17 May 2021

Disability Employment Policy

GPO Box 9820

Department of Social Services

Canberra ACT 2601

Via email only: dep@dss.gov.au

To whom it may concern,

# **Submission to the public consultation process for the National Disability Employment Strategy**

The Disabled Australian Lawyers Association (DALA) welcomes the opportunity to make a submission to the Department of Social Services to better inform the development of the National Disability Employment Strategy (NDES).

## About Us

DALA is a national association advocating for greater representation and inclusion of disabled people in the legal profession. DALA’s membership consists of disabled legal practitioners, law students and legal academics. Our submission addresses the vision, priority areas and suggestions for reform from the perspective of increasing employment of disabled people within the legal industry. However, it is noted that many of our contributions can be applied to the NDES more broadly.

### What do the vision and priority areas mean for disabled lawyers and law students?

The Vision

1. We call for the vision of the NDES to include “equal access” to meaningful work opportunities. We submit that it is vital that our governments recognise that disabled people currently do not have equal access to meaningful work opportunities. This is a key barrier for disabled people joining and continuing to remain in the workforce. The NDES must ensure that meaningful work opportunities are equally accessible for all people.
2. We also note that while the consultation paper mentions throughout the importance of financial security for disabled people, we submit that the vision must recognise that meaningful work includes fair pay.
   1. We call for Australian Disability Enterprises to move from subsidised wages and offer disabled people fair and equal wages at parity with non-disabled people.
   2. We also draw attention to the misuse of unpaid internships for disabled people and the negative impact that has for those individuals, but also on the conversation on the worth of disabled professionals. In the legal industry, we want to see disabled legal professionals paid for their time and offered genuine, equal employment opportunities.
3. As disabled legal practitioners and law students, the proposed four priority areas are, in principle, appropriate but do not go far enough to support or promote the equal participation of disabled legal professionals. We make the following submissions specific to our purpose as an association:
   1. In Priority Area 2, there is an emphasis on building employment skills, experience and confidence of young people with disability. This is of significant importance to graduates, entering the legal industry. For many, it is their first professional job. It is our view that industry-specific networks and support needs to be given in this priority area to ensure that disabled people have equal opportunity in their chosen profession. We would encourage the Strategy to broaden the proposed mechanisms such as confident and informed support networks and role models to include industry-specific programs. For example, in the legal profession it is commonplace for a graduate (or soon-to-be graduate) to undertake a clerkship as a stepping stone to a graduate lawyer position. However, there would be immense benefit in having more clerkship models where disabled law students and prospective graduates were targeted so that they could enter the program with the assurance they would have equal opportunities, but also could access important role model and mentor programs from senior people within industry who have a shared lived experience.
   2. In Priority Area 4, it is agreed that changing community attitudes is central to increasing employment opportunities and workforce participation of people with disability across all industries. However, we submit that there are three important points missing from the proposed Priority Area:
   3. Industry specific conversations

Every industry has its own set of norms and expectations. The legal profession is quite traditional in form and has been built on the participation of white, non-disabled middle-class men. This has resulted in little flexible work arrangements for women or disabled lawyers and no anticipation of accommodations that may be needed by disabled legal professionals such as physical access. In 2021, the legal profession is not “disability-ready”. Accommodations and provisions that allow disabled professionals to participate in workplaces are mostly done in retrospect. We need to move toward having these provisions proactively in place so that disabled legal professionals can aspire to be in the industry, and when joining the industry face no barriers to doing so.

We recommend that the NDES Priority Area 4 is expanded to include addressing industry specific attitudes.

* 1. Law reform to improve workplace protection for disabled employees

In practice, the legal profession is still resistant to flexibility with a continued focus on long hours and meeting billable targets to measure employee success. Despite over 84% of law firms offering flexible working conditions in 2018, only 6% of lawyers have a flexible working arrangement.[[1]](#footnote-1) Under the Fair Work Act 2009 (Cth), an employee may ‘request’ flexible work arrangements but there is no right that the request may be granted.[[2]](#footnote-2) This places disabled legal professionals in an untenable situation where they may disclose their disability and request flexible work arrangements, but if they are not granted, they cannot seek enforcement of the measures under the Fair Work Act. While a disability discrimination complaint can be brought for unfavourable treatment at work, it would be preferred that the employee had a right to be provided with the working conditions they needed to get on with the job.

Accordingly, we recommend that a law reform agenda is set within Priority Area 4 to better uphold a positive change to community attitudes. Increased employee protections under the Fair Work Act, and a greater power for the Australian Human Rights Commission to respond to disability discrimination complaints brought by workers are essential to advancing the community conversation toward inclusive workplaces. We believe this would better address the pervasive gatekeeping that currently exists in the legal industry around flexibility and accommodations.

* 1. Intersectionality

Across all four priority areas, there is a concerning absence of the impact and importance of intersectionality for disabled people. We recognise that disabled people may also identify as LGBTQIA+, gender diverse, from culturally and linguistically diverse backgrounds, be of different ages and different socioeconomic backgrounds. Acknowledging this and making specific provision for it within the Priority Areas is fundamental to the success of the NDES.

