



CRIN
CHILD RIGHTS INFORMATION NETWORK

Global report on laws protecting children from age discrimination

CRIN is a global network coordinating information and promoting action on child rights. More than 2,000 member organisations and tens of thousands more activists from across the world rely on CRIN for research and information.

CRIN presses for rights, not charity, for children and is guided by a passion for putting children's rights at the top of the global agenda by addressing root causes and promoting systematic change. Its guiding framework is the UN Convention on the Rights of the Child (CRC).

Published by
Child Rights Information Network (CRIN)
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First published 2009

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If you have information about legislative or constitutional provisions protecting children from age discrimination in your country, please email info@crin.org.

Introduction

Discrimination against children occurs in every corner of the globe. Because it is so ingrained in so many aspects of life - school, work, and home alike - we must call on our governments to take proactive measures to eliminate age discrimination. From issuing declarations to passing legislation or even amending national constitutions, many countries and organisations have taken action to ensure that children enjoy the same rights and protections as adults. Most notably, Australia enacted a comprehensive Age Discrimination Act in 2004. While the Act does permit differential treatment of children in some circumstances, it has done much to address age-based discrimination against children. A review of this and other countries' actions to guarantee children equal status to adults follows:¹

Australia

Australia (Age Discrimination Act 2004)

The Age Discrimination Act 2004 generally prohibits direct² and indirect³ discrimination on the basis of age in employment, education, access to public spaces, provision of goods and services, and accommodation, among other areas. The primary aspects of the Act are detailed below; additional background information is available on the website of the Human Rights and Equal Opportunity Commission for Australia (<http://www.hreoc.gov.au/age/publications.html>; <http://www.hreoc.gov.au/legal/FDL/chap2.html>)

Prohibition of Age Discrimination

Employment: The prohibition on age discrimination applies broadly to the large majority of employers (companies, partnerships, etc.) and employment relationships (permanent, agency, contract). It covers the entire employment process from offer and terms to termination, including working conditions, guidelines for promotion and transfer, training, and benefits. Notably, there is a controversial exception for "youth wages," as discussed below, which allow for lower salaries to be paid to employees under the age of 21.

Education: The Act prohibits discrimination in the admission process, expulsion or other disciplinary proceedings, and the provision of institutional benefits.

Access: If a space or building is open to the public or any part of the public, no one may be denied access to that space or building on the basis of their age.

¹ Notably, it does not appear that any of these legal initiatives specifically address status offenses. Where status offenses are provided for in national legislation, equal treatment for children could be furthered by repealing status offense legislation in addition to passing proactive anti-discrimination measures. Where status offenses are defined and enforced at a local level, however, it is possible that national anti discrimination legislation could eliminate status offenses across all jurisdictions.

² Direct discrimination occurs when an individual person is treated more negatively by another person because of his or her age.

³ Indirect discrimination occurs when a certain policy or practice effectively and unreasonably disadvantages a class of people because of their age.

Goods/Services/Facilities: It is unlawful to discriminate on the basis of age in providing goods or services, or making facilities available.

Accommodation: Residential and commercial landlords may not discriminate against tenants on the basis of age.

Land: Age discrimination is prohibited in the sale or transfer of land.

Government Programmes: Officials may not discriminate on the basis of age in administering government programmes.

Exceptions

Although the prohibition on age discrimination applies in most instances, the Act does provide for several exceptions where people may continue to be treated differently because of their age. Importantly, "positive discrimination" - where an act or programme is directed to benefit someone at a disadvantage because of their age - is permitted. Charities and voluntary organisations may also consider age in providing services, and religious bodies may act in line with established traditions that discriminate on the basis of age. There are additional exceptions for insurance, health care, pensions and other retirement benefits, government employment programs, and immigration and citizenship matters. Of most relevance to children, however, is the exception that allows for lower "youth wages" to be paid to employees under 21.

