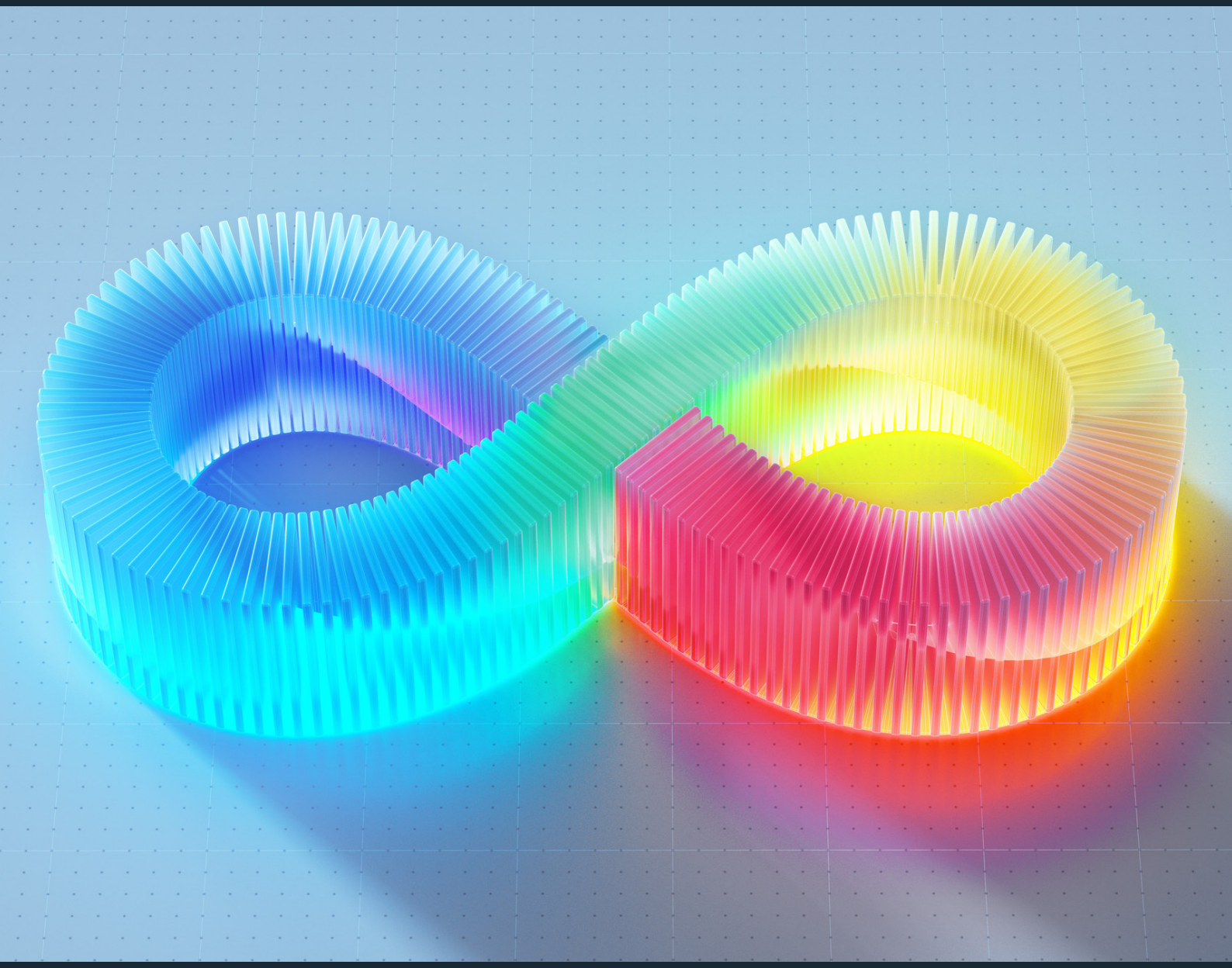
# Neurodiversity at work

## Rights, responsibilities and reality



SQUIRE PATTON BOGGS

Jacky Morgan

Neurodiversity has become a prominent workplace topic in recent years. In the City & Guilds Foundation UK 2026 Neurodiversity Index[1], it was reported that 30% of employees identified as neurodivergent, meaning supporting neurodiversity at work is no longer just a niche initiative.

While awareness of neurodiversity in the workplace has been growing across most organisations, action is inconsistent and often disconnected.

Awareness alone doesn't help the leader sitting in their office, struggling to understand why their team members' performance varies so inconsistently.

Awareness doesn't change anything for the employee wondering whether to speak up about their recent diagnosis.

Awareness doesn't help a neurodivergent individual to successfully navigate a complex hiring process.

"In a labour market reshaped by artificial intelligence (AI), demographic change and rising ill health, businesses that embed neuroinclusion into their core strategy will be better positioned to unlock productivity, reduce turnover, and build resilient workforces."

*Neurodiversity in Business: Research Report 2026*[2]

For human resources (HR), people and culture and work health and safety (WHS) teams, the real challenge is not understanding the terminology. It is knowing what to do when someone discloses a neurodivergent condition, when someone is clearly struggling but has no diagnosis, when the right adjustment is not obvious or when organisational environments, systems and processes are creating the barrier in the first place.

The workplaces that get this right don't wait for a diagnosis or a crisis before they act. They create psychological safety, they pay attention to how work is designed, they support managers to respond well under pressure and they efficiently provide adjustments to help all employees to do their job well and do it sustainably.




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1 "Neurodiversity Index Report 2026", City & Guilds Foundation, Prof. Amanda Kirby, Sourced 13 October 2026.

2 "NiB and University of Birkbeck, Research Report 2026 – Neurodiversity in Business", Neurodiversity in Business, Sourced 13 October 2026.

# 1. What is neurodiversity?

"Neurodiversity" is short for "neurological diversity". It is a concept that describes the natural variations in human brains and nervous systems.

