



Victorian Equal Opportunity
& Human Rights Commission

Mature-age workers and the Equal Opportunity Act

> Know your rights





Victorian Equal Opportunity & Human Rights Commission

Published by the Victorian Equal Opportunity and Human Rights Commission
Level 3, 204 Lygon Street, Carlton, Victoria 3053. May 2012.

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Mature-age workers and the Equal Opportunity Act: Know your rights

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This document is available for downloading from our website at humanrightscommission.vic.gov.au/resources in PDF and RTF. Please contact the Commission if you require other accessible formats.

Acknowledgements

The Commission would like to thank everyone who gave generously of their time during consultations and research. In particular we would like to thank the following organisations: Australian Computer Society; Finance Sector Union; Shop, Distributive & Allied Employees' Association; and the Victorian Trades Hall Council.

Privacy

The Commission complies with Victorian privacy laws and the confidentiality provisions of the Equal Opportunity Act. Our privacy policy is available online at humanrightscommission.vic.gov.au/privacy or by contacting us.

Disclaimer

This information is intended as a guide only. It is not a substitute for legal advice.

Printed on Precision.

ISBN 978-0-9871041-1-3

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Mature-age workers and age discrimination

Age is not a use-by date

Older Victorians make a significant contribution to the community and the economy by participating in the paid workforce. Our existing workforce is ageing and the practice of retiring between 55 to 60 years of age will soon become a thing of the past.

The number of Australians in the labour force aged 55 and over has increased from 25 per cent to 34 per cent in the last 30 years.¹

Projections also indicate that by 2051 the proportion of Victorians aged 65 and over will increase from 14 per cent to 22 per cent.²

This means that employers who do not utilise the experience and talents of mature-age workers will start to encounter labour shortages.

Despite this reality, mature-age workers (defined by the Australian Bureau of Statistics as anyone over the age of 45) continue to experience age discrimination when they are working and when they are looking for work.

This resource provides mature-age workers with information about their rights under Victoria's *Equal Opportunity Act 2010*. It highlights how age discrimination can occur when you are working or looking for work, and how the Equal Opportunity Act can protect you from discrimination.

Visit humanrightscommission.vic.gov.au/matureageworkers to find out more.

What is age discrimination?

Discrimination is treating, or proposing to treat, someone unfavourably because of a protected personal characteristic, such as age, race or disability.

In Victoria it is against the law for someone to discriminate against you or bully you because of your age or how old they think you are, or because of a characteristic that a person of a certain age has or is assumed to have. For example, making assumptions about your levels of physical fitness based upon your age.

Discrimination can be direct or indirect. Victimization – treating you unfavourably if you do make a complaint – is also against the law. These terms are explained below.

Direct discrimination is treating, or proposing to treat, someone unfavourably or bullying them because of a personal characteristic protected by law, including age.

For example, a person treats you unfavourably at work and makes derogatory comments about your age.

Indirect discrimination is where an employer imposes, or proposes to impose, a condition, requirement or practice that appears to treat everyone equally, but which will actually or potentially disadvantage a person because of a personal characteristic protected by law, including age. This requirement may be discriminatory if the employer cannot explain why the condition, requirement or practice is reasonable in the circumstances.

For example, an employer requires somebody who has graduated from university in the last two years, and the requirement disadvantages older applicants who have the necessary skills and qualifications but did not graduate this recently.

Victimization is subjecting, or threatening to subject, someone to a detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else to make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation. It is against the law for someone to treat you this way if you seek to exercise your rights because you think you have been discriminated against, or if you help someone else exercise their rights in this way.

For example, you complain to your manager about a co-worker's negative comments about your age, and then you find that your shifts have been cut.

Age discrimination in recruitment



While looking for a job can be challenging for everyone, age discrimination can present additional barriers for older people who are looking for work. People can be discouraged from looking for work because they think employers will consider them too old: “As a partially deaf 64 year-old, I am repeatedly turned away by prospective employers. I do want to work, but there is now no doubt in my mind that age discrimination is alive and flourishing in Australia. There are many older Australians who would work given the opportunity.”³

What does the law say about age discrimination in recruitment?

It is against the law to discriminate against job applicants based on their age. This means that you have the same rights in a recruitment process as everyone else, regardless of how old you are. Discrimination can include not offering the best candidate a job, or offering them a job on different or unfavourable terms because of their age.

It is also against the law for an employer or recruitment agency to request information about your personal characteristics – such as age, marital status or parental status – and then refuse you a job based on this information.

Employers and recruitment professionals can only ask for information about these personal characteristics if it is reasonably required for some other purpose that is not discriminatory.