Youth Wages

Section 25 of the Act allows for employers to pay people under 21 at lower rates for the same work conducted by their adult counterparts. Officially, the Australian government views youth wages as creating an incentive for companies to hire younger people, providing them with opportunities they wouldn't otherwise have. However, according to a [background report](#) on age discrimination prepared in anticipation of the Age Discrimination Act, there is not a lot of evidence that raising young persons' wages to equal those of adults would increase youth unemployment. The Commissioner of Children for the state of New South Wales has publicly [questioned](#) the utility of youth wages, and it is hoped that Australia will follow the lead of neighbouring [New Zealand](#) in abolishing youth wages and offering children and young adults equal pay for equal work.

Oversight/Compliance

The Human Rights and Equal Opportunity Commission (HREOC) is responsible for promoting understanding and acceptance of the Act and for monitoring compliance with its provisions. Specifically, the Act calls on the HREOC to publish guidelines for avoiding age discrimination, establish educational and research programmes, review future legislation for consistency with the Act, and recommend laws or other measures to end age discrimination. Where appropriate, the HREOC may also intervene in court proceedings on age discrimination.

Complaints:

Victims of age discrimination may file written complaints with the [Australian Human Rights Commission](#). The Commission offers assistance to anyone interested in filing a complaint, and the complaint process itself is designed to be straightforward and accessible. Once a complaint has been lodged, the Commission will investigate the complaint and work with all parties involved

through mediation to find a solution that works for everyone. If mediation does not work, complaints may then be taken to federal court.

Belarus

[Article 44 of the Belarussian Constitution](#) prohibits age discrimination in wage rates, providing that "women, men, adults and minors shall be entitled to equal remuneration for work of equal value."

European Union

The European Parliament has recently approved a draft Council Directive on implementing the principle of equal treatment between persons irrespective of belief, disability, age, or sexual orientation in areas other than employment. This needs to go to the Council of ministers for unanimous approval before it can be passed. However, the United Kingdom is seeking to oppose the inclusion of children from protection against age discrimination at the Council of Ministers. Additionally, as it now reads, [Recital 14](#) allows for "differences in treatment on grounds of age and disability...if they are objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary."

Essentially, this exception allows governments to pass laws that suitably aim to regulate the labour market and are no more discriminatory than necessary. These laws must balance the discriminatory effect of their provisions against the importance of the government's aim (which might include things like facilitating access to employment or expanding vocational training programmes), and the government must consider whether other less discriminatory means might have achieved this same aim. Where challenges to these laws are made, national courts can assess the legislation's goals and determine whether these warrant the specified level of discriminatory treatment.

- [Young Equals briefing](#)

Finland

Finland has a constitutional provision on age equality that specifically includes children. Section 6 of the Constitution provides that "[n]o one shall, without an acceptable reason, be treated differently from other persons on the ground of" age and that "[c]hildren shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development."

Relevant portions of the constitution may be accessed [here](#).

Germany

At a local level, federal states in Germany (Länder) have passed legislation relating to building standards to ensure buildings are accessible to disabled people, older people and people with small children.

Until now, the ensuring of access to buildings was primarily secured through the building codes of the states. These contain provisions on the types of buildings that must allow barrier-free access. An example of these provisions is section 39 of the Building Code of Baden-Württemberg. It requires a barrier-free environment for facilities used by small children, people with disabilities, and the elderly.

Landesbauordnung für Baden-Württemberg, Aug. 8, 1995, Gesetzblatt Für Das Land Baden – Württemberg at 617, as amended.

Netherlands

The Netherlands extends protection from age discrimination in employment to children. The Act of 17 December 2003 guarantees equal treatment irrespective of age in employment, occupation and vocational training ([Equal Treatment in Employment \(Age Discrimination\) Act](#)). To file complaints about age discrimination in employment, contact the [Dutch Equal Treatment Commission](#) weekdays between 2 and 4 p.m. Central European time at +31 30 888 38 88.

New Zealand

The [New Zealand Human Rights Act](#) prohibits discrimination on the grounds of age for people aged 16 and over⁴ in employment; access and use of public spaces; the provision of goods, services, and facilities; and accommodation. There are certain exceptions to this protection relating to – among other things - insurance, certain education policies, and membership requirements for clubs or organisations.

