



Aboriginal Family Violence Prevention & Legal Service Victoria

Ms Elizabeth Broderick
Sex Discrimination Commissioner and
Commissioner responsible for Age Discrimination
Australian Human Rights Commission
Level 8
Piccadilly Tower
133 Castlereagh Street
Sydney NSW 2000
legal@humanrights.gov.au

6 December 2010
By email

Dear Ms Broderick

Application for exemption under section 44 of the Sex Discrimination Act 1985 (Cth)

Exemption application

I apply to the Australian Human Rights Commission for an exemption under section 44 of the *Sex Discrimination Act 1985* (Cth) (the **Act**). The application is sought to:

*Allow the Aboriginal Family Violence Prevention and Legal Service Victoria (**Applicant**), for a period of five years, to advertise for and employ women to fill the following roles (however described from time to time) within the Applicant's organisation:*

- *family violence and sexual assault counsellor;*
- *lawyer;*
- *paralegal support worker;*
- *Indigenous community education and community development officer;*
- *community engagement & community legal education workshop program project officers;*
- *policy development and advocacy employees (including project employees); and*
- *Chief Executive Officer.*

The FVPLS

The Applicant is the Aboriginal Family Violence Prevention and Legal Service Victoria (**FVPLS**). We are an Aboriginal and Torres Strait Islander (**ATSI**) community controlled organisation which was established in October 2002. We provide legal assistance, counselling, information and referral, community legal education, policy development and lobby for law reform, for Indigenous victims/survivors of family violence and sexual assault and for non-ATSI carers of ATSI children.

FVPLS is funded through a number of sources including the Commonwealth Attorney General's Department, Victoria Legal Aid and Department of Justice Victoria.

Freecall 1800 105 303

Doc 5557459.10
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Bairnsdale:
210B Main Street
Bairnsdale 3875
PO Box 1281
Bairnsdale 3875

Overview of the reason FVPLS wants to employ women only

The vast majority of clients of FVPLS are women and children. The positions described above are best performed by women as women are unlikely to fully disclose detail about violence and/or sexual assaults against them by men to males. It is relevant that most perpetrators are male and that for some women, particularly where the crime against them is recent, working closely with a male may further traumatise them and certainly inhibit comfort and disclosure.

The reason the exemption is necessary

Section 14 of the Act provides:

(1) It is unlawful for an employer to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy:

(a) in the arrangements made for the purpose of determining who should be offered employment;

(b) in determining who should be offered employment; or

(c) in the terms or conditions on which employment is offered.

Section 86 of the Act provides:

(1) A person shall not publish or display an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of a provision of Part II.

By advertising for and employing only women to fill certain roles, it is clearly arguable that FVPLS would be engaging in unlawful discrimination based on sex in employment in breach of these sections.

Additional information in support of the exemption application

Background information relevant to this application is attached (**Attachment 1**). I also attach the signed affidavits used in support of an exemption application under the *Equal Opportunity Act 1995* (Vic) (**Attachment 2**). The Victorian Civil and Administrative Tribunal granted an exemption to the FVPLS on 7 June 2010. A copy of the decision is also attached (**Attachment 3**).

Updated statistical data

The affidavit of Antoinette Christian Winter Braybrook at paragraphs 10 and 17 (see Attachment 2) includes statistical data which has since been updated, as follows.

"The vast majority of clients of the Applicant continue to be women and children. Attached are client statistics for 2008-09 and 2009-10 years (**Attachment 4**). In the latter financial year, over 90 per cent of clients were women, compared to 72 per cent in 2008-09. In addition, as at 30 June 2010, approximately 2,600 ATSI women across Victoria have participated in 44 workshops. The workshops aim to support ATSI women to be prepared to handle incidents of family violence through being aware of their rights, knowing points of contact for assistance and knowing people who can provide ongoing support. Each workshop is built around a general theme that reinforces ATSI women's sense of identity and the importance of their various roles within the family and the wider community. In 2009-10, the average workshop attendance was 70 women, although some exceeded 100 participants."

Further information

Please contact me on (03) 9244 3333 or at abraybrook@fvpls.org if you require any further information or would like to discuss any of the information in this application.

Yours sincerely



Antoinette Braybrook
Chief Executive Officer

Attached

- 1 Background information
- 2 Signed affidavits used in support of the Victorian exemption application
- 3 VCAT decision dated 7 June 2010
- 4 Client statistics for 2008-09 and 2009-10