

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION
AGE DISCRIMINATION ACT 2004 (Cth)
Section 44(1)

NOTICE OF REJECTION OF APPLICATION FOR EXEMPTION

By this instrument, the Human Rights and Equal Opportunity Commission ('HREOC') declines to grant to MOSEDG Inc. trading as Youth Connect ('Youth Connect') a temporary exemption pursuant to s 44(1) of the *Age Discrimination Act 2004 (Cth)* ('ADA').

1. EXEMPTION APPLICATION

1.1 By email dated 14 February 2007, Youth Connect applied to HREOC for a temporary exemption from the ADA to allow the applicant to advertise employment vacancies specifically for young people between 15 and 24 years of age ('the application').

1.2 Youth Connect is a not for profit organisation which has been contracted to provide training and job-search assistance to young people between 15 and 24 years of age by the Department for Victorian Communities under its Workforce Participation Partnership Program ('the Program').

1.3 Section 24(1) of the ADA relevantly provides as follows:

24 Employment agencies

(1) It is unlawful for an employment agency to discriminate against a person on the ground of the person's age:

(a) by refusing to provide the person with any of its services; or

(b) in the terms or conditions on which it offers to provide the person with any of its services; or

(c) in the manner in which it provides the person with any of its services.

1.4 HREOC has considered whether to grant Youth Connect a temporary exemption from s 24(1) under s 44 of the ADA which gives HREOC the power to grant temporary exemptions.

1.5 By email dated 26 March 2007, Youth Connect provided further information to assist HREOC in assessing the application. This included information that, by providing job search assistance to young people, Youth Connect aims to:

1.3.1 improve the employment prospects and opportunities of young people who would otherwise face significant obstacles in obtaining employment;

1.3.2 assist young people in the region in making the transition from school (or training) into employment; and

1.3.3 redress disadvantage experienced by young people as a result of unemployment.

1.6 By email dated 28 June 2007, Youth Connect provided further information to assist HREOC in assessing the application. Relevantly, Youth Connect informed HREOC that:

1.6.1 To fulfil its obligations under the Program, Youth Connect aims to advertise positions for young people on its website. Youth Connect will screen all applicants for positions to ensure they are eligible for the program. Suitable applicants will then be referred on to the specific employer who will determine whether the applicant will be offered employment.

1.6.2 Youth Connect will only advertise jobs that are appropriate for young people aged between 15 to 24 years of age. Youth Connect will not apply any other criteria to the jobs it advertises.

1.6.3 Youth Connect's view is that there is 'limited intensive support for young job seekers who have a variety of special needs that prevent them from adequately accessing the labour market'.

1.6.4 The 2006 Victoria Government Report, *The Destinations of School Leavers in Victoria – On Track 2005*, found that 50 per cent of the 4 529 Victorian students who left school in

2005 without a year 12 qualification did not move into full time education or training. The Report also found there was an unemployment rate of 15.4 per cent among these early school leavers.

- 1.6.5 In the South Melbourne region where Youth Connect proposes to advertise employment vacancies for young people, the Australian Bureau of Statistics states the unemployment rate of young people between 15 and 19 years of age is 28.9 per cent.
- 1.6.6 A study undertaken by the Brotherhood of St Lurance in the City of Kingston area (an area in which Youth Connect proposes to advertise employment vacancies for young people) found that more than 2 400 people aged 15 to 24 in the City of Kingston are not in full-time education or work.

2 FINDINGS ON MATERIAL QUESTIONS OF FACT

- 2.6 Based on the evidence referred to in paragraphs 1.3 – 1.6 above, HREOC makes the following findings on material questions of fact in relation to the application:
 - 2.1.1 Youth Connect is an employment and training service that has been contracted by the Department of Victorian Communities to improve the employment prospects of young people between 15 and 24 years of age.
 - 2.1.2 Youth Connect has formed the view that a significant number of people in the South Melbourne region between 15 and 24 years of age are unemployed and face obstacles obtaining employment. Early school leaves, in particular, face a high risk of unemployment.
 - 2.1.3 Youth Connect has formed the view that there is a shortage of effective employment and training services for young people between 15 and 24 years of age in the South Melbourne region.
 - 2.1.4 Youth Connect has formed the view that targeting young people between 15 and 24 years of age in their advertisements for employment vacancies will improve the employment prospects of young people in the South Melbourne region.
 - 2.1.5 Youth Connect has formed the view that improving the employment prospects of young people aged between 15 and 24 years of age will help reduce disadvantage faced by young people in the South Melbourne region as a result of unemployment.

