

AUSTRALIAN HUMAN RIGHTS COMMISSION

SEX DISCRIMINATION ACT 1984 (Cth), Section 44(1)

NOTICE OF DECISION ON APPLICATIONS FOR TEMPORARY EXEMPTIONS: NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDER WOMEN'S ALLIANCE, THIRRILI LTD AND MARY'S HOUSE SERVICES LTD.

The Australian Human Rights Commission (the Commission) gives notice of its decision regarding applications made by the National Aboriginal Torres Strait Islander Women's Alliance (NATSIWA), Thirrili Ltd (Thirrili) and Mary's House Services Ltd (MHS) (collectively, the **Applicants**) for temporary exemptions pursuant to s 44(1) of the *Sex Discrimination Act 1984* (Cth) (SDA) (**Applications**).

1. THE APPLICATIONS

- 1.1. All Applications seek a temporary exemption to employ persons of a particular sex or gender to provide community counselling and/or consultation and/or support services to persons of that same sex or gender.
- 1.2. In one case, the Applicant also seeks an exemption to employ persons of a particular sex or gender in broader roles that are not client-facing frontline roles (non-casework roles).
- 1.3. Given the similar issues that arise for consideration, the Commission considers it expedient that all three Applications be dealt with together.

A. NATSIWA

- 1.4. The CEO of NATSIWA, Ms Wendy Anders makes this Application on behalf of NATSIWA.
- 1.5. NATSIWA is the peak Aboriginal and Torres Strait Islander Women's Alliance in Australia. NATSIWA is funded by the Department of Prime Minister & Cabinet (PM&C) under the Gender Equality - Working for Women Strategy, to bring together the issues and voices of Aboriginal and Torres Strait Islander women's organisations and individuals across Australia.
- 1.6. The NATSIWA leadership team comprises nine Aboriginal and Torres Strait Islander women directors representing each state and territory and the Torres Strait. NATSIWA's staff comprises a Chief Executive Officer, Senior Project Officer and a Communication Officer.

- 1.7. NATSIWA makes this Application for a five-year temporary exemption to allow NATSIWA to advertise for and employ women.¹ to fill a range of staff positions within the Applicant's organisation.
- 1.8. The Application advises that NATSIWA supports Aboriginal and Torres Strait Islander women in diverse communities throughout Australia via place-based, culturally safe activities and projects. Much of its consultation and support happens face-to-face. Its staff regularly hold yarning circles, forums, and one-to-one meetings, as well as holding or attending cultural healing camps with Aboriginal and Torres Strait Islander women, where it provides a place of safety to disclose their experiences and issues. These consultations then form the basis of submissions that NATSIWA makes to PM&C, so that the diverse voices and lived experiences of Aboriginal and Torres Strait Islander women can inform government decision-making and policy.
- 1.9. NATSIWA's leadership team and staff professional expertise includes multidisciplinary health, law/justice, education, business leadership, cultural consultancy, family, domestic and sexual violence support, and child protection.
- 1.10. NATSIWA believes that female workers are best placed to respond most appropriately (in consideration of trauma-informed support) to Aboriginal and Torres Strait Islander women.

B. THIRRILI

1.11. The CEO of Thirrili, Tanja Hirvonen, makes this Application on behalf of Thirrili.

1.12. Thirrili is described in its Application as an:

Aboriginal and Torres Strait Islander community-controlled organisation that is led by Aboriginal and Torres Strait Islander ways of knowing, being and doing.

Based in the ACT,

Thirrili supports Aboriginal and Torres Strait Islander communities in the aftermath of suicide or unexpected fatal incidents. It upholds protective boundaries for individuals, families and communities that allow self-determination in their ways of bereavement and healing.

1.13. Thirrili seeks a temporary exemption for five years to advertise, recruit and employ male Indigenous Community Support Workers in order to provide

¹ The applications by NATSIWA and Mary's House, discussed below, made clear that in seeking an exemption to employ women in various roles, they intended to include trans and gender diverse women, and that their services were provided to trans and gender diverse women.

culturally safe and gender appropriate therapeutic support to male clients within its Indigenous communities.

- 1.14. Thirrili submits that research and community feedback highlight that Indigenous men are more likely to engage and build trust with male support workers, particularly in culturally sensitive or deeply personal circumstances.
- 1.15. Currently, Thirrili's workforce profile is predominantly female (66%), which limits its ability to provide culturally and gender-appropriate support to Aboriginal and Torres Strait Islander men and boys who may be experiencing grief, loss and trauma.

C. MARY'S HOUSE SERVICES (MHS)

- 1.16. MHS, based in Sydney, provides immediate critical care, safety, and shelter for women and their children escaping domestic and family violence, including providing a community funded refuge. MHS' Community Programs Centre offers therapeutic and wellbeing groups, workshops, clinics, and programs for women, who have experienced or are experiencing domestic and family abuse. MHS is also involved in local community fundraising and awareness raising events and advocacy. No services are provided to men.
- 1.17. MHS seeks an exemption to advertise for and employ only women as Domestic and Family Violence Specialist Caseworkers and Refuge and Casework Managers, along with a number of other roles that are non-casework roles (non-casework team members).
- 1.18. MHS' Operations Manager advises all non-casework roles are based at the head office and MHS' Community Programs Centre is based on the same floor of that office where clients attend to see their caseworkers or participate in MHS' community programs. When clients are moving around to use the office facilities such as the bathroom, or the kitchenette, or going in and out of rooms, they may come into contact with the non-casework team members.
- 1.19. MHS also has a refuge at an undisclosed location where it provides crisis accommodation to four families at a time. Only women go in there. MHS says that from time to time, some of the non-casework team members may have to go to the refuge as well. Currently, MHS has no male non-casework team members.
- 1.20. MHS submits that because MHS follows trauma-informed practices at each of these locations, clients find it triggering to have men around. MHS submits that since the reconfiguration of its office space, it is more likely that its female clients who attend the Community Programs Centre will now come into contact with non-casework team members and will be triggered by the presence of male employees.

