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SOLICITORS & BARRISTERS

MORTGAGES & FINANCE

Discrimination

There are laws in place in NSW and Australia wide which prevent discrimination on the grounds of (among other things) their age, sex, marital status, race, HIV/AIDS status or sexuality.

One common question I hear is from employers who want to know what their rights are if they are hiring somebody for a position which is traditionally a male/female job – for example, lets say bricklaying.

The law is quite clear – you can't discriminate in the workplace against somebody merely because they are female or male. So if Mary applies for a job with you as a bricklayer, and she is just as well qualified and just as able to perform the job as Fred, then you can't not employ her simply because she's a woman.

Of course, there are differences between the sexes. It is undeniable that, for example, usually men are physically stronger than women. So if physical strength is an essential part of the job, then it would be acceptable not to hire Mary if you felt Fred was stronger than her. But there has to be a reason apart from merely Mary's sex to justify your decision.

You can't discriminate against people with a disability either. A recent example of this is where a video shop had a policy which required the production of a driver's licence as identification before it would hire videos. An assistant in the shop refused to hire videos to a person who was unable to get a driver's licence because of a physical disability. A complaint was made to the Anti Discrimination Board that this constituted discrimination on the basis of a physical disability, and the complaint was upheld. Happily, that matter was resolved by agreement between the parties eventually.

The moral of the story is to be very careful about how you treat people – these days the law has an active interest in it.