

**AUSTRALIAN HUMAN RIGHTS COMMISSION
SEX DISCRIMINATION ACT 1984 (CTH), s 44(1)
NOTICE OF GRANT OF A TEMPORARY EXEMPTION**

By this instrument, under section 44(1) of the *Sex Discrimination Act 1984* (Cth) (SDA), the Australian Human Rights Commission grants an exemption to Save the Children from the operation of section 14 of the SDA. The exemption is granted for a period of two years from the date of this instrument and is subject to the conditions outlined below.

1. Summary

- 1.1. The applicant, Save the Children, is an Australian company and is registered on the Australian Charities and Not-for-profits Commission. Save the Children provides services in all Australian states and territories to improve the lives of marginalised youth and their families through welfare centres, residential services, and educational programs.
- 1.2. Save the Children has contracted with Telstra Health, DVConnect and Marninwarntikura Women's Resource Centre, to provide workers for the 1800 Respect national hotline (1800RESPECT). 1800RESPECT is a 24/7 service that provides expert trauma counselling services nationally. Save the Children has been contracted to recruit for the caller-facing positions of Team Leader and Specialist Trauma Counsellor.
- 1.3. Save the Children seeks a temporary exemption to employ only female-identifying persons for the Team Leader and Specialist Trauma Counsellor roles.
- 1.4. The Commission grants the temporary exemption for a period of two years from the date of this instrument. The exemption is subject to the condition that Save the Children keeps records for each year that the exemption is in effect of:
 - (a) the approximate gender ratios of the clients of 1800RESPECT;
 - (b) any male clients of 1800RESPECT who express concern about being provided services by a female-identifying Specialist Trauma Counsellor or Team Leader; and
 - (c) if a male client of 1800RESPECT requests access to a male counsellor, whether this could be accommodated (e.g., by referring the client to a separate service offered by Save the Children or one of its partners, or by referring the client to an external counsellor).

2. The Commission's Power to Grant Exemptions

- 2.1. Section 44 of the SDA provides the Commission with the power to grant, by instrument in writing, an exemption from the operation of a provision of Division 1 or 2 of the SDA as specified in the instrument. The power is enlivened on application by a person, persons or class of persons, as the case may be.¹
- 2.2. An exemption may be granted subject to terms and conditions specified in the instrument, and may be expressed to apply only in circumstances, or in relation to particular activities, as specified in the instrument.² Exemptions are to be granted for a specified period not exceeding five years.³ It is not unlawful for a person to act in accordance with an exemption.⁴

3. The Application

- 3.1. The applicant, Save the Children, seeks an exemption from section 14(1)(b) of the SDA to allow it to employ female-identifying persons only for the 1800RESPECT service in two types of roles:
 - (a) Specialist Trauma Counsellor
 - (b) Team Leader
- 3.2. Save the Children seeks the exemption for two years as it is contracted to recruit staff in these two roles for 1800RESPECT for a two-year period.
- 3.3. Save the Children has capacity for 29 full-time equivalent (FTE) Specialist Trauma Counsellor roles, and 2.9 FTE Team Leader roles within the 1800RESPECT service. Save the Children states that this will equate to approximately 38-42 staff to whom the exemption will apply.
- 3.4. Nationally, the 1800RESPECT service employs approximately 100 counsellors, all of whom are female or female-identifying. There are further roles within the broader 1800RESPECT service in which people who are male or male-identifying can and do work (e.g. IT, data analytics, workforce planning, payroll). Save the Children has additional roles that support the implementation of 1800RESPECT, and these roles do not require an exemption.
- 3.5. Save the Children has provided position descriptions for each position. The position descriptions relevantly state as follows:

Specialist Trauma Counsellors

- (a) Will provide highly specialised counselling services to those whose lives have been impacted by domestic and family violence, sexual assault and/or workplace sexual harassment.
- (b) Will receive warm transfers from the 1800RESPECT telephone triage team.
- (c) Will provide single session specialist therapeutic counselling support, psycho education, referrals and at times more intensive support for complex callers through our referral pathways model.
- (d) Will support as needed in the triage teams, answering calls and chats, establishing caller safety, building rapport, and identifying the best pathways for support either internally or externally.

Team Leaders

- (a) Will provide expert clinical practice advice and leadership to support Specialist Counselling staff to effectively deliver quality client services across the 24/7 service.
- (b) Will work closely with other Team Leaders, Quality and Training roles and support the wider 1800RESPECT leadership teams to ensure we are delivering high quality and contractually compliant services.
- (c) On a day-to-day basis, will be responsible for providing mentoring/support and supervision/debriefing to on-shift counselling staff; and be the first point of escalation for any practice or other related issues on shift or flagged through compliance and quality processes.
- (d) At times of high demand, will be required to directly deliver the specialist counselling service.

