

# Age Discrimination

It is against the law under the Equal Opportunity Act 1984 (WA) to discriminate against a person because of their age.



 *Equal Opportunity Commission*

**Direct age discrimination** occurs when a person is treated less favourably because of their age, or a relative or associate is too old or too young, compared to another person of a different age in the same or similar circumstances.

**Indirect age discrimination** is when a requirement, condition or practice that is the same for everyone has an unfair effect on someone of a particular age, and is unreasonable in the circumstances.

## Where does the protection apply?

Under the Act it is unlawful to discriminate against a person because of their age in certain areas of public life, including:

- Work
- Education
- Access to places and vehicles
- Provision of goods, services and facilities
- Accommodation
- Disposal of land or estate
- Clubs and incorporated associations
- Sport
- Application forms
- Superannuation schemes and provident funds
- Advertisements

## Responsibilities

Organisations must ensure they provide a working environment and services that are free from age discrimination and they must take all reasonable steps to prevent it from happening or they may be held responsible for their employees' actions.

For the purposes of the Act, a person who causes, instructs, persuades, aids, or permits another person to engage in unlawful conduct is taken to have engaged in that conduct themselves.

## Making a complaint

A person who believes they have been discriminated against because of their age can lodge a complaint with the Commissioner. The onus of proof lies with the person making the complaint.

Complaints must be submitted in writing, but you are not required to use English. You may write your complaint in the language you feel most comfortable using.

The incident or incidents referred to in the complaint must have occurred within the 12 months prior to the date the complaint is lodged.

In some circumstances, the Commissioner may determine that there is good reason — or good cause — to include incidents that occurred more than 12 months before the complaint was submitted.

**The Commissioner for Equal Opportunity provides information about the Act, investigates and conciliates complaints, conducts community education and training and develops programs to promote equal opportunity.**

### Examples of age discrimination

After being asked for, and providing, her age during a job interview an applicant did not get the job because she was told the employer wanted a younger person for the position.

A restaurant advertised it would not serve children under 12 years of age.

A 22-year-old's application for a bank loan was refused and when she asked why she was told "... because people under the age of 24 are financially unstable".

A car rental business refused a car rental to an 81-year-old woman because the company's insurer would not insure a driver over the age of 80.

An employer refused to consider job applications from people over the age of 40 because "... they can't learn new skills".

A couple and their 12-month-old baby were denied access to a restaurant because the manager said the baby would disturb other diners. The couple lodged a complaint of unlawful discrimination on the ground of the age of a relative, their child.

### Exceptions


There are some instances where it is not unlawful to discriminate against a person because of their age. These exceptions include:

- Domestic workers in private households
- Accommodation in private households
- Payment of junior wages when prescribed by an award or industrial agreement
- Mature age admission schemes offered by an educational institution
- Bona fide benefits or concessions provided to someone of a particular age
- Where the terms and conditions imposed in relation to employment, access and the provision of goods, services or facilities comply with reasonable health and safety considerations
- Offering voluntary retirement to someone of a particular age
- The retirement of a judge, master, district or family court judge, magistrate or stipendiary magistrate, president or commissioner or solicitor-general
- A contract with a minor if that contract is unenforceable at common law
- Measures intended to achieve equality
- A genuine occupational qualification
- Acts done in compliance with a written law of Western Australia
- Superannuation and insurance, if based on reasonable data and statistical evidence
- Disposal of land within a residential complex intended for persons of a particular age, for example in a retirement village
- The provision of charitable benefits
- Admission as a member, and benefits provided to members, of an unincorporated body
- Establishments providing accommodation for aged people




If an individual or organisation relies upon an exception under the Act when a complaint is made against them, they must justify the use of that exception to the Commissioner for Equal Opportunity.

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