

**ANTI-DISCRIMINATION LIST**

21 August 2012

VCAT Reference: A122/2012

**Flat Out Inc.**  
**ATT: Michele Old**  
**54 Pin Oak Crescent**  
**FLEMINGTON VIC 3031**

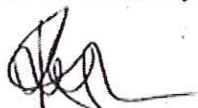
Dear Madam

**Flat Out Inc. - Exemption Application**

In regards to the above exemption application, please find enclosed copies of the Victorian Civil and Administrative Tribunal's (VCAT) orders.

If you have any queries, please contact our customer service team on the number below and quote VCAT reference number **A122/2012**.

Yours sincerely



**Kylie Pieters**  
**Registrar**  
**Human Rights Division**  
TW

Encl: Copies of orders dated 21 August 2012.

## Anti - Discrimination List

### EXEMPTION

#### APPLICATION NO A122/2012

The Victorian Civil & Administrative Tribunal has considered an application pursuant to section 89 of the Equal Opportunity Act 2010 (the Act) by Flat Out Inc (the applicant). The application for exemption is to enable the applicant to advertise for and employ only women as Outreach Support & Advocacy Workers (the exempt conduct).

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

In granting this exemption the Tribunal noted:

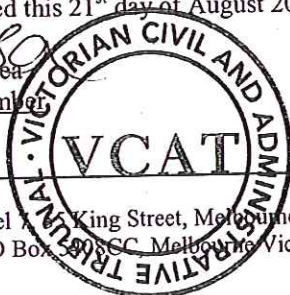
- The applicant organisation is a community based organisation which was established in 1988. It currently has seven employees. Its primary task is to support women who are exiting prison or who are at risk of being imprisoned. It provides services including access to appropriate and affordable housing. It links women with support, education and information to re-establish them in the community post-release. It also works with women to prevent their re-incarceration.
- The role of Outreach Support and Advocacy Worker includes providing case management, support and advocacy for up to eight women. The Workers seek to support women in respect to a range of matters including financial, legal, health, drug and alcohol and mental health issues. The Workers can be called upon to attend court and represent the clients in other ways. The role requires a close working relationship between the client and Worker.
- The women's prison population comprises women who have experienced significant levels of violence and sexual assault. As a consequence, those women are reluctant to disclose their personal histories and that disclosure is necessary for relevant services and referrals to be provided. In these circumstances, it is preferable that the staff who work with and interact with these clients are also women.
- An exception in respect of similar conduct was granted by the Tribunal in 2009 with an expiry date of 1 July 2012 (A166/2009). No exception or current exemption already applies to the exempt conduct and in the absence of an exemption 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 men who would wish to be employed as an Outreach Support & Advocacy Worker. 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, 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 29 August 2017.

Dated this 21<sup>st</sup> day of August 2012

A Dea  
Member



**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
HUMAN RIGHTS DIVISION  
ANTI-DISCRIMINATION LIST**

VCAT REFERENCE: A122/2012

**APPLICANT:** Flat Out Inc  
**WHERE HELD:** Melbourne  
**BEFORE:** Member A Dea  
**HEARING TYPE:** Chambers  
**DATE OF ORDER** 21 August 2012

**ORDER**

The applicant has applied for an exemption under section 89 of the *Equal Opportunity Act 2010* (EO Act) to enable the applicant to advertise for and employ only an Indigenous woman in the role of Outreach Support and Advocacy Worker (the conduct).

On the material filed in support of the application, including the affidavits of Michelle Old, the Tribunal is satisfied that the conduct is a special measure under the EO Act. The Tribunal noted:

- A copy of the application was sent by the Tribunal to the Victorian Equal Opportunity and Human Rights Commission (the Commission). The Commission did not seek leave to intervene in the proceeding.
- The applicant organisation is a community based organisation which was established in 1988. It currently has seven employees. Its primary task is to support women who are exiting prison or who are at risk of being imprisoned. It provides services including access to appropriate and affordable housing. It links women with support, education and information to re-establish them in the community post-release. It also works with women to prevent their re-incarceration.
- The role of Outreach Support and Advocacy Worker includes providing case management, support and advocacy for up to eight women. The Workers seek to support women in respect to a range of matters including financial, legal, health, drug and alcohol and mental health issues. The Workers can be called upon to attend court and represent the clients in other ways. The role requires a

close working relationship between the client and Worker.

- The women's prison population comprises women who have experienced significant levels of violence and sexual assault. As a consequence, those women are reluctant to disclose their personal histories and that disclosure is necessary for relevant services and referrals to be provided. In these circumstances, it is preferable that the staff who work with and interact with these clients are also women.
- The women's prison population is comprised of 8.4% Indigenous women. Indigenous women are more disadvantaged than women from the wider community. None of the applicant's current staff members are Indigenous. The applicant wishes to employ an Indigenous women to work with Indigenous clients so as to provide them with the most effective and culturally sensitive support.

Accordingly, under section 124 of the *Victorian Civil & Administrative Tribunal Act 1998* (VCAT Act), the Tribunal declares that the conduct is a special measure under section 12(1) of the EO Act.

Under section 12(2) of the EO Act, the applicant will not discriminate against another person contrary to the EO Act by taking that special measure. Having regard to the considerations in section 90 of the EO Act, the Tribunal is satisfied that no exemption under section 89 is necessary.

The application is struck out under section 75(1)(a) of the VCAT Act.