3 REASONS FOR DECLINING TO GRANT A TEMPORARY EXEMPTION

- 3.6 In considering THIS application for a temporary exemption, HREOC has considered whether the activities in respect of which the exemption is sought might constitute discrimination under the ADA. HREOC has also considered whether any of the permanent exemptions to the ADA may apply. HREOC is of the view that if the circumstances are not arguably discriminatory within the terms of the ADA, then there is no need for HREOC to grant an exemption.
- 3.7 For the reasons set out below, HREOC is of the view that the exemption application does not demonstrate an arguable case that the proposed activities of Youth Connect constitute unlawful discrimination under the ADA.
- 3.8 HREOC notes that the permanent exemption for positive discrimination at s 33 of the ADA is relevant to the application. Section 33 provides:

33 Positive discrimination

This Part does not make it unlawful for a person to discriminate against another person, on the ground of another person's age, by an act that is consistent with the purposes of this Act, if:

- (a) the act provides for a bona fide benefit to persons of a particular age; or

Example: This paragraph would cover a hairdresser giving a discount to a person holding a Seniors Card or a similar card, because giving the discount is an act that provides a bona fide benefit to older persons.

- (b) the act is intended to meet a need that arises out of the age of persons of a particular age; or

Example: Young people often have a greater need for welfare services (including information, support and referral) than other people. This paragraph would therefore cover the provision of welfare services to young homeless people, because such services are intended to meet a need arising out of the age of such people.

(c) the act is intended to reduce a disadvantage experienced by people of a particular age.

Example: Older people are often more disadvantaged by retrenchment than are other people. This paragraph would therefore cover the provision of additional notice entitlements for older workers, because such entitlements are intended to reduce a disadvantage experienced by older people.

3.9 The explanatory memorandum to s 33 of the ADA states:

The legislation exempts “positive discrimination”, which refers to three different types of beneficial age-based treatment (which may in some circumstances overlap):

- (a) the provision of bona fide benefits to people of a particular age. This aspect of the positive discrimination provision recognises and permits a range of concessions and benefits that are provided in good faith to people of a particular age. ...
- (b) measures intended to meet age-related needs. This aspect of the positive discrimination provision recognises and permits measures that seek to address the needs of particular ages that are different to or more acute than the needs of people of other ages...
- (c) measures intended to reduce disadvantage. This aspect of the positive discrimination provision recognises and permits measures that seek to overcome age-related disadvantage... For example, where older people experience longer periods of unemployment, extra assistance to help them find work would be permitted.

3.10 In order for an act to fall within the s 33 exemption it must be consistent with the purposes of the ADA. The objects of the ADA are set out at s 3 of the Act and relevantly (for the purposes of this application) include:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of age in the area of work, education...;
- (c) to allow appropriate benefits and other assistance to be given to people of a certain age, particularly younger and older persons, in recognition of their particular circumstances.

3.11 In HREOC’s view, the proposed activities of Youth Connect are ‘positive discrimination’ as defined by s 33 of the ADA. The activities appear to fall within all three paragraphs of the section, as they:

- 3.6.1 provide a *bona fide* benefit. Youth Connect’s proposal to target young people in their advertisements for employment vacancies is designed to bring about a *bona fide* benefit to young people, namely increased employment of young people in the South Melbourne region (s 33 (a)); and
- 3.6.2 meet an age related need. Youth Connect has formed the view that young people in the South Melbourne region have a greater need for assistance in making the transition from school (or training) into employment, than people who have been in the work place for a longer period of time and that there is a shortage of effective employment and training services in the South Melbourne region to meet this need (s 33(b)); and
- 3.6.2 reduce a disadvantage experienced by young people between 15 and 24 years of age. Youth Connect has formed the view that a significant number of people between 15 and 24 years of age are unemployed and/or lack education and, as a result, face marginalisation in community and the workforce (s 33(c)).

3.12 Youth Connect will be providing employment and training services intended to promote the employment prospects of people between 15 and 24 years of age.

3.13 HREOC is also of the view that the activities of Youth Connect are consistent with the objects of the ADA and in particular s 3(a) and (c).

3.14 HREOC is of the view that because the present application does not disclose an arguable case of discrimination it is unnecessary to grant a temporary exemption under s 44(1) is unnecessary. HREOC refuses the application by Youth Connect for a temporary exemption.

Dated this 10th day of August 2007

A handwritten signature in black ink, reading "John von Doussa". The signature is written in a cursive style with a large, looping initial "J".

Signed by the President, John von Doussa QC, on behalf of HREOC.

Please note

Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of the decision contained in this notice by or on behalf of any person or persons whose interests are affected by the decision.