



[Discrimination](#)

## “You will have a heart attack”: age discrimination against jobseeker costs employer

**By Kate Neilson**

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A 61-year-old man was appalled when an employer laughed at him and said he was “too old” when he enquired about a job and claims age discrimination.

If you apply for a [job that's advertised](#), you expect to be treated in a respectful and courteous manner when you call the employer for more details. You don't expect to be laughed at, called “too old” for the job then hung up on.

A 61-year-old construction worker told the NSW Civil and Administrative Tribunal (NCAT) that when he called to find out more information about a casual construction position, the company's director “burst out laughing” and said, in between fits of laughter, “I have had young ones run away from the workload. You would have a heart attack and I don't want that on my site... You are too old, cheers mate.”

“That's just flat out [age discrimination](#),” says Karen Gately, founding CEO of HR consultancy Corporate Dojo. “Making a hiring decision on the basis of someone's age is flat out against the law.”

No age range was specified on the online job description. The only requirement was that candidates be “fit and agile” which the jobseeker felt applied to him.

If there are physical requirements, it's perfectly fine for an organisation to ask candidates to undergo medical tests, says Gately.

“If you need to test the extent to which they can physically do the job safely, that's alright. That might be reflected in their physical size, or in this particular case, concerns around stage of life and whether they're going to be putting themselves at risk, but that's not up to the employer to decide.

“Someone can be 61 and as physically fit as someone in their 30s or 40s,” she adds. “Or you might be a 30-year-old [worker] who suffers from sciatica. If the job requires you to dig trenches, you're [likely] not going to be able to do that, physically... but it's still up to a doctor to make that call.

“[This case] is unquestionably discriminatory. They robbed him of an opportunity purely because of his age; there wasn't a fair and reasonable opportunity for him to demonstrate [his abilities].”

## Claiming age discrimination

The worker was reportedly “stunned, shocked and very offended” at the comments – rightly so – and complained to the Anti-Discrimination Board. The jobseeker claims the construction company’s solicitor “belittled and degraded” him in a letter of response to his complaint.’

On top of denying the worker’s claims, the letter said that he “cannot use his age as a shield to deflect from his lack of experience and failure to make an application for the advertised position... the [company] requires its labourer position to be filled by an experienced career labourer. Unlike [the worker], these labourers have not held part time bits and pieces labouring roles.

“They robbed him of an opportunity purely because of his age; there wasn’t a fair and reasonable opportunity for him to demonstrate [his abilities].” – Karen Gately, founding CEO, Corporate Dojo.

"[The employer] is disappointed that [the worker] chose to make this complaint. It is a complaint without substance that [the company] proposes to vigorously defend in any tribunal or court of competent jurisdiction."

It will come as no surprise that the man didn't apply for the job. What's worse, due to feeling "humiliated, ridiculed and diminished", the worker alleges he chose to work in low-paid work outside of the construction industry for six months after the discriminatory phone call - his confidence was knocked.

Following the phone call and the [complaint](#), the worker took his case to NCAT seeking damages for both the initial phone call and the "derogatory" letter that followed.

The NCAT representatives said the letter added to the jobseeker's pre-existing distress and hurt as it suggested his discrimination complaint was "innuendo" and that the letter essentially mocked his level of experience and work history.

As for the initial phone call that sparked this case, the director denies laughing or that he took issue with the age of the worker as he is 59-years-old himself.

He says that as he was up since 4:30am that morning, and the call took place at 7:30am, that he was likely "very short" with the jobseeker but not discriminatory. He claimed when the jobseeker called and asked what the role entailed, he said: "Wheeling barrows of concrete and excavated material, jack hammering" then told the jobseeker to submit his resume via the online recruitment website before hanging up.

The NCAT representatives didn't think the director's story added up. Instead, they chose to side with the jobseeker's account, as he took comprehensive notes about the phone call the following day and displayed a "serious and sensitive" demeanour.

When the director was giving evidence, NCAT representatives said he was "abrupt, exhibited frustration and temper at times and used... colourful language" which, they believed, mirrored the tone of voice the worker claims he was subjected to on the phone call.

NCAT concluded that the employer had unlawfully discriminated against the worker (according to [s49ZYB\(1\)\(b\)](#) of the [NSW Anti-Discrimination Act](#)) and hit the employer with just under \$3000 in compensation (\$1490 for economic loss - after the worker accepted lower paying jobs for six months due to low confidence - and \$1500 for non-economic loss).

For the allegedly derogatory letter, NCAT ordered an extra \$750 to be paid to the worker in aggravated damages.

See [full case details here](#).

"We have such a narrow bandwidth of the 'ideal age' to hire people." – Karen Gately, founding CEO, Corporate Dojo.

## The value of older workers

Age discrimination is something that will likely touch us all at some point - we're all getting older each second the passes. This is especially pertinent when you consider that our definition of an 'older worker' is increasingly getting younger and younger.

"It's incredibly common for executives that I support, who are 50-60, to be running into ageism issues, which is just crazy," says Gately.

Also, as Gately points out, our population is ageing, so branding your business as one that doesn't accept older workers not only damages your reputation, it's also not a smart strategy to safeguard your resources and talent.

"The number of people in the labour market relative to those in retirement is shrinking. That means the talent pool is shrinking. So if we're just going to put [older workers] out to pasture then we're [missing] talent that could be incredibly valuable. Employers who are smart about this will actually create somewhat of a competitive advantage, I think."

On top of often being experts in their respective fields, and therefore adding value from a productivity perspective, there's often a great benefit in having older workers mentor up-and-coming employees, she adds.

"Also, clearly people who've been on the planet for longer will have experience that can add value. [They can also offer] fresh perspectives and insights... and make good decisions. They usually understand the marketplace well and therefore understand your client base."

Employees often just can't win when it comes to age, says Gately.

"We have such a narrow bandwidth of the 'ideal age' to hire people. Candidates are either too young and don't have enough experience, or they're too close to having babies. Or they're too old, then there's the whole thing about avoiding millennials... it's all ignorance in my mind.

"For older workers, we need to be sensible about the fact that there's a lot of wisdom [to gain] and that a lot of investment has happened into older workers' careers. If we let go of some of the prejudices... we can leverage all the wisdom that's out there right now."

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***Want to better understand how others think about older workers? Keen to do your part to combat age discrimination? AHRI has teamed up with the Australian Human Rights Commission for its annual 'Employing Older Workers' survey. This year's results are illuminating and will be available in just a few weeks - stay tuned!***

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TAGS : age discrimination, ageism, job seekers



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