

**ANTI-DISCRIMINATION (AGE DISCRIMINATION)  
AMENDMENT ACT 1993 No. 91**

NEW SOUTH WALES



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**ANTI-DISCRIMINATION (AGE DISCRIMINATION)  
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NEW SOUTH WALES



**Act No. 91, 1993**

An Act to amend the Anti-Discrimination Act 1977 to make it unlawful to discriminate against a person on the ground of age in certain circumstances. [Assented to 29 November 1993]

**The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Anti-Discrimination (Age Discrimination) Amendment Act 1993.

**Commencement**

2. This Act commences on a day to be appointed by proclamation.

**Amendment of Anti-Discrimination Act 1977 No. 48**

3. The Anti-Discrimination Act 1977 is amended by inserting before Part 5 the following Part:

**PART 4G—AGE DISCRIMINATION****Division 1—General****What constitutes discrimination on the ground of age**

49ZYA. (1) A person (“**the perpetrator**”) discriminates against another person (“**the aggrieved person**”) on the ground of age if, on the ground of the aggrieved person’s age or the age of a relative or associate of the aggrieved person, the perpetrator:

- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who is not of that age or age group or who does not have such a relative or associate who is that age or age group; or
- (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not of that age or age group, or who do not have such a relative or associate who is that age or age group, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

(2) For the purposes of subsection (1) (a), something is done on the ground of a person’s age if it is done on the ground of the person’s age or age group, a characteristic that appertains generally to persons who are that age or age group or a characteristic that is generally imputed to persons who are of that age or age group.

(3) In this section:

“**associate**” of a person means any person with whom he or she associates, whether socially or in business or commerce, or otherwise;

“**relative**” of a person means:

- (a) any person to whom the person is related by blood, marriage, affinity or adoption; or
- (b) any person who is wholly or mainly dependent on, or a member of the household of, the person.

### **Division 2—Discrimination in work**

#### **Discrimination against applicants and employees**

49ZYB. (1) It is unlawful for an employer to discriminate against a person on the ground of age:

- (a) in the arrangements the employer makes for the purpose of determining who should be offered employment; or
- (b) in determining who should be offered employment; or
- (c) in the terms on which employment is offered.

(2) It is unlawful for an employer to discriminate against an employee on the ground of age:

- (a) in the terms or conditions of employment that are afforded to the employee; or
- (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
- (c) by dismissing the employee or subjecting the employee to any other detriment.

(3) This section does not apply to employment for the purposes of a private household.

#### **Discrimination against commission agents**

49ZYC. (1) It is unlawful for a principal to discriminate against a person on the ground of age:

- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent; or
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which the principal engages the person as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of age:

- (a) in the terms or conditions that are afforded to the commission agent; or
- (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent; or
- (c) by terminating the commission agent's engagement or subjecting the commission agent to any other detriment.

**Discrimination against contract workers**

49ZYD. It is unlawful for a principal to discriminate against a contract worker on the ground of age:

- (a) in the terms on which the contract worker is allowed to work; or
- (b) by not allowing the contract worker to work or continue to work; or
- (c) by denying or limiting access to any benefit associated with the work performed by the contract worker; or
- (d) by subjecting the contract worker to any other detriment.

**Partnerships**

49ZYE. (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against another person on the ground of age:

- (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm; or
  - (b) in determining who should be offered a position as partner in the firm; or
  - (c) in the terms on which the other person is offered a position as partner in the firm.
- (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of age:
- (a) by denying or limiting access to any benefit arising from membership of the firm; or
  - (b) by expelling the partner from the firm; or
  - (c) by subjecting the partner to any other detriment.

**Industrial organisations**

49ZYF. (1) It is unlawful for an industrial organisation to discriminate against a person on the ground of age:

- (a) by refusing or failing to accept the person's application for membership of the organisation; or
- (b) in the terms on which it is prepared to admit the person to membership of the organisation.

(2) It is unlawful for an industrial organisation to discriminate against a member of the organisation on the ground of age:

- (a) by denying or limiting access to any benefit provided by the organisation; or
- (b) by depriving the person of membership of the organisation or varying the terms of that membership; or
- (c) by subjecting the person to any other detriment.

(3) In this section “**industrial organisation**” means an industrial organisation or a non-industrial organisation within the meaning of the Industrial Relations Act 1991 or an organisation registered under the Industrial Relations Act 1988 of the Commonwealth.

**Qualifying bodies**

49ZYG. (1) It is unlawful for an authority or body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of age:

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification; or
- (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions on which it is held.

(2) This section does not prevent such an authority or body from imposing a reasonable and appropriate minimum age under which an authorisation or qualification will not be conferred.

**Employment agencies**

49ZYH. It is unlawful for an employment agency to discriminate against a person on the ground of age:

- (a) by refusing to provide the person with any of its services; or

- (b) in the terms on which it offers to provide the person with any of its services; or
- (c) in the manner in which it provides the person with any of its services.

**Junior employees**

49ZYI. (1) It is unlawful for an employer to discriminate against a person on the ground of age in relation to a matter referred to in section 49ZYB (1) or (2) on the basis that the position concerned is designed for, is proposed to be filled by or is filled by a person who is a junior employee.

