
Commonwealth exemption requested under section 30 *Sex Discrimination Act 1984* (Cth)

1 Who is seeking an exemption?

Save the Children (**SCA**) is seeking an exemption under section 30 of the *Sex Discrimination Act 1984* (Cth) (**Act**).

SCA is an Australian company and is registered on the Australian Charities and Not-for-profits Commission. SCA aims to protect children from harm. The organisation provides services in all Australian states and territories to improve the lives of marginalised youth through welfare centres, residential services, and educational programs.

SCA aims to improve the lives of marginalised children, young people and their families through localised services centred on safety, connection and upholding and promoting children's and young people's rights.

2 What circumstances and activities can be the subject of this exemption?

Save the Children (**SCA**) has contracted with Telstra Health, DVConnect and Marninwarntikura Women's Resource Centre, in providing workers for the 1800 Respect national hotline (**1800RESPECT**). SCA is committed to providing equal opportunities in recruitment and hiring a diverse staff who best meet the needs of the children, families and communities who utilise our services. As a contracting partner, SCA aligns with DVConnect's position to hire only female-identifying workers for this service. There is currently capacity for 29FTE for Specialist Counsellor roles, and 2.9FTE of Team Leader roles. This equates to approximately 38-42 staff, and they make up the 32.9 FTE.

The purpose of 1800RESPECT is to provide expert trauma counselling services across the 24/7 service. SCA is contracted to recruit for the position of Team Leader and Specialist Trauma Counsellor (**Positions**). The exemption is only sought for the two roles, though there are multiple people undertaking these roles. Nationally, the service employs approximately 100 counsellors. Save the Children/54reasons employs approximately 40 staff members in caller-facing Positions.

The position descriptions state that staff will:

- (a) provide highly specialised counselling services to those whose lives have been impacted by domestic and family violence, sexual assault and/or workplace sexual harassment;
- (b) receive warm transfers from the 1800RESPECT telephone triage team;
- (c) provide single session specialist therapeutic counselling support, psycho education, referrals and intensive support for complex callers.

Hiring exclusively female-identifying workers ensures that individuals seeking support regarding their experience of domestic, family and/or sexual violence are provided with a trauma informed service response from the first point of engagement. It is important to acknowledge that these forms of violence are gendered with gendered drivers.

Women and children are more likely to be impacted by domestic, family, and sexual violence than males, and people most commonly perpetrating this violence are male. This also applies to the higher proportion of males who experience domestic, family, and sexual violence perpetrated by other males. In consideration of this, having female-identifying workers respond to incoming calls and provide counselling support specific to domestic, family, and sexual violence is considered to be trauma-informed.

We provide what provisions we can to ensure that callers feel 1800RESPECT provides a place of safety to disclose their experiences. SCA believes that female-identifying workers are best placed to respond most appropriately (in consideration of trauma-informed support) to the majority of callers who are also female-identifying.

3 How long the exemption is required?

Under section 44 of the Act, an exemption may be in operation for up to five years. SCA seeks an exemption for two years. SCA is currently contracted to provide staff to 1800RESPECT for a two-year period.

SCA's services to 1800RESPECT may be renewed for a further term of three years at which time SCA would apply for an extension of its exemption.

4 Who will be affected by the application?

Male-identifying people will not be able to apply for any caller-facing roles within the 1800Respect service. Callers to the service will be positively impacted by the granting of this exemption, as it follows the trauma-informed justification as above. Males who utilise the service will be treated respectfully by female workers, and DFV where the victim/survivor is male is usually perpetrated by a male.

There are also specific services available for males impacted by violence and who use violence.

5 Is an exemption necessary? Why immediate compliance with the Act should not be required in this case.

1800RESPECT would not be as effective if SCA is unable to recruit exclusively female-identifying workers for the Positions.

It is important to acknowledge that many people who are contacting 1800RESPECT have often been impacted by high levels of stalking, intimidation, threats, control, and monitoring by their male partner/ex-partner or family member. Hearing a male voice answer a call, or hearing a male answer and identify their name for example can potentially trigger a response as the person using violence may have the same name as the person answering the call.

The decision to employ female-identifying workers only, is also in consideration of some of the most common reasons that people (females and males, but the vast majority females) seek support from 1800RESPECT, being seeking support immediately following a sexual assault, and specialist support having experienced a trauma response triggered by a past/historic sexual assault.

6 Why should an exemption be granted?

We seek to be exempt from the application of section 14(1)(b) of the Act by applying for an exemption as per section 30(1) of the Act which provides:

*'Nothing in paragraph 14(1)(a) or (b), 15(1)(a) or (b) or 16(b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with a position as an employee, commission agent or contract worker, being a position in relation to which it is a **genuine occupational qualification** to be a person of a different sex from the sex of the other person.'*

‘Genuine occupational qualification’ is not defined in the Act but is understood to mean the essential or fundamental service, that cannot be changed or altered, and which must be carried out to fulfil the purpose of the Positions. We submit that this exemption applies to SCA on the basis that the Positions work from an intersectional feminist framework which acknowledges the gendered nature of domestic, family and sexual violence. We are of the view that this gives rise to a genuine occupational qualification that the Positions be filled by female-identifying workers.

In addition, we rely on the following persuasive authorities in seeking this exemption which provide practical examples of the exception to anti-discrimination laws in Victoria regarding the provision of welfare services:

- (a) *Council of Single Mothers and Their Children Inc (Human Rights)* [2013] VCAT 1016 in which VCAT found staff having direct contact while providing telephone support services to single mothers invoked the exception in section 28 *Equal Opportunity Act 2010* (Vic) and all employees could be female-identifying; and
- (b) *Anglicare Victoria (Human Rights)* [2015] VCAT 79 in which VCAT found the exception applied to the roles of team leader and support workers in secure accommodation for women escaping sexual assault and family violence, which required direct contact with the people who had suffered trauma and therefore the roles could be filled by female-identifying employees.

We also note the South Australia District Court has considered a similar exemption application in relation to female-only gyms. In *Diamond Weightloss Centre v Leisure Co Pty Ltd* [2006] SADC 35, the Court granted an exemption from section 30 of the *Equal Opportunity Act 1984* (SA), accepting that:

‘women, especially those suffering obesity problems, disfiguring injuries or operations, and those simply wanting to avoid the gaze of men in general, as well as those belonging to certain religious groups, strongly prefer to work-out, lose weight and seek general health advice and support from organisations structured and operated exclusively for women clients.’

SCA requests that the Commission take this authority into consideration.

How this proposed exemption fits within the objects and scheme of the Act

The exemption will attempt to further promote recognition and acceptance within the community of the principle of the equality of men and women (section 3(d) of the Act), and achieve, so far as is practicable, equality of opportunity between men and women (section 3(e) of the Act). As discussed in relation to why the exemption is necessary, most of the people accessing 1800RESPECT will be females who have lacked the opportunity to obtain assistance to escape their abuser. SCA is cognisant that 1800RESPECT recognises the gendered nature of domestic and family violence, through providing a safe space for females to call for help.

This exemption would enable SCA to continue its work in protecting children and their families from the harm resulting from sexual, domestic and family violence.