1.21. The Application provides that when MHS has male visitors or tradespeople, it ensures they are accompanied by a woman from MHS and tries to schedule their visits at times when client interaction is at a minimum. In further communications with the Operations Manager, she confirmed that:

We do not have any male non-casework team members at the moment. If we have a visitor, because we are all women, we accompany the male on the premises.

When we do have male visitors or tradespersons, I try to schedule them outside of client hours, and if I cannot, one of the staff members will accompany them.

We do recruit for various roles that you have listed, and we would like to have an exemption for non-casework staff to only hire women, so we can continue to provide a safe and trauma-informed space at the head office, and we have the flexibility to have any staff member accompany males who attend the Refuge as well.

1.22. Additionally, MHS advises that non-casework team members share a roster to answer the administration phone. Although it is not meant for client calls, clients do call on occasion. MHS is concerned that if a male voice picked up for a Domestic and Family Violence service, it could deter some women from continuing with the call or calling again.

1.23. Therefore, MHS seeks a temporary exemption to employ women in all roles so that it can provide a female only therapeutic space.

2. DECISION OF THE COMMISSION

2.1. The Commission has decided to grant a temporary exemption to each of NATSIWA and Thirrili from s 5 of the SDA for a period of five years to allow NATSIWA to advertise for and employ women in staff roles, and Thirrili to advertise for and employ only men as Indigenous Community Support Workers.

2.2. The Commission has decided to grant a temporary exemption to MHS from s 5 of the SDA for a period of five years to employ only women in the roles of Domestic and Family Violence Specialist Caseworkers and Refuge and Casework Managers. Because of the particular nature of the service provided by MHS and the potential for clients to come into contact with people in non-casework roles, the Commission has also decided to grant a temporary exemption to MHS from s 5 of the SDA for a period of five years to employ only women in the non-casework roles of Community Engagement Coordinator, Philanthropy and Communications Manager, Finance Coordinator and Corporate Service Manager.

2.3. **CONSIDERATION AND REASONS**

2.4. In reaching its decision, the Commission has considered the following:

A. NATSIWA

2.4.1. the Application and submissions by NATSIWA

2.4.2. all further information provided by NATSIWA in relation to the Application

2.4.3. submissions from organisations and interested parties, namely, Anti-Discrimination NSW and Wiyi Yani U Thangani Institute.

B. THIRRILI

2.4.4. the Application and submissions by Thirrili

2.4.5. all further information provided by Thirrili in relation to the Application

2.4.6. submissions from organisations and interested parties, namely, Anti-Discrimination NSW.

C. MHS

2.4.7. the Application and submissions by MHS

2.4.8. all further information provided by MHS in relation to the Application

2.4.9. submissions from organisations and interested parties, namely, Full Stop Australia and Anti-Discrimination NSW.

2.5. These documents are available on the Commission's website at:

<https://humanrights.gov.au/our-work/legal/exemption-applications-under-sex-discrimination-act-1984-cth>.

2.6. In reaching its decision, the Commission had regard to the following:

2.6.1. the objects, scope and purpose of the SDA construed as a whole

2.6.2. the duties and functions of the Commission in the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act), including s 10A

2.6.3. the Commission Guidelines: *Temporary Exemptions under the Sex Discrimination Act 1984* (Cth) 2009.

2.7. The reasons for the Commission's decision are set out below at [7.1] – [7.45].

3. THE COMMISSION'S PROCESS

- 3.1. Following receipt of these Applications, the Commission published the Applications on its website and commenced a two-week public consultation period. It did this by:
- publishing the Applications and additional information on its website and calling for public submissions on their merits
 - writing to the State and Territory anti-discrimination bodies and Equal Opportunity Commissions, inviting them to make submissions
 - writing to a number of peak bodies relevant to each Application, inviting them to make submissions.
- 3.2. The Commission received 5 submissions during its public consultation, all from organisations.
- 3.3. Of the submissions from organisations, all were in favour of granting the exemptions, noting however, that the 2 submissions from Full Stop and Anti-Discrimination NSW (ADNSW) in favour of granting the exemption sought by MHS did not fully address the distinction between client-facing roles and non-casework roles.
- 3.4. The ACT Human Rights Commission and Victorian Equal Opportunity and Human Rights Commission declined to make submissions in respect of the MHS application. No responses were received from the other State and Territory anti-discrimination and human rights bodies and Equal Opportunity Commissions.
- 3.5. A list of the submissions from organisations that agreed to the publication of their submission is contained in the Schedule to this decision. These submissions are available on the Commission's website.
- 3.6. The Commission has considered all the materials referred to above in reaching its decision on the Applications.

4. PROCEDURAL FAIRNESS CONSIDERATIONS

- 4.1. Consistent with fundamental principles of procedural fairness, the Commission considers that the process outlined above has provided the three Applicants and the public with an adequate opportunity to comment on the Applications.

