

[Narelle] Hi and welcome to another episode of the Digital Access Show. In the last few weeks we've been looking a bit about WCAG, where it came from, a bit about more of the challenges that people face, that people with disability face, I should say. Actually it's everyone faces, even down to hailing a bus. The challenges that people face. This week I want to look at the legal aspects of the digital accessibility in Australia. Because people say to me, 'Oh, why should you do it?' And if I immediately say, 'it's a legal requirement,' they say 'you can't say that.'

People have to realise that is a legal requirement. So our guest today is the wonderful Jeanette Jifkins from Onyx Legal. Hello Jeanette. [Jeanette] Hi Narelle, lovely to see you today. [Narelle] Oh, it's awesome to have you here. Now, Jeanette is a lawyer but she works in the business sector. She's the lawyer that can help you with your business to business work, the agreements, contracts, everything else, she's the go to lady for this. So Jeanette, can you tell us a bit more about yourself and how you got into digital accessibility? [Jeanette] Alright, absolutely. So... Ah, I've been in legal practice for almost 30 years and... back in about 2010 I started working with people doing

digital business. So, either retail, or education and training online, that kind of thing. So, when I started working with people in that space, the biggest... issues were people didn't understand how the law applied to doing business online. So, I went away and put together a list of - here are all the things that impact doing business online and it's not that different to business offline. It's just the environment in which you're doing business. And I think for this reason, because it's not face to face, because you don't open a retail premises store and walk in, and have all of the convention that's behind that. People didn't realise that the same laws apply online as they do offline. So one of the things about being in business is... we do have anti-discrimination legislation around the country. So, when I was back at uni in the 90s, the Discrimination Act in Queensland came out in 1991. So I actually studied it when it was brand new legislation and we were all trying to figure out how it works. And it hasn't changed significantly since then. It's not the oldest anti-discrimination legislation in Australia. There is legislation that was introduced in New South Wales back in the 70s. So, we've had legislation in place in Australia for a very long time which requires people in different circumstances

not to discriminate. And discrimination is on certain basis and disability is one of those things. So people who have limited sight, or limited mobility or limited hearing, they're all the sorts of things that impact doing business online. So the mobility thing that people don't think about is the ability to use a mouse or a keyboard or either of those. Um, for sight, sight is obvious. Although, one of the things that really wasn't... obvious to me until you did an audit of our website was the contrast in colours.

[Narelle] Mm. [Jeanette] So our

logo, we're needing to update because the contrasting colours in our logo is not enough to make it easy for your software to see that or for you

to see that as a distinct, you know, the

writing on the logo when you look at our website. And that's something that never

occurred to me. And that is potentially

discrimination. So the basis for discrimination at

law is that you can't... Um, there's two types. There's direct and indirect

discrimination. So direct discrimination

is specifically doing something that impacts

an individual because of their disability. Indirect discrimination...

[Narelle] Could you give

me an example of that? [Jeanette] So, for

example, if someone says, no, you can't, I can't let

you in our store because we've got uneven

surfaces in the store. And you don't have appropriate

mobility to come into the store. By saying, no, you can't come

in. And I'm not going to give you an opportunity

to have access. That is direct discrimination. So, an example of

that, there was a case, oh, it was before  
2000 in Queensland and it was action taken  
against the Brisbane Entertainment and  
Convention centre. [Narelle] Okay.. [Jeanette] And that was on the  
basis of someone in a wheelchair, couldn't  
have access. And... Or else, it  
was either they couldn't access or their  
only access was like through a loading dock. And so there was  
a complaint made and there was a huge discussion around whether it was  
reasonable to provide access or not. [Narelle] Mm. [Jeanette] And the  
court said on the basis of the  
amount of money that it was taking, you know,  
that it was costing to build this facility, the cost of providing  
appropriate access - so, access that didn't make people in wheelchairs  
feel like second class citizens - was not unreasonable. [Narelle] Okay.  
[Jeanette] Because it was  
proportionate to the cost of the whole  
enterprise. So it wasn't going to be an  
exorbitant cost. And this is something that  
impacts businesses. So, if the cost of  
doing something is excessive for your business, then you may not have the  
requirement to  
provide that access. However, as we know, online  
accessibility is not expensive for people to take  
up that opportunity. So, for someone to  
work with you to get an audit of their  
website and find out what very simple fixes  
can be put in place to make their website  
more accessible. That is not unreasonable. [Narelle] Okay. Cool.  
[Jeanette] So there's a