For example, while it may be discriminatory to ask personal questions about your parental and carer status and, because of your answer, decide you're not suited to the job, an employer may ask if you will be able to perform the genuine requirements of a job involving frequent interstate travel and periods away from home.

Or

While making assumptions based on your age or asking irrelevant questions about your physical fitness may be discriminatory, an employer may ask you questions about your capacity to perform

the genuine requirements of the job to determine whether the work could threaten your health and safety or the health and safety of others.

What are some examples of age discrimination in recruitment?

Sometimes age discrimination can be difficult to identify, while other times it is more obvious. Employers may make assumptions based on your age which can lead to age discrimination, even if it is unintentional.

In practice, age discrimination in recruitment can include:

- negative stereotyping influencing decisions at the recruitment stage, such as perceptions that an older person won't fit in with the work culture, will be resistant to change, or will be slow to learn about new skills or technology
- irrelevant questions or comments relating to your age at job interviews, such as seeking unnecessary age-based information about the year you left school or how old your children are
- a prospective employer indicating, whether in advertising for a role or in an interview, that a younger person is wanted for the position
- offering a person a job with unfavourable terms and conditions of employment because of their age, such as a longer probationary period than is applied to younger employees.

Examples of age discrimination in recruitment

Elizabeth is 47 and applies through a recruitment agency for a position with an optometrist. The recruitment agency advises her that she was not successful because the optometrist was seeking someone under 35 years of age.

Amol is 51 and applies for a job with an information technology provider. At an interview for the position he is advised that many of the people in the team are much younger and he is asked whether this would bother him. Amol says he works well with people of all ages. The next day Amol is advised that he was not successful in getting the job. One of the reasons given is that even though the interviewers were impressed by his skills and work history, they felt Amol would have trouble 'fitting in' with the rest of the team.

What can you do to protect yourself from age discrimination in recruitment?

Tips:

- You do not need to include your age, the year you finished school or other unnecessary information that will reveal your age on your resumé.
- Be aware of discriminatory questions during interviews. These might be about your retirement intentions, when you finished school or how old your children are.
- If you feel you have been asked for unnecessary age-based information you may simply wish to say, “why do you ask?” Take the opportunity to redirect the interview, and focus exclusively on your skills and the degree of experience you will bring to the role.
- If possible, use interview questions as an opportunity to talk about yourself in other ways that do not relate to your age. For example, the question, “are you planning to retire in the next couple of years?” is potentially discriminatory but could be used as an opportunity for you to speak positively about where you see yourself in five years’ time.



Do you have a question or concern about age discrimination?

If you do, or if you'd like to make a complaint, contact us.

You can also order age discrimination postcards and posters.

Enquiry Line 1300 292 153 or (03) 9032 3583

Email enquiries@veohrc.vic.gov.au

Web humanrightscommission.vic.gov.au

Age discrimination at work



It is against the law to treat someone unfavourably because of their age in most employment situations. At work this might include denying opportunities for training, promotion, apprenticeship and traineeship programs, or other job benefits because of your age.

What does the law say about age discrimination at work?

The Equal Opportunity Act protects you from age discrimination at work and covers:

- direct and indirect discrimination
- age-based bullying or harassment
- discrimination leading to unfair targeting for redundancy or other disadvantage due to restructuring
- victimisation for seeking to exercise your rights in the workplace
- flexible work arrangements.

What are some examples of age discrimination at work?

Stereotypes and assumptions about mature-age workers can have a big influence on decisions in the workplace. Age discrimination might include things such as:

- missed opportunities for training or promotion because of your age
- being bullied or harassed because of your age
- having your duties or responsibilities reduced because of your age.

What are your rights to flexible work arrangements?

You have a right to request flexible working arrangements. If you are offered a job, an employer must not unreasonably refuse to accommodate your responsibilities as a parent or carer. If you have a disability you may also request flexible work arrangements as a reasonable adjustment.

An employer must consider all relevant facts and circumstances in assessing whether to agree to flexible work arrangements for an employee with parental or carer responsibilities. This does not mean that an employer must agree to every request for changes to existing work arrangements. However, they must not refuse a request unless it is reasonable to do so in the circumstances. Each situation will depend on the particular facts and circumstances.

Whether your employer has unreasonably refused to accommodate your responsibilities as a parent or carer will depend on factors such as the size of the employer, their financial circumstances and the nature of your responsibilities. For more information on your rights in relation to flexible work arrangements, you can call the Commission's Enquiry Line or visit [humanrightscommission.vic.gov.au](https://www.humanrightscommission.vic.gov.au).