3.6. Save the Children submits that hiring exclusively female-identifying workers for these roles ensures that individuals seeking support regarding their experience of domestic, family and/or sexual violence and sexual harassment are provided with a trauma-informed service response from the first point of engagement. Save the Children submits that there is evidence that it is the preferred and minimum standard that 1800RESPECT should be staffed by female-identifying persons in caller-facing roles.

3.7. Save the Children have provided certain policy documents in support of their application, including:

- (a) The Australian Women Against Violence Alliance's policy brief on *'The role of specialist women's services in Australia's response to violence against women and their children'* (AWAVA Policy Brief) states that 'women-only and women-led services are widely acknowledged in international minimum support standards and frameworks'.⁵ The AWAVA Policy Brief relied on the Core Minimum Standards for staffing domestic and family violence services decided by the Council of Europe.⁶
 - (b) The Queensland Government's *'Human Services Quality Framework: HSQF Use Guide – Certification – Domestic and Family Violence Services Supplement'* states that in indicating that 'the organisation has transparent and accountable recruitment and selection processes that ensure people working in the organisation possess the knowledge, skills and experience required to fulfill their roles', domestic and family violence services should be able to demonstrate 'policies around employing female-identifying people'.⁷
- 3.8. Save the Children emphasises the importance of acknowledging that these forms of violence and harassment are gendered with gendered drivers. Women are more likely to be impacted by domestic, family, and sexual violence and workplace sexual harassment than males, and the people most commonly perpetrating this violence and harassment are male. This also applies to the higher proportion of males who experience domestic, family, and sexual violence and workplace sexual harassment perpetrated by other males.
- 3.9. Save the Children states that it ensures that callers feel 1800RESPECT provides a place of safety to disclose their experiences. Save the Children submits that female-identifying workers are best placed to respond most appropriately (in consideration of best practice trauma-informed support) to the majority of callers who are also female-identifying.
- 3.10. Save the Children provided evidence that between 2016–2019, callers to the service were on average at least 85% female-identifying, 10% male-identifying and 5% not reported or other.⁸ Save the Children states that some of the most common reasons that people seek support from 1800RESPECT is immediately following a sexual assault or after experiencing a trauma response triggered by a past/historical sexual assault. Callers to the service have also often been impacted by stalking, intimidation, threats, control and monitoring by their male partner/ex-partner or a family member. Save the Children submits that hearing a male voice answer a call on 1800RESPECT can potentially trigger the caller.

3.11. Save the Children states that male-identifying callers to the service will be treated respectfully by female workers and that there are specific services available for males impacted by violence and harassment. In the situation that a caller to the service requests a male counsellor, the caller will be referred to another support line who may be more able to meet this request. 1800RESPECT has a significant referral directory and a range of referral options can be provided to a caller if required. For male-identifying callers who are affected by violence, the most common referral is to Men's Line Australia.

4. The Commission's process

4.1. In reaching its decision, the Commission considered the following:

- (a) the application and submissions made by Save the Children;
- (b) the position descriptions provided by Save the Children, and additional supporting documents;
- (c) submissions from other interested parties;
- (d) the terms and objects of the SDA; and
- (e) *Temporary exemptions under the Sex Discrimination Act: Commission Guidelines* (2009).

4.2. Following receipt of Save the Children's application, the Commission published the application on its website and commenced a three-week public consultation period. It did this by:

- (a) publishing the application on its website, and calling for public submissions on its merits; and
- (b) writing to State and Territory anti-discrimination bodies, inviting them to make submissions.

4.3. The Victorian Equal Opportunity and Human Rights Commission provided a response stating that it does not intend to make formal comment on the application, however noted that 'it is positive that the applicant is seeking to provide exemption for workers who identify as females as this affirms gender identity in the applicant's recruitment practice'. No further submissions were received.

4.4. Consistent with the fundamental principles of procedural fairness, the Commission considers that the process outlined above has provided the applicant and interested parties with an adequate opportunity to comment on this application for an exemption.

5. Consideration and Reasons for Decision

5.1. The intention of Save the Children to recruit only female-identifying persons for the roles of Team Leader and Specialist Trauma Counsellor may be inconsistent with the provisions of the SDA, including ss 14(1) and (2).

5.2. Sections 14(1) and (2) of the SDA provide:

Section 14 Discrimination in employment or in superannuation

(1) It is unlawful for an employer to discriminate against a person on the ground of the person's sex, ... gender identity, ...:

- (a) in the arrangements made for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment; or
- (c) in the terms or conditions on which employment is offered.