4.2. LEGISLATIVE REGIME AND THE COMMISSION'S POWER TO GRANT EXEMPTIONS

A. THE SDA

- 4.3. The SDA makes it unlawful to discriminate on the grounds of sex, sexual orientation, gender identity and intersex status (amongst other grounds) in a range of areas of public life.
- 4.4. Most relevantly for the purposes of these Applications, the SDA makes discrimination unlawful in relation to employment. Section 14(1) of the SDA provides:

Discrimination in employment or in superannuation

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person's sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, breastfeeding or family responsibilities:
- (a) in the arrangements made for the purpose of determining who should be offered employment;
 - (b) in determining who should be offered employment; or
 - (c) in the terms or conditions on which employment is offered.
- 4.5. The SDA also makes discrimination unlawful in relation to advertising something that would amount to unlawful discrimination. Section 86 provides:

Advertisements

- (1) A person shall not publish or display an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of a provision of Part II.
- Penalty: 10 penalty units.
- (2) For the purposes of subsection (1), **advertisement** includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and the reference in that subsection to publish or display, in relation to an advertisement, shall be construed accordingly.
- 4.6. A temporary exemption may be necessary so that the conduct proposed by the Applicants does not fall foul of these provisions. However, the SDA

provides for a number of permanent exemptions to the SDA. The Commission will usually not grant a temporary exemption if it is not necessary because a permanent exemption applies. Two provisions of the SDA are relevant when assessing whether temporary exemptions are necessary in the current circumstances and these are considered below.

Genuine occupational qualification

- 4.7. Relevantly, section 30 of the SDA provides that in some circumstances, employing only women or men to provide relevant services can be a genuine occupational qualification:

Certain discrimination on ground of sex not unlawful

- (1) 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.

- 4.8. Section 30(2) provides a list of categories of jobs to which this exemption would apply. It is arguable that in some circumstances, employing only women or men to provide relevant services could be a genuine occupational qualification for the purposes of s 30(2) of the SDA. The jobs to which the Applications relate do not fall into any of the categories in s 30(2)(a)–(h), however, s 30(2) of the SDA specifically states that the listing of these examples does not ‘limit the generality’ of the exemption.
- 4.9. By way of comparison, in NSW it is a genuine occupational qualification to be of a particular sex if ‘the holder of the job provides persons of that sex with personal services relating to their welfare ... and they or a substantial number of them might reasonably object to its being carried out by a person of the opposite sex’.²
- 4.10. In the ACT, there is a general test for a genuine occupational qualification, combined with a proportionality test. One specific statutory example of a genuine occupational qualification is: ‘preferencing people with lived experience of family and domestic violence for peer support positions in a women’s crisis centre’.³

² *Anti-Discrimination Act 1977* (NSW), s 31(2)(h).

³ *Discrimination Act 1991* (ACT), s 33B(1).

4.11. In the case of Victoria, there is a specific exception in the following form:⁴

An employer may limit the offering of employment to people with a particular attribute in relation to the provision of services for people with the same attribute if those services—

(a) are either—

(i) a special measure under section 12; or

(ii) a service for special needs under section 88; and

(b) can be provided most effectively by people with that attribute.

Examples of a ‘service for special needs’ provided in the Act are:

A support service for women who have experienced family violence may require that its counsellors are female.

A community organisation establishes a support group for single fathers in response to research that shows that single fathers have a need for targeted counselling and support.

4.12. These examples may support the view that the general exemption in the SDA could also cover some of the specific situations in the Applications. However, s 30(2) has not been tested at federal level so there is no case law precedent. Given the uncertainty about the scope of s 30(2) of the SDA, the Commission is of the view that it was reasonable for the Applicants to seek an exemption so that they have some more certainty about this position.

Special Measures

4.13. The Commission has also considered whether any of the conduct proposed by the Applicants would constitute a ‘special measure’ under the SDA. Section 7D of the SDA provides that acts are not discriminatory where a person takes ‘special measures’ for the purposes of achieving substantive equality between men and women. Achieving substantive equality need only be one of the purposes of the special measure. It is not necessary for it to be the sole or even the dominant or substantial purpose.⁵

4.14. For certain conduct to qualify as a special measure, it must be ‘aimed at accelerating de facto equality’.⁶ This requires both:

⁴ *Equal Opportunity Act 2010* (Vic), s 28.

⁵ Section 7D(3) of the SDA.

⁶ Article 4(1) of the Convention on the elimination of all forms of discrimination against Women (CEDAW).

- i. an assessment of whether the subjective intention of the person taking the measure was to achieve substantive equality; and
- ii. an objective assessment of whether the person taking the measure acted reasonably in assessing the need for the special measure, and of whether the measure has the capacity to achieve the purpose of substantive equality.⁷

4.15. The CEDAW Committee has expressed that:

The Convention on the elimination of all forms of discrimination against Women, targets discriminatory dimensions of past and current societal and cultural contexts which impede women's enjoyment of their human rights and fundamental freedoms. It aims at the elimination of all forms of discrimination against women, including the **elimination of the causes and consequences of their de facto or substantive inequality**. Therefore, the application of temporary special measures in accordance with the Convention is one of the means to realize de facto or substantive equality for women, rather than an exception to the norms of non-discrimination and equality.⁸

4.16. The choice of a particular 'measure' will depend on the context of the inequality and the specific goal the measure aims to achieve. In each of the Applications, the provision of the underlying service to only men or women is likely to be a special measure. However, the Applicants do not seek an exemption to provide the underlying services. Instead, the Applicants seek an exemption to employ only women or men in roles providing these services.

4.17. It is arguable that employing only women or men to provide relevant services could be a special measure if the provision of services by people of a particular gender is for the purpose of achieving substantive equality between the people to whom the services are provided and others of a different gender.

4.18. The MHS Application could be understood to suggest that employing only women, to provide a female only space aimed at restoring a woman's self-esteem and feeling of safety, addresses one of the consequences of women's substantive inequality, namely, violence against women. Arguably also, 'special measures' could extend to the delivery of therapeutic services by women to women or men to men in the specific contexts provided in the Applications.

⁷ Federal Court of Australia District Registry: New South Wales Division: General Roxanne Tickle v Giggle For Girls Pty Ltd ACN 632 152 017 & Anor Submissions of The Sex Discrimination Commissioner [47] – [49]

⁸ CEDAW Committee, General Recommendation 25 on *Temporary Special Measures* (2004), [14].

