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## Managing the Me(ntl Health) you can't see

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## A. Introduction

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### 1. This paper

- 1.1 We are pleased to provide you with this paper, that was first presented at the TVED 15<sup>th</sup> Annual Employment Law Conference, held on 11 and 12 August 2022 at the Gold Coast in Australia.
- 1.2 The presentation (and any slides that the reader may also have a copy of) that accompanies this paper will focus on the 'why' and the 'how' aspects of dealing with inclusive practices and related obligations for people with brain-based differences in an employment context. This paper provides the 'what' in support of the presentation, and is intended to answer a range of questions that businesses commonly have when working out how to respond to a situation that arises with an employee who has different needs, as well as the 'next' – in suggesting ways to proactively support increased inclusion for people who have brain-based differences.
- 1.3 As with any paper, the information provided is correct to the best of our knowledge, as at the date of completion (27 July 2022). We encourage readers to check legislation and case materials ahead of relying on any material included, to make sure it remains current. This paper is intended to be as useful and thus comprehensive as possible, however is no substitute for legal advice. We recommend prior to any firm decision being made where there is a risk of liability that specific advice from your trusted legal practitioner is obtained – and of course welcome any enquiries (details on how to contact us are on the first page).

### 2. The authors

- 2.1 This has truly been a collaborative and inclusive effort, where we have supported each other to complete what became a significant undertaking. The more we said, the more we wanted to share based on our own experiences of supporting both individuals and businesses through the significant transitions of employment relationships. In doing so, we have included a number of practical tools to support the completion of some of the more important tasks that arise in the administering of relationships impacted by disability and the protections afforded by law, and hope that this will serve to enhance the value of this paper for its use and continued reference over time.
- 2.2 Danny King, who is presenting this paper and has directed on its construction, is a leading practitioner of employment law and frequently presents on a range of topics with a special interest in enhancing inclusive practices across industries – particularly for those who are neurodivergent. Most recently, she was recognised as the 'cream of the crop' for the Most Influential Lawyers of 2022 in the Young Influencer category,<sup>1</sup> and is the reigning Managing Partner of the Year.<sup>2</sup> At present, she is the highest ranked female lawyer on the Doyles Guide for Australia in employee-focused law,<sup>3</sup> a distinction she shares with 3 prominent male practitioners for whom she has great respect.
- 2.3 Significant contributions to this paper were made by members of the team:
  - (1) Sonia Chandra, Partner, is the Head of our Litigation Practice. She has extensive experience in helping employers manage the complexities of responding to discrimination claims that end up in court, and helping clients take steps to avoid court entirely. As a member of the Senior Executive for Diverse Women in Law,<sup>4</sup> and being the Senior Manager of the Strategy Portfolio, she is an active contributor to diversity and inclusion in the legal industry.

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<sup>1</sup> <https://www.thelawyermag.com/au/news/general/australias-leading-legal-influencers-for-2022/414426>.

<sup>2</sup> <https://www.lawyersweekly.com.au/podcast/33675-the-reigning-managing-partner-of-the-year-on-being-true-to-one-s-self>.

<sup>3</sup> <https://doylesguide.com/leading-employment-lawyers-employee-union-representation-australia-2022/>.

<sup>4</sup> <https://www.diversewomeninlaw.com.au/>.

- (2) Dimitrious Havadjia, Solicitor, is deserving of a special mention for his efforts in constructing, editing, and drafting of various sections of this paper. He put in a mammoth effort and without this, we wouldn't have got this in at all.
- (3) Thanks also to Solicitors Natasha Prasad and Alix Parnell for contributions to diversity and safety respectively, as well as our Projects Manager, Analise Emmerick, for the comprehensive proofing support.

## **B. Context**

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### **3. Overview**

- 3.1 Mental health, especially given the COVID-19 pandemic of the last few years, has only continued to grow as a concern for individuals, employers, and governments alike. Extended lockdowns, WFH, and isolation from loved ones drew into sharp focus for everyone the reality that is often felt by those who do not feel as though they have the support in their life to maintain good mental health.
- 3.2 Unlike other markers of health and wellbeing, mental illnesses and conditions can significantly impact someone's ability to perform, without clear external characteristics that can be noticed without specific training and education.
- 3.3 Despite substantial shifts towards acceptance, including the changing of language (see below), increased government funding, and reframing of experiences, there is still a long way to go before mental conditions are destigmatised to the same extent as physical conditions (noting that many people with physical disabilities are still frequently faced with a society that is not accommodating or welcoming for them).
- 3.4 It is this enduring stigma around mental illness and conditions that has resulted in many adults having mastered the art of hiding or disguising the impact these are having on their productivity or outputs (or have simply never been appropriately assessed or diagnosed).
- 3.5 Diversity initiatives and activities are increasing – but it is essential not to fall into the trap of thinking diversity is about ticking boxes or fulfilling categories about gender or ethnicity. Instead, true diversity must consider the whole person, not just what can be seen on the outside, but also that person's unique strengths and weaknesses, including different brain functions and physical abilities.
- 3.6 This paper is focused on brain-based illnesses and conditions that exist in our community and provides considerations for workplaces on how to manage this evolving component of employment management proactively and reactively. Given that approximately 20% of Australians have a mental or behavioural condition,<sup>5</sup> this is an issue that all businesses, big and small, must address.

### **4. Mental Health and Neurodiversity**

- 4.1 While connected, mental health and neurodiversity refer to distinct concepts.
- 4.2 To add nuance to these critical issues, there has been an effort by experts in this space to use more specific and defined language around these issues. However, as with all emerging issues, the terminology is evolving, and close attention should be paid to ensure best practice terms are being used. Consultation with those impacted will help ensure inclusive language is used in workplaces.
- 4.3 Key definitions:
  - (1) Mental health

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<sup>5</sup> <https://www.abs.gov.au/statistics/health/mental-health/mental-health/2017-18>.

- (i) "A state of well-being in which every individual realises his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community."<sup>6</sup>
  - (ii) This should be considered the 'wellness' side of a two-sided coin – and not be confused with mental illness. However, mental health is frequently (and incorrectly) used interchangeably with mental illness.
- (2) Mental illness
- (i) "A clinically significant disturbance in an individual's cognition, emotional regulation, or behaviour. It is usually associated with distress or impairment in important areas of functioning."<sup>7</sup>
  - (ii) Also known as mental disorders.
  - (iii) Examples of these include anxiety, depression, bipolar, post-traumatic stress disorder (**PTSD**), schizophrenia, and eating disorders.
- (3) Mental developmental condition/disability
- (i) A neurological development that includes some differences from the 'standard' development, making the brain and its function distinct.
  - (ii) There has been a shift from the use of 'disorder' or 'deficit' in this context and a desire to reframe these conditions as different from an illness and a disability.<sup>8</sup>
  - (iii) Examples include:
    - (A) Attention deficit hyperactivity disorder (**ADHD**);
    - (B) Autism Spectrum Disorders; and
    - (C) Conduct disorder.
- (4) Psychosocial disability
- (i) "A disability that may arise from a mental health issue."<sup>9</sup>
  - (ii) This refers to the functional impacts and barriers that a mental illness may have on a person's life, i.e., the external impacts and presentations of a mental illness.
  - (iii) For example, anxiety can become a psychosocial disability when it begins to restrict a person's ability to interact with others and manage stress.
  - (iv) Not all people with a mental illness necessarily have a psychosocial disability.
    - (A) However, all people with mental health concerns/mental illnesses must be given the

<sup>6</sup> [https://www.who.int/health-topics/mental-health#tab=tab\\_1](https://www.who.int/health-topics/mental-health#tab=tab_1).