(2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex, ... gender identity, ...:

...

- (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;

...

- (d) by subjecting the employee to any other detriment.

5.3. It is not clear that the permanent exemptions to the SDA apply to these circumstances (ss 30–43A SDA). It is also not clear that the special measures provision in s 7D of the SDA applies.

5.4. The Commission accepts that the purpose of 1800RESPECT is to provide expert trauma counselling services to women and men seeking support regarding their experience of domestic, family and/or sexual violence and workplace sexual harassment. The service aims to provide a trauma informed service response from the first point of engagement.

5.5. The Commission also accepts that the 1800RESPECT service would not be as effective if it is unable to recruit exclusively female-identifying workers for the positions of Specialist Trauma Counsellor and Team Leader. Save the Children has provided evidence that over 85% of callers to the service are female and made a number of submission (outlined above) that speak to the gendered nature of domestic, family and/or sexual violence and workplace sexual harassment.

5.6. The Commission acknowledges that domestic, family, and sexual violence and workplace sexual harassment is gendered with gendered drivers. Women are more likely to be impacted by domestic, family, and sexual

violence and sexual harassment than men, and the people most commonly perpetrating this violence and harassment are men. This also applies to the higher proportion of men who experience domestic, family, and sexual violence and sexual harassment perpetrated by other men.

- 5.7. The Commission accepts the submission that persons who have experienced this kind of violence and harassment, especially women, are likely to feel safer to disclose their experiences to female counsellors. The AWAVA Policy Brief provided by the applicant notes that '[g]ood service provision is underpinned by a gendered understanding of violence' and provides 'gender and cultural safety, works from a client-centred, trauma-based, empowering framework'.⁹
- 5.8. The Commission accepts the submission made by Save the Children that the exemption will ensure that 1800RESPECT can provide a safe space for women and men to seek support and enable Save the Children to continue its work in protecting individuals from the harm resulting from sexual, domestic and family violence.
- 5.9. In deciding whether to grant this exemption, the Commission has weighed the nature and extent of the discriminatory effect against the reasons advanced in favour of the exemption.
- 5.10. The Commission received no submissions that recommended that the Commission refuse the application.
- 5.11. The Commission notes that the effect of its decision will be that suitably qualified men will be excluded from obtaining employment with the 1800RESPECT service in the two specified positions. The Commission notes that the exemption will apply to approximately 38–42 staff, who will be in the roles of Specialist Trauma Counsellor and Team Leader. The Commission notes that Save the Children provides support services to support the implementation of 1800RESPECT and these roles won't be exempt and can be filled by male or male-identifying staff. As the exemption will apply only to the caller-facing positions, the Commission is satisfied that any discrimination that may be experienced by men is outweighed by the benefits to the clients of the service and their families.
- 5.12. Balancing the discriminatory impact of the exemption against the benefit that will accrue to individuals, particularly women, who contact 1800RESPECT, for the reasons outlined above, the Commission is satisfied that it is reasonable to grant an exemption to s 14 of the SDA on specified conditions for a period of two years from the date of this instrument.
- 5.13. The exemption is subject to the condition that Save the Children keeps records for each year that the exemption is in effect of:

- (a) the approximate gender ratios of the clients of 1800RESPECT;
- (b) any male clients of 1800RESPECT who express concern about being provided services by a female-identifying Specialist Trauma Counsellor or Team Leader; and
- (c) if a male client of 1800RESPECT requests access to a male councillor, whether this could be accommodated (e.g., by referring the client to a separate service offered by Save the Children or one of its partners, or by referring the client to an external counsellor).

REVIEW OF DECISION

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.



Signed by the President, Emeritus Professor Rosalind Croucher AM, on behalf of the Commission.

23 August, 2023

¹ Sections 44(1) and (2), SDA.

² Sections 44(3)(a) and (b), SDA.

³ Section 44(3)(c), SDA.

⁴ Section 47, SDA.

⁵ Australian Women Against Violence Alliance, 'The role of specialist women's services in Australia's response to violence against women and their children - Policy Brief', 7 April 2016, p 2.

⁶ Council of Europe "Combatting Violence Against Women: Stocktaking study on the measures and actions taken in Council of Europe member states", (2006)

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⁷ Queensland Government, 'Human Services Quality Framework: HSQF User Guide – Certification – Domestic and Family Violence Services Supplement', July 2021.

⁸ UNSW Social Policy Research Centre, 'Evaluation of 1800RESPECT – Final Report', January 2020, p 45 <https://plan4womenssafety.dss.gov.au/wp-content/uploads/2020/02/1800RESPECT-Evaluation_20200219-wp-4496.pdf>.

⁹ Above n 5.