

VICTORIAN CIVIL AND
ADMINISTRATIVE TRIBUNAL

ANTI DISCRIMINATION LIST

EXEMPTION

APPLICATION NO A66/2010

The Victorian Civil and Administrative Tribunal (the Tribunal) has considered an application, pursuant to Section 83 of the *Equal Opportunity Act 1995* (the Act), by the Aboriginal Family Violence Prevention & Legal Service (Victoria) (the applicant). The application for exemption is to enable the applicant to advertise for and employ Aboriginal and Torres Strait Island (ATSI) women to fill the following roles within the applicant's organisation: family violence and sexual assault counsellor; lawyer; paralegal support worker; and Indigenous community education and community development officer (the exempt conduct).

UPON READING the material submitted in support of the application, including the affidavits of Antoinette Christian Winter Braybrook, Rebecca Anne Boreham and Shelley Burchfield, the Tribunal is satisfied that it is appropriate to grant an exemption from Sections 13, 100 and 195 of the Act to enable the applicant to engage in the exempt conduct.

In granting this exemption the Tribunal noted:

- The applicant was incorporated in October 2002. It is an ATSI community controlled organisation based in Melbourne with outreach services being provided to regional Victoria. The applicant is funded by the Commonwealth Attorney General's Department and other sources including Victoria Legal Aid, the Department of Justice Victoria and from project grants. It has been endorsed by the Australian Taxation Office as a deductible gift recipient under the relevant legislation on the basis that it is a public benevolent institution.
- The applicant was established as part of the National Family Violence Prevention and Legal Services Program (the Program). Recognition of a lack of dedicated services for the ATSI victims/survivors of family violence and sexual assault was a significant factor in the establishment of the Program. The objects of the applicant include: providing assistance to victims of family violence; reducing the incidence of violence and abuse in communities through community education and advocacy; increasing the recognition of the problem of violence and abuse in communities through community education and advocacy; and facilitating long-term solutions to violence and abuse in communities. The applicant seeks to achieve these ends in part by providing legal advice, representation, referral and other related support services to ATSI victims of family violence. The applicant does not act for perpetrators of violence.
- Through offices in Melbourne, Bairnsdale, Warrambool and Mildura, the applicant offers legal assistance, counselling, information and referral, community legal education, policy development and law reform for Indigenous victims/survivors of family violence and sexual assault and non-ATSI carers of ATSI children. The only other ATSI legal service in Victoria is the Victoria Aboriginal Legal Service which has a significant focus on criminal defence work. The applicant provided evidence regarding the extent of its involvement in running and supporting programs for ATSI women and also about its involvement in providing education to the non-ATSI community, including through cultural awareness workshops. The applicant also has links with a number of other community and government bodies.
- The applicant's current staff totals 24 full time and part time female staff, including eight ATSI women.
- Statistical information provided to the Tribunal indicates that the vast majority of the applicant's clients are women and children. In 2008-2009 the number of clients seeking assistance totalled 347 women, 33 men and 29 children. In the six months to December 2009 the numbers were 310 women, 28 men

and 33 children.

- Research has found that ATSI women are at a significant disadvantage in dealing with the law, in part because they may have had traumatic life experiences and in part because they have often had poor experiences with legal officers or others in authority. The exemption will allow the applicant to assist to redress this disadvantage.
- The independence of the applicant and it being dedicated to supporting ATSI victims/survivors have been key factors in its ability to gain the trust of ATSI women and encouraged them to seek legal and associated supports for themselves and their children. The applicant believes that the roles referred to above are best undertaken by women because ATSI women are unlikely to disclose detail about violence and/or sexual assaults to male solicitors. The affidavits included anecdotal evidence to this effect. Similarly the applicant's clients are more likely to be open with female para-legal support workers and counsellors. The applicant's experience is that clients prefer female solicitors and counsellors over male when given the choice.
- The applicant believes that each of the positions is best filled by an ATSI woman because that better allows the building of trust and rapport with clients and also ensures that the interactions are culturally appropriate and respectful. Community education and community development positions require good communication with and knowledge of the relevant communities. ATSI workers with cultural knowledge and experience are best placed to undertake those responsibilities. While non-ATSI staff can undertake cultural awareness training and that can go part of the way to addressing issues of cultural sensitivity, it does not equate with having ATSI staff.
- ATSI women holding these and other positions within the applicant organisation, is a positive way to raise the status of ATSI women in the ATSI and broader community.

The Tribunal hereby grants an exemption to the applicant from the operation of Sections 13, 100 and 195 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 9 June 2013.

Dated this 7th day of June 2010


A Dea
Member

