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Attention Ms Elizabeth Broderick, The Sex Discrimination Commissioner

10 September 2008

Dear Ms Broderick

Our reference
JAD CRY 02 1433 5244

Temporary Exemption Application – The Deli Women & Children's Centre Inc.

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We act for The Deli Women & Children's Centre Inc (**Deli**).

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We write to apply on the Deli's behalf for a temporary exemption from sections 14 and 22 of the *Sex Discrimination Act 1984* (Cth) (**SDA**) in relation to:

- (a) the provision of therapeutic services by the Deli to only female clients; and
- (b) the employment of only female staff for the provision of the Deli's therapeutic and children's services.

We seek these exemptions for the maximum period of five years given the entrenched nature of the disadvantage being targeted by these exemptions.

It is our opinion that the therapeutic services provided by the Deli fall within the description of special measures in section 7D of the SDA. We also consider that the policy of employing only female staff for the provision of therapeutic and children's services falls within section 30 of the SDA because, as explained below, being a woman is a genuine occupational qualification for these positions.

However, it is still possible that the Deli may face a discrimination claim which would have to proceed to a full hearing to determine the application of sections 7D and 30 of the SDA. This would expose our client to significant cost and divert its limited resources away from providing much needed services.

Accordingly, we seek exemptions under section 44 of the SDA in the terms set out below.

The exemptions sought

We seek the following exemptions from the SDA:

1. An exemption from section 14 (Discrimination in employment or in superannuation) in relation to the employment of only female staff for the Deli's therapeutic and children's services; and

2. An exemption from section 22 (Goods, services and facilities) in relation to the provision of the Deli's therapeutic services to only female clients; and
3. Exemptions from section 105 (Liability of persons involved in unlawful acts) and section 106 (Vicarious liability) in so far as these sections of the SDA relate to any of the activities described in paragraphs 1 and 2 above.

We seek these exemptions for the maximum period of five years.

Overview of the Deli

The Deli is a non-profit incorporated association which receives funding from the Department of Community Services (**DOCS**). Established in 1979, the Deli provides services in the Sydney metropolitan area, with a particular focus on the Botany local government area.

The Deli aims to provide professional, holistic support to women, children and families in the community within a safe and friendly environment. Further to this aim, the Deli provides a range of individual and group services with particular focus on domestic violence, children's services and family support. The Deli's children's services are facilitated by qualified early childhood workers and include a playgroup, parenting support and family support.

The Deli's therapeutic services include individual and group counselling and casework services. Its group counselling programs are both educational and therapeutic in nature, covering topics such as domestic violence, self-empowerment, relaxation and conversation, parenting and women returning to the workforce. The Deli's casework services include assessment, referrals, advocacy, and the provision of information and education.

Factors relevant to granting the exemptions

We address below the factors set out in *Temporary exceptions under the Sex Discrimination Act: HREOC Guidelines*.

1. What circumstances or activities are covered by the exemption?

- (a) recruitment and employment; and
- (b) provision of services.

2. Who will be affected by the application?

If the proposed exemptions are granted, they would affect potential male applicants for positions relating to the provision of the Deli's therapeutic and children's services. The proposed exemptions would also affect potential and existing male clients of the Deli who seek access to its therapeutic services.

3. Is the exemption necessary?

In our view, the services provided by the Deli fall within the description of special measures in section 7D of the SDA. We also consider that the policy of employing only females in relation to the provision of the Deli's therapeutic and children's services at the Deli falls within section 30 of the SDA because, as explained in paragraph 4(b), being a female is a genuine occupational qualification for these positions.

However, it is still possible that the Deli may face a discrimination claim which would have to proceed to a full hearing to determine the application of sections 7D and 30 of the SDA. Defending such an action would be financially debilitating for the Deli. Defending such an action would be financially debilitating for the Deli.

In the 2006-07 financial year, the Deli received funding from the following sources:

- (a) \$216,846 funding from DOCS;
- (b) approximately \$11,000 from clients for its children's services and other services;
- (c) approximately \$1,100 from fundraising; and
- (d) a \$1,100 grant from the Randwick City Council Small Grants Program.

The proposed exemptions are necessary to protect the Deli, with its limited financial and human resources, from potentially having to defend a costly and time consuming discrimination claim.

4. Why should the exemption be granted?

(a) How the proposed exemption fits within the objects and scheme of the SDA

The Deli is one of the few services available in the Sydney metropolitan area that offers therapeutic support for women and families experiencing or recovering from domestic violence, trauma and abuse. It is difficult to measure the true extent of domestic violence experienced by women given that many instances are unreported. However, a recent study has found that 57 per cent of Australian women report experiencing at least one incident of physical or sexual violence by a man over their lifetime.¹ In a 12 month period, one in 20 women, or over 440,000 women, were victims of violence.² These findings are supported by the Deli's experience of clients who are predominantly women experiencing or recovering from domestic violence perpetrated by men. In some cases, the difficulties experienced by these women are compounded by their culturally and linguistically diverse (**CALD**) backgrounds.

