



U3A NETWORK NSW INC.

MEMORANDUM

From: Carmen Champion/Governance Officer

To: All U3A Presidents

Subject: Anti-Discrimination Law

Date: 18/09/2019

ARE U3As AGE DISCRIMINATING?

The most fundamental principle of U3A is that it is an organization for people in their third age, that is people who have reached retirement.

The template Constitution addresses this issue by limiting membership to persons who have reached the age of 45 years and who have retired permanently from Full-Time Employment. "Full-Time Employment" means a person who has ongoing employment and works on average around 38 hours each week.

Occasionally one hears the claim that imposing an age restriction on membership puts U3As in breach of discrimination legislation. That claim has no merit.

ANTI-DISCRIMINATION LEGISLATION.

As is stated in the Blue Book:

" Australian age anti-discrimination laws do not apply to not-for-profit voluntary organisations (such as U3A) so setting an age specific entry requirement is not contrary to law (some U3As specify a minimum age of 50)".

Age Discrimination Act 2002 (Cth)

The *Age Discrimination Act 2002* allows for "positive measures to be taken on the basis of age".

The Act says that it is:

"not against the law to provide a genuine benefit to people of a particular age group or to do something that helps meet an identified need for people of a certain age group or is intended to reduce a disadvantage experienced by persons of a particular age".

<https://www.humanrights.gov.au/our-work/employers/age-discrimination>

The NSW Anti-Discrimination Act

<https://www.antidiscrimination.justice.nsw.gov.au/service-providers/volunteers-and-voluntary-organisations#ArevolunteerscoveredbytheNSWAnti-DiscriminationAct?>

Voluntary bodies, like U3As, must comply with anti-discrimination law in relation to both employment practices and service delivery. In general, they must ensure that there is no unlawful harassment or discrimination in relation to:

- a) recruitment procedures and decisions;
- b) how people are treated while they are employed; and
- c) separation/termination procedures and decisions.

What about membership rules?

Section 57 of the *NSW Anti-Discrimination Act* says that non-profit bodies (other than registered clubs, building or friendly societies, credit unions and some cooperative housing societies) can discriminate in relation to their admission to membership and the provision of benefits, facilities or services to members.

<https://www.legislation.nsw.gov.au/#/view/act/1977/48/part6/sec57>

U3As/Educational Authority

The Act defines “*educational authority*” to mean “*a person or body administering a school, college, university or other institution at which education or training is provided*”. The Act prohibits discrimination on the basis of, inter alia, age by educational authorities.

However, section 49ZYL of the Act does not apply to a “*private educational authority*” which means “*a person or body administering a school, college, university or other institution at which education or training is provided, not being:*

- (a) a school, college, university or other institution established under the Education Act 1990 (by the Minister administering that Act), the Technical and Further Education Commission Act 1990 or an Act of incorporation of a university, or
- (b) an agricultural college administered by the Minister for Agriculture.

U3As are, accordingly, not caught by section 49ZYL of the Act.

Note: This information was created in September 2019 using the above-identified sources. This material is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance.

Carmen Champion / Governance Officer