



CJC Operations Australia Pty Ltd
ABN 92 603 179 255
Level 1, 464 St Kilda Road
MELBOURNE VIC 3004

Contact Courtenay Zajicek
Direct Line 03 9863 2507
Email courtenay.zajicek@cjc.com
Our Ref Application for Temporary Exemption

1 September 2016

The Australian Human Rights Commission

BY EMAIL: legal@humanrights.gov.au

Dear Sir/Madam,

RE: APPLICATION FOR TEMPORARY EXEMPTION UNDER THE SEX DISCRIMINATION ACT 1984 (CTH) FOR CJC OPERATIONS AUSTRALIA PTY LTD ABN 92 603 179 255

(a) Who may apply for an exemption?

This application for an exemption is being made on behalf of a corporate entity.

(b) What activities can be the subject of an exemption?

This application for an exemption relates to section 22 of the *Sex Discrimination Act 1984 (Cth)* (**Act**) in the category of Goods, Services and Facilities.

(c) What activities cannot be subject of an exemption?

This application does not relate to, or request an exemption from, sexual harassment (Part II, Division 3 of the Act) nor any offences under the Act such as victimisation of a person because he or she has made a complaint or advertising that indicates an intention to do an act that is unlawful under the Act.

(d) How should applications for exemption be made?

This application has been submitted electronically to legal@humanrights.gov.au.

(e) What information should an application include?

(i) Who is seeking the exemption?

CJC Operations Australia Pty Ltd ABN 92 603 179 255 (**Curves**), trading as "Curves".

Curves is a global franchise network, which was once a privately owned family business, but today is owned by Private Equity firm, North Castle Partners.

(ii) How long is the exemption sought for?

Five (5) years.

(iii) What circumstances or activities are to be covered by the exemption?

The proposed exemption would exclude males from being able to become members of, and conduct fitness activities at, Curves Fitness Clubs within Australia.



The proposed exemption relates to section 22 of the Act, (Goods, Services and Facilities), which raises an arguable case of discrimination as the section provides that it is unlawful for a person to discriminate on the ground of sex in the provision of services by refusing to provide a person with those services.

(iv) Who will be affected by the application?

All males.

(f) Is an exemption necessary?

An exemption is necessary because the proposed activity is not covered by a permanent exemption pursuant to Division 4, Part II (sections 30-43 of the Act), and the proposed activity is unlikely to fall within the positive discrimination provision contained in in section 7D of the Act, which would require an argument to be made that discrimination is not occurring on the basis of sex by taking a 'special measure' for the purpose of achieving substantive equality.

(g) Why should an exemption be granted?

(i) Reasons why the exemption is required:

Curves Clubs are fitness and weight loss facilities that offer programs, equipment and an environment that is specially designed for women. There are approximately 200 Curves Clubs within Oceania (Australia and New Zealand) and thousands more clubs around the world, offering the same model. Members have the ability to travel between clubs, and as a result it is important that Curves, as a global brand, is consistent with its membership offering.

The idea behind the Curves concept is to create an environment where women feel comfortable exercising, and to preserve this atmosphere, where males are not permitted to join or exercise within the clubs. In addition, to enhance the comfortable environment for women, Curves does not have mirrors, and the women are encouraged to dress comfortably. As a result, Curves promotes a relaxed, inviting and safe environment for women of all ages to feel comfortable and to get the most out of their work out, which provides the opportunity for the women members to improve their health and fitness, and ultimately benefit their health and well-being.

In addition, even if males could join Curves, it is unlikely that they would be well-served by the available equipment, which have all been specifically designed and tested to suit the typical female body, in an effort to target their specific strength and cardiovascular fitness needs. Similarly, there are quite a number of fitness and gym facilities in Australia, and as a result, the likelihood of males being disadvantaged or prevented from accessing fitness facilities at all is unlikely, and therefore the exemption would not create an inequality between men and women, as the males are able to access fitness services elsewhere, however the exemption would permit many women from achieving their fitness goals in situations where they otherwise may not feel comfortable attending a regular gym, and thus miss out.

Although males are unable to join Curves as a member, as the clubs are all franchised, some clubs do employ males, and Curves is not seeking an exemption in this regard. These hiring decisions are made by each individual franchisee, some of whom are males. As Gary Heavin, a co-founder of Curves once explained, "often these men are active business owners that have a passion for helping their members move toward a better state of health and fitness".

In the opinion of Curves, the exemption is necessary to preserve the wishes of current and future women members for a number of reasons, including but not limited to:

- i. **sensitive discussions:** these discussions are about the weight loss and health of Curves members, and in Curves experience, women are more likely to give and receive open and honest advice on their health condition and workout plan when they are not in a typical male dominated fitness club environment. This can be due to a number of reasons, including embarrassment with weight or body shape, being shy or self-conscious, or simply being uncertain about how to use the equipment;
- ii. **equipment design:** the equipment, together with the workout programs, are designed specifically for women, in an effort to help women achieve results that they may not be able to achieve in co-ed gyms, where the programs tend to be more generic, and focussed on pin-loaded weights. At Curves, the equipment is all tailored and designed to focus on resistance (rather than weights), and has introduced various technologies to ensure that its members are comparing their results only against their own performance through resistance tracking and measuring;
- iii. **physical movement:** in our experience, body conscious women tend to also be rather self-conscious with the movement of their body when working out. Curves addresses these concerns in three ways; firstly by not having any mirrors, secondly encouraging members to dress comfortably for their work-out, and finally having a female only club to allow members to feel less self-conscious and focus solely on their work-out;
- iv. **female companionship, discussion and community:** these aspects of the Curves Club would have a very different dynamic if males were permitted to join and participate in the Curves Club, and will have the likely outcome of reducing the relaxed environment where those women who feel self-conscious or embarrassed tend to thrive and actually take steps to achieving their health and fitness goals;
- v. **religious factors:** there are some women who visit and attend the Curves Clubs because they are prohibited from exposing too much of their bodies to men, as part of their religion. As a result, these women are still able to access and achieve their personal fitness goals, without fear of being unfaithful to their religion, which allows these women to relax and focus on their fitness.

