



THE UNIVERSITY OF  
MELBOURNE

# Employing People with Disabilities:

## A Guide for Managers and Supervisors

The University of Melbourne is committed to equal opportunity in employment and to increasing the diversity of its workforce. The benefits of staff diversity are described in the University's Cultural Diversity Policy:

*The cultural diversity of the University and the Australian people is a strength and an asset. The University values diversity of opinions, perspectives and interests. Diversity is an essential characteristic of vigorous and adaptive ecological, social and intellectual systems. It is from such diversity that creative and effective responses to new challenges can emerge.*

The employment of people with disabilities enhances diversity in the University's workforce. It enables us to create work and learning environments that are 'vigorous and adaptive' and that reflect the diversity of the broader Australian society. By drawing upon the full range of skills and knowledge, professional and life experience that are available in Australian community, the University will be better placed to provide a rich learning environment for students, and to build a workforce that is equipped to meet the challenges of the future.

As well as recognizing the importance of a diverse workforce, the University – as stated in its Equal Opportunity Policy - has a well-established commitment to the principal and practice of equal opportunity. This includes a commitment to ensuring that recruitment practices and the work environment are free from direct and indirect discrimination, including discrimination towards people with disabilities. This commitment is reflected in the University's Disability Action Plan 2004 – 2007.

The Disability Action Plan identifies strategies, performance measures, timeframes and accountabilities that support equality of opportunity for staff with disabilities and job applicants. This includes a commitment to ensure that:

*1.2.3 Policies and procedures affecting the recruitment and employment of people with disabilities are readily accessible to staff and managers*

Information provided in this brochure aims to increase staff knowledge and awareness of policy, best practice and legislation relating to people with disabilities and thereby assist the University to meet the objectives set out in the Disability Action Plan.

A copy of the Disability Action Plan can be found at  
[www.services.unimelb.edu.au/disability/](http://www.services.unimelb.edu.au/disability/)

### **Benefits of employing people with a disability**

Research shows that workers with a disability have:

- productivity that is equal to or better than their non-disabled counterparts;
- fewer workplace accidents;
- superior attendance rates;
- increased retention in employment; and
- a positive impact on workplace morale.

*Diversity Council Australia, Diversity Matters, Issue No 43, August 2005*

equity and diversity

## People with disabilities

Anyone can experience a disability at some time in their life. Disability is a normal part of the human experience and people with disabilities are part of all sections of the Australian community. Figures provided by the Australian Bureau of Statistics indicate that 20% of the Australian population have one or more disabilities and that this proportion is increasing in conjunction with the ageing of the population.

### Mental illness/psychiatric disabilities

Around 1 in every 5 Australians (over three million people), has experienced a mental illness of some kind.

### Physical disabilities

Fourteen per cent of the community, or around 2.6 million Australians, have a physical disability. This includes people with respiratory disorders such as asthma, neurological disorders such as multiple sclerosis, cerebral palsy or epilepsy, people with immunological disorders such as HIV/AIDS, as well as people with diabetes, kidney disease or cancer.

### Sensory disabilities

Over one million Australians have a significant hearing impairment. Of these, approximately 30,000 are profoundly deaf. Around 300,000 Australians have significant vision impairments and of these 20,000 are legally blind.

### Intellectual disabilities

Around 2% of the population, or 400,000 Australians, have an intellectual impairment.

Source: [http://www.hreoc.gov.au/disability\\_rights/faq/Who\\_is\\_protected\\_/who\\_is\\_protected\\_.html](http://www.hreoc.gov.au/disability_rights/faq/Who_is_protected_/who_is_protected_.html)

## What does the law say?

The Federal Disability Discrimination Act (DDA) 1992 and the Victorian Equal Opportunity Act 1995 make it unlawful to discriminate against a person because of an actual or inferred disability or impairment whether past, present or in the future, or because of their association with someone who has a disability. Both direct and indirect discrimination are covered by the legislation.

### What is meant by 'disability or impairment'?

'Disability or impairment' refers to the total or partial loss of bodily movements and functions, a mental or psychological disorder, or a condition caused by a disease such as HIV, AIDS and Hepatitis C.

### What is meant by 'direct' discrimination?

'Direct discrimination' refers to less favorable treatment of an employee or potential employee, compared to a person without a disability, on the ground of their disability or impairment.

