



# Age discrimination

## What does the law say about age discrimination?

It is generally against the law in NSW to treat you unfairly or harass you because of your age, or because of the age of any of your relatives, friends, associates or work colleagues.

Indirect age discrimination is also against the law. This occurs when there is a rule or requirement that disadvantages people who are in one age group rather than another – unless the person or organisation can show that the rule or requirement is 'reasonable in all the circumstances'. Some examples of indirect discrimination are included in the following sections.

## When does this law apply?

Age discrimination is generally against the law in the following areas:

- **in employment** – when you apply for a job, when you are at work and when you leave a job. This also covers bodies which issue licences to perform particular jobs;
- **when you get or try to get most types of goods or services** – for example, from shops, banks, lawyers, government departments, the police, public transport, local councils, doctors, hospitals and other medical services, hotels, sporting venues and entertainment venues;
- **when you apply to get into or study in any State educational institution**, which includes any government school, college or university;
- **when you rent accommodation** such as houses, units, flats, hotel or motel rooms, caravans or commercial premises; and
- **when you try to enter or join a registered club, or when you get services from one.** A registered club is a club that sells alcohol or has gambling machines.

There are some exceptions to the age discrimination law. These generally apply in common sense situations that most people will agree with. They are described at the relevant points in this factsheet.

## What are my work rights?

### Applying for a job

You have the right to apply for most jobs and to be fairly considered for them, no matter how old you are, or how old any of your relatives, friends or associates are, including your children. This also applies to apprenticeships and traineeships, and to bodies which issue licences to perform particular jobs, for example taxi licences or registration to practice as a nurse.

In general, all jobs, apprenticeships and traineeships must be open to people of all ages, and job advertisements must not specify a particular age group. You must not be prevented from applying for a job or refused a job just because of your age (or the age of any of your relatives or associates).

For example, an employer or employment agency mustn't refuse to interview you because they consider you to be too old or too young for a particular position, or because you have young children.

Also, an employer or employment agency must not require a fixed number of years of experience, or qualifications that take a certain time to get, unless these are absolutely necessary for the job in question. This is because younger people may not be able to meet these requirements as easily as older people.

### Exceptions

There are some exceptions to the general rule that all jobs must be open to people of all ages. It is OK for an employer to do the following:

- advertise for and employ a '**junior**' and pay them at junior rates, as long as they are under the age of 21;
- advertise for and employ someone of a particular age **if age is an essential and relevant part of the job** – for example to act the part of a young person in a play, or to provide welfare or support services for a particular age group; and

- refuse to employ **children** under the age of 14 years and nine months, unless the child has permission to leave school early. Employers can only employ children under this age as casuals if they have a licence to do so.

### During employment

You generally have the right to be trained, promoted, and get all other work benefits, no matter how old you are, or how old any of your relatives or associates are, including your children. All other rules in the workplace should also be applied in the same way to people of all ages.

In some cases, work benefits that are based on the number of years you have been in a job may be against the law. This is because older people may be more likely to get the benefits. However, if an employer can demonstrate that years of service are a reasonable basis for that benefit then it wouldn't be against the law.

### Exception

The main exception to this is that '**juniors**' aged under 21 can be required to follow different rules from other employees, and can get different benefits.

You also have the right not to be harassed at work because of your age, or the age of your relatives or associates, including your children.

### Dismissal

You have the right not to be dismissed, retired or made redundant because of your age, or the age of your relatives or associates, including your children.

In general, you should only be dismissed if you are no longer able to do your job properly, or the job no longer exists. Your age must not be used as a reason to dismiss you, retire you or make you redundant. However, employers are allowed to limit voluntary retirement or voluntary redundancy schemes to people who have worked for a certain length of time.

### Compulsory retirement

It is generally against the law in NSW to force people to retire if they don't want to. This means that most employees can continue working beyond any compulsory retirement age that applied in the past.

### What is compulsory retirement?

Compulsory retirement is when an employer tells you that you must retire because you have reached a certain age. It can also occur if they threaten to retire you without actually doing so, or do anything else to try to make you retire.

Following are examples of things that may be compulsory retirement, depending on the circumstances:

- offering essential training to younger employees and not to older ones;
- giving an older employee less work, work that is of a lower status than they were doing previously or work that is demeaning;
- using performance reviews or medical assessments as a way of retiring older employees – for example making an older employee pass a medical assessment that younger employees don't have to pass. Assessments should only relate to a person's ability to perform the tasks of their particular job, regardless of their age. If you have a disability, employers should generally provide you with the services or facilities you need to do your job;
- putting older employees on fixed term contracts, where younger people are not; or
- withdrawing financial benefits such as increments or bonuses from older people, when younger people are still receiving them.

Of course, you can still choose to stop working at the compulsory retirement age that applied in the past, or at any other age. In general, it must be your choice and not your employer's choice when you retire, as long as you are still capable of doing your job.

An employer can't use the excuse that a State industrial award or agreement says they must retire you. The law against compulsory retirement overrides these. It also overrides NSW Acts and Regulations applying to public sector employees.