- 4.19. However, this is a novel argument. In the past, special measures have been interpreted as being for the direct benefit of the beneficiary of the special measure.⁹ Here, however, taking the MHS Application as an example, the employment of only women would not be to advance the equality of employment opportunities for the women employed but for the advancement of equality of opportunities for the women receiving support in the female space.
- 4.20. In the Commission's view, while this argument is open, it was reasonable for the Applicants to seek an exemption so that they have some more certainty about this position.

B. The Commission's Power to Grant Exemptions

- 4.21. Section 44 of the SDA provides the Commission with the power to grant exemptions by instrument in writing, from the operation of a provision of Division 1 or 2 of the SDA as specified in the instrument. The power is enlivened on application by a person, persons or class of persons, as the case may be.¹⁰
- 4.22. An exemption may be granted subject to terms and conditions specified in the instrument, and may be expressed to apply only in particular circumstances, or in relation to particular activities, as specified in the instrument.¹¹ Exemptions are to be granted for a specified period not exceeding five years.¹² It is not unlawful for a person to act in accordance with an exemption while the exemption remains in force.¹³
- 4.23. In practical terms, the granting of a temporary exemption means that the activities or circumstances covered by it cannot be the subject of a successful complaint under the SDA.
- 4.24. Notwithstanding the few express limitations referred to above, the Commission's power to grant exemptions from compliance with the SDA is otherwise unconfined. Consistent with established principles of administrative law, the Commission's statutory discretion must be exercised in conformity with the subject matter, scope and purpose of the legislation under which it

⁹ For example, quotas for the number of female representatives to address the lack of female representatives in a union in *Jacomb v Australian Municipal Administrative Clerical & Services Union* (2004) 140 FCR 149.

¹⁰ Section 44(1), SDA.

¹¹ Sections 44(3)(a)–(b), SDA.

¹² Section 44(3)(c), SDA.

¹³ Section 47, SDA.

arises¹⁴ and additionally, the legislation under which the Commission exercises its functions.¹⁵

4.25. The objects of the SDA are stated in section 3 to include:

- (a) to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women and to provisions of other relevant international instruments; and
- (b) to eliminate, so far as is possible, discrimination against persons on the ground of sex, sexual orientation, gender identity, intersex status, ... in the areas of work, accommodation, education, the provision of goods, facilities and services...;
- (c) to eliminate, so far as is possible, discrimination involving sexual harassment, and discrimination involving harassment on the ground of sex, ... in other areas of public activity; and
- (d) to promote recognition and acceptance within the community of the principle of the equality of men and women; and
- (e) to achieve, so far as practicable, substantive equality between men and women.

4.26. By conferring an exemption power on the Commission, the Australian Parliament has clearly contemplated that some discriminatory conduct might be justified and that, in certain circumstances, derogation from the terms of the SDA is permissible.

4.27. However, the exemption power must be interpreted in light of the objects of the SDA and the legislative scheme as a whole.¹⁶ The SDA defines discrimination and makes discrimination on the grounds of sex, sexual orientation, gender identity and intersex status unlawful in specified areas of public life. The grant of an exemption pursuant to s 44 of the SDA has the effect of taking relevant conduct out of the SDA's prohibitions and denying redress to a person who is affected by that conduct for the period covered by the exemption. The effect of granting a temporary exemption is to qualify the norms of conduct that the SDA seeks to establish.

¹⁴ *R v Australian Broadcasting Tribunal; Ex parte 2 HD Pty Ltd* (1979) 144 CLR 45 at 49; *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342 at 368; *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 40; *O'Sullivan v Farrer* (1989) 168 CLR 210 at 216; *Oshlack v Richmond River Council* (1998) 193 CLR 72 at [22], [31]; *Lesbian Action Group Inc v Australian Human Rights Commission* [2026] FCA 432 at [18], [87].

¹⁵ *Lesbian Action Group Inc v Australian Human Rights Commission* [2026] FCA 432 at [113]-[122].

¹⁶ *Lesbian Action Group Inc v Australian Human Rights Commission* [2026] FCA 432 at [98].

4.28. As the SDA already provides for permanent exemptions and defences that render any alleged discrimination not unlawful, and because the Commission's exemption power must be interpreted in light of the objects, scope and purpose of the SDA construed as a whole, the Commission considers that temporary exemptions should not be granted lightly. In exercising its statutory discretion, the Commission must have regard to the circumstances of each individual case and balance the relevant factors. Given the significant legal consequences for potential complainants, the Commission must be satisfied that a temporary exemption is appropriate and reasonable, and persuasive evidence is needed to justify the exemption.

4.29. The Commission must also ensure that in exercising its discretion to grant an exemption it is acting in accordance with the statutory duty imposed on it by s 10A(1) of the AHRC Act. The Federal Court of Australia has confirmed that the duty imposed on the Commission by s 10A(1) extends to the exercise of the Commission's function to grant a temporary exemption under s 44 of the SDA.¹⁷

4.30. Section 10A(1) imposes a duty on the Commission to ensure that the functions of the Commission under the AHRC Act and any other Act are performed with regard for 'the indivisibility and universality of human rights'¹⁸ and 'the principle that every person is free and equal in dignity and rights'¹⁹ and 'are performed efficiently and with the greatest possible benefit to the people of Australia' (the Human Rights Considerations).²⁰

4.31. The Commission issued guidelines in 2009 concerning the way in which it proposes to exercise its power under the SDA. These provide that the Commission will consider:

- whether an exemption is necessary
- whether granting an exemption would be consistent with the objects of the SDA
- an applicant's reasons for seeking an exemption
- submissions by interested parties
- all relevant provisions of the SDA
- any terms or conditions subject to which an exemption might be granted.

¹⁷ *Lesbian Action Group Inc v Australian Human Rights Commission* [2026] FCA 432 at [119].

¹⁸ AHRC Act, s 10A(1)(a)(i).