Example: An employee may be found to have discriminated against an applicant with a known disability if they failed to shortlist them for a position while giving preference to an applicant without a disability who had the same or less qualifications and experience.

### What is meant by 'indirect' discrimination?

'Indirect discrimination' refers to the way a person with a disability may be disadvantaged because of rules or conditions included in the position description or conditions of employment that appear to be fair or neutral but which can be shown to create a barrier for the people with disabilities.

Example: A candidate for promotion who has had periods of absence due to an ongoing medical condition is required to meet the same performance standards as candidates who do not have a disability or medical condition. The failure to consider 'performance against opportunity' could constitute indirect discrimination.

For more information, see the brochure *Indirect Discrimination: Fair in Form: Fair in Effect?* This is available from the Equal Opportunity Unit website at: <http://www.hr.unimelb.edu.au/anti-discrimination/indirect-discrimination.pdf>



## INDIRECT DISCRIMINATION: A CASE STUDY

The Department of Health and Social Analysis was advertising for a Research Assistant. The position had responsibility for developing and analysing telephone and postal questionnaires. Other tasks involved occasional visits to different sites and attendance at meetings with off-campus collaborators. The essential criteria stated that applicants must have a current driver's licence.

Agnes Zolinsky was interested in applying for the position but as she was legally blind, she was not able to obtain a driver's licence. On enquiring about the position, Agnes was told that a driver's licence was essential to the position. Unhappy about this response, she sought advice from the Victorian Equal Opportunity Commission. She was told that unless a driver's licence was indeed an inherent requirement for the position, including it as an essential criteria could amount to indirect discrimination. Agnes decided to write back to the Department outlining her concerns.

On receiving her letter, the Department reconsidered the criteria for the position. After some discussion and advice from Human Resources, it was agreed that the job could be carried out successfully by someone without a driver's licence. Any off-campus visits that the Research Assistant needed to make could be done using alternative forms of transport at relatively low cost.

As Agnes was able to meet all the remaining criteria to a high degree, she applied for the position and was successful.

### What are a manager's obligations under the Disability Discrimination Act?

Managers should:

- ensure that people with disabilities are not treated less favourably because of their disability;
- remove any rules or requirements that might give rise to indirect discrimination;
- make reasonable adjustments in order to accommodate the needs of people with disabilities in the workplace;
- avoid and prevent harassment of people with disabilities;
- promote a work environment that respects and supports the needs of people with disabilities.

In line with the relevant legislation, these obligations apply to:

- the recruitment and selection process, including advertising, the provision of job information, application forms, interview arrangements, selection tests, medical examinations and other requests for information;
- the terms or conditions on which employment is offered and provided, such as flexible work and leave arrangements;
- opportunities for promotion, secondments, transfers and professional development;
- redundancy, dismissal or other forms of termination of employment; and
- any other benefits associated with employment.

### FAQs: Best practice in recruitment and selection

**Q 1: As a member of a selection panel, can I ask questions about a person's disability when they apply for a job?**

The Human Rights and Equal Opportunity Commission (HREOC) has produced guidelines that aim to assist employers in complying with the Disability Discrimination Act. These guidelines suggest that discussions, questions and examinations regarding a person's disability and its effects may be legitimate, necessary and desirable in certain circumstances in order to:

- determine whether a person can perform the inherent requirements of the job; and/or
- identify any reasonable adjustments that would enable or assist the person to do the job.

This does not mean, however, that every disability-related question would be appropriate or desirable. Inappropriate questions in relation to disability may lead to, or actually constitute, discrimination. Concerns in this area include:

- the potential for inappropriate questioning to cause humiliation and to distract both the employer and the potential employee from the real business of establishing whether, and how, a person can do the job and whether s/he is the best person for the job;
- the potential for disability-related information (particularly on application forms) to be used as the basis for making discriminatory decisions, especially at the shortlisting stage.

Managers are advised to be cautious about including disability-related questions as part of the application process other than for the purpose of inviting applicants to identify access needs that



will ensure their full participation in the process. For example, all job applicants can be asked whether they require wheelchair access or other forms of assistance in order to participate in a job interview.

### **Interviewing**

Before interviewing applicants for a job, review your interview questions to ensure that they relate to the inherent requirements of the job and could not be seen as discriminatory on any ground covered by equal opportunity legislation.