The Deli acknowledges, and attempts to address through its therapeutic and children's services, issues arising from domestic violence, trauma and abuse, which contribute to the disadvantage and inequality experienced by women and their families. This is consistent with the objective under section 4(d) of the SDA to promote recognition and acceptance within the community of the principle of equality of men and women. It is also consistent with one of the Sex Discrimination Commissioner's three crucial areas for achieving equality between men and women in Australia, namely freedom from violence³.

The Deli recognises that addressing such systemic inequality and disadvantage requires a multi-faceted approach. Accordingly, the Deli's therapeutic services broadly encompass the following areas:

- (i) education;
- (ii) casework services; and
- (iii) counselling.

¹ Mouzos, J and Makkai, T (2004) *Women's Experiences of Male Violence Findings from the Australian Component of the International Violence Against Women Survey (IVAWS)* Research and Public Policy Series No 56 Australian Institute of Criminology.

² Australian Bureau of Statistics (2006) *Personal Safety Survey Australia*, Canberra: Australian Bureau of Statistics.

³ Human Rights and Equal Opportunity Commission, *Gender equality: What matters to Australian women and men* (2008).

The Deli also attempts to promote these issues in the community by hosting special event days such as International Women's Day, participating in community events and collaborating with other like-minded community organisations.

(b) Why compliance with the SDA is not possible or should not be required in this case

Given that most of the Deli's clients are women, in our view it is a genuine occupational requirement that only female employees be involved in the provision of therapeutic and children's services. It is well established that women, particularly those in circumstances of domestic violence and abuse, best respond to services provided by women and are able to recover their self-esteem more effectively in an environment where only women are present. This is supported by the Deli's experience with its female clients and its reputation in the community for its expertise in providing such services to women. While Deli's children's services are open to both men and women, the majority of women who utilise the Deli's therapeutic services have their children cared for by the Deli's early childhood workers while receiving therapeutic and education services. As such, there is a cross-over between the two streams such that employees in both streams must be sensitive to issues of domestic violence and abuse experienced by women. Accordingly, it is a genuine occupational requirement to only employ female staff in both streams.

(c) Any things done or planned by the applicant which seek to achieve the objects of the SDA

The Deli's approach seeks to advance the objects of the SDA by providing professional, holistic support to women, children and families within a safe and friendly environment. As outlined in paragraph 4(a) above, the Deli focuses on issues relating to domestic violence, trauma and abuse, which contribute to disadvantage and inequality experienced by women and their families. The proposed exemptions seek to further these objectives by ensuring that its therapeutic services clients feel they are part of a non-threatening and understanding environment.

(d) Any terms or conditions which further the objects of the SDA and which the applicant is prepared to meet as a condition of receiving the exemption

We do not consider there to be any terms or conditions in relation to granting the exemption that would further the objects of the SDA beyond those outlined in paragraphs 4(a) and 4(c) above. However, we would be happy to discuss any terms or conditions that HREOC may consider appropriate.

(e) The results of any consultations undertaken by the applicant with people who may be affected by the proposed activity and their respective organisations

No particular consultations have been undertaken with those who may be affected by the exemptions. However, as outlined in paragraphs 4(a), 4(b) and 4(g), the Deli has considered who would most benefit from the exemptions and how to minimise any adverse effects.

(f) The financial or other hardship which will be incurred if the exemption is not granted

As outlined in paragraph 3 above, the proposed exemptions are necessary to protect the Deli from potentially having to defend a costly and time consuming discrimination claim.

(g) Measures proposed to minimise or reduce any hardship which may occur to people affected by the proposed exemption

It is well established that women, particularly those in circumstances of domestic violence and abuse, best respond to services provided by women and are able to recover their self-esteem more effectively in an environment where only women are present. This is supported by the Deli's experience with its female clients and its reputation in the community for its expertise in providing such services to women.

By contrast, men comprise a very small proportion of people who experience domestic violence and they tend to have different needs and circumstances from women who experience domestic violence. While this is nonetheless a serious issue, the provision of therapeutic services to men experiencing or recovering from domestic violence requires different skills and approaches to dealing with men's specific needs. To provide these services for men would be beyond the scope of the Deli's resources and, for the reasons outlined above, would compromise the Deli's ability to effectively meet the needs of the majority of its clients, who are women.

If the proposed exemptions are granted, the Deli proposes to minimise any hardship on men seeking its therapeutic services, by referring them to other organisations which are able to provide relevant therapeutic services. (The Deli's casework service already provides referrals to other organisations where it is unable to provide appropriate services.) As such, the adverse effect of the exemptions would relate to a very small proportion of people for whom there are other services available, and to which the Deli would refer them.

We note that the Deli is also seeking exemptions under sections 126 and 126A of the *Anti-Discrimination Act 1997* (NSW).

Please contact Jan Dransfield on 9258 6533 or Clare Yazbeck on 9258 6512 if you require any further information or if you would like to discuss any aspect of this application.

Thank you for taking the time to consider this application and we look forward to hearing from you.

Yours faithfully

