

LADIES A PLATE! LADIES ONLY BOWLS TOURNAMENT ALLOWED

In a Victorian decision delivered in [Portarlington Bowls Club - Exemption \(Human Rights\) \[2018\] VCAT 1571 \(11 October 2018\)](#) the Tribunal determined that the ladies of the Portarlington Bowls Club (“the Club”) could conduct a ladies only bowls tournament.

The Tribunal noted the background to the tournament as follows:-

“The Club has a long-standing tradition of holding an annual ‘Ladies Section Open Day’. The next Ladies Section Open Day is 11 November 2018 and invitations will be issued to women in local clubs. Men are not invited (the conduct). Since 2013, the Club has operated the open day competition subject to an exemption granted by this Tribunal on 18 July 2013. The Club has made an application for a further five-year exemption to enable it to continue to run the competition under section 89 of the [Equal Opportunity Act 2010](#) (the Act).”

[Section 89](#) of the Act permits the Tribunal to grant an exemption from any of the provisions of the Act in relation to a person or class of persons or an activity of class of activities by publishing a notice in the Government Gazette.

[Section 90](#) of the Act requires the Tribunal, in deciding whether to grant, renew or revoke a decision to consider:-

- (a) whether the proposed exemption is unnecessary because-
 - (i) an exception or exemption in the Act already applies to the conduct sought to be exempted; or
 - (ii) the conduct sought to be exempted would not amount to prohibited discrimination; and
- (b) whether the proposed exemption is a reasonable limitation on the right to equality set out in the Charter of Human Rights and Responsibilities; and
- (c) all the relevant circumstances of the case.

Accordingly, the question to be determined by the Tribunal in this matter was “*whether an exception already applies, primarily whether the open day constitutes a ‘special measure’ under section 12 of the Act.*”

[Section 12](#) (3) of the Act provides as follows:-

“A special measure must-

- (a) be undertaken in good faith for achieving the purpose set out in subsection (1); and*
- (b) be reasonably likely to achieve the purpose set out in subsection (1); and*
- (c) be a proportionate means of achieving the purpose set out in subsection (1); and*
- (d) be justified because the members of the group have a particular need for advancement or assistance.”*

Section 12 (1) of the Act provides as follows:-

“A person may take a special measure for the purpose of promoting or realising substantive equality for members of a group with a particular attribute.”

The Tribunal noted:-

“.....some persons might find the use of the term “Ladies” inappropriate and might consider “Women” or “Female” more suitable. However, I consider that the term is reflective of the long tradition of the Club and of the demographic that this event serves. It is the term with which the relevant players are most comfortable and therefore the term most likely to attract players and teams to the event. Hence, I have adopted that term in these reasons.”

The Tribunal then indicated that it was satisfied with the evidence presented that:-

“...the Ladies Section Open Day provides assistance to women, particularly older women, to continue participation in bowls competitions and to develop leadership and tactical skills that they would not otherwise develop in a mixed-sex team. I am also satisfied that women, particularly older women, have a particular need in these circumstances for that assistance.

Given the declining numbers of women in the Applicant club [the Club], I consider that the continuation of the traditional Ladies Section Open Day assists in preventing further decline of female membership or, in other words, I am satisfied that the proportional loss of female membership would be greater in the absence of the single-sex competition days.”

The Tribunal further considered that the one day per year of the Ladies Section Open Day was proportionate to the purpose. The Ladies Section Open Day constituted a “special measure” and therefore an exception already applies to the conduct in these circumstances. Accordingly, an exemption is not required.

The Tribunal considered it lawful for the Club to conduct the Ladies Section Open Day as it constitutes a special measure and therefore no special exemption is required to be sought.

The Victorian Equal Opportunity & Human Rights Commission has produced a document “Equal Opportunity in Lawn Bowls – What you need to know about holding single-sex competitions” which can be found [here](#).

Date Published: 23 October 2018

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