### **Q 2: Can I ask for medical or other information in order to determine whether an applicant with a disability is going to be able to do the job?**

The HREOC guidelines state that inquiries, examinations or actions reasonably intended to determine a person's ability to perform the inherent requirements of the job are lawful.

However, a requirement for an applicant to pass a medical or other examination, although intended to determine a person's ability to do the job, might be found to be discriminatory if it is poorly suited to that purpose and cannot be said to be based on the inherent requirements of the job.

### **Q 3: What is meant by the 'inherent requirements' of the job?**

Not all of the requirements and tasks outlined in the position description are essential requirements. 'Inherent requirements' usually refers to core tasks which, if excluded from the position description, would change the fundamental nature of the job.

In determining whether a person with a disability can perform the inherent requirements, HREOC, the Equal Opportunity Commission and the courts will consider whether the person could perform these requirements if some adjustments were made.

### **Making adjustments**

For many people with a disability, a major barrier to equality of job opportunity is some feature of the work situation that could be readily altered. Adjustments can be made to either the working arrangements or the work environment in order to reduce or eliminate the impact of a particular disability or impairment. This would then remove any barriers that might give rise to discrimination and ensure that the person can perform on an equal basis.

## **FAQs: Making adjustments**

### **Q 1: What kinds of adjustments could I consider?**

Most people with a disability will not require major or costly adjustments. For this reason, employers should not assume that all people with a disability will require adjustments and use this as a basis for selection or other work-related decisions.

The Disability Discrimination Act only requires employers to consider adjustments that are 'reasonable'. This may involve, for example:

- adjustments to workplace or work-related premises, equipment or facilities, including provision of additional equipment or facilities. For example, rearranging the layout of office furniture to improve access to a staff member who uses a wheel chair;
- adjustments to work-related communications or information provision, including the form or format in which information is available. For example, obtaining a telephone with a light so that a hearing impaired member of staff can tell when the telephone is ringing, or obtaining a stand-alone, voice synthesized scanner so that a person who is blind can access printed materials;
- adjustments to work methods. For example, devising alternative ways of accomplishing a given task;
- utilising flexible work arrangements, including flexi-time, job sharing, leave entitlements and the option of working from home for part of the working week;
- adjustments to methods of assessing performance. For example, focusing on the quality and impact of publications, rather than the number and frequency of publications produced.

'Reasonable adjustments' may require, for instance, negotiation over flexible work arrangements. Information for managers on negotiating alternative work arrangements with staff can be found in the best HR practice guide *Negotiating Flexible Work Arrangements: Guidelines for Supervisors, Managers and Department Heads*. The publication is available from the Equal Opportunity Unit or other Human Resources staff.

### **Q2: What if I decide that it is not possible to make the necessary adjustments?**

It is not necessary to make adjustments for an applicant or staff member who has a disability if it means that, in doing so, the organisation would suffer 'undue hardship'.

In the Disability Discrimination Act, ‘unjustifiable hardship’ refers to a defence in law where an organisation can argue that to make a particular adjustment would impose an unreasonable burden on them. Whether or not a defence of unjustifiable hardship can be sustained is determined on a case by case basis, taking into account all the relevant circumstances. These would normally include:

- the actual nature of the disability and its impact on the person’s ability to perform the job;
- the effectiveness of the adjustments that have been requested. Will they actually be effective in removing barriers to the person with a disability?
- any detriment to the organisation if the adjustment is made. For example, would it impact upon client access to services or prevent other staff from being able to perform their roles effectively?
- the cost of the adjustment and the ability of the organisation to pay for it.

An employer or manager who fails to consider adjustments and provide them if they are reasonable would be exposed to liability for unlawful discrimination.

### **Q3: Who pays for the cost of the adjustments?**

The University of Melbourne does not have a central fund to cover workplace modifications. Hence, modifications and adjustments, such as the purchase of assistive technology, must be covered by local budgets.

It may be possible, however, to qualify for a grant under the Commonwealth Government Workplace Modifications Scheme to cover the cost of purchasing some equipment or making other modifications to the workplace. Information about the Scheme can be found at

[www.jobable.gov.au](http://www.jobable.gov.au)

### **Consulting people with disabilities**

People with a disability are often the best source of information about reasonable adjustments. Managers can discuss this with applicants at a recruitment interview or with a staff member in a regular supervision meeting. The person with a disability will usually be able to identify simple adjustments or accommodations that would enable them to perform their role more effectively.