Neurodiversity is also a paradigm that shapes how we perceive the variations. The underlying assumption of the neurodiversity movement is that that there is no single "right way" for the human brain to work, and different ways of thinking, communicating, processing and experiencing the world are naturally occurring and important.

Just as healthy ecosystems benefit from biodiversity; from a variety of species, the neurodiversity perspective highlights that communities and workplaces benefit from a variety of thinking styles, perspectives and cognitive diversity.

Currently, the neurological profiles that sit under the neurodiversity umbrella include:

- Autism Spectrum Disorder (Autism or ASD)
- Attention Deficit Hyperactivity Disorder (ADHD)
- Dyslexia

Depending on the framework used, neurodiversity may also encompass conditions such as Tourette syndrome, acquired brain injury, Obsessive Compulsive Disorder (OCD) and some mental health conditions.

Adopting a neurodiversity mindset means that we shift the focus from "fixing" individuals to creating inclusive environments and making adjustments that enable employees to thrive. The core idea is that society benefits when we rethink the structures and systems that shape participation, productivity and performance.

Rather than viewing disability as a limitation or restriction, a neurodiversity lens asks us to see differences as valuable resources that can strengthen workplaces, communities and society as a whole.



## 2. What does it mean to be neurodivergent?

"Neurodivergent" describes someone whose functioning or way of thinking, communicating or experiencing the world differs from what is considered neurotypical or how the majority of people operate.

"Lived experience professionals" also present the idea that what is considered "normal" or common is determined by current social and cultural norms – for example what is considered "divergent" in one culture may be considered a normal behaviour in other cultures around the world. Context matters.

Using an umbrella-term like "neurodivergent" can create a false sense that everyone is the same. It is worth remembering that two autistic employees are likely to have completely different profiles with different strengths, support needs and communication styles. The same goes for two people with ADHD, or two people with Dyslexia. There is no standard neurodivergent employee, and it is not unusual for people to have multiple diagnoses or no official diagnosis at all.

Some people are diagnosed as children. Others are diagnosed later in life. Some may be unaware that their challenges at work are related to neurological differences. Some choose never to pursue a formal assessment, because the process itself can mean multiple appointments, long waitlists, real cost and a lot of emotional energy.

One practical takeaway for employers is simple: don't make diagnosis the starting point for support, focus on individual needs instead.



# 3. The strengths and benefits of a neurodiverse workforce

Research increasingly shows that neurodivergent employees can bring valuable strengths to teams and organisations.

The 2026 Birkbeck report[3] describes neurodivergent talent as contributing "sharp, critical and disruptive thinking" that can help organisations solve problems, challenge assumptions and identify new opportunities.

Common strengths identified across the research include:

- Problem solving and critical thinking
- Creativity and unconventional perspectives that challenge "groupthink"
- Systems thinking and pattern recognition
- Sustained focus and attention to detail

However, it is important not to stereotype people. Strengths and capabilities should be explored with the individual rather than assumed from a diagnosis. Strength-based practice means helping people identify and use their own strengths, not deciding in advance what they should be good at.

The question then becomes whether these individual strengths translate into organisational outcomes.



3 "NiB and University of Birkbeck, Research Report 2026 – Neurodiversity in Business", Neurodiversity in Business, Sourced 13 October 2026.



## Organisational benefits

There is growing evidence that neuroinclusive workplaces can deliver measurable benefits. Studies involving organisations such as EY and the Department of Human Services[4] have reported productivity gains from neurodiverse teams of up to 30%, while research from Accenture[5] has linked disability-inclusive organisations with stronger financial performance. While outcomes vary across organisations, the overall direction of the evidence is clear: when people can work in ways that allow them to perform at their best, organisations benefit.

Birkbeck's researchers[6] describe this as "neurodiversity gain": the idea that when organisations design systems, cultures and work practices that enable neurodivergent people to contribute fully, the benefits often extend to everyone.

The practical message is straightforward. Don't recruit for difference and then expect everyone to succeed in the exact same way. Potential only turns into performance when the conditions support it.

**Case study: Department of Human Services (now Services Australia)**

Harvard Business Review cited preliminary results from a neurodiverse program within the Australian Department of Human Services (now Services Australia), which saw over 30 neurodivergent individuals placed in software-testing roles.[7] This led to the reported employees being approximately 30% more productive than comparable teams.

The program highlighted the power of neurodiversity in being able to recognise patterns and anomalies in data, channelling that into tasks such as examining logs and jumbled data for a sign of cyber-attacks.

4 "Neurodiversity as a Competitive Advantage", Austin, R. D. and Pisano, G. P. (2017), *Harvard Business Review*, May–June 2017.

5 "Companies Leading in Disability Inclusion Have Outperformed Peers, Accenture Research Finds", Sam Hyland and John Connolly, *Accenture*, 29 October 2019.

6 "NiB and University of Birkbeck, Research Report 2026", Neurodiversity in Business, Sourced 13 October, 2026.

7 "Neurodiversity as a Competitive Advantage", Robert Austin and Gary Pisano, *Harvard Business Review*, May-June 2017.

## Intergenerational differences

One of the other benefits of becoming a neuroinclusive organisation is that it allows for the effective integration of a growing number of younger workers entering the workforce who have grown up with diagnoses, supports and greater awareness of neurodiversity.

Many younger employees have spent years advocating for their needs. They may have had individual education plans, learning adjustments or other forms of support throughout their education. As a result, many enter the workforce with a clearer understanding of how they work best and have greater confidence discussing what helps them perform effectively. Increasingly, they expect workplaces to provide clarity, psychological safety, flexibility and inclusion by design.