<sup>7</sup> <https://www.who.int/news-room/fact-sheets/detail/mental-disorders>.

<sup>8</sup> <https://aadpa.com.au/wp-content/uploads/2022/02/Talking-About-ADHD-Poster.pdf>.

<sup>9</sup> <https://www.health.nsw.gov.au/mentalhealth/psychosocial/foundations/Pages/psychosocial-what-is.aspx>.

support they need – regardless of whether that illness manifests as a disability.

(v) In Australia, over 1 million people have a psychosocial disability.<sup>10</sup>

(5) Neurotypical

(i) Someone whose neurological development is absent of any development differences from the 'norm'.

(ii) This is not a medical category but has been used by the autism community and the neurodiversity movement. Therefore, there is some debate over using this term, as outlined by the BBC.<sup>11</sup>

(6) Neurodiverse

(i) Someone whose neurological development includes some developmental differences, making their brain and its function distinct from a neurotypical person.<sup>12</sup>

(ii) Most often, this is associated with conditions like ADHD and spectrum disorders, but it is also used in some contexts to refer to all forms of mental illness.

(iii) As with neurotypical, this is not a medical category, hence the variety of different examples as outlined above.<sup>13</sup> Neurodiversity can also refer to the diversity of brains in human society more broadly.

(iv) In this paper, we use the word 'neurodivergent' to describe the mental conditions of ADHD and spectrum disorders. Neurodivergent people do not necessarily have a psychological disability; however, employers benefit from striving to identify how to support the differences these individuals may need to truly thrive.

4.4 While it is not always possible to get everything right, keeping the above language and distinctions in mind when considering mental health in the workplace will go a long way toward supporting employees and managers alike.

4.5 To ensure a workplace properly appreciates the impact of mental health and neurodivergence on its employees, it is essential to recognise the difference between mental illness, such as depression, and other forms of neurodivergence, such as ADHD. The measures relevant to each are sometimes distinct, and workplaces have a lot to gain through tailoring solutions to specific needs.

## 5. Why is it important in the workplace?

5.1 Understanding the differences between mental health, mental illness, psychosocial disabilities, and neurodivergence allows management to create systems and structures that can both prevent harm and increase productivity. The age-old adage of 'prevention is better than a cure' also applies in this context – a considered and transparent system for managing employees with mental health concerns is always better than simply responding to issues when they arise.

5.2 Exclusion, isolation, and not feeling like you 'belong' are not only factors that will reduce an employee's productivity, but, in some instances, can also constitute bullying and be a risk to workplace health and safety (explored further in 3.2(1)).

<sup>10</sup> <https://www.abs.gov.au/articles/psychosocial-disability>.

<sup>11</sup> <https://www.bbc.com/future/article/20191008-why-the-normal-brain-is-just-a-myth>.

<sup>12</sup> <https://www.planetneurodivergent.com/what-we-do/>.

<sup>13</sup> <https://www.bbc.com/future/article/20191008-why-the-normal-brain-is-just-a-myth>.

- (1) Awareness of the differences in the workplace, open discussions, and dialogues about mental health can ensure that those who need support speak up. As outlined above, many people with a mental illness do not have a psychosocial disability. Many neurodivergent individuals have distinct traits that are not really described as purely negative conditions or have their own coping mechanisms that allow them to hide it from managers and employers. Creating an environment of inclusion empowers everyone to speak up and will enable risks to be addressed early.
- 5.3 Additionally, a general principle of law known as the 'eggshell skull rule' means that employers must take their employees as they find them.
- (1) This means someone's predisposition to mental illness or an existing neurodivergence cannot be used as a reason to reduce the liability of an employer for any injury that occurs to the employee because of work.
- 5.4 Failure to address mental health and neurodivergence can create many problems for employers:
- (1) Lower productivity, with employees either working at reduced capacity or taking frequent personal leave;
  - (2) Reduced team cohesion, as those with different working styles are locked out of being able to engage and work with their colleagues meaningfully; and
  - (3) High employee turnover, especially in an environment of increasing awareness of the importance of mental health to employer brands.

## 6. Royal Commission(s)

- 6.1 Two recent royal commissions are relevant to this area: the Australian Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (ongoing)<sup>14</sup> and the Victorian Royal Commission into Victoria's Mental Health System (completed in 2021).<sup>15</sup>
- 6.2 While approaching the topic from different angles, both included terms of reference directing the Commission to review and make recommendations regarding the steps workplaces can take to improve the lives of those with mental health concerns and different lived experiences.
- 6.3 The Victorian Royal Commission into Victoria's Mental Health System has recommended that mentally healthy workplaces be established. The Victorian Government has committed to implementing all the recommendations.<sup>16</sup> The details of how these changes will be implemented are yet to be outlined.
- 6.4 The Australian Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability is also reviewing how workplaces can be made more inclusive for those with disabilities – both physical and mental. The Commission has already issued an interim report,<sup>17</sup> with the final report due on 29 September 2023.
- 6.5 While the dust is still settling on these Royal Commissions, what is clear is that the expectations of employers by the community to take steps to manage the mental health and neurodiversity of their staff effectively is only going to increase in the future.

<sup>14</sup> <https://disability.royalcommission.gov.au/>.

<sup>15</sup> <https://finalreport.rcvmhs.vic.gov.au/recommendations/>.

<sup>16</sup> <https://www.health.vic.gov.au/mental-health-reform/about-the-final-report-of-the-royal-commission-into-victorias-mental-health>.

<sup>17</sup> <https://disability.royalcommission.gov.au/publications/interim-report>.

## C. Discrimination and the Law

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### 7. Discrimination under the Fair Work Act 2009 (Cth)

- 7.1 All employees have workplace rights and the right to work in a safe environment, free from unlawful discrimination, bullying and harassment.
- 7.2 Under Australian workplace law, the *Fair Work Act 2009* (Cth) (**FW Act**), employees are protected from discrimination as it is unlawful for an employer to take adverse action against an employee or potential employee because of a protected reason. A protected reason includes the person's race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, or social origin.<sup>18</sup>
- 7.3 Many of these protections were found in predecessors to the FW Act but the broad prohibition of discrimination in employment for conduct other than termination is new. It offers employees and prospective employees a new avenue through which they can seek redress for workplace discrimination.
- 7.4 Adverse action against someone with a mental disability could include:
- (1) Not hiring a potential employee;
  - (2) Treating an employee differently to other employees; or
  - (3) Changing an employee's job to their disadvantage.
- 7.5 Contemporaneous evidence plays a key role in proceedings brought under the FW Act as the relevant prohibitions on actions taken for protected reasons heavily rely upon the decision-maker. Proceedings will come down to a question of fact, to be answered by what consciously motivated the decision maker. An employer defending an adverse action claim must prove that the adverse action against the employee was not taken for a protected reason.
- 7.6 A helpful tip for employers is to keep a file note of every conversation they have with an employee, including the subject of the conversation, a date and time stamp and who was present at the time (see below at section 290).