### Exceptions

Following are examples of people who can still be compulsorily retired in NSW:

- judges and magistrates; and
- an officer not appointed for a fixed term, who can only be removed from office by Parliament.

### What are my rights to goods and services?

You have the right to:

- get most goods or services no matter how old you are, or how old any of your relatives or associates are, including your children; and
- get most goods and services on the same terms as people of other ages – for example you must not be charged higher prices, or have to meet different rules.

You also have the right not to be harassed while getting goods and services because of your age, or the age of your relatives or associates, including your children.

#### Exceptions

Following are the main exceptions to these rights:

- **legal age limits** still apply for things like drinking, getting a driver's licence, sexual activity, marriage, voting, watching films with different ratings, buying cigarettes and alcohol, giving consent for tattoos, adopting a child, getting age-related social security benefits, needing to be accompanied by an adult for safety reasons, and so on;
- **insurance, superannuation and credit providers** can discriminate on the basis of age if there is good statistical evidence to support their decision, or if another law says that they must discriminate on the basis of age;
- **benefits, concessions or services** can be offered to help specific age groups, such as children or the elderly;
- **holiday tours** can be offered for specific age groups;
- **sporting activities** can be offered for specific age groups;
- **drivers' licences** can have restrictions based on age; and
- **wills** can say that people can only get money or other things when they are a certain age.

### What are my State education rights?

State education includes education at any State university, State college, TAFE or State school.

Independent, private and/or religious-based educational institutions are not covered by the age discrimination law, so they can discriminate on the basis of age if they choose to.

Generally you have the right to apply for and get education, and any related benefits, at any State educational institution – no matter how old you are, or how old any of your relatives or associates are, including your children.

#### Exceptions

Following are the main exceptions to this right:

- **there is a minimum school entry age;**
- generally schools are **intended for children aged 18 and under**, and TAFE colleges for people over 18 who want to study the school curriculum. However individual situations are dealt with on a case-by-case basis;
- **other State educational institutions can refuse you admission** if you are below the age they have set for the type of education you are applying for (for example a mature-age entry program). However there is no upper age limit on entering or staying on at any State educational institution; and
- **benefits to help students in particular age groups**, such as mature age students or school students in particular grades, are OK.

### What are my rental accommodation rights?

You have the right to:

- rent accommodation no matter how old you are, or how old any of your relatives or associates are, including your children. For example, a real estate agent or landlord can't refuse you accommodation just because you have children, or because they think you are too old or too young to look after the property. Generally, they can only refuse to rent to you if the accommodation is not large enough for your family or group, or you can't pay for it, or your references don't check out; and
- rent accommodation on the same terms as people from other age groups – for example you should not have to pay a higher rent because you have young children.

**You also have the right not to be harassed** while renting accommodation because of your age, or the age of your relatives, friends or associates, including your children.

#### Exceptions

Following are the main exceptions to these rights:

- **shared accommodation in a private household.** If you share facilities with the owner of the accommodation or their close relative, and the shared accommodation is for six or less people, then they are allowed to specify the age of their tenants. This does not apply if the accommodation is self-contained and does not share facilities;
- **accommodation specially designed to meet the needs of a particular age group** such as the elderly or young people is OK; and
- **if the accommodation is on licensed premises,** people under 18 can be refused access to the licensed areas, and any mini-bar in their room can be locked or removed.

### What are my registered club rights?

Registered clubs include any clubs that sell alcohol or have gambling machines – for example RSL clubs, workers clubs, most ethnic clubs and sporting clubs. Voluntary clubs such as Rotary and Lions are not registered clubs and can therefore discriminate on the basis of age if they choose to.

You have the right to:

- be a member of a registered club no matter how old you are (as long as you are at least 18). If you are 18 or over, your age must not be used as a reason to refuse you membership or take away your membership. (Sporting clubs can also give junior membership to people aged under 18);
- get benefits and services from a registered club on the same basis as people from other age groups (aged 18 or over).

#### Exceptions

Following are the main exceptions to these rights:

- **registered clubs that were set up specifically to cater for a particular age group;**
- registered clubs can have **different categories of membership** based on age; and
- registered clubs can provide **benefits to members based on age.**

### Victimisation is also against the law

It is against the law for anyone to hassle or victimise you or treat you unfairly because:

- you have complained to your employer or someone else about age discrimination;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with an age discrimination complaint or been a witness in an age discrimination case.

You can lodge a separate complaint of victimisation with the Anti-Discrimination Board if you have been victimised because of an age discrimination complaint.

### **What can I do if I'm treated unfairly or harassed because of my age?**

First you need to decide if what has happened to you seems to be against the anti-discrimination law. If you are not sure after reading this factsheet, phone our Enquiry Service or refer to our website for more information.

If what happened to you does seem to be against the law, you should try talking to the person or organisation involved. The organisation may have a policy on these issues or a process for dealing with grievances, and you may be able to address your problem through these channels. You can also get help from other sources such as trade unions.

If you don't feel able to talk to the person or organisation, or you talk to them but it doesn't solve the problem, you can make a complaint to the Anti-Discrimination Board. It won't cost anything to make a complaint, and you don't need a lawyer.

