

Age Discrimination

OLDER PEOPLE

CASE STUDY

Retrenchment and redundancy¹

Marcus was 56 years old and had worked at the local bank in a variety of roles – accountant, training officer, credit controller and branch manager – when he lost his job because of “downsizing”. Marcus was doing a good job, had lots of experience and had worked for the bank for 36 years. He had expected to stay until retirement. Marcus was told that he was dismissed because he was not “flexible” and had too little knowledge of the proposed restructure. After six months and over 400 job applications, Marcus now works as a clerk on a relatively low wage.²

Losing a job has a particularly serious impact on mature and older workers, as they find it more difficult to obtain employment once they have lost their jobs.

Age discrimination rights in international conventions

Young and older people have the same right as everyone else to be treated with dignity.

Protection against age discrimination is included in the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) through recognition that all human rights should be equally enjoyed without any discrimination.

The International Labour Organisation’s *Discrimination (Employment and Occupation) Convention 111* prohibits discrimination in employment. Australia has voluntarily specified that this will include age discrimination in Australia.

Older people

The United Nations Principles for Older Persons, the International Plan of Action on Ageing, and the International Labour Organisation’s Recommendation No. 162 concerning the rights of older workers, all reinforce international concern regarding the rights of older persons.

Children and young people

The rights of children are most explicitly recognised in the *Convention on the Rights of the Child* (CROC), which specifically recognises that young people have the right to freedom of association and peaceful assembly.³

Current Australian policy on age discrimination

Australian federal anti-discrimination legislation provides limited protection against age discrimination. The Commonwealth *Human Rights and Equal Opportunity Commission Act 1986* covers age discrimination in employment only,

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Youth wages

Melinda has worked at a fast food outlet for nearly 3 years. She began working there when she was 16 years old on a casual part-time basis. Melinda worked on average 11 hours a week and was paid around \$8 an hour. When Melinda turned 18, her wage increased to \$10.50 an hour but her shifts were cut back to only 3 hours a week.⁴

Most industrial awards and enterprise agreements include junior rates of pay, or youth wages, based solely on the employee’s age, usually under 18 or 21 years. Using age to determine rates of pay is discriminatory.⁵ Young people are often employed as casual workers and do not receive sick leave or holiday pay. It is common for young people to be retrenched or for their hours to be reduced when they get older and their hourly rate goes up.

and does not make age discrimination unlawful or provide enforceable remedies.⁶

Age discrimination is unlawful in all states and territories of Australia. However, the various laws are not consistent. The right to be free from age discrimination can depend on where you live and who you work for.⁷

In 2003, a federal Age Discrimination Bill was introduced but it has not yet been passed. If it is passed,



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Job placement

Marion is 55 years old and has had several years of experience working in the advertising industry. After working in different industries Marion attempted to re-enter advertising at 53. For two years she has applied for a large number of jobs to which her skills and experience were applicable, but she has been interviewed only twice. Marion has been told that her experience in advertising is no longer relevant and that employment agencies consider her to be “over the hill”.⁸

Age discrimination by employers is common, and many employment agencies make little effort to help older people to find work.

it will provide some additional protection against age discrimination in certain circumstances.

Age discrimination rights not protected in Australia

Older people’s rights not protected

While compulsory retirement is unlawful, older people continue to face indirect discrimination in employment and are often “eased out” when they near retirement age.

There is current debate about improving superannuation arrangements for older people who wish to continue working. However, compulsory superannuation payments by employers stop when an employee turns 70. This means that organisations employing people over 70 are not obliged to make superannuation payments. This disadvantages people over 70 wishing to continue working.

Young people’s rights not protected

The CROC has not been fully implemented in Australian law. For example, citizens have no right to

launch complaints in the local courts on the basis of the CROC.

Young people tend to socialise in public and commercial spaces. Security guards routinely targeting young people at shopping centres is an example of indirect age discrimination.

Indirect age discrimination happens when legislation, policies, practices or organisational structures treat people of a particular age group less favourably.

The United Nations Committee on the Rights of the Child has expressed concern about restrictions placed on young people’s access to public spaces and has stated that such restrictions are an infringement on children’s civil rights, including the right to assembly.⁹

Improving older and young people’s rights in Australia

Although not yet passed the proposed Age Discrimination Bill is a step towards recognising some of the rights of older and young people. However, there are still areas that are not covered by the Bill. It specifically excludes youth wages, making it legal to discriminate against young people in employment,¹⁰ and includes several general exemptions that weaken the Bill.

Protection against age discrimination in line with international standards is required to ensure that people of all ages are treated fairly and with dignity.

“What form should the protection of human rights take?”

➡ For options about protecting human rights through a Charter or Bill of Rights see fact sheet N^o 1: **Background to Human Rights**

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Public space

When Ben was 13 years old he was banned from his local shopping centre for three months for stealing a toy. Since the shopping centre was the hub of social activity and the public bus stop was actually on shopping centre property, keeping to a lengthy ban was very difficult. Ben broke the ban and was caught by security guards. He was charged with “entering enclosed lands”. The shopping centre then banned Ben for a further 12 months.¹¹

Young people meet in groups in public spaces more often than older people. Shopping centres are a common meeting place. These centres are legally classified as private property and the owners can control who enters them. Banning young people from shopping centres for minor misbehaviour has become common in all states and territories. Young people from ethnic backgrounds and young Indigenous people often suffer from racial stereotyping. They are often routinely targeted by security guards because they are perceived to cause trouble. Banning is particularly unfair when public utilities and Centrelink offices are inside shopping centres. Some young people have even been banned for life.

REFERENCES

- ¹ Being “retrenched” or made “redundant” means losing your job because it no longer exists.
- ² Human Rights and Equal Opportunity Commission, *Age Matters* (1999), p 23.
- ³ CROC, Article 15. Also recognised in the ICCPR, Articles 21 and 22.
- ⁴ Case study provided by Job Watch – Employment Rights Legal Centre, Victoria.
- ⁵ As footnote 2, p 39.
- ⁶ As footnote 2, p 6.
- ⁷ As footnote 2, p 6.
- ⁸ As footnote 2, p 18.
- ⁹ UN Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child, Australia, 10/10/1997, UN Doc CRC/C/15/Add.79.
- ¹⁰ Age Discrimination Bill 2003 (Cth), Clause 23.
- ¹¹ Case study provided by Marrickville Legal Centre, NSW.