### 8. The Disability Discrimination Act 1992 (Cth)

- 8.1 Disability discrimination under the *Disability Discrimination Act 1992* (Cth) (**DDA**) occurs when a person is treated less favourably, or not given the same opportunities as others in a similar situation because of their disability.
- 8.2 Section 7 of the DDA makes it unlawful to discriminate against a person because of a disability or the disability of an associate, such as a friend, partner, carer, or family member of the person.
- 8.3 It covers people who have:
- (1) temporary and permanent disabilities;
  - (2) physical, intellectual, sensory, neurological, learning, and psychosocial disabilities;
  - (3) diseases or illnesses, physical disfigurement, medical conditions; and
  - (4) work-related injuries.

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<sup>18</sup> FW Act s 351.

- 8.4 The definition of 'disability' extends to a disability that presently exists, previously existed but no longer exists; may exist in the future (including because of a genetic predisposition to that disability) or is imputed to a person.<sup>19</sup>
- 8.5 The definition of 'disability' used in the DDA is broad and includes physical, intellectual, psychiatric, sensory, neurological, and learning disabilities. This includes mental illness, as well as neurodivergence, and whether that person also experiences a psychosocial disability. Therefore, in the context of the DDA, disability should be taken to mean mental illness, mental disorders, and neurodivergence – the DDA being a prime example of where the language used has not kept up with the changes in this space.
- 8.6 Whilst the prevalence of discrimination against the community of people living with a psychosocial disability is alarmingly high<sup>20</sup>, the case law in this area is sparse.<sup>21</sup>
- 8.7 Key to the challenges faced by people living with a brain-based disability in addressing discrimination is the very nature of the disability itself. Assuming the individual has the capacity to bring such a claim, doing so requires them to characterise themselves as different in a way that is both confronting and in a lot of cases triggers feelings of shame.<sup>22</sup>
- 8.8 Neurodivergence is a very broad concept and many living with neurodivergence do not regard themselves as being disabled in the 'traditional' sense. For people living with neurodivergence who are not also experiencing a psychosocial disability, there is a resistance to pressing for access to protections under the DDA as to do so would label their particular abilities as being characterised as disordered, disturbed, malfunctioning, ill or diseased.<sup>23</sup>

## 9. Direct Discrimination vs Indirect Discrimination

- 9.1 In the context of the DDA, a person (the **discriminator**) discriminates against another person (the **aggrieved person**) on the ground of a disability if, because of the disability, the discriminator treats, or proposes to treat the aggrieved person less favourably than a person without the disability in circumstances that are not materially different.<sup>24</sup>
- 9.2 Direct discrimination also occurs where the discriminator discriminates against the aggrieved person on the ground of a disability if:
- (1) The discriminator does not make, or proposes not to make, reasonable adjustments for the person; and
  - (2) The failure to make reasonable adjustments has, or would have, the effect that the aggrieved person is, because of the disability, treated less favourably than a person without the disability would be treated in circumstances that are not materially different.<sup>25</sup>
- 9.3 Indirect discrimination against a person on the basis of their disability occurs when:
- (1) The discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and

<sup>19</sup> DDA s 4(1).

<sup>20</sup> <https://www.abs.gov.au/articles/psychosocial-disability> which notes that in 2018, of the 4.6% of Australians (1.1 million people) living with a psychosocial disability, almost one quarter had experienced discrimination in the past 12 months. This is a rate that is 4 times higher than those with a different disability. The reported rate of discrimination at 24.1% was up from 21.5% in 2015 and was most stark in the 45-54 year age group. 23% of those reporting discrimination in 2018 referred to the source of discrimination being from employers or work colleagues.

<sup>21</sup> Bruce Arnold, Patricia Easteal AM, Simon Easteal and Simon Rice OAM, 'It just doesn't add up: ADHD/DD, the workplace and discrimination' (2010) 34 *Melbourne University Law Review* 374.

<sup>22</sup> Bruce Arnold, Patricia Easteal AM, Simon Easteal and Simon Rice OAM, 'It just doesn't add up: ADHD/DD, the workplace and discrimination' (2010) 34 *Melbourne University Law Review* 375.

<sup>23</sup> Bruce Arnold, Patricia Easteal AM, Simon Easteal and Simon Rice OAM, 'It just doesn't add up: ADHD/DD, the workplace and discrimination' (2010) 34 *Melbourne University Law Review* 376.

<sup>24</sup> DDA s 5(1).

<sup>25</sup> DDA s 5(2).



- (2) Because of the disability, the aggrieved person does not or would not comply, or is not able or would not be able to comply, with the requirement or condition; and
- (3) The requirement or condition has, or is likely to have, the effect of disadvantaging persons with the disability.<sup>26</sup>

9.4 Indirect discrimination also arises if:

- (1) The discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
- (2) Because of the disability, the aggrieved person would comply, or would be able to comply, with the requirement or condition only if the discriminator made reasonable adjustments for the person, but the discriminator does not do so or proposes not to do so; and
- (3) The failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.<sup>27</sup>

9.5 Indirect discrimination may not be deliberate but may occur due to a lack of awareness about the negative impact a particular policy can have on a worker with a disability or mental illness.

## 10. Inherent Requirements

10.1 Put simply, the inherent requirements of an employee's role are the essential tasks that must be completed in order to do the job productively and to the required quality. What will be included as an inherent requirement will vary, but the core question is 'what are the outcomes that I expect to be satisfied by someone doing this role successfully?'

10.2 HREOC has described their view of inherent requirements of a role to be:

- (1) The ability to perform the functions that are a necessary part of the job;
- (2) Productivity and quality requirements;
- (3) The ability to work effectively in the team or other type of work organisation concerned; and
- (4) The ability to work safely.<sup>28</sup>

10.3 It is the responsibility of the employer to clearly spell out the essential duties of the position being advertised and what type of work the employee is expected to do.

## 11. What are reasonable adjustments?

11.1 Due to the definitions of direct and indirect discrimination in the DDA, including a failure of an employer to make a reasonable adjustment<sup>29</sup>, it is necessary to both understand what a reasonable adjustment request is and where it will be appropriate for an employer to decide not to accommodate such a request. A refusal can in and of itself be a breach of the DDA.<sup>30</sup>

11.2 The term 'reasonable adjustment' is defined in the DDA as follows:

<sup>26</sup> DDA s 6(1).

<sup>27</sup> DDA s 6(2).

<sup>28</sup> <https://www.alrc.gov.au/publication/essentially-yours-the-protection-of-human-genetic-information-in-australia-alrc-report-96/31-inherent-requirements-of-the-job/the-inherent-requirements-exception/>.

<sup>29</sup> DDA s 6.

