Yes | No | Prefer not to say

If yes, do you require adjustments to your working environment or arrangements?

Yes | No | Prefer not to say

Note: Disability is a broad term and includes physical, intellectual, psychiatric, sensory, neurological, learning disability, physical disfigurement and immunological. Examples of disability include hearing speech or visual impairments (not corrected by wearing glasses or contact lenses); mental illness such as schizophrenia, depression and bipolar disorder; speech impairment such as stuttering; intellectual disability such as Down syndrome; others include arthritis, asthma, cancers, diabetes, dyslexia, epilepsy or facial disfigurement.

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WHAT NOT TO ASK

Do not ask survey respondents to name their disability or nominate a category of disability. This is because:

- The name or category of disability is not relevant to their capacity to undertake the inherent requirements of the job.
- It can lead to unhelpful labels and stereotypes.

- It is very likely to discourage people from sharing information.

Don't use the words 'disclosure' or 'declaration' – it suggests that you think your employees have something to hide in relation to disability.

Don't ask how they acquired the disability.

MEETING YOUR LEGAL OBLIGATIONS⁸

This guide is a practical approach to monitoring disability in your workforce. It is not a comprehensive guide to the Disability Discrimination Act. It is unlawful for an employer to discriminate on the grounds of a person's disability:

- in offering employment, including the processes of determining who should be offered employment;
- in the terms or conditions of employment;
- by limiting opportunities for promotion, transfer or training, or to other benefits;
- by dismissing the employee; or by subjecting the employee to any other detriment
- to request information for an unlawful purpose – that is, in order to discriminate against the person.⁹

Definitions of disability in Australian law¹⁰ are very broad. The DDA definition includes physical, intellectual, psychiatric, sensory, neurological, learning disabilities, physical disfigurement and the presence in the body of disease causing organisms such as HIV/AIDS or hepatitis. It includes a person with invisible disability such as epilepsy or a depressive illness or a person who has had cancer. The DDA also covers people with disability who may be discriminated against because they are accompanied by an assistant, interpreter or reader; they are accompanied by a trained animal, such as a guide or hearing dog, or they use equipment or an aid, such as a wheelchair or a hearing aid. The DDA also protects people who have some form of personal connection with a person with disability like

relatives, friends, carers and co-workers if they are discriminated against because of that connection or relationship. It is also unlawful to discriminate against someone because they previously had disability or will have in the future, or because it is thought that they have had, or will have, disability. State and Territory laws may also apply and employers are encouraged to check with the relevant body. More information is available on the Australian Human Rights Commission's DDA Guide www.humanrights.gov.au/our-work/disability-rights/guides/brief-guide-disability-discrimination-act. Links to all State Anti-Discrimination Boards websites can be found at www.eoc.sa.gov.au/eo-resources/links/anti-discrimination-agencies.

Employers have a legal obligation to provide 'reasonable adjustments' to allow people with disability equal participation or equal performance at work. A reasonable adjustment is a necessary or appropriate modification or adjustment made to ensure or enable equal participation. It could be an adjustment to work hours, training or workplace equipment. An adjustment will not be reasonable if it imposes an 'unjustifiable hardship' on the employer. Under the DDA, it is not unlawful to refuse to employ or promote a person on the basis of their disability if they are unable to carry out the essential or 'inherent' requirements of the job, even with reasonable adjustments.

The Fair Work Act 2009 states that an employer must not take adverse action against an employee or prospective employee because of disability (or any other protected attribute, such as race,

sex, age). Adverse action includes such things as dismissing an employee, altering an employee's position to their detriment or refusing to employ a prospective employee.¹¹

Health and Safety

Employees with disability have the same rights and responsibilities as employees without disability when it comes to creating and maintaining a safe work environment. Employers and employees both have a duty of care to ensure a safe working environment for all staff. An employee is required to tell you about disability if it impacts on their ability to work safely.

When an employee shares personal information

Privacy legislation requires you to obtain consent from an employee to share the information about their disability with other people within your organisation (for example, staff in the human resource department). Usually it is not necessary to tell another member of staff the reason for an adjustment, simply that it is required in order for the employee to do their job. If it does cause discussion or disruption among the team it is important to talk to the employee with the adjustment about what information they might like to share, if any.

Federal government agencies, private sector business with a turnover of more than \$3 million, health service providers and some small businesses are subject to The Privacy Act 1988. See OAIC Privacy Guide www.oaic.gov.au/privacy-law/privacy-act.

State and territory governments may also have privacy laws and employers are also advised to check these.



⁸ www.humanrights.gov.au/our-work/disability-rights/guides/brief-guide-disability-discrimination-act

⁹ Direct discrimination involves treating a person with disability less favourably than a person without disability in the same or similar circumstances. Indirect discrimination occurs when there is a rule or policy that is the same for everyone but has an unfair effect on people with a particular disability.

¹⁰ Disability Discrimination Act 1992.

¹¹ Fair Work Act 2009 (Commonwealth), section 351.

WHERE TO GET MORE INFORMATION

- Australian Network on Disability (AND) website plus resources: Managers' Guide: Disability in the Workplace, 2011; Beyond Recruitment, 2013. www.and.org.au
- Australian Human Rights Commission AHRC Website www.humanrights.gov.au
- Heads Up initiative and Mentally Healthy Workplaces Heads Up website www.headsup.org.au
- JobAccess www.jobaccess.gov.au or telephone 1800 464 800
- Victorian Equal Opportunity and Human Rights Commission See "Disability and Work Frequently asked questions." www.humanrightscommission.vic.gov.au
- Links to all State Anti-Discrimination Boards www.eoc.sa.gov.au/eo-resources/links/anti-discrimination-agencies
- 'Choosing Your Path. Disclosure: It's A Personal Decision' is a web based resource published by Western Sydney University and the University of Ballarat <http://westernsydney.edu.au/choosingyourpath>



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Dr Susanne Bruyère from the Cornell University Employment and Disability Institute presentation to Australian Network on Disability Conference 2015, Disability Inclusion in the Workplace: Building a Climate of Inclusion which draws from extensive surveys and research undertaken in the US.

Helen Cook, "Openness: Understanding why students are reluctant to be open with employers about their disability" great with disability, March 2015. Online survey of ~1000 graduates with disability plus focus groups.

Employers' Forum on Disability (now known as Business Disability Forum UK) "Monitoring for Change, A practical guide to monitoring disability in the workforce," 2004.

Kate Nash, Secrets & Big News, April 2014. The book is based on a two year study about the challenges of disability 'disclosure' for employers and employees with disability. In total, 55 employers took part as well as over 2,500 of their employees who offered their views about what makes it hard to share personal information, as well as what makes it easier.

Social Firms Australia, Roles, Rights and Responsibilities Disclosure of Mental Illness in the Workplace, A Guide for Employers, 2010.

Geoff Waghorn, Helping people with severe and persistent mental illnesses manage their information, 2010 Presentation.

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