We are seeing more awareness and increasing diagnosis of neurological, neurobiological and neurodevelopmental conditions, for instance:

- Estimates suggest that neurodiverse individuals represent around 15% to 20% of the global population, with neurodiverse professionals making up an estimated 17% of the workforce[8]
- The Australian Bureau of Statistics data shows a 41.8% increase in identified autistic Australians between 2018 and 2022[9]
- Recent Australian research also found that 15% of Year 12 students reported being neurodiverse, including ASD or ADHD[10]
- The number of Australians on ADHD medication surged by almost 300% in 10 years, rising to 470,000 people in 2022–2023[11]

The key point is that the benefits of neuroinclusion do not come from knowing who is neurodivergent. It comes from creating an environment where people feel safe to communicate their needs and access the support that helps them perform to their potential. For some employees, this may involve disclosing a diagnosis or sharing information about how they work best. How managers and colleagues respond in those moments can have a significant impact on trust, wellbeing and performance.



8 "Neurodiversity and inclusivity in the workplace: Biopsychosocial interventions for promoting competitive advantage," Piper Hutson and James Hutson, *Journal of Organizational Psychology* 23, no. 2 (2023).

9 "Autism in Australia, 2022", Australian Bureau of Statistics, *Australian Bureau of Statistics*, 11 October 2024.

10 "Youth mental health and neurodiversity in Year 12", Ben Edwards, Kate Doery and Jessica Arnup, *What Young Australia Thinks – GENERATION*, 3 September 2025.

11 "ADHD diagnoses on the rise as awareness grows", The Herald Sun, *Australian Psychological Society (APS)*, 19 August 2024.

# 4. How to respond when an employee discloses neurodivergence

Disclosure can be a big moment for an employee. For some, it's a simple conversation. For others, it comes after years of masking, uncertainty or difficult experiences at previous workplaces.

People weighing up whether to disclose are often worried about being judged differently, whether their information will be treated confidentially, being seen as less capable, missing out on career opportunities, being labelled or excluded, having colleagues treating them differently or having ordinary performance challenges suddenly blamed on their diagnosis.

Research cited in the recent Directioneering report[12] found only around one in three neurodivergent employees had disclosed to a manager or colleague, with fear of judgement and career consequences cited as the main reasons for not disclosing.

The 2026 City & Guilds Index[13] tells a similar story. Only around 32 to 38% of neurodivergent employees in the sample felt psychologically safe enough to disclose, trusted that adjustments would actually be implemented or believed their organisation understood the impact of their neurodivergence.

The first response matters more than most managers realise. A good response doesn't require becoming an expert in Autism or ADHD overnight. It requires being calm, respectful and genuinely curious.

Something as simple as this goes a long way:

"Thank you for trusting me with that. What would be useful for me to understand about how this affects you at work?"

Followed by:

"Is there anything that would help you do your best work?"

The principles underlying a supportive response are straightforward:

1. Listen without jumping to assumptions

2. Thank the employee for sharing

3. Reassure them the conversation will be handled properly

4. Be clear about what information can and cannot be shared further

5. Ask about the impact on work, rather than requesting medical detail you don't need

6. Agree on next steps

7. Follow through

Parity matters enormously. An employee should not lose access to opportunities simply because they disclosed. And a diagnosis should not become the lens through which every mistake, behaviour or performance issue gets interpreted from that point on. Disclosure should improve understanding and support, never quietly lower expectations, shrink autonomy or close off opportunity.

12 "Neurodiversity, Workplace Design and AI: Our Research From 2024 to 2026", Directioneering, *Directioneering*, accessed 19 October 2026.

13 "Neurodiversity Index Report 2026", City & Guilds Foundation, Sourced 13 October 2026.

Privacy matters too. Just because someone has told their line manager does not mean they have the individual's permission to share that information with others. This is a basis of psychological safety.

## The legal requirements: Privacy obligations

Information about an employee's neurodivergency is generally health information, which is a category of sensitive information under the *Privacy Act 1988* (Cth) (Privacy Act). When an employee discloses that they are neurodivergent, an employer's privacy obligations depend on whether the employer is a private sector employer or a public sector employer, because of the Privacy Act's employee records exemption.

For most private sector employers, the handling of employee records that are directly related to a current or former employment relationship is exempt from many of the Australian Privacy Principles. The exemption only applies where the act or practice is directly related to the employment relationship, but it does expressly include health information contained in employee records. Despite the exemption, employers should generally comply with Australian Privacy Principles as a matter of best practice even where an exemption may technically apply.

Importantly, the employee records exemption does not apply to job candidates or contractors, so employers must ensure that they treat any disclosure by a candidate or contractor in accordance with the Australian Privacy Principles, including the strict requirements regarding collection, use, storage and disclosure of personal (including health) information.

The handling of employee records by Australian government agencies also remains subject to the Australian Privacy Principles.

As a matter of good practice, and to minimise risks that might arise in respect of discrimination claims, victimisation claims, breaches of workplace policy and psychosocial safety concerns, even where the employee records exemption applies, employers should generally use, disclose and retain only the minimum information necessary.

**Practical example: Employee discloses ADHD to manager**

If an employee discloses ADHD or another neurodivergent condition, the safest approach for an employer is to:

- Treat the information as confidential health information
- Collect only the information needed to assess adjustments
- Disclose the information only to those with a genuine business need to know, e.g. HR who will help assess and implement any request for reasonable adjustments
- Obtain consent from the employee before broader disclosure, including where information is disclosed to external parties
- Securely store any records
- Use the information only for employment-related purposes, particularly assessing and implementing reasonable adjustments
- Delete or deidentify the information once it is no longer necessary