Although the Human Rights Act initially allowed for lower youth wage rates, the government recently moved to stop discrimination against children in employment by abolishing youth wages with the passage of the [Minimum Wage \(New Entrants\) Amendment Act 2008](#). Notably, this legislation does permit lower pay rates for “new entrants,” those in their first 200 hours or three months of work. The complete act as now in force can be read [here](#), and the background behind the introduction of the bill to abolish youth wages is described [here](#).

Following a previous increase in youth wages in 2001, a study was commissioned to determine the effects of the increase on youth employment. The results revealed “no adverse effects on youth employment or hours worked” on young adults and “stronger evidence of positive employment responses to the changes” for teenagers receiving higher wage rates. The report, *Youth Minimum Wage Reform and the Labour Market*, can be accessed [here](#).

“Abstract: This paper analyses the effects of a large reform in the minimum wages affecting youth workers in New Zealand since 2001. Prior to this reform, a youth minimum wage, applying to 16-19 year-olds, was set at 60 per cent of the adult minimum. The reform had two components. First, it

⁴ Regrettably, this prohibition does not apply to children under the age of 16, arguably the most vulnerable to discrimination.

lowered the eligible age for the adult minimum wage from 20 to 18 years, and resulted in a 69 per cent increase in the minimum wage for 18 and 19 year-olds. Second, the reform raised the youth minimum wage in two annual steps from 60 per cent to 80 per cent of the adult minimum, and resulted in a 41 percent increase in the minimum wage for 16 and 17 year-olds over a two-year period. We use data from the New Zealand Household Labour Force Survey (HLFS) to estimate the impact of these changes on a variety of labour market and related outcomes. We compare the average outcomes of these two groups of teenagers, before and after the policy reform, to those of 20-25 year-olds, who were unaffected by the reform. We find no robust evidence of adverse effects on youth employment or hours worked. In fact, we find stronger evidence of positive employment responses to the changes for both groups of teenagers, and that 16-17 year-olds increased their hours worked by 10-15 percent following the minimum wage changes. Given the absence of any adverse employment effects, we find significant increases in labour earnings and total income of teenagers relative to young adults. However, we do find some evidence of a decline in educational enrolment, and an increase in unemployment and inactivity, although these results depend on the specification adopted.”

To further combat age discrimination, the government of New Zealand has issued guidelines for legislation to encourage thoughtful consideration of (not) including strict age limits that might negatively impact children. See “[Does your policy need an age limit?](#)”

The New Zealand Human Rights Commission oversees age discrimination matters. Official grounds for complaints may be found [here](#), and complaints may be filed online [here](#).

South Africa

South Africa provides children with constitutional and statutory protection against age discrimination. Section 9 of the Constitution states that "the state may not unfairly discriminate directly or indirectly against anyone" on the grounds of age, and the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 provides for the enactment of national legislation to prevent and prohibit unfair discrimination and to promote the achievement of equality. In addition, Section 6 of the Children's Act introduces the principle that children must be treated fairly and equitably and protected from unfair discrimination.

Relevant portions of the law may be accessed [here](#).

Complaints of age discrimination may be addressed in writing to the South African Human Rights Commission [here](#); detailed guidelines for the complaints process (including submission requirements) may be found in the Complaints Handling Manual [here](#). For more information, contact the child rights co-ordinator at: jmehlomakulu@sahrc.org.za

Sweden

Sweden has recently prohibited age discrimination against children with the enactment of the Discrimination Act of 5 June, 2008. However, although age is listed as a protected factor and children are not excluded from protection against discrimination, differential treatment on grounds of age is in large part permitted "if there is a legitimate purpose and the means that are used are

appropriate and necessary to achieve that purpose." The full text of the act is available [here](#).

United Kingdom (Northern Ireland)

In Northern Ireland, public authorities have a statutory duty to "promote equality of opportunity between persons of different age" under Section 75 of the Northern Ireland Act 1998, available [here](#).