<sup>30</sup> DDA ss 5(b) and 6(c).

an adjustment to be made by a person is reasonable adjustment unless making the adjustment would impose an unjustifiable hardship on the person.<sup>31</sup>

11.3 The following must be taken into consideration when determining whether a hardship imposed on a person (the **first person**) would be an unjustifiable hardship:

- (1) The nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned.
- (2) The effect of the disability on any person concerned.
- (3) The financial circumstances, and the estimated amount of expenditure required for the reasonable adjustment to be made, by the first person.
- (4) The availability of financial and other assistance for the first person.
- (5) Any relevant action plans given to the Australian Human Rights Commission under section 64 of the DDA.<sup>32</sup>

11.4 Section 5 of the DDA requires a causal link between the disability and the discriminators conduct.<sup>33</sup> Section 5(2) of the DDA effectively imposes a positive obligation to make reasonable adjustments in certain circumstances and this provision was introduced by the *Disability Discrimination and Other Human Rights Legislation Amendment 2009* (Cth). The background to, and reasons for, the introduction of s5(2) were described in *Watts v Australian Postal Corporation*<sup>34</sup> where reliance and reference was made to the Productivity Commission's recommendations. The Commission:

- (1) Endorses the concept of reasonable adjustment as a means to this end and recommends that it be included explicitly in the Act as a standalone duty. This would mean that failure to provide reasonable adjustment could itself be unlawful discrimination and the subject of a complaint.
- (2) Makes this recommendation provided that the duty is always subject to the unjustifiable hardship defence. 'Reasonable adjustment' should be defined to exclude adjustments that would cause unjustifiable hardship. This safeguard is necessary to ensure that adjustments are likely to produce net benefits for the community, and do not impose undue financial hardships on the organisations required to make them.

11.5 The word 'adjustment' is left undefined by the statute and is to be given its ordinary meaning as 'an alteration or modification'. However, unlike other aspects of the DDA (see, for example, s 6) the statute does not leave it to the discriminator in the first instance and the Court in the second instance to determine whether an adjustment is 'reasonable'. Although the word 'reasonable' is used, it has no qualitative character in its context. It is simply part of a term defined by legislative declaration of what is outside the term. All that Parliament declares to be outside the term is a modification or alteration that imposes unjustifiable hardship on a person, taking into account the considerations applicable to identifying hardship of that nature, which are set out in s 11 of the DDA.<sup>35</sup>

11.6 Reasonable adjustments might include:

<sup>31</sup> DDA s 4(1).

<sup>32</sup> DDA s 11(1).

<sup>33</sup> See *Purvis v State of New South Wales (Department of Education and Training)* [2003] HCA 62.

<sup>34</sup> [2014] FCA 370.

<sup>35</sup> *Watts v Australian Postal Corporation* [2014] FCA 370.

- (1) Providing an employee who has vision impairment specific technology or providing specific computer applications that make the text on the screen larger.<sup>36</sup>
- (2) Providing standing desks to an employee who is unable to sit for long periods of time at their desk due to their disability.
- (3) Providing a higher-level desk to suit an employee who is in a wheelchair so that they may sit at their desk comfortably. This ensures that the desk is at the right height for them.
- (4) Providing equipment to employees who are unable to write extensive notes. For example, an employee who is unable to write can be provided with a Dictaphone to record notes which is later transcribed so as to assist the employee with taking notes.

11.7 In *Kristjansson v State of Queensland*<sup>37</sup>, the court found that even if there is a failure to provide adjustments that resulted in less favourable treatment to an employee, the conduct would not be deemed discriminatory in nature if the implementation of the requested reasonable adjustments would cause unjustifiable hardship on the employer. Furthermore, the court found that a Respondent in such proceedings would only need to show that just one of the requested reasonable adjustments would cause unjustifiable hardship<sup>38</sup> to an employer.

## 12. Timing of the request

12.1 Current and potential employees can request reasonable adjustments at any time from the point of applying for a role, and throughout the course of employment.

12.2 There are some important matters that employers should be aware of in the pre-employment period:

- (1) A person's disability must not be the reason for failing to progress in a hiring process. An assessment is to be made of the inherent requirements of the role and whether that person can meet those inherent requirements without reference to that person's characteristics that are covered by the DDA's protection. That a person may have a disability should not be a matter of consideration – look beyond that to whether that person has the skills and experience to be able to do the role that you are trying to fill.
- (2) A person may elect to ask for reasonable accommodations before, or after, applying for a role. If they do, then it is the assessment of whether the accommodations can be made that is the relevant question for the employer to establish. It is not the appropriate time to demand that the person demonstrate that they can satisfy the inherent requirements of the role notwithstanding their disability – that assessment should be done in the ordinary course when reviewing candidates as against the role criteria and without regard to any disability (whether you know about it or are as yet unaware).
- (3) It is not a requirement that the individual disclose their disability or foreshadow that they may later make a request for reasonable adjustments during the hiring process. It is not open to assert that a failure to make such matters clear earlier precludes the ability of that person to make a request for reasonable adjustments after starting at work (whether early in the relationship, or at a later point).

12.3 Enclosed with this paper is a file note template that outlines the relevant considerations in a hiring process.

<sup>36</sup> See *McNeil v Commonwealth* [1995] HREOCA 9.

<sup>37</sup> [2018] FCCA 3894.

<sup>38</sup> *Kristjansson v State of Queensland* [2018] FCCA 3894 at 103.

### 13. Roles and responsibilities

13.1 In addition to understanding the inherent requirements of their roles (as explained above), where employees require reasonable adjustments to be made in their employment, they are expected to:

- (1) Provide documentary evidence of their disability and work-related limitations when requested; and
- (2) Work with their employer to determine solutions and the reasonable adjustments which need to be put in place to perform the inherent requirements of their role.

13.2 Similarly, employers are expected to:

- (1) Clarify the inherent requirements of the role with the employee;
- (2) Request documentary evidence from the employee when required;
- (3) Work with the employee to determine solutions; and
- (4) Recommend and/or decide on an appropriate solution, only refusing a request where there are cogent grounds to do so.

## D. Work Health and Safety Framework

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### 14. Health and Safety

14.1 The health and safety of workers and workplaces is provided by a framework which consists of:

- (1) The Work Health and Safety Act 2011 (Cth) (**WHS Act**);
- (2) Work Health and Safety Regulations 2011 (**WHS Regulations**); and
- (3) The Codes of Practice.

14.2 The framework protects workers and other people against harm to their health and safety by eliminating and minimising risks arising from work, so far as reasonably practicable.

### 15. Employer's Obligations

15.1 Generally, employers fall under the definition of '*person conducting a business or undertaking*' (**PCBU**) contained in the WHS Act,<sup>39</sup> as they engage workers to undertake work for them, or direct or influence workers to carry out work for them.<sup>40</sup>

15.2 As such, the WHS Act states that a PCBU must ensure, so far as is reasonably practicable, the health and safety of:

- (1) Workers engaged, or caused to be engaged by the person; and
- (2) Workers whose activities in carrying out work are influenced or directed by the person;

while the workers are at work in the business or undertaking.<sup>41</sup>

<sup>39</sup> WHS Act s 5.

<sup>40</sup> Work Health and Safety (Work Health and Safety Consultation, Co-operation and Co-ordination) Code of Practice 2015 1.1 <https://www.legislation.gov.au/Details/F2016L00408>.