# 5. Discrimination and adverse action risks

## Discrimination risks

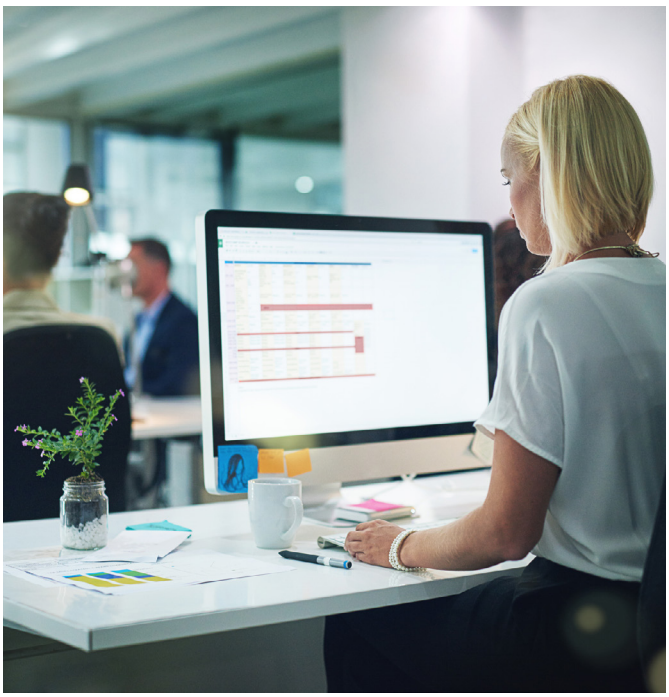
Many neurodivergent conditions fall within the broad definition of disability under the *Disability Discrimination Act 1992* (Cth) (Disability Discrimination Act), as well as state discrimination legislation.

If a neurodivergent individual is subject to direct or indirect discrimination, this can amount to unlawful discrimination under the Disability Discrimination Act and state discrimination legislation. To access the protections, an employee must have, or have had, a diagnosed neurodivergent condition that meets the definition of "disability" in the relevant act, or have a disability imputed to them (meaning an employer cannot treat an employee differently because they suspect that an employee has a neurodivergent condition).

In the Disability Discrimination Act, the definition includes "a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction" and "a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour". Furthermore, the definition includes "behaviour that is a symptom or manifestation of the disability". These definitions are likely to include ASD, ADHD, Dyslexia, Tourette syndrome and other neurodevelopment conditions that affect learning, communication, executive functioning, behaviour or cognition.

Direct discrimination prohibits an employer from treating an employee with a disability differently from an employee who does not have the disability.

Indirect discrimination prohibits an employer from imposing a requirement, condition or practice that appears neutral and applies to everyone, but which has the effect of disadvantaging a neurodivergent employee and the requirement is not reasonable in the circumstances.



**Practical example: Direct discrimination**

Sarah is employed as a finance manager. She is autistic and has disclosed her diagnosis to her employer.

Sarah applies for a promotion to senior finance manager. She meets all of the selection criteria, has strong performance reviews and is regarded as technically excellent.

During the selection process, the decision-maker states:

"Sarah is very capable, but I don't think someone with Autism could effectively manage senior stakeholders or represent the company at executive meetings."

The promotion is awarded to a less qualified candidate.

**Practical example: Indirect discrimination**

Graham is a high-performing marketing specialist with ADHD who works successfully from 10 a.m. to 6 p.m. Graham's employer introduces a new policy requiring all employees to start work at 8 a.m., with no exceptions. Graham explains that, because of his ADHD, he experiences significant difficulties with executive functioning early in the morning and requests to continue his later start time.

The employer refuses, stating that all employees must be treated the same. As a result, Graham struggles to comply with the new requirement and is later performance managed for attendance and performance issues linked to the earlier start time.

Imposing an 8 a.m. start time for Graham may constitute indirect disability discrimination. Although the 8 a.m. start requirement applies to everyone, it disproportionately disadvantages Graham because of his disability. If Graham can perform the inherent requirements of his role through a later start time and the arrangement would have little operational impact, the employer may have difficulty establishing that the requirement is reasonable.



## General protections risks

Employers should be mindful that neurodivergent employees may be protected not only by discrimination legislation, but also by the general protections provisions of the *Fair Work Act 2009* (Cth) (Fair Work Act).

These provisions prohibit an employer from taking adverse action against an employee because of a protected attribute, including a disability, or because the employee has exercised a workplace right. In the context of neurodiversity, a workplace right may include making a complaint or inquiry about workplace conditions, requesting reasonable adjustments, seeking flexible working arrangements, raising concerns about psychosocial hazards or accessing leave entitlements.

An employer must therefore ensure that any decisions affecting a neurodivergent employee, including performance management, disciplinary action, promotion decisions or termination of employment, are based on legitimate operational or performance-related reasons rather than the employee's condition or their request for support.

As noted elsewhere in this guide, the existence of a neurodivergent condition does not prevent an employer from managing performance or conduct issues.

However, before taking action, an employer should carefully consider whether the employee has disclosed, requested adjustments or exhibited difficulties that may be linked to an underlying disability. Where appropriate, the employer should engage with the employee to understand whether workplace adjustments may assist them to meet the inherent requirements of the role.

Maintaining clear records of performance concerns, support measures offered, adjustment discussions and the reasons for any management decisions will assist in demonstrating that action was taken for legitimate reasons unrelated to the employee's disability or the exercise of a workplace right.

**Case example**

The case of *Debus v Condor Energy Services Ltd* [2022] FedCFamC2G 429 involved an employee with Autism bringing both adverse action and disability discrimination claims.

The employee was employed as an assistant accountant and was dismissed during his probationary period following concerns about his workplace behaviour, including alleged hostility towards colleagues, inappropriate language and threatening conduct. After his dismissal, he alleged that the employer had taken adverse action against him because of his Autism and mental health condition.

The court dismissed the claims. A key issue was that the employer was found not to have known about the employee's Autism diagnosis at the time of dismissal. The court accepted evidence that the employer's reason for terminating employment was the employee's conduct and workplace behaviour, rather than any disability. Accordingly, the employee could not establish the necessary causal connection between the protected attribute (his disability) and the adverse action (his dismissal).

The case demonstrates that employers may lawfully address performance or conduct issues involving neurodivergent employees, provided decisions are based on legitimate reasons and not the employee's disability. The decision also highlights the importance of maintaining clear records of performance concerns, investigations, discussions and decision-making processes. Where an employer can establish that action was taken because of demonstrated performance, conduct or operational concerns, rather than a protected attribute or the exercise of a workplace right, it will be in a stronger position to defend any subsequent adverse action claim.

