

HUMAN RIGHTS LIST

EXEMPTION

APPLICATION NO H54/2015

The Victorian Civil & Administrative Tribunal has considered an application pursuant to section 89 of the Equal Opportunity Act 2010 (the EO 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 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, and having had regard to oral and written submissions made by the applicant and the Victorian Equal Opportunity and Human Rights Commission (Commission), 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 EO Act to enable the applicant to engage in the exempt conduct.


- The Tribunal has granted previous exemptions to the applicant on similar terms (A232/2002, A202/2005 and A160/2011). An interim exemption which was granted to allow the proper consideration of this application is due to expire on 30 November 2015. The circumstances surrounding this application are the same as for the previous exemptions. The purpose of the exemption is to ensure that the 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 and the Commission have had discussions about the terms of the exempt conduct as set out above. Those terms differ in some respects from those contained in earlier exemptions. 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.
- The applicant sought a further provision which would have allowed it to charge a higher bond to those persons who fall within the terms of this exemption. I have refused that request on the basis that, in the light of the terms of the exempt conduct as set out above and given the absence of evidence about the operation of the exemption as framed previously, I am not satisfied that the applicant has established that the further exemption provision is necessary. Where the Tribunal is obliged to have regard to the right to equality and other relevant human rights contained in the Charter of Human Rights and Responsibilities Act 2006 (the Charter) and having regard to the objects of the EO Act, I am not satisfied that the limitation on equality that the imposition of a higher bond would represent is justified.
- 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.

The Tribunal hereby grants an exemption from the operation of sections 44, 50, 107 and 182 of the EO Act to enable the applicant to engage in the exempt conduct.

This exemption is to remain in force from 1 December 2015 to 30 November 2020.

Dated this 30th day of October 2015


A Dea
Member

