

ANTI-DISCRIMINATION LIST

23 February 2012

VCAT Reference: A352/2011

Attention: Kerin Leonard
Victorian Equal Opportunity
& Human Rights Commission
Level 3 / 204 Lygon Street
CARLTON VIC 3053

RECEIVED

24 FEB 2012

Victorian Equal Opportunity
& Human Rights Commission

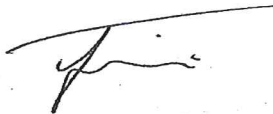
Dear Madam

Gunditjmara Aboriginal Co-operative Ltd - Exemption Application

In regards to the above exemption application, please find enclosed a copy of the Victorian Civil and Administrative Tribunal's (VCAT) order, by way of notification.

If you have any queries, please contact our customer service team on the number below and quote VCAT reference number **A352/2011**.

Yours sincerely



Judy O'Connor
Registrar
Human Rights Division
KF

Encl: Copy of order dated 16 February 2012



VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
HUMAN RIGHTS DIVISION
ANTI-DISCRIMINATION LIST

VCAT REFERENCE A352/2011

APPLICANT: Gunditjmara Aboriginal Cooperative Ltd
INTERVENOR: Victorian Equal Opportunity & Human Rights
Commission
WHERE HELD: Melbourne
BEFORE: Member A. Dea
HEARING TYPE: Chambers
DATE OF ORDER 16 February 2012

ORDER

The applicant has applied for an exemption under section 89 of the *Equal Opportunity Act 2010* (EO Act) to enable it to advertise for and employ only a female as in the role of mental health worker (the conduct).

On the material filed in support of the application, including the affidavit of Marcus Clarke, the Tribunal is satisfied that the conduct is a special measure under the EO Act and also under section 8(4) of the *Charter of Human Rights and Responsibilities Act 2006* (Charter). The Tribunal notes:

- A copy of the application was sent by the Tribunal to the Victorian Equal Opportunity and Human Rights Commission (the Commission). The Commission sought and was granted leave to intervene in the proceeding. The Commission did not oppose the Tribunal concluding that the conduct is a special measure.
- The applicant received public funding for the purpose of providing a range of health and social welfare programs and services to principally Aboriginal people in south western Victoria. One such program is the Bringing Them Home Program which seeks to provide counselling to individuals, families and communities affected by past practices regarding the forced removal of children from Aboriginal and Torres Strait Islander families.
- This service is to be provided via the applicant's existing Social Emotional Wellbeing Program. The Aboriginal community has asked the applicant to

retain the services of a female mental health worker to enhance access to the service for female clients. The applicant currently employs a male mental health worker who can provide services to male and female Aboriginal clients. The applicant states that, for a range of reasons, some female clients will not engage in counselling and other services provided by a male worker. To ensure that those female Aboriginal clients, who have been affected by the past practices of removing children from their families, benefit from the program, a female mental health worker is sought.

Under section 124 of the *Victorian Civil & Administrative Tribunal Act 1998* (VCAT Act), the Tribunal declares that the conduct is a special measure under section 12(1) of the EO Act.

Under section 12(2) of the EO Act, the applicant will not discriminate against another person contrary to the EO Act by taking that special measure. As the conduct is a special measure under section 8(4) of the Charter, it does not limit the Charter right to equality. Having regard to the considerations in section 90 of the EO Act, the Tribunal is satisfied that no exemption under section 89 is necessary.

The application is struck out under section 75(1)(a) of the VCAT Act.

