

## YOUR RESPONSIBILITIES as an employer

As an employer, you have a legal responsibility to prevent age discrimination and harassment from occurring in the workplace.

This means employers have an obligation to take reasonable precautions and exercise due diligence to minimise the risk of discrimination or harassment in the workplace.

This may include putting in place policies and procedures to ensure older workers are not discriminated against in relation to:

- job advertisements and recruitment practices
- access to promotion, transfer and training opportunities
- terms, conditions and benefits of employment
- decisions about termination and redundancies
- allegations of discrimination and harassment made by employees. It is against the law to victimise a person for making, or proposing to make, a complaint to the Australian Human Rights Commission about age discrimination.

Employers can be held legally responsible for discrimination or harassment by their employees. This is called 'vicarious liability'.

It is *not* against the law to overlook or dismiss someone for a position if they can't perform the 'inherent requirements' of the job because of their age. As an employer, it is good practice to clearly distinguish between 'essential criteria' and 'desirable criteria'.

However, beyond your legal responsibilities as an employer, there is a good business case to empower your organisation to recruit and retain older workers and harness the power and innovation of a multigenerational workforce.

For more detailed information about your legal responsibilities as an employer, see the Commission's [Guide to the rights of older workers under the Age Discrimination Act 2004 \(Cth\)](#).

### WHAT IS AGE DISCRIMINATION?

Age discrimination can be direct or indirect.

**Direct discrimination** occurs when a person is treated less favourably than another because of their age, or a characteristic generally associated with a person of that age, in the same or similar circumstances. For example, if a person is selected for redundancy simply because they are aged over 55 this is likely to amount to direct discrimination.

**Indirect discrimination** occurs when a condition, requirement or practice that applies to everyone, disadvantages people of a particular age, and that condition, requirement or practice is not reasonable in the circumstances. For example, if an employer requires an older person to meet a physical fitness test which more younger people are able to meet, and that fitness standard is not necessary for the job.