(2) Subsection (1) does not commence until a day appointed by proclamation which is not to be earlier than 2 years after the date of commencement of this Part.

(3) Until subsection (1) commences, nothing in this Division renders unlawful the employment of persons on the basis that they are junior employees or the terms and conditions of employment of those persons if those terms and conditions are in accordance with an award.

(4) In this section:

**"award"** means an award, enterprise agreement, former industrial agreement or contract determination within the meaning of the Industrial Relations Act 1991 or an award within the meaning of the Industrial Relations Act 1988 of the Commonwealth;

**"junior employee"** means an employee or prospective employee who is described as a junior employee, or of less than 21 years, in an award.

(5) This section has effect despite section 54 (1) (d) and (e).

**Exception—genuine occupational qualification**

49ZYJ. (1) Nothing in this Division renders unlawful discrimination against a person on the ground of the person's age if being a person of a particular age or age group is a genuine occupational qualification for the job.

(2) Being a person of a particular age or age group is a genuine occupational qualification for a job if either of the following requirements is satisfied:

- (a) in dramatic performances or other entertainment, the essential nature of the job calls for a person of that age or age group for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person of another age or age group;

(b) the holder of the job provides persons of that age or age group with services for the purpose of promoting their welfare or furthering their education and those services can most effectively be provided by a person of a particular age or age group.

(3) Being a person of a particular age or age group is a genuine occupational qualification for a job, or a job of a class or description, prescribed by the regulations.

(4) Nothing in subsection (2) limits the Governor's power to make a regulation for the purposes of subsection (3).

**Exception—voluntary retirement or severance schemes**

49ZYK. Nothing in this Division renders it unlawful to offer to a person who is an employee, commission agent, contract worker or partner, on the ground of the length of service of that person, participation in a voluntary phased-in retirement scheme, voluntary retirement scheme, retirement incentives scheme, voluntary severance scheme or other like scheme.

**Division 3—Discrimination in other areas**

**Education**

49ZYL. (1) It is unlawful for an educational authority to discriminate against a person on the ground of age:

- (a) by refusing or failing to accept the person's application for admission as a student; or
- (b) in the terms on which it is prepared to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of age:

- (a) by denying or limiting access to any benefit provided by the educational authority; or
- (b) by expelling the student or subjecting the student to any other detriment.

(3) Nothing in this section applies to or in respect of:

- (a) the admission of, or the refusal of admission to, a person to a school, college, university or other institution if the level of education or training sought by the person is provided only for students above a particular age; or
- (b) a private educational authority; or
- (c) an education authority prescribed by the regulations in relation to such circumstances (if any) as may be so prescribed.



(4) Nothing in this section applies to or in respect of a refusal by an educational authority to enrol at a government school or registered non-government school a child who is not of or above the age of 6 years. In this subsection, “**registered non-government school**” has the same meaning as in the Education Reform Act 1990.

(5) Nothing in this section applies to or in respect of benefits, including concessions, provided in good faith to a student by reason of his or her age.

#### **Access to places and vehicles**

49ZYM. (1) It is unlawful for a person to discriminate against another person on the ground of age:

- (a) by refusing to allow the other person access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not; or
- (b) in the terms on which he or she is prepared to allow the other person access to or use of any such place or vehicle; or
- (c) by refusing to allow the other person the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not; or
- (d) in the terms on which he or she is prepared to allow the other person the use of any such facilities; or
- (e) by requiring the other person to leave or cease the use of any such place or vehicle or any such facilities.

(2) Nothing in this section applies to or in respect of benefits, including concessions, provided in good faith to a person by reason of his or her age.

#### **Provision of goods and services**

49ZYN. (1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against another person on the ground of age:

- (a) by refusing to provide the other person with those goods or services; or
- (b) in the terms on which the other person is provided with those goods or services.

(2) Nothing in subsection (1) applies to or in respect of:

- (a) benefits, including concessions, provided in good faith to a person by reason of his or her age; or
- (b) holiday tours offered or provided to persons who are of a particular age or age group.

(3) Nothing in this section renders it unlawful for a person to discriminate against a person on the ground of age in disposing of goods, or in providing services, by gift or will or in accordance with the terms of a gift or will.

### **Accommodation**

49ZYO. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of age:

- (a) by refusing the person's application for accommodation; or
- (b) in the terms on which the principal or agent offers the other person accommodation; or
- (c) by deferring the other person's application for accommodation or according the other person a lower order of precedence in any list of applicants for that accommodation.

(2) It is unlawful for a person, whether as principal or agent, to discriminate against a person for whom accommodation has been provided on the ground of age:

- (a) in the terms or conditions on which accommodation is provided; or
- (b) by denying or limiting access to any benefit associated with accommodation; or
- (c) by evicting the person or subjecting the person to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if:

- (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, in those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.

### **Registered clubs**

49ZYP. (1) It is unlawful for a registered club to discriminate against a person (not being a person under the age of 18 years) on the ground of age:

- (a) by refusing or failing to accept the person's application for membership of the club; or
- (b) in the terms on which it is prepared to admit the person to membership of the club.

