



## What does the law say about age discrimination?

It is against the law to treat you unfairly or harass you in NSW, because of:

- your age; or
- the age of any of your relatives, work colleagues, or people you associate with.

In general, it is against the law to do this:

- when you apply for a job, or at work;
- when you get or try to get most types of goods or services;
- when you rent or try to rent accommodation;
- when you apply to get into, or are studying in, any State educational institution; and
- when you try to enter or join a registered club, or when you are inside one.

If you are treated unfairly or harassed in one of these circumstances because of your age, or because of a relative's or associate's age, you have the legal right to do something about it.

There are some exceptions to the age discrimination law. Most of these are common sense exceptions covering 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 and be fairly considered for most jobs, apprenticeships or traineeships, no matter what age you are, or what age any of your relatives or associates are, including children.**

In general, all job advertisements, jobs, apprenticeships and traineeships must be open to people of all ages. Your age (or the age of any of your relatives, friends or work associates) must not be used as a reason to prevent you applying for or getting a job.

For example, an employer or employment agency must not generally refuse to interview or employ you just because you are above or below a particular age, or because you have children below a certain age.

In addition, an employer or employment agency must not require you to have a set number of years of experience, or qualifications that take time to get, unless this is necessary for that particular job. This is because younger people won't be able to meet these sorts of requirements.

### Exceptions

The main exceptions to all jobs being open to people of all ages are that it is OK for an employer to:

- 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 stage play, or to provide welfare or education services for a particular age group, in a situation where the most effective way to do this is for someone of the same age group to do it; and
- refuse to employ **children** under the age of 14 years and nine months (unless the child gets 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 have the right to:

- **generally be trained, promoted, get all other work benefits, and have to follow all other work rules fairly — no matter what age you are, or what age any of your relatives or associates are, including children.**

In some cases, work benefits or rules that are based on the number of years you have worked in a job may also be against the law. This is because those who are older are more likely to get the benefits or get more of them. However, these types of benefits won't be against the law if it is reasonable for the employer to use years of service as the determining factor.

- **not be harassed** at work because of your or your relative's or associate's age, including the age of your children.

### Exception

The main exception to this part of the age discrimination law is that 'juniors' aged under 21 can get different benefits or be made to follow different rules.

## Dismissal

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

In general, you should only be dismissed if you are no longer able to do the job properly, or if the job no longer exists. Age must not be used as a reason to dismiss you, retire you or make you redundant. However, employers can ask for a particular length of service for voluntary retirement or voluntary redundancy schemes.

## Compulsory retirement

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

### What is compulsory retirement?

Compulsory retirement is when an employer:

- retires you because of your age;
- threatens to retire you because of your age; or
- does anything that is intended to make you retire because of your age.

Depending on the circumstances, this could include:

- offering essential training to younger employees and not older ones, to try to force the older employees to leave;
- giving an older worker demeaning, fewer or lesser status tasks to try to make them leave;
- using performance or medical assessments as a backdoor way of retiring older employees. For example, it could be against the law to make you pass assessments that younger employees don't have to pass. Any assessments that are done should be conducted fairly whatever age you are, and should relate to your ability to perform the tasks of your particular job. If you have a disability, employers should generally provide you with services or facilities so you can do your job;
- using fixed term contracts as a backdoor way of retiring older employees. For example, it could be against the law to employ older workers on fixed term contracts when younger workers are not employed for fixed terms; or
- withdrawing benefits or stopping accrual of benefits such as increments or bonuses.

Naturally, you can still choose to stop working at the old compulsory retirement age, 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.

Note also that an employer can't use the excuse that a State industrial award or agreement says that they must retire you. The law against compulsory retirement overrides these. And if you are a public sector employee, an employer can't use the excuse that a NSW Act or a NSW Regulation says that they must retire you, as the law against compulsory retirement overrides these.

### Exceptions

There are still a few people employed in NSW who can be compulsorily retired. They include:

- people employed under a federal award that specifically provides for a compulsory retirement age;
- judges and magistrates; and
- an officer not appointed for a fixed term, who can only be removed from office by either or both Houses of Parliament.

## What are my rights to goods and services?

Goods and services include goods or services that you get from shops, banks, lawyers, government departments, public transport, local councils, doctors, hospitals, pubs and entertainment places.

You have the right to:

- **get most goods or services** — no matter what age you are, or what age any of your relatives or associates are, including children; and
- **get most goods and services on the same terms as people of other ages.**

For example, you must not be harassed because of your age. And in general, you must not be made to pay more, or meet harder rules, than people in other age groups.

### Exceptions

The main exceptions to these rights include:

- **legal age limits** for drinking, driver's licence tests, age-related social security benefits, marriage, voting, being able to adopt a child, sexual activity, watching different ratings of films, buying cigarettes and alcohol, having to have parental consent for tattoos, needing to be accompanied by an adult for safety's sake, and so on, are still in force;
- **insurance, superannuation and credit providers** can discriminate on the basis of age if there is good statistical or actuarial evidence to support their decision, or if another law says that they must discriminate on the basis of age;
- **benefits, concessions or services provided to help specific age groups**, such as children or the elderly, are still OK;
- **holiday tours** can continue to be offered to specific age groups;
- **sporting activities** can still be aimed at specific age groups;
- **restrictions on drivers' licences;** and
- **wills** that say that people can only get money or other goods when they reach, or if they are below, a certain age, must still be followed.

