



GOVERNMENT OF
WESTERN AUSTRALIA

Your Ref: 2014/107
Our Ref: GOV 11/0148
Enquiries: Allan Macdonald (08 9216 3952)



Ms Hashini Panditharatne
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Legal Section
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

Dear Ms Panditharatne

Exemption Application under the 'SDA' – Arden Anglican School

Thank you for your letter dated 4 May 2017, inviting me to make a submission regarding an application by the Arden Anglican School ('Arden') for an exemption under section 44 of the *Sex Discrimination Act 2004* ('SDA').

I note that the letter from Arden's Principal, Graham Anderson, is dated 17 February 2016, which I assume is a mistake. Regardless, I wish to comment on only one aspect of Arden's application, namely, the statement in the second last paragraph of Mr Anderson's letter: "*We have reviewed our circumstances and do not believe it can be brought within the 'Special Measure' provision of the Sex Discrimination Act, section 7D.*"

Mr Anderson does not elaborate as to why the school has reached that view. The WA State Administrative Tribunal (SAT) has previously refused to grant an exemption on the basis that the applicant's conduct – the provision of an online job search facility for the benefit of women - amounted to a special measure intended to achieve equality on the ground of sex, within the meaning of section 31 of the *Equal Opportunity Act 1984 (WA)* (EOA), the equivalent provision to section 7D of the SDA. A copy of the SAT's decision is attached – ***Switch Now Pty Ltd t/as Just Be [2007] WASAT 134***.

Notwithstanding Arden's belief that section 7D of the SDA does not apply to its circumstances, it will benefit the AHRC to consider the above decision in forming a view as to whether or not the exemption should be granted.

Thank you again for providing me with the opportunity to comment on this matter. Should you wish to discuss my comments in more detail, please telephone Allan Macdonald, Senior Legal Officer on (08) 9216 3952 or email allan.macdonald@eoc.wa.gov.au.

Yours sincerely

Dr John Byrne

Acting Commissioner for Equal Opportunity

26 MAY 2017