



Age discrimination

Age discrimination occurs when a person is treated less favourably, or not given the same opportunities as others in a similar situation, because he or she is considered to be too old or too young.

The *Age Discrimination Act 2004* (ADA) prohibits discrimination in employment on the basis of age. It applies to young and older workers alike.

The ADA also protects younger and older Australians from discrimination in other areas of public life, including education; getting or using services; or renting or buying a house or unit.

In addition, the ADA makes it unlawful to harass or bully another person because of his or her age.

Employees and potential employees

The ADA makes it unlawful to discriminate on the basis of age when advertising jobs; during recruitment and selection processes; when making decisions about training, transfer and promotion opportunities; and in the terms, conditions and termination of employment.

Stereotypes about young people and mature workers can greatly influence decisions made during recruitment and in the workplace.

Examples of age discrimination could include:

- not employing certain people because they won't 'fit in' with other employees because of their age
- not employing younger workers because of assumptions that they will quickly move on to another job
- advertising a position for someone aged 'under 30' to join a 'dynamic, young team'
- making choices around redundancy, or forcing someone to retire, because of his or her age, or
- harassing or bullying a person because of his or her age.

All types of employers and employment relationships are covered under the ADA, including: Commonwealth Government employees, state government employees and private sector employees; full-time, part-time and casual employees; contract workers and commission agents; as well as apprentices, trainees and those on probation.

It also covers recruitment processes organised through recruitment and employment agencies.

Customers

The ADA makes it unlawful to discriminate against people on the basis of age in the provision of goods and services, such as banking and insurance services; services provided by government departments; transport or telecommunication services; professional services, such as those provided by lawyers, doctors or tradespeople; and services provided by restaurants, shops or entertainment venues.





This means that it is against the law for a provider of goods or services to:

- refuse to provide a person with goods, services and facilities
- provide them with goods, services and facilities on less favourable terms and conditions, or
- provide the goods, services and facilities in an unfair manner

because of his or her age.

For example, it would be discriminatory for a real estate agent to refuse to rent a house to two 19-year-old university students because 'they might damage the property by partying too hard'.



Direct and indirect discrimination

Discrimination can be direct or indirect.

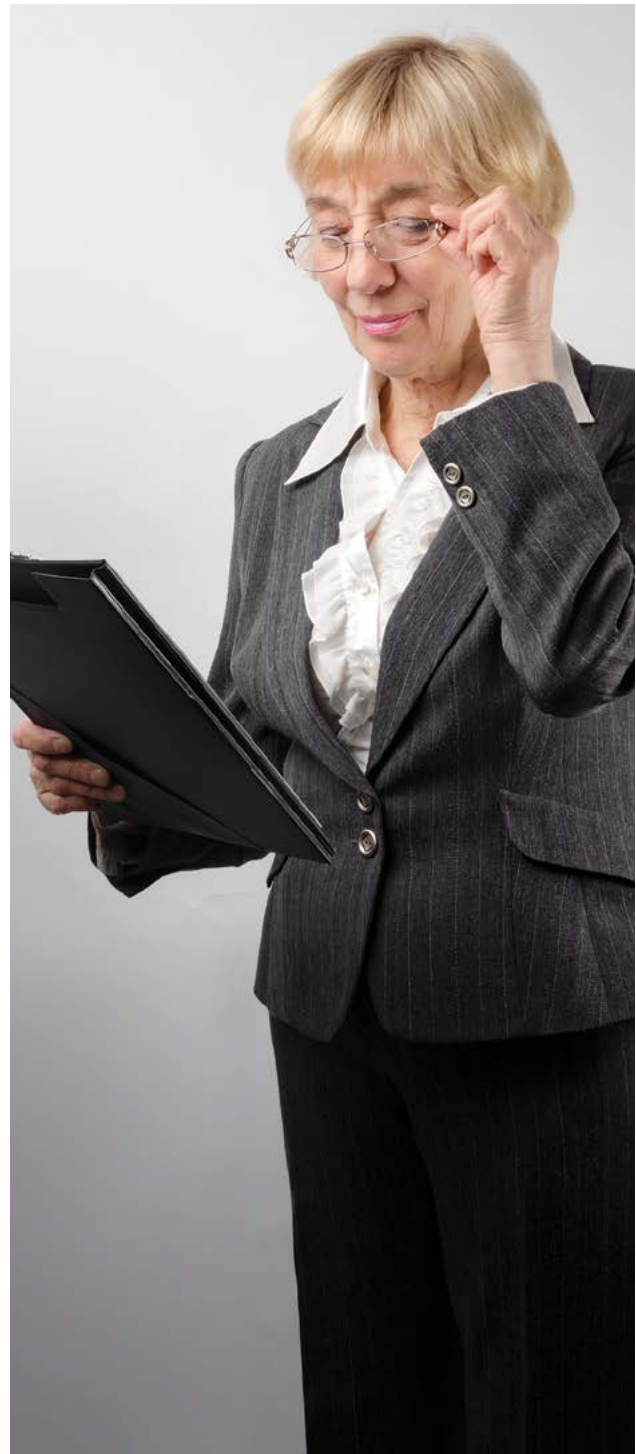
Direct age discrimination happens when a person is treated less favourably because of his or her age than a person of another age would be treated in the same or similar circumstances.