Examples of age discrimination at work

Maria is 60 and works in a real estate agency as a property manager. Her employer regularly makes derogatory comments based on her age. Maria believes that the recent recruitment of property managers, all of whom are under 40, shows that her employer prefers younger staff and that this counts as sufficient to make a complaint about age discrimination.

Robert is 57 and works in human resources. He approaches his supervisor to approve his attendance at a training course to update his knowledge about occupational health and safety laws. Robert's supervisor informs him that they will not be able to fund the training on this occasion. Robert later finds out that a colleague, who is employed in a similar capacity but is much younger, has been approved to attend the same training course at their employer's expense.

Flexible work arrangements in practice

Your employer must consider any requests for arrangements that will help you balance your work and parental or carer responsibilities. Flexible work arrangements may apply to your conditions and benefits, training and promotion, task allocation, shifts and working hours, leave arrangements, equipment and transport.

Examples of flexible work arrangements include:

- flexible rostering
- working from home
- compressed hours, where you work additional daily hours to provide for a shorter working week
- changing the need for work travel and overnight stays
- phased retirement.

These are just some of the options that you may agree to. Flexibility at work is best achieved through open and ongoing communication between you and your employer.

What are your rights to reasonable adjustments?

Research indicates that the number of people with disability steadily increases with age, particularly after the age of 65.⁴

It is against the law for an employer to deny you a job because you have a disability and, if you are

working and have a disability, your employer has an obligation to make any reasonable adjustments you may need to perform the role, as long as it causes no major difficulty or unreasonable cost for them. You can call the Commission's Enquiry Line or visit humanrightscommission.vic.gov.au/disability for more information about disability discrimination.

What can you do to protect yourself from age discrimination at work?

Tips:

- Seek out professional development and training opportunities, and show a willingness to learn new skills.
- Discuss flexible working options with your employer and be open about your responsibilities outside of work, such as caring responsibilities you may have for your partner, children, parents or grandchildren. You may wish to discuss options such as reduced hours, working from home or phased retirement with your employer.
- If a colleague discriminates against you because of your age, you have the right to discuss this with your employer and attempt to resolve the issue. Your employer has a legal responsibility to ensure age discrimination and bullying do not occur in the workplace, and can be liable themselves if discrimination among employees is allowed to occur.

Example of flexible work arrangements

Phillip was working in the public service in an administrative role when his mother developed multiple sclerosis. He requested flexible working hours in order to balance his work responsibilities with caring for his mother. After consultation and consideration, Phillip's manager agreed he could leave work early and work 2.5 hours from home each weekday evening using remote access to his office email account.

Age discrimination and retirement



Are you planning to retire? Feeling pressured to retire soon – even if you’re not planning to? A range of factors can influence your decision to retire, and you can choose to retire at any age. While some people have clear retirement intentions that they may convey to their employer, many workers experience age discrimination at work due to assumptions others make about their intention to leave the workforce.

What does the law say about age discrimination and retirement?

There is no set retirement age for most professions and it is against the law to force retirement.⁵ Nonetheless, mature-age workers can often feel pressured or face discriminatory treatment at work because of their retirement intentions. This may include situations where your employer treats you unfavourably because they assume you are going to retire, or behaves in a way that forces you to retire.

While there is no mandatory retirement age, there are laws about when you can access the aged pension and your superannuation. You should check with your superannuation fund for details.

What are some examples of discrimination relating to retirement?

Age discrimination – unfavourable treatment relating to retirement – might include:

- scaling back your hours against your wishes
- denying you opportunities for training and promotion because of assumptions about your retirement intentions
- unfavourable treatment leading to unfair targeting for redundancy
- questions about when you will retire, or an expectation that you will retire.

What about retirement and flexible work arrangements?

While for some mature-age workers flexible working hours or scaling back in the lead up to retirement might be important, others who still want to work full time can suffer from being forced to scale back, workplace restructuring or underemployment because of their age.

Research indicates that flexibility at work is one of the things that older people value the most.⁶ Your right to request flexible work arrangements because of parental and carer responsibilities or disability continues to apply regardless of your retirement intentions.

What can you do to protect yourself from discrimination related to retirement?

Tips:

- Be proactive about opportunities to develop and learn new skills. Professional development and training opportunities, including promotions, should be merit-based, regardless of your age and retirement intentions.
- If you suspect you are being discriminated against because of your actual or assumed retirement intentions, contact the Commission or see the directory at the end of this booklet for other sources of advice and information.
- Discuss flexible working options with your employer, such as phased retirement, which may include options for scaling back in the lead up to retirement if this is your intention.

Examples of age discrimination related to retirement

Rosemary is 54 and has worked for more than 20 years in a pharmacy. She is diagnosed with a serious medical condition requiring surgery and is absent from work for two months. While on sick leave the pharmacy employs a much younger permanent employee and suggests Rosemary apply for the Disability Support Pension and retire. Rosemary believes she is being replaced by the younger worker because her employer would rather pay youth wages than keep Rosemary on staff.

Carol is 62 and has worked for 15 years at a supermarket. She has always been praised for her performance at work but things have been different since a new manager, John, was appointed. He frequently makes derogatory comments about her age, saying that she is slow and needs to “get with the program”. He asks her how much longer she intends to work. John cuts back Carol’s shifts in favour of some of the recently recruited younger workers, which also reduces her superannuation payments and leave entitlements.

Making a complaint to the Commission

How do I make a complaint of discrimination to the Commission? What will happen if I do?

If you feel you have been discriminated against because of your age when looking for a job, while in a job or because of your actual or assumed retirement intentions, you can make a complaint to the Commission.

You can make a complaint to us by mailing or emailing the Commission a letter, filling in an online complaint form or calling our Enquiry Line.

Contact the Commission on 1300 292 153 or (03) 9032 3583 or email enquiries@veohrc.vic.gov.au.

When you lodge a complaint we will contact you to discuss the details. We can then try to help you resolve your complaint through a conciliation process between you and the person you are complaining about (“the parties” to the complaint).

In some cases we may not be able to deal with your complaint. If this happens, we will contact you and explain why. If we can't help you we will try to refer you to someone who can.

The diagram over the page shows the steps involved in dispute resolution at the Commission.

What is conciliation?

Conciliation is a free, flexible and confidential process where the parties to the complaint, with the help of a conciliator, explore resolution.

Conciliation can be a very successful way of resolving complaints. Feedback shows that people find our process fair, informal and easy to understand.

The aim of conciliation is for both parties to reach agreement about resolving the dispute. The Commission does not have the power to make orders or award compensation.

Conciliation can take place:

- in a face-to-face meeting
- by telephone conference by contact through the conciliator.

Disputes can be resolved in a number of different ways, including:

- an apology (verbal or written, private or more public)
- agreement to change policy or practice by the employer
- staff training
- access to a previously denied job opportunity
- improved accessibility at work premises
- a job reinstatement or reference
- financial compensation.

Can someone come with me?

Yes, you may bring a friend or advocate.

You do not need a lawyer to make a complaint to us and it does not cost anything to make a complaint or enter conciliation. The Commission will try to help you resolve your complaint but we do not advocate for you or for the person or organisation you are complaining about.

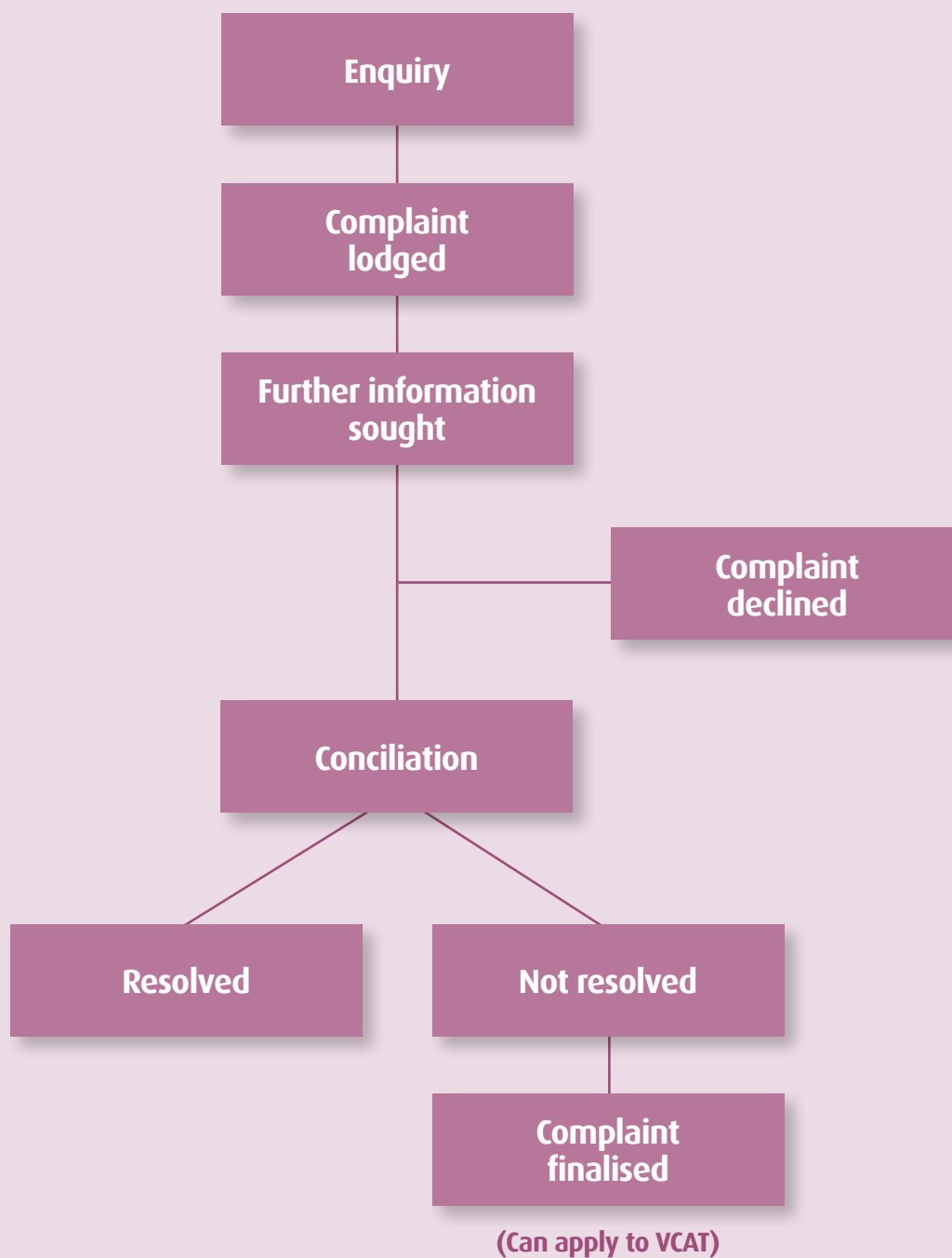
The directory included at the end of this booklet provides information about other organisations who may be able to provide you with legal advice and assistance when you make a complaint to the Commission.

What if no agreement can be reached at conciliation?

If the complaint is not resolved at conciliation the complaint will be closed.

You may decide to make an application to the Victorian Civil and Administrative Tribunal (VCAT) Anti-Discrimination List. VCAT hears and determines complaints of discrimination, sexual harassment and vilification.

The Commission's dispute resolution process



Where else can I go for help?

Council on the Ageing Victoria

(03) 9654 4443
cotavic.org.au

Council on the Ageing is the primary organisation representing the interests of older Victorians, providing a range of benefits and support to members, and influencing government, community and business to ensure the voices of older Victorians are heard.

Fair Work Australia

1300 799 675
fwa.gov.au
inquiries@fwa.gov.au

Fair Work Australia receives complaints about discrimination as well as unfair dismissal.

Fair Work Ombudsman

13 13 94
fairwork.gov.au

The Fair Work Ombudsman receives complaints about a range of employment-related matters, including underpayment.

Federation of Community Legal Centres

(03) 9652 1500
fclc.org.au

The Federation of Community Legal Centres can direct you to a range of community legal centres for legal advice and assistance.

JobWatch

Melbourne residents (03) 9662 1933
Country Victorian residents 1800 331 617
jobwatch.org.au

Jobwatch provides free legal advice on employment rights for workers.

Victoria Legal Aid

Melbourne residents (03) 9269 0120
Country Victorian residents 1800 677 402
legalaid.vic.gov.au

Victoria Legal Aid provides legal help to disadvantaged Victorians, and may be able to assist you if you are eligible.

Worksafe Victoria

(03) 9641 1444 or 1800 136 089 (toll free)
worksafe.vic.gov.au
info@worksafe.vic.gov.au

Worksafe deals with Victoria's occupational health and safety laws and can assist you if you are injured or bullied at work.

Your union if you are a union member.

Support for job seekers

You can find information on job vacancies, training and career development opportunities from:

- dome.org.au
- silvertemp.com
- benext.com.au
- greyhairalchemy.com
- adage.com.au

Endnotes

- 1 Australian Bureau of Statistics, *Australian Social Trends – Older people and the labour market*, Australia 4102.0, (2010).
- 2 Department of Planning and Community Development, *Victoria in Future 2012*, (2012).
- 3 Australian Council of Trade Unions, *Voices from Working Australia – Findings from the ACTU Working Australia Census* (2011), 28.
- 4 Australian Bureau of Statistics, *Disability, Ageing and Carers*, Australia 4430.0, (2009).
- 5 Some professions may legally impose a retirement age, such as the judiciary and the Australian Defence Force.
- 6 Diversity Council Australia, *Grey matters: Engaging mature age workers*, (2007).



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