proportionality reasonable. [Narelle] Yeah. That's interesting, I didn't realize that. So how does the indirect fit in with that? [Jeanette] So the indirect is where you create a situation which makes it harder for one class of people against another. So in this example, if you, for example, have a website, and we were discussing certain telecommunications providers before. [Narelle] Yeah.

[Jeanette] If your website is easy for people with sight to use, but difficult for people without sight, it's not accessible. And that's indirect discrimination. You haven't actively gone about setting up the website so it's hard to access for people with limited sight. However, the result is that people with limited sight are going to have significantly more difficulty accessing the website. So that's indirect discrimination. You haven't done it intentionally. It's just one of those 'side things' that's happened and the result is, there's a group of people who can be identified because of their disability who don't have the same access as somebody who doesn't have their attributes. [Narelle] So who decides what's reasonable? [Jeanette] So that, well, it really depends. But generally speaking, it's the Human Rights, uh, Commission. So complaints, complaints go to

the Human Rights Commission. Very few matters actually go to trial because for a business, reputationally, it's embarrassing to be taken to court for discrimination. So most of these things resolve at an early stage, and the way the Human Rights Commission works- And there are different ones. So there's the Australian Human Rights Commission and then there are Commissions in each state and territory depending on which law you're going under. [Narelle] So Queensland has a Commission? [Jeanette] Yeah, it does. [Narelle] Oh wow, I didn't know that. [Jeanette] It's not the Human Rights Commission, it is... So generally speaking, depending on what the complaint is about, discrimination is heard by different groups, different tribunals. So in Queensland, if you have a, for example, an employment, it goes through Fair Work. Because the Fair Work Commission has that jurisdiction. So that's just an example. But if someone makes a complaint to the Human Rights Commission, then there's a conciliation conference. And in the course of that conference, this whole discussion happens about, you know, I can't access such and such. And then the commissioner or the conciliator would normally speak to the respondent and sort of say, well, how hard would it be for you to fix this? And the kinds of complaints are... it's generally related around features on a website. So you've got limited sight.

[Narelle] Yep. [Jeanette] So you use some software that will assist you to read what's on website pages and navigate websites. If a website is

difficult to navigate, or it can't be read, that's an easy fix. [Narelle]  
Yeah, it is,

actually, I agree. It's a simple fix.

[Jeanette] Yeah, so in those circumstances, the

commissioner or the tribe- whoever the

conciliator is would normally go back

to the respondent and say, well, you

know, how long and how much cost and

how much time is it going to take

you to fix this? And how can you... effectively either compensate or

accommodate this person in the meantime while you fix that. So a really,  
a really sort of the most known example of

this in Australia was the Sydney Olympic Committee. Their website was not  
accessible for people with disabilities. And, it.. Due to timing and

everything like that, there was no way they could

fix it before the Olympics. But that, that case actually went through to  
decision

because, you know, they said, well, we can't. And in actual fact, in

those circumstances, because they hadn't

thought about it beforehand. Now that's 24 years ago. [Narelle] Oh,

it is too, isn't it? [Jeanette] It's 24 years ago. So

we have no excuse nowadays. [Narelle] And it's

the same with issues still happening. It's 24 years. [Jeanette] I know,  
24 years. And the thing is, it's

more... people just think, 'okay, I'm not going to

get in trouble for that.' But you can be sued. People can lodge a  
complaint. And even if the

complaint gets resolved in an early stage, you go through

the time, the costs, the stress of having to

deal with that complaint. And.. Even though you might argue that putting money into that is not reasonable, it probably is reasonable. Y'know, and also, I mean,

people don't think about it. It's probably close to

a fifth of the population. Have some form of

accessibility issue. [Narelle] Yeah. [Jeanette] And they have family members who get

cranky at sites that... You know, don't make it easy for

their family members to access. [Narelle] Services, so

many services don't. [Jeanette] Yeah.

