

**AUSTRALIAN HUMAN RIGHTS COMMISSION
SEX DISCRIMINATION ACT 1984 (Cth), Section 44(1)
NOTICE OF REFUSAL OF A TEMPORARY EXEMPTION**

By this instrument, the Australian Human Rights Commission (Commission) rejects the application of the Deli Women & Children's Centre (Applicant) for a temporary exemption pursuant to s 44(1) of the *Sex Discrimination Act 1984* (Cth) (SDA).

BACKGROUND

Nature of the application

The Applicant, has applied for an exemption from the SDA to allow it to:

- provide therapeutic services to only female clients; and
- employ only females to provide therapeutic and children's services.

The Applicant has applied for an exemption for five years.

About the Applicant

The Applicant is a small not-for-profit incorporated association incorporated in 1979 to provide services to 'low income families in the Botany Bay' area. It provides therapeutic services such as individual and group counseling as well as case work and education to female domestic violence survivors. It also provides children's services such as playgroup, parenting support and family support.

The Applicant claims that while its children's and family services are open to all members of the local community, these services complement its therapeutic services.

Applicant's reasons for requesting an exemption

The Applicant believes that women domestic violence survivors tend to feel most comfortable and respond best in an all female environment. The Applicant has referred the Commission to a 1999 United Kingdom Home Office Research Study Report and its own anecdotal evidence to support its view.

The application expressly states that the Applicant considers its conduct to fall under either the special measures exemption under s 7D SDA or the genuine occupational qualification exemption under s 30 of the SDA. The Applicant has asked the Commission to nonetheless grant a temporary exemption to shield its limited resources from costly litigation.

REASONS FOR DECISION

The Commission has decided to reject the application. The Commission is of the view that a temporary exemption is not necessary. This is primarily because the Commission is of the view that the Applicant is not a trading

corporation and therefore the SDA does not apply to the conduct of the Applicant by virtue of s 9 of the SDA.

The Commission is also of the view that:

1. the provision of therapeutic services to only females constitutes a special measure under s 7D(1) of the SDA. Section 7D(2) provides that such special measures do not constitute discrimination. Therefore no exemption is required to provide therapeutic services to only women; and
2. the employment of female staff providing therapeutic services to female violence survivors falls under the permanent exemption in s 30 of the SDA. Therefore, no exemption is required to employ female therapeutic staff.

The Commission is not satisfied, on the basis of the information before it, that the employment of only females to provide children's services falls under one of the permanent exemptions or is a special measure under s 7D of the SDA. However, the Commission is of the view that a temporary exemption is still not necessary because the SDA does not apply to the Applicant's conduct in any event.

The Commission has considered the Applicant's submission that its activities further the objects of the SDA and therefore a temporary exemption should be granted, even though it is not necessary, to shield its limited resources from costly litigation. The Commission does not regard that as a sufficient basis for granting an exemption.

APPLICATION FOR REVIEW

Subject to the *Administrative Appeals Tribunal Act 1975* (Cth), any person whose interests are affected by this decision may apply to the Administrative Appeals Tribunal for a review of the decision.

Dated this 22nd day of September 2009

Signed by the President, Catherine Branson QC, on behalf of the Commission.