¹⁹ AHRC Act, s 10A(1)(a)(ii).

²⁰ AHRC Act, s 10A(1)(b).

Those guidelines need to be read in a way that is consistent with the principles identified above, including recent guidance in relation to s 10A of the AHRC Act.

5. DECISION TO GRANT THE EXEMPTIONS

A. NATSIWA

5.1. NATSIWA seeks an exemption from the SDA on the following terms:

To allow the National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA) (Applicant) to advertise for and employ women (inclusive of gender diverse women) to fill positions within the applicant's organisation, for five years.

- 5.2. Salient matters that are set out in the Application and accompanying submission from the CEO, Ms Anders are referred to at [1.4]–[1.10] above. The Commission has no doubt that the work of NATSIWA aims to address substantive inequality experienced by Aboriginal and Torres Strait Islander women relative to men and relative to non-Indigenous Australians.
- 5.3. The issues to consider include whether it is discriminatory to exclude men from working in staff roles and whether employing only Aboriginal and Torres Strait Islander women is a targeted, reasonable and proportionate response that will achieve the purpose of addressing that substantive inequality and whether the granting of the exemption sought would be consistent with the furtherance of the Human Rights Considerations referred to at [6.28].
- 5.4. In discussions with NATSIWA, the CEO advised the Commission that NATSIWA is currently seeking to employ a Senior Project Officer and a Communication Officer and believes that female workers are best placed to respond most appropriately (in consideration of trauma-informed support) to Aboriginal and Torres Strait Islander women.
- 5.5. Ms Anders advised that the CEO, Special Projects Officer and Communication Officer roles have responsibilities that require them to be out in the community. The roles involve liaising with women who tell their stories, which then inform the submissions that NATSIWA makes to PM&C. It is not a counselling service. She advised that Aboriginal and Torres Strait Islander women like to tell their stories in context. They do not respond to forms or tick a box questionnaires. It is necessary for NATSIWA staff to go to them and listen to their lived experiences face-to-face sometimes in yarning circles, sometimes one-on-one.
- 5.6. The CEO further said that Aboriginal and Torres Strait Islander women will not open up to men about their domestic and family violence experience, women's health or 'women's business'. NATSIWA has an exemption to employ

Aboriginal and Torres Strait Islander workers but equally as a women's service, it needs to engage women to speak to its members.²¹

- 5.7. Given the systemic discrimination experienced by First Nations people relative to non-Indigenous Australians and by women relative to men, NATSIWA is uniquely placed to bring the lived experiences of its members to the attention of PM&C, so that when making laws and policies, the Commonwealth Government is better informed about the substantive inequalities faced by Aboriginal and Torres Strait Islander women in key areas such as employment, education, health, housing, the legal system and their experiences of discrimination, vilification and family and domestic violence and gain insight into how these inequalities can be addressed.
- 5.8. Having Special Projects Officer and Communication Officer roles staffed by Aboriginal and Torres Strait Islander women around regional and remote Australia, facilitates effective communication of their experiences so that NATSIWA is able to perform its functions. In this way, granting an exemption furthers the recognition that First Nations women are entitled to have their voices heard and their issues addressed, to be treated with dignity and respect and enjoy equal rights with others.

B. NATSIWA AND MHS

- 5.9. It is instructive when considering the Applications of both NATSIWA and MHS to refer to previous temporary exemptions granted by the Commission to the Australian Bureau of Statistics (ABS) and to the Aboriginal and Torres Strait Islander Corporation Family Violence Prevention and Legal Service (FVPLS).
- 5.10. The Commission granted an exemption to the ABS to use predominantly female interviewers to conduct the PSS. The PSS is a survey that collects sensitive information about a person's experience of violence, in particular domestic violence. The exemption allowed the ABS to use predominantly female interviewers to conduct the private one-on-one interviews with both male and female respondents in response to respondents' preferences.
- 5.11. FVPLS is an Aboriginal community-controlled organisation that provides legal and other related services to Indigenous persons and non-Indigenous parents and carers of Indigenous children who have experienced family violence and/or sexual assault. It is also involved in policy and law reform activities. It

²¹ Membership includes over 180 women's organisations from across Australia. Since it became an Indigenous corporation in 2013, NATSIWA has included 524 individual Aboriginal & Torres Strait Islander women members and 14 Aboriginal Organisations.

sought an exemption to advertise for and employ women only in a range of positions.

5.12. The Commission granted an exemption to FVPLS from sections 5, 14 and 86 of the SDA to allow it to employ women only in positions where a substantial component of the job involved direct contact with (predominantly female) clients, namely:

- provision of legal advice to clients of FVPLS; or
- provision of counselling services to female clients of FVPLS; or
- attendance in interviews or at court with clients of FVPLS; or
- provision of education or training to women only about family violence and/or sexual assault; or
- attendance at women only forums, meetings or other events.

5.13. However, the Commission did not grant an exemption for FVPLS to employ only women in all of the 22 roles covered by the application by FVPLS. In the Commission's decision, it made clear that the exemption:

allows the Applicant to employ women only in those roles where a substantial part of the role involves the provision of education or training to women only about family violence and/or sexual assault or requires attendance at women only forums, meetings or other events. This means that before restricting employment in a role to women only, **the Applicant must consider the particular requirements of each position.** (emphasis added)

5.14. FVPLS Victoria had sought and was granted a three-year temporary exemption by the Victorian Civil and Administrative Tribunal (VCAT) on 7 June 2010 to enable it to advertise for and employ Aboriginal and Torres Strait Islander women to fill the following roles:

- a. Family violence and sexual assault counsellor
- b. Lawyer
- c. Paralegal support worker
- d. Indigenous community education and community development officer.

5.15. The Commission believes that these decisions provide support for a similar exemption to be granted to NATSIWA noting the roles for which an exemption is sought and to MHS in respect of the roles of Domestic and Family Violence

Specialist Caseworkers and Refuge and Casework Managers (discussed further below).

