

HUMAN RIGHTS LIST

EXEMPTION

APPLICATION NO H154/2017

The Victorian Civil and 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 females or people whose gender identity is female in all roles within the applicant organisation (the exempt conduct).

UPON READING the material filed in support of this application, including the affidavit of Michele 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 six 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 applicant provides these services through staff engaged as Outreach Support and Advocacy Workers. Those staff provide case management, support and advocacy. They also seek to support women in respect to a range of matters including financial, legal, health, drug and alcohol and mental health issues. The staff 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 staff member and requires the disclosure of detailed personal information and histories by the client. The women's prison population comprises women who have experienced significant levels of violence and sexual assault. As a consequence, those women are often reluctant to disclose their personal histories and that disclosure is necessary for relevant services and referrals to be provided.
- The applicant also employs an executive officer, a finance manager and an administration resource coordinator. From time to time the executive officer is required to undertake casework and work directly with the applicant's clients. The other staff have incidental contact with the clients only.
- On the evidence provided, I am satisfied that the services provided by the applicant are special needs services under section 88 of the Act as they meet the special needs of its clients. I am further satisfied that the exception contained in section 28 of the Act applies in relation to much of the exempt conduct. That is because I am satisfied that the direct client services of the kind described above where the staff have direct and significant contact with the applicant's clients can be most effectively provided by females or people whose gender identity is female. The evidence does not, though, satisfy me that the tasks undertaken by the finance and administration worker can most effectively be provided by a staff member who is female or whose gender identity is female such that the exception contained in section 28 of the Act has been proven to apply. 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 vulnerable clients receive services only from females or people whose gender identity is female, it is appropriate that an exemption be granted.
- On 21 August 2012, the Tribunal granted the applicant an exemption in respect of advertising for and employing women only as Outreach and Advocacy Workers. That exemption will expire on 28 August 2017. In the circumstances discussed above in relation to sections 28 and 88 of the Act, no further exemption is required for those staff.
- On 26 March 2013, the Tribunal granted an exemption in respect of advertising for and employing women only in all roles in the applicant organisation (other than Outreach and Advocacy Workers) and

in relation to the provision of services to women only (A42/2013). That exemption expires on 3 April 2018. While the exemption granted in proceeding A42/2013 applies to the employment of women only in all roles other than Outreach and Advocacy Workers, the exemption does not expressly provide for the employment of females and people whose gender identity is female. To the extent that the exemption in proceeding A42/2013 does not extend to the whole of the conduct which falls within this proceeding, it is preferable that a further exemption is granted to ensure that the Applicant does not inadvertently engage in prohibited conduct contrary to the Act. As discussed above, I am satisfied that section 88 applies to the applicant's services and so no further exemption is required in respect of the provision of services.

- 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 or people whose gender identity is male who would wish to be employed by 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, 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 23 August 2022.

Dated this 17th day of August 2017


A Dea
Senior Member