## **Further advice and assistance**

Many questions may arise in determining ways to ensure physical access for people with disabilities and in considering any adjustments that may be required.

Sometimes it can be unclear whether a policy or practice would directly or indirectly discriminate against an applicant or staff member with a disability. A manager may also receive complaints about discrimination on the ground of disability from staff or students. In these situations it is advisable to seek assistance and clarification of their obligations under the University’s Equal Opportunity Policy and the Disability Discrimination Act.

### **Equal Opportunity Unit**

Staff of the University’s Equal Opportunity Unit are available to provide advice and information about policies, practices and resources that may assist in the recruitment and employment of people with disabilities. They can also help managers and supervisors deal with concerns or complaints raised by staff or students.

A key strategy for preventing discrimination and for increasing access and opportunity for people with disabilities is the provision of training for staff on their rights and responsibilities under disability discrimination legislation and University policy. Information sessions for staff can be requested from the Equal Opportunity Unit.

For further information or to request an information or training session contact the Equal Opportunity Unit on 8344 4438 or visit the Equal Opportunity website at <http://www.hr.unimelb.edu.au/equal-opportunity>

### **Anti-Discrimination Advisers**

The University has a network of Anti-Discrimination Advisers (ADAs) who provide confidential advice and support for staff and students with concerns or complaints. ADAs are also able to provide advice and support to supervisors and managers needing clarification of policies and practices that may potentially discriminate towards staff or students with disabilities.

For an up-to-date list of ADAs see the Equal Opportunity website at: <http://www.hr.unimelb.edu.au/anti-discrimination-advisers>

## Resources

### Publications

*Cultural Diversity Policy*. The University of Melbourne, 1998.

*Disability Action Plan 2004–2007*. The University of Melbourne.

*Equal Opportunity Policy*. The University of Melbourne, 2002.

*Indirect Discrimination: Fair in Form: Fair in Effect?* Equity, Language and Learning Programs/Equal Opportunity Unit, The University of Melbourne, 2004.

*Making Melbourne a Great Place to Work*. Human Resources, The University of Melbourne, 2003.

*Negotiating Flexible Work Arrangements: Guidelines for Supervisors, Managers and Department Heads*. Equal Opportunity Unit, Human Resources, The University of Melbourne, 2005.

### Web based resources and assistance

#### *The University of Melbourne*

#### Equal Opportunity Unit

The Equal Opportunity Unit has a range of publications and resources that can assist managers in increasing access and opportunity for people with disabilities. These can be downloaded or ordered from the Equal Opportunity website at: <http://www.hr.unimelb.edu.au/equal-opportunity> or by contacting the Unit directly on **8344 4438** or by email at [hr-eo@unimelb.edu.au](mailto:hr-eo@unimelb.edu.au)

#### Client Services

Speak to your Human Resources Consultant about matters relating to University policies and procedures and how to meet the needs of staff with disabilities in your workplace. Contact details for Human Resource Consultants can found at <http://www.hr.unimelb.edu.au/client-services-directory>

#### University Health and Counselling Services

Health and counselling services are available for all staff and students. Information and contact details can be found for Counselling at <http://www.services.unimelb.edu.au/counsel/> or for Health Services at <http://www.services.unimelb.edu.au/health>

#### External Resources

Support services for employers and people with disabilities: <http://www.facs.gov.au/disability>

Assistance for people with disabilities on managing the effects of their injury, disability or health condition and retaining or gaining employment is available through the government website at: <http://www.csrrehab.gov.au>

Competitive Employment Placement Training Services (CEPT): CEPT services are specialist, community-based job placement agencies funded by the Commonwealth Department of Family and Community Services. They can assist managers in promoting job vacancies and encouraging applicants from people with disabilities. [http://diversityatwork.com.au/disability/resources/disability\\_services.cfm#CEPT](http://diversityatwork.com.au/disability/resources/disability_services.cfm#CEPT)

*Workplace Modifications Scheme*: Commonwealth Government financial assistance up to a capped amount for each person with a disability may be provided to employers to assist them with workplace modifications, including the lease, purchase or hire of equipment. For information see <http://www.jobable.gov.au>

Blindness and low vision services contact Vision Australia: <http://www.visionaustralia.org.au/> or phone **1300 847 466**

Victorian Deaf Society contact Vicdeaf: <http://www.vicdeaf.com.au> or phone **9473 1111**