



Fact sheet

Complaints under the Age Discrimination Act

What is the Age Discrimination Act?

The *Age Discrimination Act 2004* (Cth) (the ADA) makes it against the law to treat you unfairly because of your age. The ADA protects young people, older people and everyone in between.

When can this law be used?

You can use the ADA to get fair treatment in many areas of public life such as:

- **Employment** – getting a job, terms and conditions of a job, training, promotion, being dismissed.
- **Education** – enrolling or studying in a course at a private or public school, college or university.
- **Accommodation** – renting or buying a house or unit.
- **Getting or using services** – such as banking and insurance services, services provided by government departments, transport or telecommunication services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues.

What is age discrimination?

Age discrimination happens when a person is treated less favourably than another person in a similar situation, because of their age. For example, it could be 'direct age discrimination' if an older person is not employed in a particular job because it is assumed that they are not as up to date with technology as a younger person.

Discrimination also happens when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular age. This is called 'indirect discrimination'. For example, it may 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 the fitness standard is not an inherent requirement of the job.

However, the ADA says that it is not against the law to discriminate against a person because of their age where the person cannot perform the inherent requirements of the job. For example, as a

person must be over 18 years old to work in a bar, it would not be discrimination if a bar owner refused to employ a person because they are under 18 years of age.

Exemptions

Like other anti-discrimination laws, the ADA says that in some circumstances treating someone differently because of their age won't be against the law. This is known as an exemption.

The exemptions in the ADA include:

- Things done in compliance with Commonwealth laws, including laws about taxation, social security and migration.
- Things done in compliance with State and Territory laws.
- Certain health and employment programmes.
- Youth wages or direct compliance with industrial agreements and awards.

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 to meet an identified need of people of a certain age group.

Examples of 'positive discrimination' may include discounts and concessions provided to older Australians for services and/or facilities and special accommodation assistance provided to homeless teenagers.

What can I do if I experience discrimination?

You may want to deal with the situation yourself by raising it directly with the person or people involved.

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone such as a solicitor, advocate or trade union make a complaint on your behalf.

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing. The Commission has a complaint form that you can fill in and post or fax to us or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this.

For your complaint to be valid it must be reasonably arguable that the events you want to complain about are unlawful discrimination and you must provide sufficient details about your allegation including what happened, when and where it happened and who was involved.

A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.

What will happen with my complaint?

When the Commission receives a complaint about something that is covered by the ADA, the President of the Commission can investigate the complaint and try to resolve it by conciliation. The Commission is not a court and cannot determine that discrimination has happened. The Commission's role is to get both sides of the story and help those involved resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

Where appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint.

If your complaint is not resolved or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Circuit Court. In certain circumstances, you can only take a matter to court if the court has granted you leave to do so.

Where can I get more information?

The Australian Human Rights Commission's contact details are:

Telephone

National Information Service: 1300 656 419 (local call)

TTY: 1800 620 241 (toll free)

Fax: (02) 9284 9611

Post

Australian Human Rights Commission

GPO Box 5218

Sydney NSW 2001

Online

Email: infoservice@humanrights.gov.au

Website: www.humanrights.gov.au

You can make a complaint online by going to www.humanrights.gov.au/complaints_information/online_form/index.html.

If you are deaf or hearing impaired you can contact us by TTY on 1800 620 241. If you need an Auslan interpreter, the Commission can arrange this for you.

If you are blind or have a vision impairment, the Commission can provide information in alternative formats on request.

If you are thinking about making a complaint, you might also want to consider getting legal advice or contacting your trade union. There are community legal services that can provide free advice about discrimination and harassment. Contact details for your closest community legal centre can be found at www.nacalc.org.au/directory.

Disclaimer: The information on this fact sheet is only intended as a guide. It is not a substitute for legal advice.