

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

VCAT REFERENCE: H37/2015

**CATCHWORDS**

*Equal Opportunity Act 2010* ss 12, 89 and 90 – declaration that the conduct which is the subject of an exemption application is a special measure – no exemption necessary.

**APPLICANT:** Genovate Consulting  
**WHERE HELD:** Melbourne  
**BEFORE:** Member A Dea  
**HEARING TYPE:** Chambers  
**DATE OF ORDER** 11 May 2015

**ORDER**

The applicant has applied for an exemption under section 89 of the *Equal Opportunity Act 2010* (EO Act) to enable the applicant to provide services to women by targeting, selecting and short listing women only in short lists prepared by the applicant for presentation to employers who seek to employ a person in a leadership, management, executive or board level role (the conduct).

On the material filed in support of the application, including the affidavit of Ashwitha Navaratnam, the Tribunal is satisfied that the conduct is a special measure under 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 did not seek leave to intervene in the proceeding.
- The applicant is a consulting and advisory recruitment business engaged by potential employers to specifically recruit women into leadership and executive roles aiming to increase gender equality and diversity at management levels. The applicant does not engage the candidates, but rather presents to employers shortlists of experienced and qualified candidates who may be suitable for the particular role.
- The applicant will only target, select and short list women and will not seek applications from men, approach men for vacancies or include men in shortlists.

- The applicant works in this way because women are underrepresented at leadership and management levels in Australian workplaces. The Workplace Gender Equality Agency's 2012 Australian Census of Women in Leadership found that: fewer than one in 10 directors of Australian Stock Exchange (ASX) listed companies are women; over 60% of ASX 200 companies do not have any women executives; and over one third of ASX 200 companies and more than half of ASX 500 companies do not have a female director. The Business Council of Australia has produced a 2013 report which recommends that, in order to address gender disparity, a key solution is to increase the number of women in management roles.
- There are currently over 3,300 recruiting services in Australia and New Zealand and, at present, there is only one other recruitment company which focuses on the recruitment of women only to executive roles.

Accordingly, 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. 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  
Member**

