

HUMAN RIGHTS LIST

EXEMPTION

APPLICATION NO H111/2021

The Victorian Civil and Administrative Tribunal has considered an application pursuant to section 89 of the *Equal Opportunity Act 2010* (the Act) by Harkaway Public Hall Committee Inc (the applicant). The application for exemption is to enable the applicant to engage in the conduct defined below and to advertise that matter.

The conduct is to enable the applicant to refuse to permit occupation of the Harkaway Hall by any group consisting predominantly of people aged 22 years or under, for the purpose of a party or similar function, if the applicant:

- (a) has informed the prospective hirer of the terms of this exemption; and
- (b) has given the prospective hirer a reasonable opportunity to provide information relevant to this exemption; and
- (c) is satisfied that the prospective hirer has not taken or, in the view of the applicant, is unable to take or does not intend to take reasonable steps to:
 - (i) ensure that the group is adequately supervised by an adequate number of people whom the applicant considers can supervise the group effectively; and
 - (ii) ensure the adequate provision of security for the function; and
 - (iii) prevent uninvited people (commonly known as 'gatecrashers') from attending; and
 - (iv) provide safe and adequate transport for those attending away from the Harkaway area within a reasonable time at the end of the function

(the exempt conduct).

UPON READING the material filed in support of this application, including the affidavit of Philip John Wild, Secretary of the Harkaway Public Hall Committee, and his oral evidence provided in the Directions Hearings on 18 June 2021 and 29 July 2021, and the written material in support of the application, together with earlier exemptions granted by this Tribunal in similar terms, the Tribunal is satisfied that it is appropriate to grant an exemption from sections 44, 50, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct. The Tribunal notes:

- The Tribunal has granted previous exemptions to the applicant on similar terms (A232/2002, A202/2005, A160/2011 and H54/2015). The reason for the initial application for an exemption was the events attended predominantly by people aged 22 years or under that became uncontrolled drunken affairs, leading to concerns about the personal safety of Harkaway residents, property damage, and real concerns about the safety of young people at events which had inadequate supervision, security, and transport arrangements. This was due to the unique Harkaway village environment, and the lack of public transport, taxis, footpaths, lighting and the dangers of walking on roads at night when leaving the village. Since the first exemption was granted, these issues have greatly resolved.

- The circumstances surrounding this application are the same as for the previous exemptions. The purpose of the exemption is to ensure that the Harkaway Hall is used in a manner consistent with the interests of the residents of Harkaway and in a way which minimises the risk to the young people attending functions.
- The applicant provided information in relation to events at the Harkaway Hall over the period of the previous exemption. There have been 51 events, not counting regular bookings for programs such as karate classes and exercise classes. 13 events involved people aged 22 years and under. Only one event occurred where the Harkaway Public Hall Committee was misled by a booking, and the event was attended by a large number of unsupervised people aged 22 years or under and a repeat of many of the concerns which led to the initial application.
- I am satisfied that the above description of the exempt conduct is consistent with the intended use of the earlier exemptions and that the exemption as framed will meet the purposes described above.
- Arguably, this exemption limits the right to equal and effective protection against discrimination of people aged 22 years or under who would wish to hire the Harkaway Hall and who cannot satisfy the applicant about the matters listed above. I am satisfied that the limit imposed by this exemption is reasonable and justified under the *Charter of Human Rights and Responsibilities Act 2006* (Charter).

The Tribunal hereby grants an exemption from the operation of sections 44, 50, 107 and 182 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 13 August 2026.

Dated this 13th day of August 2021


C. Thwaites
Member