## Employer checklist for minimising discrimination and adverse action claims

- ✓ Separate discussions about performance or conduct from discussions about an employee's disability or adjustment needs
- ✓ Genuinely consider and document any adjustment requests before making decisions affecting employment
- ✓ Ensure managers understand that employees should not be disadvantaged for disclosing a neurodivergent condition or seeking support
- ✓ Apply policies and performance standards consistently, while recognising that reasonable adjustments may be required to enable an employee to meet those standards
- ✓ Maintain clear records evidencing the legitimate reasons for employment decisions

# 6. Why reasonable adjustments matter



We want to set employees up for success. The goals are engagement, productivity and performance. It is important to remember that this is the intention of the adjustment, as well as ensuring that the employer meets its legal obligations (outlined further below). Employers are not required to reduce expectations or lower performance outcomes.

Another common misconception, that comes up in conversations about adjustments, is that fairness means everyone should be treated exactly the same. In practice, that is equality, not equity.

Equity recognises that people start from different circumstances and may require different supports to perform at their best. This distinction is particularly important, because a commitment to treating everyone identically can sometimes become a barrier to providing reasonable adjustments. True workplace fairness is not about everyone receiving the same support or conditions. It is about everyone having a fair opportunity to contribute, participate and succeed. (Refer to the practical example of indirect discrimination above.)

As we consider why adjustments matter, it is important for an employer to understand and identify what neurodivergent employees identify as challenges in their workplace. In the Neurodiversity in Business (NiB) and University of Birkbeck, Research Report 2026 – Neurodiversity in Business,[14] neurodivergent employees said their five biggest challenges at work are:

1. Managing concentration (77%)
2. Dealing with criticism (76%)
3. Sensory overwhelm (75%)
4. Rumination (71%)
5. Navigating politics at work (68%)

Many of the challenges can impact concentration:

- The inability to filter out background noise can impact attention
- The emotional distress from "feedback" can slow things down
- The internal noise from overthinking distracts from the task
- The pressure of correctly meeting social and communication expectations can cause procrastination

So, what support matters most to neurodivergent employees? What sort of adjustments commonly enables the neurodivergent community to do their best work?

According to the latest data from the NIB & Birbeck Report[15]

- Flexible structures and hybrid work (72%)
- Line manager support (68%)
- Colleagues and peer support (65%)
- Informal relationship adjustments – colleagues understanding how the employee works best (61%)
- Information technology adjustments such as AI tools (45%)

14 "NiB and University of Birkbeck, Research Report 2026", Neurodiversity in Business, Sourced 13 October 2026.

15 "NiB and University of Birkbeck, Research Report 2026", Neurodiversity in Business, Sourced 13 October 2026.

We can see from the research that it is not someone's diagnosis that drives the adjustment. Research conducted by the NiB charity and Birkbeck University of London[16] recommends a move away from formal diagnosis as the gateway to adjustments, and towards proactive, needs-led support.

Leaders and HR professionals don't need to guess an employee's diagnosis. Adopting a neurodiversity informed lens keeps the conversation exactly where it should be on performance, participation and work that employees can sustain.

Reasonable adjustments are misread as special treatment more often than they should. A better way to think about them: adjustments remove unnecessary barriers so someone can meet the expectations of their role. The standard usually does not change. The route to get there does.

Common examples include:

- Clearer written instructions
- More explicit and specific expectations
- Defined priorities
- Advance notice of meetings or changes
- Fewer unnecessary interruptions
- Quiet focus time
- Sensory adjustments
- Assistive technology
- Flexible start and finish times
- Hybrid or remote work where it makes sense
- More structure or predictability
- Feedback delivered in different ways

The City & Guilds 2026 Index[17] found around six in 10 neurodivergent employees said adjustments would help them perform better, while only around half felt their organisation actually delivered the support they needed.

There is another reality: employees don't always know exactly what they need. Someone might know they're exhausted, overwhelmed or struggling to deliver consistently, without being able to name the fix.

Instead of asking "Tell me which adjustment you want," try:

- "Which parts of the role are taking the most out of you?"
- "When are you at your best?"
- "What tends to throw you off?"
- "What could we try?"
- "How will we know if it's helping?"

Good leaders have honest, open conversations to help employees discover the conditions they need to succeed and treat adjustments as an ongoing activity, not a one-off fix, or a one-off form to fill in and file away



16 "NiB and University of Birkbeck, Research Report 2026", Neurodiversity in Business, Sourced 13 October 2026.

17 "Neurodiversity Index Report 2026", City & Guild's Foundation, Sourced 13 October 2026.

## The legal requirements: Reasonable adjustments and flexible working requests

### Requesting reasonable adjustments under discrimination legislation

The obligation for an employer to make reasonable adjustments is a central feature of Australian discrimination legislation and seeks to ensure that employees with disabilities (including neurodiversity) can participate in employment on an equitable basis.

The Disability Discrimination Act requires an employer to make reasonable adjustments for an employee where:

- The employee requires an adjustment because of their disability
- The adjustment would enable the employee to perform the inherent requirements of the position, participate equally in employment or obtain equal access for workplace benefits
- The adjustment would not impose "unjustifiable hardship" on the employer

A failure to make reasonable adjustments can itself amount to unlawful disability discrimination under the Disability Discrimination Act. The reasonableness of an adjustment is assessed having regard to factors such as the benefit to the employee, the effect on the employer, the practicality of the adjustment, the cost involved and the availability of assistance or funding.

If an employee successfully establishes disability discrimination (including a failure to make reasonable adjustments), the matter can proceed through the Australian Human Rights Commission and ultimately the Federal Court of Australia or Federal Circuit and Family Court of Australia. The court may make orders to remedy the discrimination, including compensation.



**Practical example: Indirect discrimination/ failure to make reasonable adjustments**

Ben, who has ADHD, performs his role effectively but struggles with concentration in a noisy open-plan office.

Ben requests noise cancelling headphones, a quieter workstation or permission to work from home two days per week.

These are likely to be reasonable adjustments if they are practical, low-cost and allow the employee to perform their role effectively without having detrimental operational impacts.