## What are my accommodation rental rights?

Rental accommodation includes houses, units or flats, hotel or motel rooms, caravans and commercial premises.

You have the right to:

- **rent accommodation no matter what age you, or your relatives (including any children) or associates are.**

For example, a real estate agent 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. They can only generally refuse to rent you accommodation if it is not large enough for all of you, or if you can't pay for it, or if your references don't check out; and

- **rent accommodation on the same terms as people from other age groups.**

For example, if they want you to pay for any breakages caused by your children, they should make all tenants renting that property or room pay for any breakages. And you can't be harassed just because they think you are too young or too old.

### Exceptions

The main exceptions to these rights include:

- **shared accommodation in someone's private household or in their close relative's private household.** If you share amenities with the owner or their close relative, and the shared accommodation is for six or less people, then they can ask for tenants/sharers of any age they choose. This does not apply if the accommodation is self-contained;
- **accommodation that is specially designed to meet the needs of a specific age group**, for example, 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 parts of the premises, and any mini-bar in their room can be either locked up or removed.

## What are my State education rights?

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

You have the right to **generally apply for and get education, and/or any educational benefits, at any State educational institution** — no matter what age you are, or what age any of your relatives or associates are, including children.

### Exceptions

The main exceptions to this right include:

- the **school entry age** is the same as it always was. However, there is no upper age limit on either entry to, or staying on at, State schools;
- **other State educational institutions can refuse you admission** if you are below the age they have set for the type of education, training, or qualification you are applying for (as, for example, with mature age entry programs). However, there is no upper age limit on entry to, or staying on at, any State educational institution; and
- **benefits or concessions provided to help students in specific age groups**, such as mature age students, or school students in particular grades, are still OK.

Independent educational institutions are not covered by the age discrimination law — they can discriminate on the basis of age if they want to.

## 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 want to.

You have the right to:

- **become a member of a registered club, and keep your membership, no matter what age you are (as long as you are at least 18)**. Your age (as long as you are over 18) must not be used as a reason to refuse you membership or take away your membership. (Note that sporting clubs can give junior membership to people aged under 18);
- **get registered club benefits and services on the same basis as all other age groups aged 18 or over.**

### Exceptions

There are three exceptions to these rights:

- any registered club that was set up specifically to cater for a particular age group can continue to operate just for that age group;
- a registered club can retain different categories of membership based on age and age groups; and
- a registered club may provide a benefit, including a concession, to a member of the club based on his or her age (*Anti-Discrimination Regulation 1999*).

## 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 another person about age discrimination;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with an age discrimination complaint or acted as 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?

Read through this factsheet to check that what's happened seems to be against the law. If you aren't sure if it's against the law, phone us to check on your rights.

If what's happened seems to be against the law, try talking to the person or organisation that you think is discriminating against you or harassing you. The organisation may have a policy on these issues and/or a process in place to deal 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 talking to the person or organisation doesn't work, or isn't appropriate, you may decide to make a complaint to the Anti-Discrimination Board. It won't cost you any money for the Board's staff to help you, and you don't need a lawyer.

## Making a complaint

If you want to make a complaint, it must be in writing and it is best if it is signed by you. You can either send us a completed discrimination complaints form, or write a letter to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been discriminated against because of your age. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille. If you need assistance to make a written complaint, phone the Board and we can help you or refer you to an organisation that can help you.

We also accept complaints on your behalf from your lawyer, or organisations such as unions and other representative bodies. However the complaint must make it clear that you agree with the complaint being made and you must be named in the complaint. In some circumstances you may also be required to show 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 the Board for more information.

For us to be able to accept a complaint, the events involving disability discrimination must have occurred

in the twelve months before the complaint is received by the Board. If you make a complaint about events that occurred more than twelve months before you lodge your complaint, the Board may refuse to investigate your complaint.

If your problem is urgent (for example, you think you are about to lose your job), tell us this in your letter and we will get back to you in time to do what we can to help.

## What happens after you make a complaint?

We have the legal power to investigate your complaint, and if it's against the law, to try to conciliate it. This means that we will try to help you and the person or organisation you are complaining about reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

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

We treat all complaints confidentially, but we will need to inform the organisation or person you are complaining about of the 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 Equal Opportunity Division of the Administrative Decisions Tribunal, which is like a court. It provides a legal judgment that must be followed. However, very few cases need to go to the Tribunal and in some circumstances it's possible to ask the Tribunal to keep your details confidential.

### For more detailed information on making a complaint

refer to our website at [www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb) or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.

## 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 the complainant the income she would have earned had she not 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

(open weekdays 9am-4.30pm)

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### Newcastle

Level 1  
414 Hunter St  
Newcastle West 2302  
Phone (02) 4926 4300  
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### Enquiries

(02) 9268 5544

### Employers Advisory Service

(02) 9268 5544

### Toll free number

1800 670 812  
(if you are calling from rural or regional NSW)

### Website

[www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb)