



Victoria Government Gazette

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EXEMPTION

Application No. H443/2019

The Victorian Civil and Administrative Tribunal has considered an application pursuant to section 89 of the **Equal Opportunity Act 2010** (the Act) by YMCA Victoria Community Programming Pty Ltd – Carlton Baths (the applicant). The application for exemption is to enable the applicant to limit patronage at its establishment to persons over the age of 18 at a single function and to advertise that fact (the exempt conduct).

Upon reading the material filed in support of this application, including the affidavit of Kieran O'Dwyer, the Tribunal is satisfied that it is appropriate to grant an exemption from sections 44, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

In granting this exemption the Tribunal noted:

- An exemption on the same terms for the same event was granted in January 2019.
- The Victorian Equal Opportunity and Human Rights Commission indicated by letter dated 24 January 2020 that it did not seek to intervene if the exemption is limited to 12 months.
- The applicant plans to run the event on or about 9 February 2020 as a safe and inclusive event for people from the LGBTIQ+ community to access exercise in its pool stadium and health club.
- The applicant states and the Tribunal accepts that people from the LGBTIQ+ community suffer disadvantage and experience increased risk of mental health issues and increased suicide rates. The applicant further states, and the Tribunal accepts, that people from this community have felt excluded from opportunities to exercise, in circumstances where exercise is known to reduce the likelihood of mental health issues and suicide.
- The applicant seeks to ensure at the event in February 2020 that people from the LGBTIQ+ community feel welcome and included. Accordingly, they will have access to gender neutral changerooms.
- The applicant has insufficient resources to also a separate changerooms for families or persons under 18 in addition to gender neutral changerooms for the expected patrons from the LGBTIQ+ community.
- In those circumstances, the exclusion is consistent with the applicant's child safety policy which prohibits children using alternative gender changerooms.
- The Tribunal is not satisfied that any exception applies to the exempt conduct.
- 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 under the age of 18. 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 44, 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 28 February 2021.

Dated 28 January 2020

A. SMITH
Member

SPECIAL

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