<sup>41</sup> WHS Act s 19(1).

- 15.3 A PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.<sup>42</sup>
- 15.4 The term 'reasonably practicable' refers to the duty to ensure health and safety, meaning that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, considering and weighing up all relevant matters including:
- (1) The likelihood of the hazard or the risk concerned occurring; and
  - (2) The degree of harm that might result from the hazard or the risk; and
  - (3) What the person concerned knows, or ought reasonably to know, about:
    - (i) The hazard or the risk; and
    - (ii) Ways of eliminating or minimising the risk; and
  - (4) The availability and suitability of ways to eliminate or minimise the risk; and
  - (5) After assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.<sup>43</sup>

## **16. Safety obligations to a person with mental health concerns or neurodivergence**

- 16.1 Work Health Safety is about preventing workers being harmed at work and mental (psychological) health, just like physical health, is an important part of work health and safety.
- 16.2 Employers have work health and safety obligations to all their employees, including employees who have a mental illness or are neurodivergent. Most jobs involve some psychosocial hazards, and these are hazards that can harm workers' mental health.
- 16.3 Psychosocial hazards and factors are anything in the design or management of work that increases the risk of psychological harm. Poorly managed psychosocial hazards and factors can result in impacts on mental health including stress and job burnout. Specifically, high of job demands and low levels of resources increase the risk of psychological harm.
- 16.4 Employers should consider the psychosocial hazards that may be present in the workplace and work towards minimising or eradicating it. Some psychosocial hazards and factors can be:
- (1) Emotional demand – the role includes tasks and activities that require employees to show false displays of emotion, or the role includes exposure to emotionally distressing or sensitive situations.
  - (2) Role ambiguity – lack of clarity or uncertainty about the role which can cause confusion or feeling undervalued.
  - (3) Role overload – when employees feel stress and pressure due to excessive work demands.

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<sup>42</sup> WHS Act s 19(2).

<sup>43</sup> WHS Act s 18.

## 17. Managing risks

- 17.1 Recognising and managing risks in the workplace that may lead to physical or psychological injury is an essential part of creating a safe, healthy, and productive workplace.
- 17.2 Employers can refer to and rely on a number of Codes of Practice that provide practical guidance for persons who have duties under the WHS Act and WHS Regulations.
- (1) How to manage work health and safety risks – Code of Practice;<sup>44</sup>
  - (2) Work Health and Safety (Work Health and Safety Consultation, Co-operation and Co-ordination) Code of Practice;<sup>45</sup>
  - (3) NSW Government - Code of Practice – Managing Psychosocial Hazards at Work;<sup>46</sup>
  - (4) WHSQ – How to manage work health and safety risks Code of Practice 2021;<sup>47</sup> and
  - (5) Safe Work Australia – Model Code of Practice: How to manage work health and safety risks.<sup>48</sup>
- 17.3 A risk assessment involves considering what could happen if someone is exposed to a hazard and the likelihood of it happening. A risk assessment can help an employer determine:
- (1) How severe a risk is;
  - (2) Whether any existing control measures are effective;
  - (3) What action should be taken to control the risk; and
  - (4) How urgently the action needs to be taken.
- 17.4 A risk assessment can be undertaken with varying degrees of detail depending on the type of hazards and the information, data and resources that an employer has available. It can be as simple as a discussion with employees or involve specific risk analysis tools and techniques recommended by safety professionals.
- 17.5 Safe Work Australia has listed four easy steps to preventing psychological injury at work:
- (1) Identify hazard:
    - (i) Talk and listen to employees; and
    - (ii) Take note of how employees interact.
  - (2) Assess risks:
    - (i) Consider what could happen if workers are exposed to the identified hazards and risks.
  - (3) Control risks:

<sup>44</sup> <https://www.legislation.gov.au/Details/F2016L00414>.

<sup>45</sup> <https://www.legislation.gov.au/Details/F2016L00408>.

<sup>46</sup> [https://www.safework.nsw.gov.au/\\_data/assets/pdf\\_file/0004/983353/Code-of-Practice\\_Managing-psychosocial-hazards.pdf](https://www.safework.nsw.gov.au/_data/assets/pdf_file/0004/983353/Code-of-Practice_Managing-psychosocial-hazards.pdf).

<sup>47</sup> [https://www.worksafe.qld.gov.au/\\_data/assets/pdf\\_file/0022/72634/how-to-manage-work-health-and-safety-risks-cop-2021.pdf](https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0022/72634/how-to-manage-work-health-and-safety-risks-cop-2021.pdf).

<sup>48</sup> [https://www.safeworkaustralia.gov.au/system/files/documents/1901/code\\_of\\_practice\\_-\\_how\\_to\\_manage\\_work\\_health\\_and\\_safety\\_risks\\_1.pdf](https://www.safeworkaustralia.gov.au/system/files/documents/1901/code_of_practice_-_how_to_manage_work_health_and_safety_risks_1.pdf).

- (i) Eliminate the risk; or
  - (ii) Minimise the risk via planning and prevention.
- (4) Review and maintain control measures.

## **18. Responding to psychosocial risk or incident**

- 18.1 The WHS Act assumes that most psychosocial hazards should be identified via risk management process, however, sometimes, the first time an employer becomes aware of an incident is when it is reported.
- 18.2 Responding to a report or incident requires an employer to undertake an investigation in a fair, timely and balanced way to find out what happened and why and what can be done to improve the controls, so the incident does not occur again.
- 18.3 Keeping an organisational risk register is a helpful way to record psychosocial and physical hazards, risks, and incidents, and monitor that these have happened (see section 290 for a template).

## **19. Psychological injury claims**

- 19.1 In order to have a successful psychological injury claim under workers compensation legislation<sup>49</sup>, there is an important threshold question for the insurer to answer: did the injury arise because of the employer conducting a form of reasonable management action in a reasonable manner? Where the injury does indeed arise from such an action, then whilst it otherwise satisfies the requirement for it to be related to work, the injury itself is not one that will result in compensation.
- 19.2 Reasonable action is broken into seven categories,<sup>50</sup> that relate to the events and communications surrounding the administration of those events that are necessary in the standard management of an employment relationship:
- (1) Transfer of employment;
  - (2) Demotion of the employee;
  - (3) Promotion of the employee;
  - (4) Performance appraisal or process related to a need to improve performance;
  - (5) Discipline of the employee, which can include for acts of misconduct that do not result in termination;
  - (6) Retrenchment or dismissal of employment (including termination from performance or conduct reasons following the relevant process, as well as summary dismissal arising from serious misconduct); and
  - (7) Provision of employment benefits (or the absence of such a provision).
- 19.3 The further layer on this consideration is the manner of the action. For instance, an otherwise appropriate performance management process (following a well worded script) will be rendered 'unreasonable' if it is delivered in an aggressive and threatening manner, such as shouting profanities and making movements towards the employee with clenched fists.

<sup>49</sup> E.g., *Workers Compensation Act 1987* (NSW).

<sup>50</sup> *Workers Compensation Act 1987* (NSW) s 11A.

