

FACT SHEET:

Age discrimination

The Anti-Discrimination Act 1991 makes it unlawful to discriminate against a person because of their age.

What is age discrimination?

Age means a person's chronological age. The prohibition on age discrimination covers all ages, which means people can be discriminated against for being 'too young' or 'too old'.

Age discrimination can be direct or indirect. Direct discrimination is treating a person less favourably because of their age than someone in similar circumstances of a different age.

For example, a particular employee not being selected to go on a training course because their boss thinks they are 'too close to retirement age'.

Indirect discrimination may be less obvious. Sometimes a rule or policy seems to treat everyone the same, but in fact, some people end up being treated less favourably. Indirect discrimination happens when there is an unreasonable requirement that people with a certain attribute (or characteristic) have difficulty complying with, compared to others without that attribute.

For example, an employer requiring job applicants to have ten years' experience for an unskilled role might disadvantage younger workers.

It is also unlawful to discriminate against a person because of their association with or relation to a person identified on the basis of their age - such as a friend, family member or co-worker.

For example, a backpacker being refused entry to a hostel when travelling with her mum because she "wouldn't fit in with the usual crowd".

It doesn't matter if the person doesn't mean to discriminate, or whether they think they are being discriminatory or not. It also doesn't matter if their beliefs or assumptions about the person or people they are discriminating against are correct or not. Under the Act, someone's motive for discriminating is irrelevant.

If you have experienced any of these types of discrimination, you may be able to lodge a complaint with us at the Commission.

However, not all treatment that might seem unfair is unlawful under the Act (see the exemptions below).

When and where is age discrimination unlawful?

Age discrimination is unlawful in all aspects of work, including recruitment, terms and conditions on which a job is offered, employment benefits, training, transfers, promotion and dismissal.

It is also unlawful when a person is:

- a customer in a shop or restaurant;
- a student at school or university (if it is by the educator);
- looking for accommodation;
- applying for credit, insurance or a loan; or
- when dealing with tradespeople, businesses or State or local government.

In general, employers should not ask a person's age or date of birth on application forms or in job interviews. It is against the law to ask this question unless it is reasonably necessary for the employer to have this information for a non-discriminatory purpose (see below).

If date of birth is necessary for purposes such as superannuation or award increments, this information can be sought after the person is employed, rather than at the recruitment stage.

Except for certain occupations, it is against the law to require employees to retire once they reach a particular age, and employees should not be asked to sign an agreement that they will retire at a certain age.

Examples of age discrimination

A university student is told that they can't rent a flat because "young people always wreck them".

An employer provides prizes or extra benefits as an incentive for employees who are especially productive, but only employees under the age of 30 are eligible for a prize.

When and where is different treatment okay?

Not all treatment that might seem unfair is against the law. The Act lists some exemptions that allow conduct that would otherwise be discriminatory. Whether or not an exemption applies will depend on individual circumstances, but some that may apply in relation to age are as follows.

Welfare measures: This allows conduct to help certain groups. In relation to age, this could mean, for example:

An employer could encourage applications from older unemployed people who may have difficulty re-entering the workforce due to stereotypes and prejudices about older workers.

In a sector of the workforce where young people have difficulty getting a start, or in a town or locality with a high level of youth unemployment, an employment agency could establish a program for young people to gain sufficient confidence and skills to be competitive.

Age-based benefits: Concessions and other benefits might also be permitted, for example:

Travel concessions for children and seniors.

The government issues Seniors Cards that entitle the holder to concessions and discounts from government and business.

Information for a non-discriminatory purpose: While in most cases, employers can't ask for age-related information during the recruitment process, there are some exemptions. For example:

Age may be asked if the position is for a junior.

Date of birth may be asked for identification purposes.

In Queensland, private employment agents are required to keep a register of people looking for work, and the register is to include the name, age and gender of those people.

There are also several employment-related exemptions, including:

Genuine occupational requirement: If there is a genuine need for someone of a certain age to be able to fulfil the duties of a particular job effectively. For example:

A role in a play might require a person in a particular age group.

To obtain a real estate agent license a person must be 18 years or over.

Youth wages: A worker under the age of 21 years may be paid according to their age. An employer can advertise for a junior and select the successful candidate on that basis.

Compulsory retirement: Queensland fire officers, police officers, and certain statutory appointments (such as judges), can be required to retire at a specified age.