

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
HUMAN RIGHTS DIVISION  
HUMAN RIGHTS LIST**

VCAT REFERENCE: H280/2016

**APPLICANT:** Berry Street Victoria Inc  
**WHERE HELD:** Melbourne  
**BEFORE:** Senior Member A Dea  
**HEARING TYPE:** In chambers  
**DATE OF ORDER** 6 April 2017

**ORDER**

The applicant has applied for an exemption under section 89 of the *Equal Opportunity Act 2010* (EO Act) to enable it to employ only staff who are physically or physiologically female or whose gender identity is female (female staff) to work in its Family and Domestic Violence Service (the conduct).

On the material filed in support of the application, including the affidavits of Erana Kaye-Bergman and Christie Pinto, the Tribunal is satisfied that the conduct falls within the exception contained in sections 28 of the EO Act. The Tribunal noted:

- A copy of the application was sent by the Tribunal to the Victorian Equal Opportunity and Human Rights Commission (the Commission). The Commission was granted leave to intervene in the proceeding under section 159 of the EO Act. The Commission made written submissions on the question of identification of the attribute in issue.
- The applicant is an independent, not-for-profit community organisation that provides services to children, young people and families who have experienced the trauma of family violence, child abuse and neglect. The applicant's Family and Domestic Violence Service (FDVS) operates across Victoria and predominantly supports women and children who are victims of domestic violence. The FDVS is funded by the Department of Health and Human Services.
- The clients of FDVS include: indigenous women and children, women and children from culturally and linguistically diverse backgrounds, women and children with disabilities, lesbian, bisexual, transgender and intersex people, female sex workers and women prisoners and ex-prisoners. In the 2015/2016 financial year approximately 48% of those who attended the Northern Services arm of FDVS identified as CALD. A number of those clients come from

countries where the predominant religion is Islam.

- In order to qualify for services, clients are required to disclose some details of their experiences of violence. The majority of the perpetrators of family and domestic violence are male and the overwhelming majority of the victims of this violence are female (whether physically or physiologically or by gender identity – referred to here as female clients). Due to the often very serious and sensitive nature of family and domestic violence, the applicant believes, and the Tribunal accepts, it is not appropriate to expect FDVS' female clients to disclose those experiences to a male worker (including workers who are physically or physiologically male or whose gender identity is male – referred to here as male workers). Those clients may experience re-traumatisation if they are expected to disclose experiences to a male worker and may not access services if that is required.
- If requests for services are received from males who are victims of family and domestic violence, they are referred to the Men's Referral Service.
- The application relates only to staff who engage directly with female clients and children seeking services from FDVS. No exemption or other application is made in relation to staff who do not have direct dealings with those clients.
- Unless the conduct is a special measure or an exception applies, the conduct would amount to unlawful discrimination contrary to the EO Act on the basis of sex (being people who are physically or physiologically female) or gender (people whose gender identity is female). The evidence provided does not support a finding that the conduct amounts to a special measure under the EO Act. On the evidence provided, I am, however, satisfied that the services provided by FDVS are special needs services under section 88 as they meet the special needs of its female clients. I am further satisfied that the exception contained in section 28 of the EO Act applies in relation to the conduct. That is because I am satisfied that the services offered by FDVS can be most effectively provided by female staff.

Under section 13 of the EO Act, discrimination is not prohibited where an exception such as that contained in section 28 applies. Having regard to the considerations in section 90 of the EO Act, the Tribunal is satisfied that no exemption under section 89 is necessary.

Section 75(1)(a) of the *Victorian Civil and Administrative Tribunal Act 1988* allows the Tribunal to strike out an application where it is misconceived. To the extent that no exemption is required for the conduct, the application is misconceived and so it is struck out under section 75(1)(a).

  
**A Dea**  
**Senior Member**