C. THIRRILI

5.16. Thirrili has applied to the Commission for a temporary exemption with supporting submissions from the CEO and Chairperson. A brief outline of Thirrili's Application and submissions is at [1.11]–[1.15].

5.17. Thirrili applies for an exemption to:

Advertise, recruit and employ male support workers in order to provide culturally safe and gender appropriate therapeutic support to male clients within its Indigenous communities.

5.18. The letter from the CEO, Ms Tanja Hirvonen, dated 8 October 2025 containing Thirrili's submissions in support of its application provides inter alia:

- Within Indigenous communities, gender roles and cultural protocols strongly influence the acceptability of health and wellbeing services.
- Male clients often require male support workers to engage in culturally safe conversations, particularly regarding men's health, cultural practices, and sensitive issues.
- Research and community feedback highlight that Indigenous men are more likely to engage and build trust with male support workers, particularly in culturally sensitive or deeply personal circumstances.
- Access to male staff in these roles will provide cultural safety, strengthen relationships and improve service outcomes for families and communities.
- Currently Thirrili's workforce profile is predominantly female (66%), which limits its ability to provide culturally and gender-appropriate support to ATSI men and boys who may be experiencing grief, loss and trauma.
- Effective delivery of these services requires a male presence as a role model and mentor to build trust and rapport.
- This request for an exemption aligns with the objectives of the SDA by recognising the need for targeted measures to ensure equitable access to support services for Indigenous men.

5.19. A letter supporting the application from Thirrili's Chairperson, Ms Summer May Finlay, dated 8 October 2025 provides:

- For issues considered 'men's business' it is culturally appropriate, and in many cases essential, that services be provided by male workers.
- Many Indigenous men in our community are reluctant to engage with female support workers due to shame, cultural obligations or past trauma.
- Without male support workers, participation rates and outcomes for men's support are severely limited.
- Providing male support workers and culturally safe services to Indigenous men improves mental health, strengthens families and builds resilience across the whole community.
- This exemption will allow the organisation to provide appropriate and effective services tailored to the needs of Indigenous men.

5.20. In discussions with Thirrili's CEO, Ms Hirvonen advised the Commission that as a not-for-profit community organisation, Thirrili was concerned to use its limited resources to defend any legal challenge to its proposed actions and would like the certainty of a temporary exemption.

5.21. The Commission's view is that Thirrili's Application for a temporary exemption is a reasonable, appropriate and proportionate response to the demand for Aboriginal and Torres Strait Islander male support workers who can provide culturally sensitive support to Indigenous men experiencing grief, loss and trauma. Granting an exemption is consistent with the Human Rights Considerations because it recognises and respects that Indigenous men are unlikely to seek support from non-Indigenous services and female counsellors to discuss 'men's business' and that providing male counsellors will address that need so that they can access Thirrili's services on an equal footing with Indigenous women.

D. PUBLIC CONSULTATION

5.22. The Commission received 5 submissions in response to the Applications. The Commission heard from 2 peak organisations and 1 state body on the issues raised by the Applications.

NATSIWA

5.23. Anti-Discrimination NSW (ADNSW) advised that it has received a number of exemption applications from services that provide support and refuge to victims of domestic violence where the applicant has requested to employ female only staff. ADNSW noted that it has relied upon the exemption under

s 31 of the *Anti-Discrimination Act 1977* (NSW) (noted in [6.7] above). ADNSW submitted:

Given that NATSIWA's proposed activity could arguably be covered by an exception under the ADA, the Federal and State Government priorities relating to domestic violence prevention and noting the importance of delivering culturally safe activities and projects to Aboriginal and Torres Strait Islander women, ADNSW supports the granting of this exemption under s 44 of the SDA.²²

5.24. By letter dated 6 March 2026, Wiyi Yani U Thangani Institute for First Nations Gender Justice provided a persuasive and informative submission in support of NATSIWA's Application and the important role NATSIWA performs for Indigenous women.

5.25. In the first instance, Wiyi Yani U Thangani Institute applauded NATSIWA for embracing the gender diversity of First Nations women in Indigenous communities:

The Institute also affirms its commitment to the inclusion, dignity, and rights of trans women and Sistergirls within First Nations communities. In supporting NATSIWA's application, the Institute understands the exemption as applying to women, including trans women and Sistergirls. Our support for this application is therefore grounded in a commitment to ensuring that spaces intended for Aboriginal and Torres Strait Islander women are inclusive of the diversity of women's identities and experiences within our communities.

5.26. It then went on to refer specifically to the two staff roles that are primary to NATSIWA's Application:

The Institute acknowledges NATSIWA's long-standing and vital role as the peak body representing Aboriginal and Torres Strait Islander women nationally. ... The positions of Special Project Officer and Communication Officer—central to this exemption request—are core to NATSIWA's ability to carry out these functions effectively.

The Institute considers that women are best suited to hold these positions. The responsibilities of the Special Project Officer and Communication Officer requires deep understanding and engagement with gender-specific issues, including gender-based discrimination, safety, wellbeing, community dynamics, and the impacts of patriarchal systems on women and girls.

These roles require the facilitation and communication of often deeply sensitive issues, and trauma-informed practice to ensure women are able to access a safe environment to speak openly and confidentially about their experiences.

²² Email dated 1 March 2026.

Women, through their own lived experience of gendered inequality and the shared social and relational contexts that shape women's lives, are uniquely positioned to undertake this work with authenticity, empathy, and the capacity to foster trust. Employing women is therefore necessary to ensure the integrity, effectiveness, and cultural safety of NATSIWA's engagement with First Nations women and communities.

...

Ensuring that these positions are held by Aboriginal and Torres Strait Islander women provides the trust, cultural authority, and deep contextual understanding needed to engage, listen, and respond in ways that uphold cultural safety and community expectations.