The employer simply says, "Everyone must work the same way. No exceptions.", without properly considering the request.

### Requests for flexible working arrangements under the Fair Work Act

In some circumstances, a neurodivergent employee has a right to request a change to their working arrangements because of their neurodivergence under the Fair Work Act.

To be eligible to make such a request, the employee must:

(a) Have a disability (as outlined above, certain neurodivergent conditions are disabilities)

(b) If they are a permanent employee, have completed at least 12 months of continuous service with their employer immediately before making the request

(c) If they are a casual employee, have been a regular casual employee for at least 12 months immediately before making the request and have a reasonable expectation of continuing employment on a regular and systematic basis

Accordingly, employees with less than 12 months' service are unable to make a flexible working request pursuant to the Fair Work Act.

The employee's request must be in writing, set out the details of the change sought and the reasons for the change.

If an employer receives a request, it must provide a written response within 21 days.

The employer can only refuse the request if there are reasonable business grounds to do so. This might include:

- The working arrangements requested would be too costly for the employer
- There is no capacity to change the working arrangements of other employees to accommodate the working arrangements requested
- It would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the working arrangements requested
- The working arrangements required would be likely to result in a significant loss in efficiency or productivity
- The working arrangements requested would be likely to have a significant negative impact on customer service

A note within the Fair Work Act explains that the specific circumstances of the employer, including the size and nature of the enterprise carried on by the employer, are relevant to whether the employer has reasonable business grounds for refusing a request for flexible working arrangements. For example, if the employer has only a small number of employees, there may be no capacity to changes the working arrangements of other employees to accommodate the request. A change that would not materially affect the performance of the employer's business or the employee's team is unlikely, of itself, to constitute reasonable business grounds for refusing the request.

Before refusing a request, the employer must discuss the request with the employee and genuinely try to reach an agreement with the employee about making changes to the employee's working arrangements that will accommodate their neurodiversity.

Any response that refuses a request must:

- Include details of the reason for the refusal
- Set out the employer's particular business grounds for refusing the request and explain how those grounds apply to the request
- Provide information about how disputes regarding requests for flexible working arrangements are to be dealt with
- Set out any alternative changes to the employee's working arrangements that the employer would be able to accommodate

If a dispute arises between an employer and employee about a request for flexible working arrangements, the parties must first attempt to resolve the dispute through discussions. If discussions do not resolve the dispute, then the matter can be referred to the Fair Work Commission, who can seek to resolve the dispute using conciliation, mediation or by making a recommendation or expressing an opinion.

If the dispute remains unresolved, the Fair Work Commission can arbitrate the dispute. In broad terms, the employee will generally need to demonstrate that they were eligible to make the request and that the requested flexibility is related to the circumstances relied upon (such as a disability). The employer will generally need to demonstrate, with evidence rather than mere assertion, the reasonable business grounds for refusing the request, including any material adverse impact on operational requirements, productivity, service delivery, supervision arrangements or the workload of other employees.

This process may result in the Fair Work Commission making orders, which can include an order that the employer grant the request or make specified changes to the employee's working arrangements to accommodate their neurodiversity.

**Case example**

In the following case, the employee did not utilise Section 65 of the Fair Work Act to make a request based on his own neurodivergence. Rather, he established that he was a carer, within the meaning of the Fair Work Act, of neurodivergent family members.

In *Ridings v Fedex Express Australia Pty Ltd T/A Fedex* [2024] FWC 1845, Mr Ridings made a request under Section 65 of the Fair Work Act to continue working remotely after COVID-19 measures came to an end on the basis that he had substantial caring responsibilities for neurodiverse members of his family. This included his wife, who had a diagnosis of Level 2 ASD and two children that had Level 3 ASD and intellectual disabilities.

Fedex refused the request, relying on operational requirements and the perceived benefits of workplace attendance and collaboration.

The Fair Work Commission was critical of Fedex's response. Noting that some of the explanations it provided in refusing Mr Riding's request were too general and insufficiently tailored to Mr Ridings' specific circumstances. For instance, insufficient weight had been given to Mr Riding's caregiving obligations, the practical impact on the employee and his family had not been fully assessed and the evidence did not establish that the requested arrangements would cause significant operational problems.

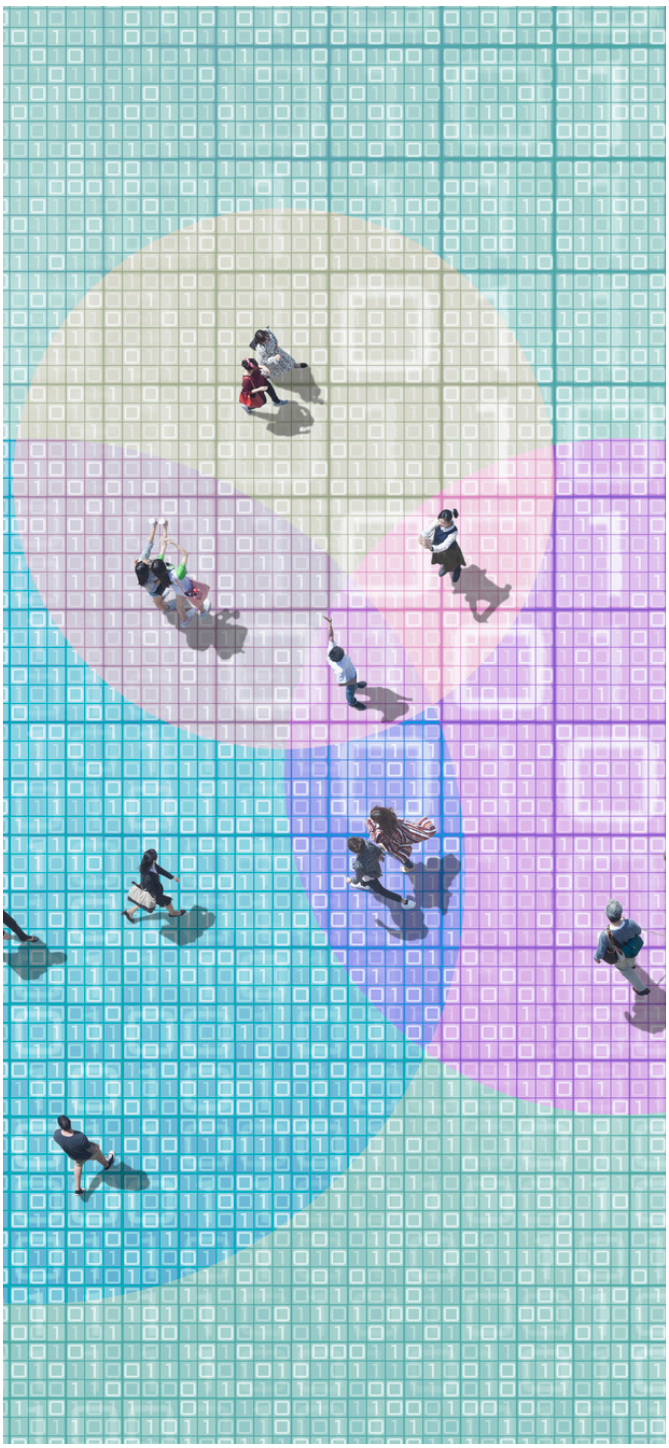
The Fair Work Commission ultimately ordered a modified flexible working arrangement rather than accepting either party's preferred position in full. The result effectively allowed Mr Ridings to work predominantly from home, while preserving a degree of office attendance and employer oversight.

