

Can a hiring manager really ask that?

There are things that employers can ask you in a job interview, and there are those they can't. Surprisingly, those questions aren't always what you'd expect.

In Australia both federal and state laws make it unlawful for employers to ask job applicants discriminatory questions. There are circumstances, however, when you might be asked a question you're not expecting that is perfectly legitimate. You can be asked, for example, if you smoke, says employment lawyer Sara McRostie of [Minter Ellison](#).

McRostie says the laws are slightly different in each state. For example in Victoria and Queensland, a prospective employer cannot ask a job applicant questions that resemble discrimination, unless they can demonstrate the information is reasonably required for a purpose that *does not* involve discrimination.

We've provided detail on five questions employers can ask, to ensure you're prepared and informed for your next job interview:

- **If you're a particular age.** Generally, your age is irrelevant, says McRostie, but where age does pertain to the specific requirements of the job, such as the service of alcohol, questions about age can be asked. Once you've secured the role, an employer will need to know your date of birth for taxation, superannuation and remuneration entitlement reasons, which is perfectly lawful.
- **If you have the right to work in Australia.** Discrimination on the base of race or ethnicity is an absolute no-no in Australia. But employers are entitled to ask you to provide proof of your right to work in this country. This means you can be asked if you are an Australian citizen or have the appropriate visa to work, says McRostie. The Australian Human Rights Commission has published a [guide to racial discrimination](#) in the workplace, but there are exceptions. Queensland's Anti-Discrimination Commission cites an example of where it might be a genuine occupational requirement for an employee to be of, or have

connections with Aboriginal or Torres Strait Islander heritage. “In these cases it may be appropriate for employers to advertise for an ['identified position'](#),” says McRostie, as certain health-related jobs, for example, require specific local, cultural or gender-based knowledge.

- **If you have any medical problems.** Asking questions about your health or requesting that you undergo a pre-employment medical check, is lawful says McRostie, but employers need to be very cautious. Questions about your health must be related to the potential health risks associated with the job or the industry, and your ability to perform the specific elements of the job.
- **If you have a criminal record.** It’s okay to ask this, says McRostie, and to make an offer conditional upon you obtaining and providing a satisfactory criminal history check. However, there are some limits on how criminal history checks are used, she says. For example, it is unlawful under Tasmanian and Northern Territory law to discriminate against a job applicant on the basis of a criminal record that is not relevant to your ability to perform the “inherent requirements,” of the job. A conviction for violence, for example, may not be relevant for a job handling money, whereas a theft conviction might be. What’s more, you don’t have to reveal spent convictions, that is, when a [10 year waiting period](#) has been fulfilled from the date of conviction. If you think you have been refused a job because of your criminal record, you can lodge a complaint with the [Australian Human Rights Commission](#). The Commission will investigate the complaint and, where appropriate, try to resolve the issue through conciliation.
- **If employers want to run a credit check on you.** Employers can run credit checks on you if there is a legitimate reason for doing so, for example, if the job involves dealing with things such as money, accounts, or financial administration. However, you need to provide your consent before a credit check is undertaken.

Finally, [Fair Work Australia](#) says that any employee who needs advice or assistance in relation to their rights or obligations under workplace law, can contact the Fair Work Infoline on 13 13 94, or visit www.fairwork.gov.au. Resources available on the Fair Work Ombudsman’s website also include [information relating to discrimination laws](#).

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