



Australian
Human Rights
Commission

Age Discrimination

KNOW YOUR RIGHTS





What is age discrimination?

Age discrimination is when a person is treated less favourably than another person in a similar situation, because of their age.

For example, it could be 'direct age discrimination' if an older applicant is not considered for a job because it is assumed that they are not as up to date with technology as a younger person.

It is also age discrimination when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular age. This is called 'indirect discrimination'.

For example, it may be indirect age discrimination if an employer requires an older person to meet a physical fitness test – which more young people are able to meet – if the fitness standard is not an inherent requirement of the job.

How am I protected from age discrimination?

The Age Discrimination Act makes it against the law to treat you unfairly because of your age in different areas of public life, such as work, education and buying goods and services.

Negative stereotypes often lie at the heart of age discrimination. That's why an important part of the Commission's work is to help foster positive community attitudes towards both young and older Australians.

What does the Age Discrimination Act do?

The Age Discrimination Act aims to ensure that all Australians – young and old and everyone in between – are treated equally and have the same opportunities as others.

The Act protects you against discrimination in many areas of public life, including:

- **employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed
- **education** – enrolling or studying in a course at a private or public school, college or university
- **accommodation** – renting or buying a house or unit
- **getting or using services** – such as banking and insurance services, services provided by government departments, transport or telecommunication services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues.



What about discrimination at work?

The Age Discrimination Act covers situations where you feel that, because of your age, you have been:

- refused employment
- dismissed
- denied a promotion, transfer or other employment-related benefits
- given less favourable terms or conditions of employment
- denied equal access to training opportunities
- selected for redundancy
- harassed.

It doesn't matter if you are applying for a job, are an apprentice or trainee, on probation, work part-time or full-time, or if you are a casual or permanent employee – you are protected by the Act.

The law covers all types of employers, including the Commonwealth and state governments and the private sector.

It also covers contract and commission-based work and recruitment and employment agencies.

Employers should have policies and programs in place that aim to prevent discrimination and harassment of both young and mature age workers – in fact, all workers – in the workplace.

Elizabeth was 17 years old.

She was employed by a recreational centre as a customer service attendant on a casual basis.

She claimed she had not been given shifts for approximately four months because she had been replaced by younger workers.

The company confirmed that it had employed new workers but said that they were the same age as Elizabeth and were not employed to replace her.

They suggested that there were concerns about her work performance and thought she was not interested in ongoing work as she had not contacted them to inquire about future shifts.

The complaint was resolved through conciliation with an agreement that the employee keep her job and be transferred to work in a different branch of the company.

When is age discrimination not against the law?

Exemptions

Like other anti-discrimination laws, the Age Discrimination Act says that, in some circumstances, treating someone differently because of their age won't be against the law. This is known as an exemption.

The exemptions in the Act include:

- things done in compliance with Commonwealth laws, including laws about taxation, social security and migration
- things done in compliance with state and territory laws
- certain health and employment programmes
- youth wages or direct compliance with industrial agreements and awards.

For example, as a person must be over 18 years old to work in a bar, it would not be discrimination if a bar owner refused to employ a person because they are under 18 years of age.

Positive discrimination

The Act also says that it is not against the law to provide a genuine benefit to people of a particular age group or to do something that helps to meet an identified need of people of a certain age group.

Examples of 'positive discrimination' may include discounts and concessions provided to older Australians for services and/or facilities and special accommodation assistance provided to homeless teenagers.



What if I'm not able to do the tasks that make up the job?

It is not against the law to refuse someone a job if, because of their age, they can't perform the 'inherent requirements' of the position. In other words, you must be able to carry out the essential duties of the job.

For example, a young person may not be able to meet the 'inherent requirements' of a courier job if they are not yet eligible for a driver's licence.

What can I do if I experience discrimination?

You may want to deal with the situation yourself by raising it directly with the person or people involved or with a supervisor, manager or discrimination/harassment contact officer.

Making a complaint to the Commission

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone, such as a solicitor, advocate or trade union representative make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing.

The Commission has a complaint form that you can fill in and post or fax to us. Or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.

The complaint should say what happened, when and where it happened and who was involved.

A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.

What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the Age Discrimination Act, the President of the Commission can investigate the complaint and try to resolve it by conciliation.

The Commission is not a court and cannot determine that discrimination has happened.

The Commission's role is to get both sides of the story and help those involved resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint.

The Commission may ask the respondent for specific information or a detailed response to your complaint.

Where appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved, or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Magistrates Court.

Nora was a 60-year-old woman who had been employed as a casual for two years with a club until she was made redundant.

She alleged that this was because of her age and claimed a younger person was later employed in her position.

The club said that Nora's employment had been finalised for operational reasons.

The complaint was resolved through conciliation with the club agreeing to reinstate Nora to her former position, pay financial compensation and provide her with a letter of apology.

What can I do to prevent discrimination?

Everyone can play a role to help ensure that people of all ages have the same opportunities as others.

The Commission undertakes a wide range of activities to build awareness about the rights and responsibilities of individuals and organisations under the Age Discrimination Act, especially in the workplace.

On our Age Positive website (www.humanrights.gov.au/age-positive) we actively promote positive stories about older people, using them to remind the public of the varied and important ways older people contribute to Australian society.

We've also produced information to help young people who experience discrimination (www.humanrights.gov.au/complaints_information/young_people.html) and to assist mature age workers experiencing age discrimination (www.humanrights.gov.au/matureworkers/index.html).

You can find out more about what we're doing by visiting: www.humanrights.gov.au/age



Where can I get more information?

The Australian Human Rights Commission's contact details are:

Postal Address

Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Street Address

Level 3, 175 Pitt Street
Sydney NSW 2000

Phone: (02) 9284 9600 or 1300 369 711

TTY: 1800 620 241 (toll free)

Fax: (02) 9284 9611

Email: communications@humanrights.gov.au

Website: www.humanrights.gov.au

Complaints

Complaint Info line: 1300 656 419 (local call)

Email: complaintsinfo@humanrights.gov.au

Online: You can make a complaint online by going to www.humanrights.gov.au/complaints_information/online_form/index.html.

If you are deaf or hearing impaired you can contact us by TTY on 1800 620 241. If you need an Auslan interpreter, the Commission can arrange this for you.

If you are blind or have a vision impairment, the Commission can provide information in alternative formats on request.

If you are thinking about making a complaint, you might also want to consider getting legal advice or contacting your trade union.

There are community legal services that can provide free advice about discrimination and harassment. Contact details for your closest community legal centre can be found at www.naclc.org.au/directory.

Disclaimer

The information in this brochure is only intended as a guide. It is not a substitute for legal advice.

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