(2) It is unlawful for a registered club to discriminate against a member of the registered club on the ground of age:

- (a) by denying or limiting access to any benefit provided by the club; or
- (b) by depriving the member of membership of the club or varying the terms of that membership; or
- (c) by subjecting the member to any other detriment.

(3) Nothing in subsection (1) or (2) applies to or in respect of a registered club:

- (a) that has as its principal object the provision of benefits for persons who are of a particular age or age group; or
- (b) so as to prevent the retention by the club of different categories of membership for members of different ages or age groups.

(4) In determining whether the principal object of a registered club is as referred to in subsection (3) (a), regard is to be had to:

- (a) the essential character of the club; and
- (b) the extent to which the affairs of the club are so conducted that the persons primarily enjoying the benefits of membership are of the relevant age or age group; and
- (c) any other relevant circumstance.

#### **Division 4—Exceptions to Part 4G**

##### **Legal capacity and welfare of children**

49ZYQ. Nothing in this Part:

- (a) affects the operation of a law that relates to the legal capacity or the legal entitlements, obligations or disqualifications of persons who are under 18 years of age; or
- (b) affects the operation of a law the object of which is to protect the welfare of those persons, including provisions of the criminal law that are designed to protect them.

##### **Special needs programs and activities**

49ZYR. Nothing in this Part applies to or in respect of anything done to afford persons who are of a particular age or age group access to facilities, services or opportunities to meet their special needs or to promote equal or improved access for them to facilities, services and opportunities.

**Superannuation**

49ZYS. (1) Nothing in this Part renders unlawful discrimination against a person on the ground of age in the terms or conditions appertaining to a superannuation or provident fund or scheme if, subject to subsection (2), one or more of the following apply:

- (a) the discrimination occurs because of the application of a standard in force under the Occupational Superannuation Standards Act 1987 of the Commonwealth;
- (b) the discrimination is required in order to comply with, or obtain a benefit of, or avoid a penalty under, any other Act of the Commonwealth;
- (c) the discrimination is based on actuarial or statistical data from a source on which it is reasonable to rely;
- (d) if there is no data of a kind referred to in paragraph (c), the discrimination is based on such other data as may be available and on which it is reasonable to rely;
- (e) if none of the above apply, the discrimination is reasonable having regard to any other relevant factors;
- (f) the discrimination is based on an existing condition and relates to a person who became a member of the fund or scheme before the commencement of this section or not more than 12 months after that commencement, or happens not more than 12 months after that commencement.

(2) An exemption under subsection (1) (c)–(e) is available only if the sources on which the data are based and those relevant factors (if any) are disclosed to the Tribunal, if the Tribunal so requires.

(3) This section has effect despite section 54 (1) (d) and (e).

**Provision of insurance**

49ZYT. Nothing in this Part renders unlawful discrimination on the ground of age the terms on which any annuity, life assurance policy or accident or insurance policy or any other kind of insurance is offered or may be obtained if:

- (a) those terms:
  - (i) are based on actuarial or statistical data from a source on which it is reasonable to rely or, if there are no such data, on such other data as may be available; and
  - (ii) are reasonable having regard to the data and any other relevant factors; and

- (b) the sources on which the data are based and those relevant factors (if any) are disclosed to the Tribunal, if the Tribunal so requires.

**Credit applications**

49ZYU. Nothing in this Part renders unlawful discrimination against a person on the ground of age with respect to the criteria on which an application for credit is assessed or the terms on which credit is offered or may be obtained if:

- (a) those criteria or terms:
  - (i) are based on actuarial or statistical data from a source on which it is reasonable to rely or, if there are no such data, on such other data as may be available; and
  - (ii) are reasonable having regard to the data and any other relevant factors; and
- (b) the sources on which the data are based and those relevant factors (if any) are disclosed to the Tribunal, if the Tribunal so requires.

**Safety procedures**

49ZYV. Nothing in this Part renders unlawful discrimination against a person on the ground of age with respect to:

- (a) the manner in which fitness to control a vehicle or a class of vehicle is assessed; or
- (b) the terms and conditions on which and the length of time during which a licence to drive or ride a vehicle is provided or made available,

as the case requires, if that manner is, or those terms and conditions and length of time are, imposed in order to meet safety considerations that are reasonable in the circumstances.

**Sport**

49ZYW. (1) Nothing in this Part renders unlawful the exclusion of persons of particular ages from participation in any sporting activity.

(2) Subsection (1) does not apply:

- (a) to the coaching of persons engaged in any sporting activity; or
- (b) to the administration of any sporting activity; or
- (c) to any sporting activity prescribed by the regulations for the purposes of this section.

**Certain activities or matters may be prescribed to be lawful**

49ZYX. Nothing in this Part renders unlawful any activity or matter declared to be lawful by regulation made for the purposes of this Part.

**Operation of Part 4E not affected**

49ZYY. Nothing in this Part affects the operation of Part 4E.

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*[Minister's second reading speech made in—  
Legislative Council on 27 October 1993  
Legislative Assembly on 18 November 1993]*