

# Good practice, good business



Australian  
Human Rights  
Commission

*everyone, everywhere, everyday*

Eliminating discrimination and harassment from your workplace

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## AGE DISCRIMINATION

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*The information provided is a guide only. Employers should obtain legal advice if they have specific questions about their obligations under age discrimination legislation.*

### **What is age discrimination?**

The *Age Discrimination Act 2004* (ADA) makes it unlawful to treat people less favourably because of their age, protecting both younger and older Australians.

**Direct age discrimination** happens when a person is treated less favourably because of their age than a person of another age group would be treated in the same or similar circumstances. It could be direct age discrimination if a person who is the best person for the job is not employed simply because of their age.

Discrimination also happens when there is a requirement or condition or practice that is the same for everyone but disadvantages a person because of their age. If the requirement is unreasonable, it could be **indirect age discrimination**.

It could be indirect discrimination if an employer requires an older person to meet a physical fitness test which more young people can meet, if the fitness standard is not reasonable for the job in question. However, the ADA states that it is not unlawful for a person to discriminate against a person because of their age where a person can not perform the **'inherent requirements'** of a job.

### **Age discrimination in employment**

The ADA covers recruitment, including terms and conditions of a job, training, promotion and being dismissed.

Voluntary work and domestic duties in private households are not covered under the law.

### **Exemptions**

Like other anti-discrimination laws, the ADA provides for exemptions. These include state laws, certain health programmes, and youth wages or direct compliance with industrial agreements and awards.

### **Positive discrimination**

Under the ADA it is not unlawful to provide a benefit to a particular age group where the action was intended to meet a need that arises from that age group. For example, discounts and concessions provided to older Australians for services and/or facilities, or special assistance provided to homeless teenagers for accommodation.

### **Case example: Complaint of discrimination on the ground of age**

The complainant, who was employed by an Australian Government department, alleged that for a number of years he had been subjected to offensive comments about his age. He claimed for example that he was called 'old' and 'decrepit' and was subjected to a betting game about his age. The complainant claimed that he developed a significant psychiatric condition because of this treatment and was later dismissed from employment.

The department denied that the complainant had been discriminated against on the basis of his age. The department stated that the first time the allegations of harassment came to its attention was in late 2001 when the complainant requested a transfer. The department claimed that it investigated the alleged incidents and determined that any such conduct had ceased in mid-2001 and that most of the comments were 'innocent banter' and 'friendly jibes'.

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The department advised that it ordered its employees to cease any jokes or comments that could be construed as harassment. The department stated that the complainant was dismissed from employment as he was determined to be medically unfit due to a long-standing medical condition unrelated to the issues in his complaint.

The complaint was resolved through a conciliation process with the parties agreeing that the complainant would withdraw his complaint and the respondent would pay the complainant \$15,000 compensation.

*Source: Human Rights and Equal Opportunity Commission 2002-03 Annual Report.*

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This fact sheet is part of *good practice, good business* – information and resources for employers to address discrimination and harassment in the workplace.

Available online at [www.humanrights.gov.au/employers/](http://www.humanrights.gov.au/employers/)

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