Indirect discrimination can be less obvious. It can happen when employers or service providers put in place conditions, requirements or practices which appear to treat everyone the same but which actually disadvantage some people because of their age. It will be discriminatory if it:

- applies to everyone, and
- a large number of people of a certain age can comply or are able to comply with it

but

- other people, or even just one other person, do not or are not able to comply, and
- it is unreasonable in all of the circumstances.



*For example, it could be **direct** age discrimination if a person is selected for redundancy simply because of his or her age.*

It could be **indirect** discrimination if an employer requires an older person to meet a physical fitness test, which more young people are able to meet, if that fitness standard is not necessary for the job in question.



When discrimination is not unlawful

Like other anti-discrimination laws the ADA says that, in some circumstances, treating someone differently because of his or her age in employment or in the provision of services is not against the law. This is known as an exception.

Exceptions in the ADA include:

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

Under the ADA, it is not unlawful for an organisation to advertise for, employ and pay a person as a junior **up to the age of 21**. It is against the law, however, to dismiss a person from employment because they turn 21.

In addition, **voluntary work** and **domestic duties** in private households are not covered under the law.

Positive discrimination

The ADA 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 meet an identified need for people of a certain age group.

Meeting the inherent requirements of the job

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

Complaint of age discrimination resolved by the Commission



A 60-year-old woman who had been employed as a casual for two years with a club was made redundant. She alleged she was made redundant because of her age and claimed a younger person was later employed in her position. The club said that her employment had been terminated for operational reasons. The complaint was resolved through conciliation with the club agreeing to reinstate her to her former position, pay financial compensation and provide her with a letter of apology.



For example, some Australian jurisdictions prohibit people under 18 years from serving alcohol. Where a person must be over 18 years old to serve alcohol, it would not be discrimination if a bar owner refused to employ a person because he or she was under 18 years.

For example, **positive discrimination** may include discounts and concessions provided to older Australians using a Seniors Card and special accommodation assistance provided to homeless teenagers.



A young person may not be able to meet the **inherent requirements** of a courier job if they are not yet eligible for a drivers licence.



Complaint of age discrimination resolved by the Commission

Two people under 25 years of age were each required to pay a \$20 bond to stay at a caravan park. The manager of the caravan park confirmed that people under 25 years were required to pay a cash bond and said that this policy was introduced to discourage anti-social behaviour in the park. The complaint was resolved after the owner of the caravan park agreed to change the policy so that a security bond would apply to all sites. A statement of regret was also provided to the two young people.



Employers' obligations

Employers have a legal responsibility to take all reasonable steps to prevent age discrimination.

'Reasonable steps' may include putting in place policies and procedures to create a discrimination-free environment. It could also include procedures to deal with allegations of discrimination and harassment made by employees or customers.

It is against the law to victimise a person for making, or proposing to make, a complaint to the Australian Human Rights Commission about age discrimination.

Employers can also be held legally responsible for discrimination or harassment by their employees. For more information, see the fact sheet *Vicarious liability* at www.humanrights.gov.au/employers.



Useful links

The Power of Oldness
www.powerofoldness.com

**Working past our 60s:
Reforming laws and policies
for the older worker**
www.humanrights.gov.au/working-past-our-60s

**Age Discrimination – exposing the hidden
barrier for mature age workers**
www.humanrights.gov.au/publications/age-discrimination-exposing-hidden-barrier-mature-age-workers-2010



Further information

**Australian Human Rights
Commission**

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GPO Box 5218
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National Information Service: 1300 656 419
TTY: 1800 620 241

Email: infoservice@humanrights.gov.au
Website: www.humanrights.gov.au/employers



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