- 19.4 Legal decisions over the last decade have confirmed that the onus is on the employer to prove the action was indeed reasonable management action of the nature of one of the listed categories and that the psychological injury was caused 'wholly or predominantly' by the reasonable action (and not, for example, by bullying alleged to have taken place around the same time as the action).
- 19.5 Medical evidence is necessary to prove that that psychological injury was caused by the reasonable action, and this requires precision in the assessment of the trigger for that injury. In *Hamad v Qantas Catering Limited*<sup>51</sup> the employee claimed that he had sustained a psychological injury due to his employer, Qantas, disciplining him. Qantas accepted that the employee had sustained psychological injury but declined liability on the basis that the injury resulted from reasonable action. The employee has medical evidence from his treating medical practitioners that attested to the injury being caused by mistreatment, bullying, and intimidation at work, rather than a single incident of discipline.
- 19.6 The Workers Compensation Commission found that Qantas had not provided sufficient medical evidence to prove the psychological injury was caused predominantly by the reasonable action and rejected their defence. In effect, the Commission determined that the injury was caused by more than just the disciplinary process and so compensation should be awarded notwithstanding that the disciplinary process itself may have been appropriate.

## 20. Awareness

- 20.1 The earlier you become aware or identify that an employee is experiencing work-related stress or trauma, the sooner steps can be taken to prevent a psychological injury.
- 20.2 There may be times when an employee may be at risk of psychological injury because of a non-work-related mental illness or neurodivergence. Employers still have a duty to ensure, so far as reasonably practicable, the health and safety of their employees whilst at work.
- 20.3 Below are some examples of situations that may arise that employers should consider a warning sign of psychological injury risk:
- (1) Employer receives reports of low morale, disengagement, unexplained sickness absences, and reduced work productivity. If this report is for a single employee, approach the employee and discuss one-on-one whether the employee is ok, and whether their absences or reduced work productivity is due to the workplace and/or their role. If it is within a group of employees, consider the common connections between them and whether there is a clear cause of harm (such as an undetected bully, or unreasonable working conditions).
  - (2) Employees or teams show signs of work-related stress. For example, an employee saying, "we are so busy, I don't know how I will get this done!" This is a prime example of when early intervention will prevent psychological injury and psychological injury claims such as workers compensation claims. Employers should address the concern by the employee and identify what steps can be taken to reduce the stress/burden on the employee. In some cases, it could be that the employee's workload is not that high, however, their coping strategies are not effective. Employers should attempt to provide as much support as possible and refer employees to external organisations or use EAP for assistance.
  - (3) Employee asks for employer's help by raising with the employer a personal situation that has impacted the employee and how the workplace may be adding to the employee's stresses. For instance, a domestic violence situation that makes the employee feel

<sup>51</sup> NSWCCPD 6.



vulnerable working alone in a publicised location. In addition to any physical risk of harm, the employee may suffer an increased sense of anxiety or exacerbation of a brain-based vulnerability that could lead to a psychiatric injury. As employers have a duty to ensure, so far as reasonably practicable, the health and safety of its employees whilst at work, the employee's personal circumstances create a heightened risk of them suffering reasonably predictable harm in the carrying out of their role without adjustment. Best practice approach in this circumstance is for the employer to invite employees to be open with how their personal circumstances may impact on their safety at work, and assess each report on a case by case basis to see what measures can be put in place to reduce that risk.

## **E. Termination**

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### **21. How to Manage a Termination**

- 21.1 Despite all the above, there will be situations where employers have no choice but to terminate employees with mental illnesses or neurodivergence.
- 21.2 To ensure that the termination follows best practice, the following flowchart provides an overview of the key questions to be considered, with reference to the earlier materials.
- 21.3 While these materials are designed to provide an overview, these issues are complex, and we strongly recommend professional support be sought before making a decision to terminate based on disability.
- 21.4 Importantly, failing to consider whether:
- (1) Reasonable adjustments could be made (see section 111111) and/or
  - (2) Processes could be revised to remove a safety risk (see sections 1514-1818);

before moving to termination is high risk, and likely to expose employers to claims by the affected employee.



**F. Shifting mindsets to achieve best practice**

**22. Language, consultation, and engagement with stakeholders**

22.1 Being a deliberately welcoming workplace that actively strives to accommodate the breadth of diversity that exists in the community can reap significant rewards.

22.2 Businesses and companies that have diverse workforces are:

- (1) 35% more likely to experience greater financial returns;

- (2) 1.7 times more innovative; and
- (3) Better at making decisions 87% of the time

than equivalent, non-diverse organisations.<sup>52</sup>

22.3 There are a range of ways to start a discussion on inclusion for people living with mental illness and neurodivergence, and workplaces can consider what methods are most suitable to them. Some ideas include:

- (1) Printing some of the resources available from organisations that target inclusive practices, and making them available in prominent locations (such as break rooms, or at key access points). The Talking About ADHD Language Guide<sup>53</sup> from the Australian ADHD Professionals Association is a good example of how to show an awareness and interest in supporting neurodiversity within an organisation.
- (2) Asking for expressions of interest for a reference committee to be established to consider diversity and inclusion initiatives within the workplace. Resourcing any eventuating committee with allocations of time and some expertise (including an external guide) that can make meetings not only possible, but meaningful.
- (3) Developing a Disability Action Plan, which specifically addresses mental illness and neurodivergence inclusion. This is a great way to express a company's intentions towards making the workplace more inclusive. Under s 64 of the DDA, organisations can lodge a copy of such an action plan with the Australian Human Rights Commission, and this is then placed on the Disability Action Plan Register.<sup>54</sup>

## 23. Being pro-active about removing discrimination from the workplace

23.1 Employers should reflect on the different needs of employees to proactively assess all new and existing practices for indirect discrimination exposures, and where raised as a concern by employees, take all such reports seriously.

23.2 In most established organisations, large volumes of existing policy and practice materials have legacy issues that may lead to a direct or indirect discrimination risk. Ideally, a full review of such materials is conducted to address this risk, and as a short-cut an invitation to staff to make suggestions on how such materials can be updated to address such risks can spread the workload and create meaningful opportunities to not only update materials where needed, but demonstrate a commitment to continuing to improve diversity culturally. This invitation might be expressed as a policy of its own, such as:

- (1) *We respect that not everyone has the same lived experience, and some of the ways we do things may be unintentionally harder on some people than others. If you see something in our policies or practices that you think deserves consideration to make it more inclusive, reach out to [insert contact person] with a reference to the relevant material and your thoughts on how we might adjust our approach.*
- (2) *Everyone deserves a 'fair go', and sometimes despite the best of intentions, the way a policy is applied to an individual may be disproportionately hard because of that person's own circumstances. If you see something that you think could be fairer, tell us about it!*

<sup>52</sup> <https://www.forbes.com/sites/ashleystahl/2021/12/17/3-benefits-of-diversity-in-the-workplace/?sh=6f153c022ed2>.

<sup>53</sup> <https://aadpa.com.au/talking-about-adhd/>.

<sup>54</sup> <https://humanrights.gov.au/our-work/disability-rights/register-disability-discrimination-act-action-plans>.

