

New amendments to Federal anti-discrimination legislation recently commenced

On 8 July 2009, the *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009* (Cth) (Act), which amends various human rights legislation including federal disability and age discrimination laws, received Royal Assent. Most of the legislative changes (including the amendments to federal disability and age discrimination laws) commenced on 5 August 2009.

Key amendments to Federal disability discrimination laws

The main amendments in the Act to the *Disability Discrimination Act 1992* (Cth) make it easier for employees to bring disability discrimination complaints by:

- Making clear that the definition of 'disability' includes a genetic predisposition to a disability and behaviour that is a symptom or manifestation of a disability
- making clear that any refusal to make reasonable adjustments for people with a disability may also amount to direct disability discrimination, and
- shifting the onus of proving the reasonableness of a requirement or condition imposed on a person with a disability, in the context of indirect discrimination, from the person with the disability to the respondent (often an employer).

However, the Act also broadens the application of possible defences that a respondent may rely on by:

- Extending the 'inherent requirements' defence to **all** areas of discrimination in employment (rather than only with respect to an offer of employment or dismissal from employment), except for discrimination in determining who should be offered a promotion, transfer or training, and
- making clear that **all** the relevant circumstances of a particular case must be taken into account in determining whether the 'unjustifiable hardship' defence is established and to apply it to all unlawful discrimination on the ground of disability (except for harassment and victimisation).

Key amendments to Federal age discrimination laws

Previously, under the *Age Discrimination Act 2004* (Cth), where an act is done for two or more reasons, and one of those reasons is the age of the person, that reason must be the **dominant reason** for which the act was done in order to establish that unlawful age discrimination has occurred.

The Act removes the 'dominant reason' test, making it easier for employees to bring age discrimination complaints where an act is done for two or more reasons including a person's age. Unlawful age discrimination will be established provided that **one** of the reasons (whether or not it is the dominant or a substantial reason) is a person's age, or a characteristic that appertains or is generally imputed to persons of that age.

In addition, the Act also extends the period in which a person can take a complaint of unlawful discrimination to the Federal Court or Federal Magistrates Court after it is terminated by the Australian Human Rights Commission from 28 days to 60 days.

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