

HUMAN RIGHTS LIST

EXEMPTION

APPLICATION NO H144/2022

The Victorian Civil and Administrative Tribunal has considered an application pursuant to section 89 of the *Equal Opportunity Act 2010* (Vic) (**the Act**) by Women’s Health Goulburn North East Inc (**the Applicant**). The Applicant varied its initial application and now seeks an exemption to enable it to advertise for and employ only women in all roles in the organisation and to provide services to women only. “Woman” means anyone who identifies as a woman, regardless of their sex or the gender assigned to them at birth (the exempt conduct).

UPON READING the material filed in support of this application, including the affidavit of Amanda Kelly, CEO of the Applicant, and the written submissions providing information about the Applicant, its programs, structure, policies and staff positions, 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 provides services to women within a community development framework by offering skills training, support, advocacy and assistance to build networks. For individual women, the Applicant provides referrals, information and resources on all aspects of women’s health. For service providers and planners, the Applicant provides training, information and assistance with service improvement. The Applicant also provides consultancy services on equity, gender and health including evaluation, planning and research.
- The Applicant is a service run by women for women. It is an independent feminist organisation dedicated to promoting the health outcomes for all women, and to improving the delivery of health and community services for women in its catchment area. The Applicant believes that its work is best done by women. The Applicant believes that a woman-only organisation creates an environment that is accessible, non-threatening and comfortable for women, where confidentiality and respect for women’s perspective is attributed the highest priority. The Applicant provides an environment where sensitive issues of sexual and reproductive rights, terminations of pregnancies, gender-based violence, access to health services including family violence services, community health services, economic abuse and domestic violence can be discussed in safety.
- The Applicant has 10 staff positions. While not all positions are focused on direct client service delivery, all employees have some client contact and stakeholder engagement. The Applicant believes the effective delivery of its services would be threatened if it was not able to employ women only, as some women may not seek assistance or feel comfortable to share their stories in the presence of persons who do not identify as women.



- The Victorian Equal Opportunity and Human Rights Commission was notified of the application and has indicated it does not seek leave to intervene.
- The Applicant was granted an exemption in respect of similar conduct in 2017, 2012, 2008 and 2003. While some of the Applicant's services may be characterised as special services for special needs as set out in section 88 of the Act, and some of the staff positions may come under the exception in section 28 of the Act, I am not satisfied that all the staff positions and services would come under those exceptions. Therefore, in the absence of an exemption, the exempt conduct would amount to prohibited discrimination. Given the size of the organisation, and the vulnerability and special needs of some of its clients, I accept that the services provided by the Applicant are most effectively delivered by an organisation that employs women only.
- 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 (the Charter)*. This exemption limits the right to equality, and in particular the right to equal and effective protection against discrimination for people who do not identify as women, who may wish to be employed by, or seek the services of, the Applicant. I consider the exempt conduct is focused and directed to delivering the Applicant's purpose, and that the exemption will not adversely affect anyone seeking employment or services from other organisations. On the evidence before me, I am satisfied that, in the circumstances discussed above, the limit imposed by this exemption is reasonable and justified under the Charter.
- Based on the evidence and considerations noted above, I am satisfied in all the relevant circumstances of the case, that it is appropriate to grant the exemption.
- I am also satisfied that the exemption should be granted for the period of five years.

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 15 September 2027.

Dated this 15<sup>th</sup> day of September 2022.

C. Thwaites  
Member