5.27. The Commission accepts the submissions in support of NATSIWA's Application and is of the view that the exemption sought by NATSIWA is both reasonable and necessary to ensure that it can continue to carry out its legislated purpose, meet its obligations to NATSIWA members, and uphold the cultural integrity expected of a national representative women's alliance.

5.28. The Commission also considers that the requested five-year period is proportionate, providing stability for NATSIWA's programs and enabling continuity of culturally informed practice while the organisation continues to deliver outcomes under Commonwealth funding frameworks.²³

THIRRILI

5.29. The Commission received a submission from ADNSW which provides:

ADNSW has received a number of exemption applications from services that provide special needs programs aimed at people of a particular race. ADNSW notes that s 21 of the *Anti-Discrimination Act 1977* (NSW) (ADA) provides an exception from the ADA's race discrimination provisions for programs which afford access to persons of a particular race to facilities, services or opportunities to meet their special needs or the promotion of equal or improved access for them to facilities, services and opportunities.

5.30. Additionally, ADNSW again referred to s 31 of the ADA containing the exception that permits employers to discriminate on the ground of sex in employing workers where, 'the holder of the job provides persons of that sex with personal services relating to their welfare or education, or similar

²³ Letter from Wiyi Yani U Thangani Institute for First Nations Gender Justice, ANU to the Commission dated 6 March 2026 p 2.

personal services, and they or a substantial number of them might reasonably object to its being carried out by a person of the opposite sex’.

Given that Thirrili’s proposed activity could arguably be covered by an exception under the ADA, the Federal and State Government priorities for targeted measures to ensure equitable access to support services for Indigenous men, and noting the importance of delivering culturally safe activities and projects to Aboriginal and Torres Strait Islander men, ADNSW supports the granting of this exemption under s 44 of the SDA.

5.31. The Commission accepts ADNSW’s submission as further support for its view at [7.21] that Thirrili’s Application should be granted.

MARY’S HOUSE SERVICES

5.32. MHS seeks an exemption to create a female only therapeutic environment by excluding male employees from its premises. This would otherwise constitute direct discrimination on the ground of sex in employment.²⁴

5.33. MHS seeks an exemption to allow it, for a period of five years, to advertise for and employ only women to fill both non-casework roles (Marketing, Fundraising, Corporate Services and Finance) and client-facing roles (Refuge and Casework Managers and Domestic and Family Violence Specialist Caseworkers) within the organisation.

5.34. By letter dated 3 March 2026, the CEO of Full Stop Australia, Ms Karen Bevan, provided a submission on behalf of the organisation in support of MHS’ Application.

5.35. Her letter provides:

We strongly believe the exemption to employ women only for certain identified roles is appropriate given the sensitive nature and gendered elements of the work MHS performs in relation to sexual, domestic and family violence. This request aligns with current sector knowledge and practices.

5.36. Similarly, on 12 March 2026, ADNSW wrote to the Commission in relation to MHS’ Application:

[T]he application by Mary’s House Services Ltd (MHS) for a temporary exemption pursuant to s 44 of the *Sex Discrimination Act 1984* (Cth) (SDA) to advertise for and employ only people who identify as women as Domestic and Family Violence Specialist Caseworkers and Refuge and Casework Managers, along with a number of other roles that are not front-line roles.

²⁴ Section 5 and 14 of the SDA.

5.37. ADNSW stated that it has received a number of exemption applications from services that provide support and refuge to victims of domestic violence where the applicant has requested to employ female only staff. It noted the exemption in s 31 of the *Anti-Discrimination Act 1977* (NSW) (ADA) referred to at [6.7] and [7.30] above. ADNSW submitted:

Given that MHS's proposed activity could arguably be covered by an exception under the ADA, the Federal and State Government priorities relating to domestic violence prevention, ADNSW supports the granting of this exemption under 44 of the SDA.

5.38. Following the reasoning in the FVPLS decisions of the Commission and VCAT referred to at [7.9]–[7.15] above, the Commission has considered the requirements of each position in respect of which MHS applies for an exemption.

5.39. It is instructive in this context to consider the full text of the genuine occupational qualification exemption in the ADA, which provides:

31 Exception--genuine occupational qualification

- (1) Nothing in this Division renders unlawful discrimination against a person on the ground of the person's sex where being a person of a particular sex is a genuine occupational qualification for the job.
- (2) Being a person of a particular sex is a genuine occupational qualification for a job where any one or more of the following requirements is satisfied—

....

- (h) the holder of the job provides persons of that sex with **personal services relating to their welfare** or education, or similar personal services, and **they or a substantial number of them might reasonably object to its being carried out by a person of the opposite sex.** (Emphasis added)

5.40. The Commission also references the genuine occupational qualification exemptions in the ACT and Victorian legislation noted at [6.8]–[6.9] above, which provide support for employing only women as Refuge and Casework Managers and Domestic and Family Violence Specialist Caseworkers.

5.41. The Commission has then considered the Position Descriptions for non-casework roles at MHS to assess whether it is appropriate and reasonable that the roles are only open to women.

5.42. **Community Engagement Coordinator:** The Position Description for the Community Engagement Coordinator provides that the incumbent is

responsible for supporting the Philanthropy and Communications Manager to nurture and manage MHS' relationships with community stakeholders, including its relationships with individuals, corporates and community members who support it in a range of ways, and who attend its annual events. Specifically, the role involves engagement with community organisations, community-based clubs such as Rotary, school and parent groups, cultural and place-based groups, sports clubs and businesses (e.g. corporates, venues, councils) and community members.

5.43. On the information before the Commission, it does not currently appear that a man would be unable to fulfil the duties demanded. The position itself does not involve the delivery of personal services relating to the welfare of the victims of family and domestic violence.

