

HUMAN RIGHTS LIST

EXEMPTION

APPLICATION NO H329/2018

Geelong Grammar School applied to the Victorian Civil and Administrative Tribunal under to section 89 of the *Equal Opportunity Act 2010* (the Act) for an exemption to enable the applicant to, from time to time:

- (a) structure waiting and enrolment lists to target prospective students of either gender;
 - (b) offer places to students of either gender to maintain a gender balance;
 - (c) reject applications based on gender to maintain a co-educational balance;
 - (d) advertise for prospective male or female students in any year level where future waiting lists show a gender imbalance;
 - (e) offer scholarships to students of a minority gender at a particular year level and advertise the availability of such scholarships; and
 - (f) grant incentive rebates or discounts to parents of a minority gender in a particular year level to achieve a co-educational balance and advertise that such rebates or discounts are available.
- (the exempt conduct).

UPON READING the material filed in support of this application, including the affidavit of the Vice Principal Charlie Scudamore and the Director of Community Relations, Brendan McAloon, the Tribunal is satisfied that it is appropriate to grant an exemption from sections 38, 44, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct during the period of the exemption.

In granting this exemption, the Tribunal noted:

- An exemption in identical terms was granted by this Tribunal on 11 November 2013 and expired on 15 December 2018. An application for a continuing exemption was filed with the Tribunal on 12 September 2018 and an interim order was issued on 29 November 2018. The interim order will expire on 31 March 2019.
- The school became co-educational in 1976. According to the deponents, for a co-educational school to work best, the applicant considers that it is essential that there be, as far as practicable, equal numbers of female and male students at each year level in the school.
- At present across the campuses, 58.27% of the students are male and 41.73% are female. There are particular gender imbalances in some year levels at present, for example in year 6 at the Toorak campus 74% of students are male and 26% are female.
- Statistics provided by the applicant highlight that while gender imbalance at the Toorak campus is improving, the applicant is still yet to achieve true co-education through equality in male and female enrolments. Since the last substantive exemption was made, the applicant has only advertised and awarded five scholarships in accordance with the exemption.
- The applicant has complied with directions by the Tribunal to advertise the application for an exemption and invite submissions from members of the school community and the prospective school community. 23 responses were received by the applicant. Of the responses, none contained any argument or weighty submission and some responses were misdirected about the nature of the application and the exempt conduct. No submissions were made to the Tribunal (other than by the applicant) and the Victorian Equal Opportunity and Human Rights Commission did not seek to intervene.
- I am not currently satisfied that an exception applies to the exempt conduct. Accordingly, in the absence of an exemption the exempt conduct would amount to prohibited discrimination.
- When making decisions about exemptions, the Tribunal is required to give proper consideration to relevant human rights as set out in the *Charter of Human Rights and Responsibilities Act 2006*

(Charter). Arguably, this exemption limits the right to equality and in particular the right to equal and effective protection against discrimination of students who would wish to be offered a place at the school on the sole basis of their place on a waiting list or obtain a scholarship, rebate or incentive based on gender neutral criteria. I am satisfied that for the purposes of this exemption, the limit imposed by this exemption is reasonable and justified under the Charter.

The Tribunal hereby grants an exemption from the operation of sections 38, 44, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

This exemption is to remain in force from 31 March 2019 until 30 March 2024.

Dated this 7th day of March 2019.



A Smith
Member