## Employer checklist for flexible working requests under the Fair Work Act

- ✓ Assess whether the employee meets the eligibility criteria to make the request for flexible working arrangements.
- ✓ Assess the employee's request against actual, rather than hypothetical, operational impacts.
- ✓ Discuss the request with the employee to genuinely try to reach an agreement about changes to their working arrangements that accommodate their circumstances.
- ✓ Ensure that the response to the request details any reasonable business grounds preventing the request from being granted. Mere generic statements about the benefits of office attendance will not be enough to refuse a work from home request.
- ✓ Provide the employee with a written response to the request within 21 days.

# 7. The link between WHS, safe work and neuroinclusion

Neuroinclusion shouldn't sit in a separate lane from work health and safety (WHS). Good psychosocial risk management and good neuroinclusive practice overlap far more than most organisations realise.



## The legal requirements: WHS and psychosocial risks

All employers in Australia have a duty to ensure, so far as reasonably practicable, the health and safety of all workers while they are at work and others that may be affected by the carrying out of work, such as visitors.

As part of their WHS obligations, Australian employers are required to identify and manage psychosocial hazards, including high job demands, low job control, poor support, unclear roles, poorly managed change, inadequate recognition, poor workplace relationships, bullying and harassment, remote or isolated work and aspects of the physical environment. When deciding on control measures, they must consider the design and systems of work.

Neuroinclusive practice starts from the same place as an employer's obligations under WHS law. The goal is to adopt a universal design approach. This means organisations need to design ways of working so everyone benefits everyone from the outset. In practice, this includes leaders holding regular one-to-one check-ins to help employees organise, plan and prioritise, and giving employees as much autonomy as the employer allows over how, when and where they work.

## Same hazard, different impact

Psychosocial hazards affect everyone, but they don't affect everyone in the same way or at the same pace. This is where a neuroinclusive lens adds real value.

- A noisy open-plan office might mildly annoy one employee and cause sustained sensory overload for another
- A last-minute change might barely register for one employee and genuinely dysregulate a colleague
- Ambiguous instructions might be easy for some to interpret and create significant cognitive load for others
- High workload affects everyone eventually, but someone already spending energy on masking, managing sensory input or compensating for executive functioning challenges is likely to reach overload sooner

A 2026 City & Guilds study[18] found that the pressures neurodivergent employees face are often high workload, sensory overload, cognitive load, unclear expectations, stigma and limited flexibility.

Research from Birkbeck, University of London[19] found the likelihood of burnout for neurodivergent employees is high, particularly for those with multiple neurotypes, driven by cognitive load, inconsistent support and inflexible structures.

None of this makes neurodivergent employees a risk to be managed. The hazard sits in how work is designed, not in the employee experiencing it. While neurodivergent employees may feel the impact first, it is an early signal of a problem that will eventually affect others too. Many neurodivergent employees are also undiagnosed or choose not to disclose, so the only reliable way to reduce risk is to design work well for everyone. Organisations that do this protect their whole workforce and meet their obligations under both WHS and anti-discrimination law.

## Using hazards as conversation starters

Using hazards as conversation starters creates a shared opportunity for WHS, HR and leaders. Rather than treating psychosocial hazards as a compliance checklist, use them to open practical conversations:

- **Job demands** – Which parts of your workload are hardest to sustain?
- **Role clarity** – Are expectations and priorities clear enough?
- **Job control** – Where would more flexibility or autonomy help you perform?
- **Support** – What support can I provide that is genuinely useful, and what isn't?
- **Change** – What information or notice would make change easier to manage?
- **Physical environment** – Is anything in your workspace making it harder to concentrate or settle?

These conversations help managers understand individual differences without anyone needing to disclose a diagnosis, and they surface risks early, before they turn into performance issues, absence, conflict or burnout.

## Joining the dots

If you are already managing psychosocial hazards proactively and well, you are likely doing much of what makes a workplace neuroinclusive. The opportunity is to join the dots and make that connection explicit.

Neuroinclusion is not a separate initiative. It is a way of understanding how different people actually experience work and creating environments where employees can thrive.

18 "Neurodiversity Index Report 2026", City & Guilds Foundation, Sourced 13 October 2026.

19 "NiB and University of Birkbeck, Research Report 2026", Neurodiversity in Business, Sourced 13 October 2026.

