VCAT | victorian civil & administrative tribunal

HUMAN RIGHTS LIST

EXEMPTION

APPLICATION NO H68/2017

The Victorian Civil and Administrative Tribunal has considered an application pursuant to section 89 of the Equal Opportunity Act 2010 (the Act) by Women's Health Goulburn North East Inc (the applicant). The application for exemption is to enable the applicant to advertise for and employ only females in all roles in the organisation and to, from time to time, provide services to females only (the exempt conduct).

UPON READING the material filed in support of this application, including the affidavit of Susan Reid, the Tribunal is satisfied that it is appropriate to grant an exemption from sections 16, 44, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

In granting this exemption the Tribunal noted:

- The applicant organisation provides services to women by offering skills training, support, advocacy and assistance to build networks. It also provides individual women with information and resources on all aspects of women's health via its specialist library. It refers women to agencies for particular needs. It also provides training, information and assistance with service improvement to service providers and planners. Finally it provides consultancy services on equity, gender and health including evaluation, planning and research. The applicant operates under a feminist framework and believes that much of its work is best done by women so as to best promote the interests of women and to ensure their voices are heard. Some of its research work involves speaking with women, who have suffered violence at the hands of men. The applicant works with family violence services in the region including working with community based organisations providing direct services to women and their children.

- On the evidence provided, I am satisfied that the services provided by the applicant direct to women who are seeking health and welfare information and referrals are special needs services under section 88 of the Act as they meet the special needs of its female clients. I am further satisfied that the exception contained in section 28 of the Act applies in relation to those direct service provision aspects of the exempt conduct. That is because I am satisfied that the services where staff have direct and significant contact with the applicant's clients can be most effectively provided by female staff. However, the evidence does not establish that the broader policy, research and consultancy services, particularly when offered to other organisations, can be provided most effectively by females. Where I am not satisfied that an exception applies to the services provided by the holder of each role within the applicant organisation but accept that it is preferable that those services be provided by women only, it is appropriate that an exemption be granted. It is also appropriate to ensure that an organisation established to provide the kinds of services set out above, is able to, when appropriate, limit its services to women only.

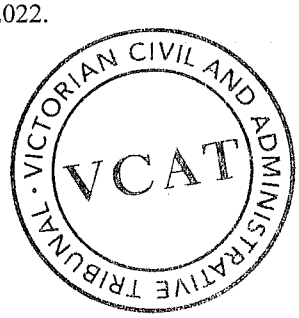
- In the absence of an exemption, aspects of the exempt conduct would amount to prohibited discrimination.

- When making decisions about exemptions, the Tribunal is required to give proper consideration to relevant human rights as set out in the Charter of Human Rights and Responsibilities Act 2006 (Charter). Arguably, this exemption limits the right to equality and in particular the right to equal and effective protection against discrimination of males who would wish to be employed by the applicant or receive services from the applicant. I am satisfied that, in the circumstances discussed above, the limit imposed by this exemption is reasonable and justified under the Charter.

The Tribunal hereby grants an exemption from the operation of sections 16, 44, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

This exemption is to remain in force from the day on which notice of the exemption is published in the Government Gazette until 24 May 2022.

Dated this 22nd day of May 2017



A Dea
Senior Member