If what has happened to you is not against the law, there may be other ways you can solve the problem. Refer to our factsheet *How to deal with discrimination, unfair treatment or harassment* or phone our Enquiry Service for advice.

### **Making a complaint**

Your complaint must be in writing and if possible you should sign it. You can make a complaint by completing our discrimination complaint form, which is available on our website or from our Enquiry Service.

Another option is to write to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against because of your age (or the age of your relative, friend, work colleague or associate). Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille, and we will have your complaint translated free of charge. If you need assistance to write your complaint down, phone us and we will help you or refer you somewhere else for help.

We also accept complaints made on your behalf by organisations such as trade unions and representative community groups (for example a pensioners group). In this case you must be named in the complaint and it must be clear in the complaint that you agree with it being made. You may also be asked to show that you consent to the complaint being made on your behalf.

If you want to make a complaint on behalf of a child or a person with a disability who cannot make their own complaint, contact us for more information.

The Board can only accept a complaint if the discrimination or harassment occurred in the 12 months before we receive the complaint. If you make a complaint about events that occurred more than 12 months before we receive it, we may not investigate the complaint.

If your problem is urgent, for example you are about to lose your job or housing, make this clear in your complaint and we will try to help you quickly.

### **What happens when you lodge a complaint?**

The Board will send you a letter of acknowledgment within two weeks of receiving your complaint, and will assess your complaint to determine if it is covered under the Anti-Discrimination Act.

If this is the case, we will try to conciliate your complaint. This means we will try to help you and the person or organisation you are complaining about to reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

The settlement will depend on the circumstances of your case, on what the other parties are willing to offer and what you are willing to accept. It could be an apology, financial compensation, getting your job back, changes to your working arrangements, getting the service you were denied, and so on.

We treat all complaints confidentially, but we have to inform the organisation or person you are complaining about of the complaint. This is so we can give them a fair chance to respond to your complaint. We will not release information about your complaint to anyone else except with your permission or if we are required to by law.

Most complaints are conciliated. If yours isn't, you may go to the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal, which is like a court. It provides a legal judgment that must be followed. Very few cases need to go to the Tribunal and in some circumstances you can ask for your details to be kept confidential.

## Examples of age discrimination complaints we have handled

- The complainant worked as a cleaner and was made redundant along with other staff. The employer advised her that she would not be entitled to receive a redundancy payment as she was over 65. When she complained to the Board, the employer agreed to pay her full redundancy benefits (an additional \$12,000).
- The complainant worked for her employer for 20 years. Towards her 60th birthday, her manager began to warn her about her work performance and say things like, 'You're getting old, you should retire, you're going blind'. She eventually resigned. As soon as she left, her manager allegedly told her that she was in fact a very good worker and he would call her back on a casual basis when needed. She complained to the Board, and after a conciliation conference the employer agreed to pay her the income she would have earned if she hadn't been forced to resign.
- A couple with five children lodged complaints with the Board against the owner of a rental property and the real estate agent. They alleged that they had been refused rental accommodation because of the age of some of their children. The owner agreed that he had not wanted to rent the property to the complainants because he did not think the property was suitable for young children. The owner and real estate agent agreed to pay \$5,000 to the complainants to resolve the complaint.
- A man complained that his superannuation fund did not provide online account details to those over 65. The fund said that because there were few members over 65 who wanted to do this, the cost would be prohibitive, and the complainant replied that the fund should prepare for more demand in the future as more people stayed in employment after 65. The fund agreed to send the man detailed quarterly statements and advised him that he could access his account information by telephone.

## The Anti-Discrimination Board of NSW

### Enquiries

Phone (02) 9268 5544  
Toll free number 1800 670 812  
(if you are calling from outside Sydney)  
Email: [adbcontact@justice.nsw.gov.au](mailto:adbcontact@justice.nsw.gov.au)

### Complaints

Phone (02) 9268 5544  
Toll free number 1800 670 812  
(if you are calling from outside Sydney)  
Email: [complaintsadb@justice.nsw.gov.au](mailto:complaintsadb@justice.nsw.gov.au)

### Telephone interpreter service

Phone 13 14 50

### Website

[www.antidiscrimination.justice.nsw.gov.au](http://www.antidiscrimination.justice.nsw.gov.au)

### Parramatta

Level 7, 10 Valentine Avenue, Parramatta NSW 2150  
PO Box W213, Parramatta Westfield NSW 2150  
Phone (02) 9268 5555 Fax (02) 9268 5500

### Wollongong

84 Crown Street, Wollongong NSW 2500  
PO Box 67, Wollongong NSW 2520  
Phone (02) 4267 6200 Fax (02) 4267 6261

### Newcastle

Suite 5, Level 5, 400 Hunter Street,  
Newcastle NSW 2300  
PO Box 1077, Newcastle NSW 2300  
Phone (02) 4903 5300 Fax (02) 4929 7952

**For more detailed information on making a complaint and the complaint process refer to our website and select 'Making a complaint', or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.**