



Victoria Government Gazette

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EXEMPTION

Application No. H331/2018

The Victorian Civil and Administrative Tribunal has considered an application pursuant to section 89 of the **Equal Opportunity Act 2010** (the Act) by the Department of Justice and Community Safety (the applicant). The application for exemption is to enable the applicant to advertise for and employ female staff in custodial roles at Dame Phyllis Frost Centre and Her Majesty's Prison Tarrengower within the applicant organisation (the exempt conduct).

Upon reading the material filed in support of this application, including the affidavit of Miya Chiba, the Tribunal is satisfied that it is appropriate to grant an exemption from sections 16, 18, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

In granting this exemption the Tribunal noted:

- In November 2017 the Victorian Ombudsman released its report entitled 'Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre (DPFC)'. The report contains 19 recommendations to reduce the risk of cruel, inhuman and degrading treatment at DPFC. The applicant has accepted the majority of the recommendations. Recommendation 18, which is adopted, states:

Recommendation 18: More women officers

The General Manager at DPFC develop a strategy for recruiting and retaining women to increase the proportion of female custodial officers at DPFC to 60 per cent by 2020, including seeking any necessary exemptions under the **Equal Opportunity Act 2010** (Vic).

- The applicant intends to apply that recommendation to Her Majesty's Prison Tarrengower also.
- I accept that the recruitment strategies would not attract the operation of section 12 of the Act because the purpose is not for promoting or realising substantial equality for female custodial officers, but rather to promote better care and rehabilitation outcomes for women prisoners.
- I accept that the recruitment strategies would not attract the operation of section 26 of the Act because not all duties of a custodial officer in a women's prison need to be performed by a woman.
- The applicant has complied with directions to advertise details of the application to its existing and potential workforce and to provide a copy of the application to the relevant union body.
- Only one submission was made in response to the application. That response misconceived the basis of the application.
- 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 persons who are not female and 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, 18, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct until such time as the application can be heard.

This exemption is to remain in force from the day it is published in the Gazette until 26 February 2024.

Dated 7 March 2019

A. SMITH
Member

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Level 2, 1 Macarthur Street
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