## 24. Having a new attitude to psychological injury claims

- 24.1 Claims of psychological injury in the workplace often strike a very personal note with employers, as it suggests that the employer has engaged in some action that was wrong and the damage the employee experiences is accordingly the fault of the employer. There is a difficult balance to be struck between managing a business in a caring and respectful manner that accommodates the different needs of employees, and exercising managerial prerogative to direct the human capital of an organisation to produce the required outputs.
- 24.2 Where allegations are made that psychological harm has arisen from a workplace situation, it is common that a defensive stance is taken by the employer (and any individual named as the relevant perpetrator) in an attempt to deny wrongdoing, and attendant liability.
- 24.3 Even where there is insurance that covers payments to the aggrieved employee, and so there is no direct cost to the employer for workplace-derived psychological injury, employers are often intent on establishing a lack of fault for that harm. This can manifest in denials of responsibility, or reports of events made by employees in relation to their claims, without having first conducted the due diligence to be able to confidently state such a position. In situations where there is a genuine difference in view held by the employer and the insurer (which often arises in practice), employers can be at pains to make sure that the employee in question knows that the employer continues to regard their claim as inadequate regardless of what the insurer has determined.
- 24.4 Re-framing the approach to such matters is an important step to addressing any underlying risk factors, as well as creating a culture that is more inclusive and robust. This can aid not only in reducing instances of claims being made in the future, but also preserve the underlying relationship with the relevant employee which will make a return to work situation significantly more likely to be a success.
- 24.5 This might be achieved through a company policy that appoints a designated point of contact for any psychological claims, and that person is trained on dealing with individuals who are alleging psychological harm. Having a firm 'no blame' stance, keeping language respectful, and deferring to independent investigations prior to expressing a view are all measures which can assist in maintaining relationships in such situations. Taking this further, reflecting on claims made, including those that are not successful in obtaining insurance coverage, in order to identify root causes of the issues, will help management to implement targeted measures to address those causes and limit the ongoing risk for similar claims into the future.

## G. Bright and shiny future

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### 25. Cultural changes to diversity attitudes

- 25.1 In 2022, much can be said of the changes to the level of acceptance we have in the community for people with different abilities. Reflecting back on just a span of 10 years, we can see that there is a greater degree of visibility of the need to embrace differences and practice inclusive management – with COVID-19 having supercharged this process. Some examples include:
- (1) Greater access to telehealth, which reduces the barrier for people seeking support;
  - (2) The creation of various programs to make careers more accommodating to those who are neurodiverse;<sup>55</sup> and
  - (3) The fact that 61% of women and 48% of men now say they would look at the diversity of a company's leadership before deciding whether to accept an offer.<sup>56</sup>

<sup>55</sup> E.g., <https://www.qmentoring.com/2empower>.

<sup>56</sup> <https://www.jaluch.co.uk/hr-blast/the-language-of-inclusivity/>.

- 25.2 There are a number of well-established and respected organisations that are providing support to individuals living with mental illness or neurodivergence, and in turn, making that support available to key stakeholders like employers. Such bodies have greatly assisted in helping enhance communication, reduce barriers to access employment opportunities, and guide inclusivity practices to retain diverse employees in rewarding employment relationships that meets their needs. Some of the more prominent organisations and their mandates are included in our table in section 28.
- 25.3 Prominent members of the community, often carrying significant political or commercial power, have been more open about their own mental illness or neurodivergence, including:
- (1) Richard Branson - Entrepreneur (ADHD)
  - (2) Greta Thunberg - Climate Activist (ADHD)
  - (3) Whoopi Goldberg - Actor (Dyslexia)
  - (4) George Lucas - CEO of Raiz (Autism)
  - (5) David Beckham - Sportsman (OCD)
  - (6) Andrew Robb - Politician (Depression)
- 25.4 Danny King, one of the authors of this paper, and the person with the name on the door of this law firm, has made several public statements about her own neurodivergence, including in CPD courses to lawyers and media interviews.<sup>57</sup>
- 25.5 That so many people are publicly declaring what is, technically, a mental illness diagnosis, shows the community that diversity exists in a variety of contexts. It is also a deliberate step taken towards addressing the continued existence of stigma that attaches to diagnoses of such kinds. Whilst there is still a way to go, there has certainly been a lot of ground gained over the years.

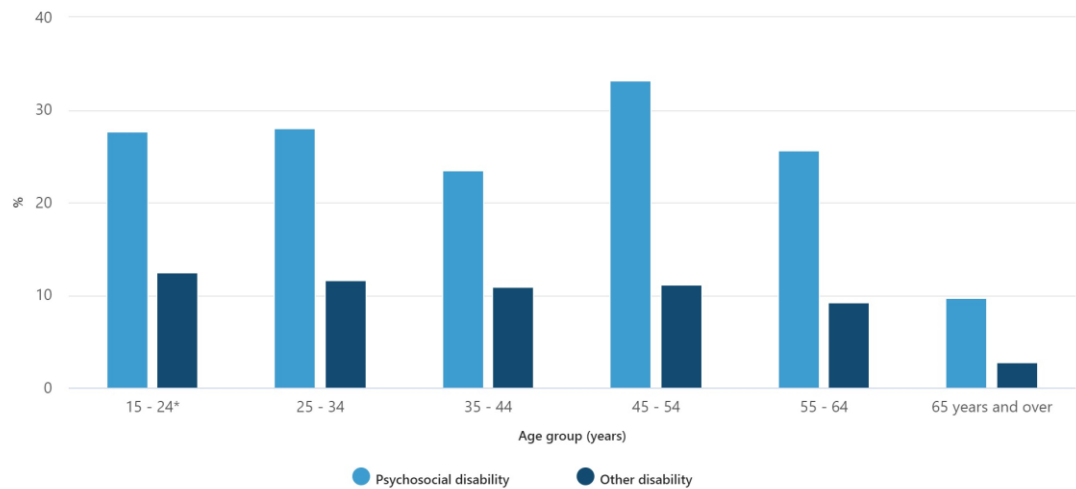
## **26. More is more – for everyone**

- 26.1 Discrimination is statistically more prominent for people living with a psychosocial disability than any other form of disability:

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<sup>57</sup> <https://www.lawyersweekly.com.au/podcast/33675-the-reigning-managing-partner-of-the-year-on-being-true-to-one-s-self>.

Graph 8. Persons with disability(a), experience of discrimination(b) by disability type and age, 2018



a. Aged 15 years and over living in households

b. In the previous 12 months

\*Estimate for people with psychosocial disability has a high margin of error and should be used with caution.

Source: Australian Bureau of Statistics, Psychosocial disability 25/09/2020

- 26.2 The ABS reports that 67% of people with a psychosocial disability avoid situations because of their disability (which is significantly higher than those with a different form of disability, at 25.2%).<sup>58</sup>
- 26.3 Employers that take an extra step to assist people experiencing psychosocial disability to consider taking up employment with their organisation can make a very significant impact on not only the lives of the individuals that are dealt with, but also on the community in general. Corporate leadership in this regard can go a very long way, and significant steps forward can be made through the completion of a Disability Action Plan (see above at 22.3(3)), with the support of organisations skilled in proactive inclusion programs.
- 26.4 With an extremely low unemployment rate, limited migration, and a large demand for workers, Australian workplaces are needing to take a different approach to finding and retaining talent. By encouraging a higher workforce participation rate for people living with mental illness and neurodivergence, and especially those experiencing forms of psychosocial disability, there are more chances of the shared benefit of access to employment opportunities and the larger pool of candidates available to employ.

