

The 7 things you wanted answered about illegal interview questions

SEEK received an overwhelming response to our [Illegal Interview Questions article](#), which detailed what employers have no right to ask individuals in interviews.

With the article sparking a lot of follow-up questions from our community, we decided to go back to Andrew Jewell, Principal Lawyer with [McDonald Murholme](#) and Jaenine Badenhorst, Senior Solicitor with [Rainey Collins](#) for more information about what's acceptable when it comes to interview questions.

1. Q: Can recruiters or potential employers request a proof of ID such as a licence or passport at the job application or interview stage?

A: Yes. If the request relates to the inherent requirements of a role, such as requiring proof of age to work in a licensed venue or proof of licence to drive a delivery van, then it is legitimate.

But it's important to note that because these documents contain information regarding the employee's age and other protected attributes, such a request may be discriminatory. For example, if an employer uses your driver's licence to calculate your age, and then subsequently uses your age to discriminate against you, that would be illegal.

Of course, you may not know if a potential employer has used your driver's licence to work out your age and discriminate against you. However, you should always be mindful and protective of sharing this type of information. Don't be afraid to question why proof of ID is required and how it will be used.

2. Q: Is it legal for recruiters or employers to ask for information such as age, gender and ethnicity in application forms?

A: There is no real difference between an "application form question" and an "interview question". Although these questions are probably quite common, there will be very few positions that can justifiably have a vacant position only for a candidate of a specific gender, age or sexual orientation.

Some employers may genuinely need to ask some of these questions in order to determine whether you can perform the inherent requirements of the role. For example, whether you are over the age 18 to work behind a bar. But this doesn't have to be asked in an application form; the employer just needs confirmation that you are over the age of 18.

However, generally these qualities are not indicative of whether a person is able to do a job. The obvious question that follows is: "Why do employers ask the question then?" If the purpose of the question is to screen against or preferentially select certain applicants, then the employer might be guilty of discrimination.

You cannot "refuse or omit to employ" a potential candidate because they are of a certain gender, sexual orientation, age, race or due to another illegal ground. But there are limited occasions when discrimination may be allowed if it relates to the requirements of the position.

Different treatment is sometimes legal (and necessary) to enable a particular group of people to achieve equality with others. [Examples of this](#) include gender quotas in the workplace or measures to reduce the discrimination or under-representation of specific ethnic or cultural groups.

In addition to knowing what your rights are at the job application stage, you also wanted to know if the following questions were legal:

3. Q: How do you juggle work and looking after your children?

A: No. This question suggests that your family responsibilities are relevant to the decision of whether to employ you or not.

The mere fact that someone has children, no children, plans to have children, plans to have no children, or has other dependants (like an elderly parent, or disabled relative) should not be used to discriminate against a prospective employee.

It is illegal to discriminate against an employee due to the employee's family status (such as being a single parent).

4. Q: How much are you currently getting paid?

A: This question is not illegal per se, but the information could be used to discriminate against a candidate.

For instance, this might be a way for an employer to gauge whether the particular employee is within the employer's budget, in which case the question is legitimate. The questions (and answer) could prevent both parties wasting time on an interview, if their respective expectations do not align.

However, if someone is unemployed, then it will be apparent from the answer, and a candidate may prefer not to disclose that, to avoid the risk of being discriminated against.

Instead, you could answer with something like, “I’d prefer to focus on what I would be willing to work for, rather than what I am currently earning”.

5. Q: Are you currently working?

A: It is illegal to discriminate against a candidate because they are employed, unemployed, or on a benefit. That being said, the question could be legitimate to determine when the employee would be able to start in the role (for instance the candidate might need to give notice to an existing employer).

6. Q: Have you had any past injuries/illnesses?

A: No. As this relates to a protected attribute (disability) it is unlawful.

Depending on the circumstances, however, this question could be relevant if it is specifically aimed at asking about an illness or injury that would directly relate to the ability to perform the inherent requirements of the role. For example, if the job inherently involved lifting heavy items, a specific question such as, “Do you have any medical conditions that would mean that you are unable to lift heavy items?” would most likely be appropriate.

7. Q: Have you made any claims through Workcover?

A: No. This question relates to a protected attribute (workplace right and disability) and is therefore unlawful.

Things to keep in mind

Australia does not have one single law that determines what can and can’t appear in job advertisements or can be asked in interviews. However, these laws apply to all of Australia under the Fair Work Act 2009 and state and territory anti-discrimination legislation.

“Regardless of what is noted above, it can be difficult to prove that you have been discriminated against,” says Badenhorst. “How do you prove that you were not offered an interview or a job as a result of discrimination, as opposed to something else?”

Many of the questions above are not “illegal” per se, but they can be used for illegal purposes. “It can be very difficult to prove that you were an unsuccessful candidate as a result of your age (or some other form of discrimination), rather than due to another legitimate reason (i.e another candidate was more suitable),” says Badenhorst. “Further to this, many of the questions above can be justified by a prospective employer, and

you might never know that you are being discriminated against. Where an employee suspects that they are being discriminated against, they can request an interviewer's notes made during an interview (under the Privacy Act). Evidence from such notes could be useful.”

If you are concerned that you have been asked an illegal or discriminatory question you have every right to ask what the information will be used for. You can always say something like, “I hope you don’t mind me asking, but I’d like to find out a little more about the reasons for this question and how this information may be used.” Most employers are not looking to discriminate against you or ask illegal questions, but it is worth knowing your rights and requesting interviewer’s notes made during an interview if you think you have been discriminated against.

The [Human Rights Commission](#) has further information.

Information provided in this article is general only and it does not constitute legal advice and should not be relied upon as such. SEEK provides no warranty as to its accuracy, reliability or completeness. Before taking any course of action related to this article you should make your own inquiries and seek independent advice (including the appropriate legal advice) on whether it is suitable for your circumstances.