# 8. Bringing it together

The strongest neuroinclusive organisations do not rely on disclosure, diagnosis or the goodwill of any one manager.

They build practices that make it easier for employees to succeed in the first place: clear expectations, good work design, psychological safety, flexibility where it is possible, managers who know how to have useful conversations, timely adjustments, consistent processes and proactive management of psychosocial hazards.

The 2026 research[20] keeps pointing to the same gap. Plenty of organisations have the policies and the good intentions. But an employee's actual experience still depends heavily on the capability of one manager, or one local HR team, on any given day.

That is exactly where the opportunity is for HR and WHS professionals; not in knowing everything about every diagnosis, but in helping organisations to ask better questions, design better work and respond earlier.

Less guessing. More curiosity. Better work design.

Good neuroinclusion. Good business.



20 "Neurodiversity Index Report 2026", City & Guilds Foundation, Sourced 13 October 2026 and "NiB and University of Birkbeck, Research Report 2026", Neurodiversity in Business, Sourced 13 October 2026.

# 9. Frequently asked questions

## If an employee discloses their diagnosis, what am I legally required to do?

If an employee discloses that they have a neurodivergent condition, there is generally no automatic legal obligation to implement a particular adjustment immediately. However, as outlined in this guide, there are several important obligations that arise under discrimination, work health and safety and privacy laws.

By way of a quick guide:

- Acknowledge the disclosure
- Thank the employee for raising it
- Ask whether any workplace impacts exist
- Ask whether any adjustments are sought
- Obtain supporting medical information if necessary
- Assess reasonable adjustments
- Document the process
- Keep the information confidential
- Review the effectiveness of any adjustments implemented
- Ensure future employment decisions are based on performance and role requirements, not assumptions about the condition

## Can I ask for further medical information about the employee's diagnosis?

Not necessarily. However, if the effect of the condition or the need for adjustments is unclear, it may be reasonable to request medical information.

For example, you could ask the employee:

"Can you provide information from your treating practitioner about the workplace impacts of the condition and any recommended adjustments?"

The focus should be on workplace impacts and accommodations, not obtaining detailed medical histories unnecessarily.



## Can I still manage an employee's performance if they disclose that they are neurodivergent? How do I hold someone accountable while still being supportive?

A neurodivergent employee can be performance managed. Having a neurodivergent condition does not exempt an employee from meeting the inherent requirements of their role, complying with lawful and reasonable directions or being subject to the same performance standards as other employees.

The legal risk is not performance management itself. The risk is how the performance management is conducted and whether the employer has properly considered the impact of the employee's disability and whether making any reasonable adjustments would assist the employee to improve their performance.

Where performance concerns arise, managers should first have a genuine discussion with the employee to understand what may be contributing to the issue.

Useful questions include: "What is getting in the way of you meeting these expectations?" and "What support, resources or adjustments would assist you to meet the requirements of the role?"

Employers should not assume that a performance concern is solely attributable to the employee's conduct or capability before considering whether workplace factors, communication methods, training needs or reasonable adjustments may be relevant.

If an employee discloses a neurodivergent condition during a performance management process, you should generally:

1. Document the disclosure

2. Ask whether workplace adjustments are required

3. Obtain medical information if necessary

4. Implement reasonable adjustments where appropriate

5. Clearly communicate performance expectations

6. Monitor performance after adjustments have been implemented

7. If performance remains inadequate, proceed with ordinary performance management

## Do I have to do anything differently to ensure compliance with WHS obligations for our neurodivergent employees to ensure we minimise psychosocial risks?

Not separate obligations, but an employer's existing WHS duties may require it to consider the particular impact workplace hazards have on neurodivergent workers.

While WHS laws do not impose a separate set of obligations specifically for neurodivergent employees, they do require employers to identify and control psychosocial hazards so far as is reasonably practicable. If an employer knows, or ought to reasonably know, that aspects of the workplace create particular WHS risks, including psychosocial risks, for a neurodivergent employee, those risks should be considered as part of the employer's WHS risk management processes.



## How do I support someone properly if I suspect they have a neurodivergent condition but won't disclose anything formally?

Firstly, you should not diagnose, speculate about or pressure an employee to disclose a neurodivergent condition. However, you should address any workplace issues you observe and offer support based on those observed impacts rather than any suspected diagnosis.

Often the most effective approach is to create an environment where disclosure is safe rather than trying to obtain disclosure itself. Examples include:

- Promoting inclusion policies
- Educating managers on neurodiversity
- Normalising adjustment requests
- Communicating that support is available
- Ensuring confidentiality

From a psychosocial risk perspective, if you observe signs that an employee is struggling with workplace stress, anxiety, overload or other risks, you should address those risks regardless of whether a diagnosis has been disclosed.

## How do I deal with other team members who believe that "reasonable adjustments" are preferential treatment?

The key message is that reasonable adjustments are not preferential treatment. They are measures designed to provide an employee with an equal opportunity to perform their role despite a disability.

Courts and tribunals generally recognise that treating everyone identically is not always fair. In fact, discrimination law often requires employers to treat employees differently where necessary to accommodate a disability.

As noted in this guide, employers should be striving for equity, not equality.

## What capabilities do our leaders need to have to manage neurodiverse team members?

- **Inclusive communication** – The ability to communicate clearly, consistently and with minimal ambiguity.
- **Understanding reasonable adjustments** – What they are, when to seek HR support, how to have conversations about reasonable adjustments.
- **Performance management capability** – Being able to support employees while holding them accountable for performance expectations.
- **Psychosocial risk awareness** – Managers should be capable of identifying psychosocial hazards that may disproportionately affect neurodivergent employees.
- **Emotional intelligence** – The ability to listen and have conversations with neurodivergent employees and build psychosocial safety.
- **Flexibility and adaptability** – Focus on outcomes, quality, productivity and business requirements, rather than a requirement that every employee needs to work the same way.
- **Awareness of legal obligations** – A working understanding of discrimination obligations, including reasonable adjustments, privacy obligations and psychosocial risk obligations.



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