So there's, I mean, there's an opportunity of

assisting and increasing your market by, you know, 15 to 20%. By just being accessible. And, and people don't have

to figure it out for themselves. People doing business online can

consult with you. You can do an audit of their website. You give them all the advice

and can connect them to developers who can fix it. [overlapping]

[Narelle] So, to summarise, [Jeanette] Yeah. [Narelle] It is discrimination. I know Queensland

has a Queensland Discrimination Act 2019. I think it's the latest

one, but I could be wrong. Can't remember. Every state has a

Discrimination Act. [Jeanette] Yes, they do. [Narelle] The Australian Federal

Government has the Disability Discrimination Act 1992. [Jeanette] Yes. [Narelle] And it is illegal

to discriminate. [Jeanette] It's not illegal. [Narelle] Okay. [Jeanette] Okay,

so it's, well... it's contrary to law. [Narelle] Okay. [Jeanette] So it's a breach of

legislation not to be accessible. And what that means

is, so the confusion is that when you say something's

illegal, people think the police are going to come after them. And generally speaking, that's what happens. But in this case, it's



contrary to law in that a person who is

impacted can sue you if you breach the legislation. So if you're, if you provide a

business that's not accessible, someone can complain

and there are avenues and tribunals to which

they can complain. And then you have to

participate in that process. [Narelle] And that process would involve time, lawyers...

[Jeanette] Time and and cost and stress. Because you can't predict the result. This is one of the things.

[Narelle] Okay. [Jeanette] You know, with court

proceedings, we always say to people you've got no

better than a 50-50 chance. If you think you've got an un-loseable case, I've

lost a case we thought we were going to win. I've won a case we thought

we were going to lose. You know, these... people are involved

in this process and they're not predictable. So, just assuming that the court is going to

solve your problems for you is naive. [Narelle] Yep.

[Jeanette] And... The cost and the

stress involved in going through those processes shouldn't be underestimated. [Narelle] Yeah. And then there's also the

branding reputation issue. [Narelle] Because people talk.

[Jeanette] There is definitely a reputational issue. [Jeanette] They do, they do. People talk and people

get on review websites and you know, they talk to TV programs. And they do-

[background alarm noise] [Jeanette] Sorry,

there's our 15 minutes. [both] [laugh] [Jeanette] And you know, and

they do all sorts of things. And... it's much easier to be proactive than it

is to be reactive. And, I mean, this is

why we work in the area of corporate and commercial law is because we can assist businesses to be proactive and avoid having to deal with all those sorts of problems down the track. Or at least if they have those types of problems then improve systems or processes of documentation to avoid them again in future. And that's, that's your space as well. You're in the preventative space and... [Narelle] Yeah. [Jeanette] It's all about helping people. And I mean, if businesses just looked at it from, you can increase your market by 15 to 20%. If you make it easy for people to have access and it's not expensive. So it's just a, a strategic, you know, part of the planning process. And for bigger businesses, ESG, you know, you've got to look at environment society. You've got to look at governance. You've got to look at these things now. It's really important to investors. It's important to purchasers, that... that as businesses, we get these things right. [Narelle] Okay. Wow, I didn't, I've learnt. I didn't know about direct and indirect, so. For a start.

[Jeanette] Oh, okay. [Narelle] At all. Yeah.

