



In Australia, discrimination law states that it is illegal to discriminate against a person on the grounds of that person's disability. This is set out in the Disability Discrimination Act 1992 (DDA); however, section 46 of the DDA states that discrimination in the provision of insurance is not unlawful under certain circumstances.

The Disability Discrimination Act 1992 (DDA)

In the DDA, discrimination on the grounds of disability is unlawful across a range of areas, and the definition of disability includes mental illness.

However, Section 46 of the DDA states that **it is lawful for providers of insurance and superannuation to discriminate based on disability**, under certain conditions.

Discrimination is considered reasonable if it is based on actuarial or statistical data or 'having regard to other relevant factors'. So, if the insurance company has information saying that people with a mental illness are more likely to make a claim, then they are allowed to refuse to insure someone or only offer them a policy with exemptions or reduced benefits.

Section 46: Superannuation and insurance

(1) This part does not render it unlawful for a person to discriminate against another

person, on the ground of the other person's disability, by refusing to offer the other person:

- a) an annuity; or
- b) a life insurance policy; or
- c) a policy of insurance against accident or any other policy of insurance; or
- d) membership of a superannuation or provident fund; or
- e) membership of a superannuation or provident scheme;

if:

- f) the discrimination:
 - (i) is based upon actuarial or statistical data on which it is reasonable for the first mentioned person to rely; and
 - (ii) is reasonable having regard to the matter of the data and other relevant factors;

or

- g) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the discrimination is reasonable having regard to any other relevant factors.

(2) This Part does not render it unlawful for a person to discriminate against another

person, on the ground of the other person's disability, in respect of the terms or conditions on which:

- a) an annuity; or
- b) a life insurance policy; or
- c) a policy of insurance against accident or any other policy of insurance; or
- d) membership of a superannuation or provident fund; or
- e) membership of a superannuation or provident scheme;
- f) is offered to, or may be obtained by, the other person, if:
 - g) the discrimination:
 - a. is based upon actuarial or statistical data on which it is reasonable for the first mentioned person to rely; and
 - b. is reasonable having regard to the matter of the data and other relevant factors; or
 - h) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the discrimination is reasonable having regard to any other relevant factors.