5.44. **Philanthropy and Communications Manager:** The Philanthropy and Communications Manager's role is to lead the planning and execution of the fundraising, philanthropy, marketing and external communications strategies, ensuring they align with MHS' strategic and operational plans. The position's central goals are to achieve a sustainable income stream with annual growth. This is a leadership role, reporting to the CEO.

5.45. The two primary areas of focus are:

- generating income to maintain and grow MHS' frontline services; and
- engaging a highly committed and generous local community by raising and maintaining public awareness of MHS' services for all stakeholders and leading a communications strategy that supports revenue generation and advocacy about women and children's safety.

5.46. As noted in relation to the previous role, the position description itself does not support the employment of only women in this role. The fact that the role involves advocacy against domestic violence should not necessarily prevent men from being able to apply.

5.47. **Finance Coordinator:** The Finance Coordinator is responsible for the effective financial management of the organisation. Key responsibilities encompass long and short-term financial planning, financial risk management, efficient cash flow management, continuous monitoring of financial performance, the creation of timely periodic financial reports for the management team and the Board, oversight of day-to-day financial operations, budget and forecast preparation, management of the audit process, and ensuring compliance with regulatory reporting and any accountability requirements of funders.

5.48. This is a role within Corporate Services and appears to have no professional face-to-face interaction with MHS' clients.

- 5.49. **Corporate Services Manager:** The Corporate Services Manager is responsible for leading the development and delivery of services through identifying the resources necessary to achieve the organisation's goals, and meeting risk management and compliance obligations through strong leadership and engagement with key internal stakeholders (CEO, staff) and external stakeholders, in this case, third party providers such as IT providers and building and maintenance contractors.
- 5.50. Looking at the duties of the position, it is a business management role involving management of finance, IT, operations, procurement, maintenance and housekeeping. There are no client-facing responsibilities. Accordingly, the same arguments apply to this role as to the Finance Coordinator role and the Commission considers it unlikely that the role can only be fulfilled by women.
- 5.51. When deciding whether to grant a temporary exemption under the SDA, the Commission must consider whether to do so would be consistent with the objects, scope and purpose of the SDA construed as a whole and s 10A(1) of the AHRC Act, which includes eliminating barriers which stereotype both men and women into categories which may not always be representative of our present society. In addition to the specific role descriptions identified above, it is also important to consider the practicalities of how MHS delivers its service. In a particular case, those practicalities may justify a departure from the delineation between caseworker and non-casework team roles. It is important that the relevant context for the delivery of the service is properly understood.
- 5.52. The Commission understands that the rationale MHS provides for employing only women in all roles is that:
- MHS follows trauma-informed practices at each of its locations. Its clients find it triggering to have men around.
 - MHS has a small team and occasionally non-casework team members are required to attend the Refuge site.
 - MHS' head office site is on the same floor as its Community Programs Centre and it is possible that clients of MHS may come into contact with non-casework team members when attending programs.
 - When MHS has male visitors or tradespeople, it ensures they are accompanied by a woman from MHS and try to schedule their visits at times when client interaction is at a minimum.
 - Non-casework team members share a roster to answer the administration phone. Although it is not meant for client calls, clients do

call on occasion. If a male voice picked up for a DV service, MHS believes it could deter some women from continuing with the call or calling again.

5.53. The Commission is satisfied that these aspects of the operations of MHS, in combination, justify granting an exemption under s 5 of the SDA to MHS in relation to the non-casework roles identified above. In particular, the need for non-casework staff to be available to attend the Refuge from time to time as part of their duties, and the colocation of the head office with the Community Programs Centre were significant considerations. While it will not always be the case that an exemption from s 5 of the SDA in relation to the hiring of non-casework staff is appropriate (as can be seen from the terms of the exemption previously given to FVPLS), the Commission is satisfied that it is appropriate in this case having regard to the vulnerabilities of the clients of MHS, the nature of the trauma that they have suffered, and the impact that the exemption would have on the promotion of their human rights including their right to security of person.

6. SUMMARY

- 6.1. The Commission considers that temporary exemptions should not be granted lightly. The grant of an exemption has the effect of taking relevant conduct out of the SDA's prohibitions and denying redress to a person who is affected by that conduct for the period covered by the exemption. One effect of granting a temporary exemption is to qualify the norms of conduct that the SDA seeks to establish.
- 6.2. In exercising its statutory discretion, the Commission must have regard to the circumstances of each individual case and balance the relevant factors. Given the significant legal consequences for potential complainants, the Commission must be satisfied that an exemption is appropriate and reasonable, and persuasive evidence is needed to justify the exemption. The Commission must also consider whether the exercise of its discretion in favour of or against granting an exemption is in conformity with the Human Rights Considerations referred to in s 10A(1) of the AHRCA.
- 6.3. The Commission has considered the nature of the exemptions sought in the three Applications before it and submissions received in relation to those Applications.

6.4. The Commission has decided to grant exemptions on the terms set out in [2.1] and [2.2] above.

A handwritten signature in black ink, consisting of a stylized 'H' followed by a series of loops and a long horizontal stroke.

Signed by the President, Hugh de Kretser on behalf of the Commission.
August 2026

Copies of all submissions (except where consent was not obtained) are available on the Commission website at: <https://humanrights.gov.au/our-work/legal/exemption-applications-under-sex-discrimination-act-1984-cth>

SCHEDULE

1. Anti-Discrimination NSW
 - Submission in support of NATSIWA's application dated 11 March 2026
 - Submission in support of Thirrili's application dated 12 March 2026
 - Submission in support of Mary's House Services application dated 13 March 2026
2. Full Stop
 - Submission in support of Mary's House Services' application dated 3 March 2026
3. Wiyi Yani U Thangani Institute
 - Submission in support of NATSIWA's application dated 10 March 2026