Because to me it was just - yeah. And of course, I didn't- I would have said it's illegal. Where actually

it's a breach of... [Jeanette] It's a breach

of the legislation. [Narelle] Legislation, yeah, okay. [Jeanette] It makes you - yeah. It exposes you to

the risk of being sued. [Narelle] Right. So. With all of this, with what you're saying. What are take aways that you

would provide to business? And to people like myself? Well, the standard person on the street. The person with disability

because it's face it. As you said, we're a

fifth of the population. We're pretty common. [Jeanette] Yeah. Well, for a business, I would suggest, um... Well, I mean, [indicating

Narelle] you're a resource. I would suggest

they get an audit. You know, because the audit that you

provided to us gave us some really clear, easy guidelines to improve our accessibility as a business. Not that we've implemented

them all at this stage. But it, you know, that framework. You don't have to

reinvent the wheel. You don't have

to do it yourself. You've got the expertise. People can leverage

that expertise and improve their position

very, very quickly. And cost effectively. So, from a business

perspective, it's that. And, I think, because... More and more

people are using online. And because our younger

generations are very... They're activists.

[Narelle] Yeah. [Jeanette] You

know, they tell you when they're not happy. [Narelle] That's a good point. That's a really good point. [Jeanette] Yep, so

knowing that that's your future consumers coming forward. The proactive approach is

a good thing because you're preparing your business

for the future and this, this new generation

of consumers. Umm. With, for people with

disability - be vocal. You know, don't be

afraid to make a complaint. Don't be afraid. However, one of the things we

always suggest with our clients is you take the collaborative approach first. So the collaborative approach is, to approach a business, find the decision maker and communicate with the decision maker and say, hey, look. This is my position. I'm a consumer. I'm interested in your products and services. I can't access them. It's frustrating for me. I would like to spend money with you. But I can't, because you're making it hard. Here's how you can make it easier for me. Um, people... Firstly, people love to help. So it's a much more open approach. And secondly, something I read many years ago is when you... When someone's aggressive or... Makes an unexpected comment to you that's... That you react badly to. You can't actually hear. Physiologically it impacts your ability to, to take in information. [Narelle] Mhm. [Jeanette] So you react in the fight or flight sort of way. So the minute someone complains at a business. Generally speaking, the business owner is going to act with the fight or flight response and not hear what you're trying to do. But if you approach them and say, hey, look. My concern is this. You know, I know what you're trying to achieve. But it's impacting me and my concern is this. And here's how I can see you could make improvements. That gets much better traction. And people hear it. You know, they can do something with it. They can actually action it. Whereas if you, you know, when you're aggressive and complaining and everything like that, that's why people get stonewalled and don't get help. And stuff like that. It's just physiologically and psychologically, we can't hear. Because we're too busy defending ourselves. [Narelle] I'm so pleased you came on today. Because I, yeah, it

makes sense what you're saying there as well. Because that's what anyone does, isn't it, when they feel

like they're being attacked? It's that fight or flight.

[Jeanette] Yep! [Narelle] So thank you. Jeanette, how

can people find you? If they want to find out

more about what you do. And I will tell you - We've used Jeanette's

legal services. And she's wonderful. [Narelle] [laughs]

[Jeanette] Thank you. [Narelle] I'll just

give the extra plug. But seriously. [Jeanette] Excellent.

So we are Onyx Legal. Onyx is a stone,

you know, a crystal. And so it's Onyx.legal That's our website. So we try and make it nice and simple and easy to find us. Yes, I know our website is not totally accessible yet.

[Narelle] [laughs] [Jeanette] We are working on it. And we are making small

improvements all of the time. So yes, if you'd

like to contact us. Our website is Onyx.legal. And if you want to

email us, it's @ advice. advice@onyx.legal. [Narelle] Thanks Jeanette. Thanks for being on the show. [Jeanette] You're welcome. [Narelle] You've said

some really good advice. So for anyone out there, its Jeanette Jifkins

at Onyx Legal. You'll find the details at the end of the show. And if you like

what we're doing, please like, subscribe,

share like crazy. We're actually up to

460 odd listeners now. [Jeanette] Fantastic!

[Narelle] We've only been doing

this since January, so we're a wee bit excited. And we've met some amazing people. So, have a listen. We've got some more amazing people coming up to tell you about their thoughts on communication and digital

accessibility and accessibility and usability. And we'll see you next time. Bye-bye.