## H. Resources

### 27. Additional Useful Materials

- 27.1 Planet Neurodivergent brings together a lot of resources that detail how to assist and support those who are Neurodivergent.
- (1) <https://www.planetneurodivergent.com/>.
- 27.2 A handy guide for talking about people with ADHD respectfully.
- (1) <https://aadpa.com.au/wp-content/uploads/2022/02/Talking-About-ADHD-Poster.pdf>
- 27.3 The Australian Human Rights Commission's step by step guide on managing mental illness in the workplace – complete with examples and references to additional reading.

<sup>58</sup> <https://www.abs.gov.au/articles/psychosocial-disability>.

- (1) <https://humanrights.gov.au/our-work/3-managing-mental-illness-workplace>

27.4 The Network of Alcohol and other Drugs' template for a mental health episode risk management plan.

- (1) <https://bit.ly/3b7jmC1>

27.5 NSW Government Mental Health Resource Kits – for small businesses, COVID impacts, business leaders, and recovery at work. Useful tools and resources for all workplaces – regardless of whether you're in NSW or not.

- (1) <https://www.nsw.gov.au/mental-health-at-work/mental-health-at-work-resources/resource-kits>

## 28. Support Organisations

Name	What do they do?	Mission Statements
<b>Autism CRC (Cooperative Research Centres) Board</b>  <a href="https://www.autismcra.com.au/">https://www.autismcra.com.au/</a>	<p>Autism CRC was established in 2013 and is the world's first national, cooperative research effort focused on autism. They provide the national capacity to develop and deliver evidence-based outcomes through our unique collaboration with the autism community, research organisations, industry, and government. Currently, they have 56 participant organisations and other partners based around Australia and internationally.</p>	<p>Motivate, facilitate and translate collaborative autism research, across the lifespan and the spectrum, underpinned by inclusive practices</p>
<b>Sylvia Rodger Academy</b>  <a href="https://www.autismcra.com.au/sylvia-rodger-academy">https://www.autismcra.com.au/sylvia-rodger-academy</a>	<p>A part of Autism CRC, this organisation is focused on supporting greater representation of Autistic adults on corporate boards, through governance training, relationships and opportunity sourcing:</p> <ul style="list-style-type: none"> <li>• increase the engagement of autistic adults in organisational decision-making</li> <li>• establish a national network of autistic people with governance skills, enabling them to share experiences and opportunities</li> <li>• provide participants with practical knowledge and experience</li> <li>• improve participants' understanding of governance structures and different organisational models.</li> </ul>	<p>Our mission is to provide programs, pathways and networks that create communities where autistic people fully contribute and influence policy, practice and culture in partnership with their peers.</p>

<p><b>Autism STAR</b></p> <p><a href="https://autism-star.com.au/">https://autism-star.com.au/</a></p>	<p>Provides services to individuals and groups to promote and enhance the engagement of autism and Asperger Syndrome within the employment sector. Such services are tailored to the needs of the individual or group. Autism STAR also provides consulting services to organisations and educational institutions that are involved in the training, placement, and employment of people on the autism spectrum. Autism STAR's Understanding Autism workshops are held throughout Australia and are available to groups on demand.</p>	<p>Our vision is for autism spectrum to be acknowledged and recognised as a highly valued and respected attribute in the employment sector, and for autistic and Asperger employees and job seekers to recognise their individual and full potential.</p>
<p><b>Specialisterne (Australia)</b></p> <p><a href="https://specialisterne.com.au/">https://specialisterne.com.au/</a></p>	<p>Develop and refined non-interview methods for assessing, training, and managing neurodiverse talent and demonstrated the viability of its model by running a successful for-profit company focused on software testing.</p>	<p>To educate stakeholders in talent and career development for autistic people through innovation, collaboration, and knowledge sharing.</p>
<p><b>The Believe: NeuroDiversity iNDex</b></p> <p><a href="https://www.believe-nd.org/">https://www.believe-nd.org/</a></p>	<p>Collate data reports on neurodiversity in the workplace.</p> <p>Reports were initially expected for release in May 2022, but have not yet been released at the time of writing.</p>	<p>The Believe:NeuroDiversity iNDex is a groundbreaking tool that measures and rates how well organisations have progressed towards embracing neurodiversity at work.</p>
<p><b>WithYouWithMe</b></p> <p><a href="https://withyouwithme.com/">https://withyouwithme.com/</a></p>	<p>Provide neurodiverse, and other minority groups with re-education and re-training for work in the Tech industry.</p>	<p>WithYouWithMe builds talent where there are skills shortages in the technology sector and have solved inefficient training, education and recruiting systems.</p>
<p><b>Disability:IN</b></p> <p><a href="https://disabilityin.org/">https://disabilityin.org/</a></p>	<p>Disability:IN is a non-profit resource for business disability inclusion worldwide, with a network of over 400 corporations expands opportunities for people with disabilities across enterprises.</p>	<p>An inclusive global economy where people with disabilities participate fully and meaningfully.</p>
<p><b>Australian ADHD Professionals Association</b></p> <p><a href="https://aadpa.com.au/about-aadpa/">https://aadpa.com.au/about-aadpa/</a></p>	<p>As leaders in the diverse field of ADHD, our mission is to promote evidence-based research, diagnosis, treatment and management of ADHD for the benefit of individuals with ADHD and their families across Australia. AADPA is an independent, not-for-profit organisation with a diverse membership of inter-disciplinary professionals across Australia and New Zealand.</p>	<p>Formed in November 2016, AADPA is committed to working towards enhanced lifetime outcomes for individuals with ADHD and their families. Focus on ADHD Education &amp; Training, Advocacy, Policy Development and Research</p>





## TOOL: HIRING FILE NOTE

<b>Potential Employee's Name</b>		
<b>Hiring Manager's Name</b>		
<b>Question</b>	<b>Answer</b>	<b>Date</b>
Does the prospective employee satisfy the inherent requirements of role?		
Have reasonable adjustments been requested?		
Are the adjustments able to be made?  <i>If no, make sure to clearly list why and the relevant considerations.</i>		
Has the outcome of the adjustments request been communicated, in writing, to the potential employee?  <i>The reasons should be sent in writing.</i>		
Was the outcome of the adjustment request accepted by the potential employee?  <i>If no, further investigation/review may be required.</i>		
<b>List any reasonable adjustments to be made below</b>		

**TOOL: RISK REGISTER**

<b>Site</b>	
<b>Management Representative</b>	
<b>Worker representative</b>	

<b>Date issue raised</b>	<b>Hazard Situation</b>	<b>Information Source</b>	<b>Harm Likelihood</b>	<b>Risk Level</b>	<b>Controls in place?</b>	<b>Existing controls adequate?</b>	<b>Further controls required?</b>	<b>Actioned by/ Comments</b>	<b>Date completed</b>	<b>Monitor and review</b>	<b>Review date</b>