Research shows that women and non-cis people disclose their disabilities far less than their male counterparts and request less flexible working conditions for fear of bias against them, with perceptions being that their disability needs to be more extreme or debilitating in nature to justify these requests. As a result, they will self-accommodate to manage their disability. [[3]](#footnote-3) This has long term burnout effects and contributes to the high representation of women in the legal profession who drop out from pursuing leadership roles and moving up the career ladder. When implementing initiatives to address employer engagement and building the skills and confidence of young people with disability, we need to consider their intersectional identities. This could be achieved through partnerships with peak bodies and grassroots organisations with lived experience of these additional identities to build more holistic solutions to the challenges each group faces.

### What actions and initiatives would create positive change for the inclusion of disabled law students and legal practitioners in the legal profession?

1. We recommend the following actions and initiatives, based on the experiences of the legal profession, pursuant to each priority area:
   1. Priority Area 1: employer engagement, capability, and demand:

* Government institutions to provide disability awareness training (run by people with disability).
* All employers in the legal profession to develop Disability Action Plans in consultation with employees with disability.
* Government institutions and peak bodies to work with law firms to move away from measuring success through billable targets and instead adopt initiatives that assess holistic performance.
* Legislative reform to provide for stronger legal obligations to provide for flexible working arrangements in the workplace.
  1. Priority Area 2: building employment skills, experience, and confidence of young people with disability:
* Establishment of more targeted positions in government for disabled legal practitioners.
* Creation of opportunities for disabled law students to obtain practical experience in earlier years of law school; recognising the barriers they face in legal assistant an/paralegal roles and allowing for a smoother transition from school to university and/employment. This will build confidence for both employees, who feel more confident in a workplace, and employers, as they gain first-hand exposure to the benefits of employing disabled people.
* Creation of mechanisms in law schools that expose law students to processes for asking for reasonable adjustments and disability accommodations, including professional or career progression guidance and know-your-rights campaigns informing them of their rights under the *Disability Discrimination Act 1992* (Cth) and relevant state legislation.
* Establishment of more initiatives that connect disabled law students to disabled lawyers to learn from their experiences, assist during recruitment, provide support for their transition into workplaces and request reasonable adjustments.
  1. Priority Area 3: Improving systems and services for jobseekers and employers:
* Engagement with law societies and peak bodies to provide information to employers regarding the NDES and the various options for government financial support, noting that these bodies would be trusted sources in the industry.
* Development of resources informing of accessible recruitment processes. This could contain guidance on how to provide material in multiple accessible formats, the need to avoid psychometric testing and video interviews and instead provide alternatives and develop an understanding of the need to provide reasonable adjustments in the recruitment process.[[4]](#footnote-4)
  1. Priority Area 4: Changing community attitudes:
* We support the consultation paper’s recognition of the benefits of inclusive procurement policies to emphasise the commercial benefits of employing disabled people. In a practical sense, we would recommend more disability questions and targets in tenders for government legal work. This could include questions that require law firms to meet a minimum standard of disability confidence to obtain government work; for example, have a certain percentage of disabled practitioners employed, in leadership positions or similar commitment to disability rights through pro bono work.
* Adoption of disability pay gap reporting, to raise awareness of inequities within the industry and directly address disabled people’s need for financial security on an equal basis to their non-disabled counterparts.

### How should the success of disabled lawyers in employment be measured?

1. We believe success should be measured by qualitive and quantitative measures. These include:

* Quotas for disabled people at all levels: it is important that if quotas are used, they apply to all levels of the workforce and avoid employers filling the quota through entry level positions that disabled people struggle to progress out of. For this reason, we would also recommend employee retention and promotion indicators be used to assess the longer-term impact of employment initiatives targeted at disabled people.
* Qualitative measurements of success: these could include employee satisfaction questions targeted at disability inclusion. This could be achieved through a survey initiative by the Australian Human Rights Commission and/or Australian law societies and peak industry bodies to ensure impartiality and broad reach.
* Ease of access and participation audits: a consideration of how employers track against the recommendations set out in this submission and the NDES, with a focus on what actions they are implementing to better address the underrepresentation of disabled people in their workforce.

We would welcome the opportunity to discuss our submission and recommendations made in further detail with the Committee and Department to ensure greater inclusion of disabled people in the legal industry.

Yours sincerely

Abbey Dalton and Natalie Wade

Co-Founders

**Disabled Australian Lawyers Association**

*This submission was prepared by Abbey Dalton, Natalie Wade, Nayonika Bhattacharya and Madeleine Causbrook as representatives of DALA.*

*Please note: all views expressed in this submission are those of the Disabled Australian Lawyers Association and its contributing members, and do not represent the views of members’ employers.*

1. Law CPD, *Flexible work in the law: where are we now?* (22 July 2019) <https://lawcpd.com.au/blog/flexible-work-lawyers-now/>. [↑](#footnote-ref-1)
2. *Fair Work Act 2009* (Cth) s65(1a)(c). [↑](#footnote-ref-2)
3. Carrie Griffin Basas ‘The New Boys: Women with Disabilities and the Legal Profession’ (2010), 25 *Berkeley Journal of Gender Law & Justice* 32. [↑](#footnote-ref-3)
4. See recent recommendations in Deborah Foster and Natasha Hirst, *Legally Disabled? The Career Experiences of Disabled People Working in the Legal Profession*, (report, 2020) Cardiff University <http://orca.cf.ac.uk/129396/>. [↑](#footnote-ref-4)