

ASID Position Statement

Including board directors with intellectual disabilities

ASID supports the right of people with intellectual disabilities to participate in organisational governance, including as board directors. This is a human rights issue. Like many areas of Australian law, corporate governance law has not kept pace with the principles of the UN Convention on the Rights of Persons with Disabilities. ASID is committed to calling for legal changes to make meaningful inclusion of people with intellectual disabilities on boards possible.

To understand what needs to change, we must start with what the law says now. Professor Ian Freckelton KC provided a legal opinion outlining how current law would be. His opinion is about how the law works now is that:

People with intellectual disability will be unable to discharge core board members' financial and governance requirements, consistently with what is required by law, including under the Corporations Act [and other Acts] ... This is especially so when a failure to discharge these requirements can result in significant civil, and even criminal, liability.

He outlines how the current law requires, Board directors to discharge **all** financial and governance responsibilities **without exception**. View the full legal opinion [here](#).

This opinion describes the current state of the law about being a board director in Australia. Legal 'opinions' are not what the person writing them thinks is right or fair, they are an analysis of how the law - as it is now - would **most likely be applied** to a particular situation. It is also important to know that the law as it is now means that there might be legal and financial risks to people with intellectual disabilities on Boards right now and to the other Directors of those Boards (such as if there were any legal or financial issues for that company).

This opinion does not reflect ASID's view of what the law should be, nor does it endorse or support the current law. It simply puts it forward as an analysis of the current law. ASID thinks it is important to have this piece of research which is a legal analysis of the law as its

stands. This is because understanding the law as it stands is essential to show problems that exist in that law – it excludes people with intellectual disabilities. It is essential to understand how things are now to be clear how what changes to the law are needed so that people with intellectual disabilities can be included on boards in future without any doubts.

ASID calls for reform of corporate governance law and other legislation that excludes people with intellectual disabilities from full participation. We will support advocacy for legal change that reflects human rights principles and UNCRPD obligations. We will also support the development of ways for people with intellectual disabilities to participate in governance now, within and beyond existing legal frameworks.

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