(ii) *How does the proposed exemption fit within the objects of the Act?*

As we know, the objectives of the Act are to give effect to the object and spirit of the Convention on the Elimination of All Forms of Discrimination against Women, eliminate discrimination against persons on the ground of sex, and promote recognition and acceptance within the community of the principle of the equality of men and women.

The proposed exemption does not intend to negate the objectives of the Act, despite the application being to exclude males from club membership, however instead is focused on being able to support women in their fitness and weight journeys, who might otherwise not be prepared to take these steps should a women only club not be available to them. There are again many reasons why this might be the case, including embarrassment, self-consciousness, or simply shyness, which may prevent them from having the confidence to attend a co-ed gym.

As a result, the proposed exemption seeks to promote the opportunity for women to have equal access to health and fitness services, in an environment where they will not feel embarrassed or self-conscious, or at least in an environment where these feelings can be minimised for these women, using the strategies described in this application.

Included below are testimonials from Curves club owners and members, who confirm the above, and the importance of having a women only club to attend.

i. Testimonial from Curves Club Owner in NSW

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ii. Testimonial from Curves Club Member in NSW

iii. Testimonial from Curves Club Member in NSW

iv. Testimonial from Curves Club Member in NSW

(iii) Why is immediate compliance with the Act not possible or should not be required?

In Curves opinion, for the reasons outlined earlier, compliance with these elements of the Act should not be required, to ensure that the women who attend the Curves Clubs are able to continue working out in an environment that is acceptable to, and suits them.

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(iv) *The financial or other hardship that will be incurred if the exemption is not granted*

Given the results of the survey, highlighted above, it is likely that there could be significant business loss to our Curves franchisees if clubs were to allow males to become members of the clubs. Unfortunately, existing members would likely leave the clubs, and the men would unlikely stay at the club because of the unique and tailored environment, equipment and services offered, which are female centric. In most cases, this will have the likely effect of the franchisees closing their clubs through lack of membership, in a time where they are already battling with the impacts of increased competition and decreased consumer spending.

(v) *Additional information regarding reasons why the exemption should be granted*

Curves has been operating as a fitness and weight loss club for women for 20 years globally, and over 10 years in Australia. As a member women are able to enjoy facilities of Curves clubs globally. One of Curves unique propositions, and point of difference in the market, is the fact that the clubs can offer women a unique environment to workout, not one where they are intimidated by the idea or reality of men watching them working out. If the exemption is not granted, Curves and its franchisees will lose its point of difference in the market, and its female members will no longer have a club to go to where they feel comfortable to workout.

In addition, both the Victorian Civil and Administrative Tribunal (**VCAT**) and the Human Rights Commission previously approved and granted an exemption for a similar application, albeit for a male only fitness club, stating the following reasons from the Deputy President of VCAT, “in my view there is a clear public interest in improving the health both of men and women. I accept that some men for religious or other reasons, may feel uncomfortable about exercising in a mixed men’s and women’s environment, and indeed may not attend. Without a single sex facilities [sic] such as the one which is proposed, these men would not have the opportunity to undertake regular and supervised exercise. The exemption seeks to provide for men a similar choice which is provided by the women’s only facilities for women. That choice is either to attend a single sex facility or to attend a mixed sex facility. In this way the exemption promotes that objective of the Equal Opportunity Act which speaks of the acceptance and recognition of everyone’s right to equality of opportunity. This facility will also contribute to health education of men by providing various health tests and classes about fitness and nutrition” (Human Rights and Equal Opportunity Commission Sex Discrimination Act 1984 (Cth), 2005).

This example is included only for illustrative purposes, as Curves understands that the Commission is not bound by VCAT or other applications, but will make a decision on this application on its merits.

(h) Are there factors that may affect the processing of the application?

Ideally the application will be processed urgently to ensure that Curves franchisees, who own approximately 180 clubs in Oceania, can conduct their businesses free from concern that they are in any way in breach of the Act.

Curves does not object to a majority of the information contained in this application being made publicly available, except to the extent that it relates to testimonials from club members due to privacy, as well as statistical information which is business sensitive. The contents of which have been italicised and marked *red* for the sake of clarity.

The applicant has not yet sought an exemption under any law of a State or Territory dealing with sex discrimination, however intends to do so if necessary, after receiving a response from the Human Rights Commission, as the national regulatory body.

For completion however, the Curves NSW ACT Co-op group have already been provided with a Certificate of Exemption under the *Anti-Discrimination Act 1977* pursuant to section 126A, whereby an exemption was given on 9 March 2015 from the provisions of sections 33 and 51 of the *Anti-Discrimination Act 1977*, to allow the operation of fitness and weight management centres specifically designed for women (enclosed for ease of reference).

Curves is not aware of any formal complaints against an individual franchisee or Curves Club before the Commission under the Act, or before any State or Territory authority dealing with sex discrimination, in relation to the subject of the exemption application.

Please don't hesitate to contact me if you have any additional queries, or require any additional information to consider the exemption application.

Yours faithfully,

Courtenay Zajicek

General Counsel

E: courtenay.zajicek@cjc.com

M: 0402 976 193

P: (03) 9863 2507