

Equal Opportunity Act 2010

Section 89 Exemption Applications

What is an exemption?

Under section 89 of the *Equal Opportunity Act 2010* (the Act), the Human Rights List at VCAT may grant a temporary exemption from the provisions of the Act if it believes that doing so would promote equal opportunity. For the duration of the exemption, the discriminatory conduct would not be against the law.

What factors does VCAT consider in granting an exemption?

Under section 90 of the Act, the factors VCAT must consider when deciding whether to grant, renew or revoke an exemption include:

- a. whether the proposed exemption is unnecessary because:
 - i. an **exception** or exemption already applies, or
 - ii. the conduct would not amount to discrimination, including where the conduct is a **special measure** under section 12 of the Act
- b. whether the proposed exemption is a reasonable limitation on the rights to equality set out in the Charter of Human Rights and Responsibilities, and
- c. all relevant circumstances of the case.

How long does an exemption last?

Exemptions apply for the period set by the Tribunal, which cannot be longer than five years. During the exemption period, the discriminatory behaviour will not be against the law.

Can VCAT make an interim exemption?

VCAT may grant an interim exemption if a previous exemption is due to expire or there is a need for an interim exemption while the application is being considered.

Applicants must complete an 'Application for Order – Human Rights List' together with an affidavit outlining current circumstances together with details of any previous exemption/s.

What is an exception?

As mentioned, an exemption is not required when a general or specific exception or a general exemption in the Act clearly applies.

- General exceptions or exemptions apply to discrimination in all areas of public life, for example, where discrimination is necessary to protect health and safety **and**
- Specific exceptions apply to discrimination in particular areas of public life, which include accommodation, clubs, education, employment, provision of goods and services, local government and sport.

You can find further information about exceptions and general exemptions on the Victorian Equal Opportunity & Human Rights Commission website.

www.humanrightscommission.vic.gov.au

What is a special measure?

Under section 12 of the Act, a special measure is conduct that has the purpose of promoting or realising substantive equality for members of a group with a particular attribute. Where conduct is proven to be a special measure, engaging in that conduct is not prohibited discrimination and so there is no need for a temporary exemption.

The following are examples of conduct that is considered to be a special measure:

1. A company operates in an industry in which Aboriginal and Torres Strait Islanders are under-represented. The company develops a training program to increase employment opportunities in the company for Aboriginal and

Torres Strait Islanders.

2. A swimming pool that is located in an area with a significant Muslim population holds women-only swimming sessions to enable Muslim women who cannot swim in mixed company to use the pool.
3. A person establishes a counselling service to provide counselling for gay men and lesbians who are victims of family violence, and whose needs are not met by general family violence counselling services.

What kind of orders can VCAT make?

VCAT may make an order granting a temporary exemption, and in some cases, will provide written reasons for the decision. If the exemption is granted, VCAT will send the order for publication in the Government Gazette before it is operative.

If the conduct is found to be an exception or special measure, VCAT may make an order declaring the conduct an exception or special measure and striking out the application.

The order will be published on the Australian Legal Information Institute website www.austlii.edu.au.

VCAT may also strike out or dismiss an application if the conduct is found to be not discriminatory, or if the applicant does not provide further information.

Intervention by the Victorian Equal Opportunity and Human Rights Commission (VEO&HRC)

Under section 159 of the Act, the VEO&HRC, with the Tribunal's permission, may intervene and be joined as a party in any proceeding that involves issues of equal opportunity and other issues covered by the Act.

How do I apply?

Application for Order available at <https://www.vcat.vic.gov.au/resources/application-for-an-order-human-rights-list>

You will need to complete all sections of the application **except** the 'respondent details' as this section is not applicable to your application.

You must also attach an affidavit in support of your application detailing the reasons why you are seeking an exemption. You can download a blank affidavit from our website at:

<https://www.vcat.vic.gov.au/resources/affidavit-proforma>

Can I provide any other supporting documents with my application?

Provide any other material that you feel will support your application, such as:

- copies of previous exemptions,
- any other supporting material relevant to your application.

If you are supplying copies of documents electronically, please ensure the files are uploaded in the following formats: BMP, DOCX, DOC, PDF, XLSX, XLS, PPT.

Who gets a copy of my application?

Under section 91 of the Act, when lodging an exemption application with VCAT, the applicant must also provide a copy of the application to the VEO&HRC.

Can I make an application on behalf of someone else?

Yes. A person can also make an application on behalf of a group of people. This kind of application is called a 'representative application'.

If you are considering making this type of application, you may wish to discuss the issue with the VEO&HRC or consider obtaining independent legal advice. Refer to the contacts at the end of this fact sheet.

Can I apply to revoke an exemption?

If you believe your interests may be or have been affected by the granting of the exemption, you may apply to VCAT for a revocation of the exemption.

To apply for a revocation you must complete a VCAT application form, available at:

<https://www.vcat.vic.gov.au/resources/application-for-an-order-human-rights-list>

You must also attach an affidavit in support of your application detailing why you believe the exemption should be revoked.

You can download a blank affidavit from our website at:

<https://www.vcat.vic.gov.au/resources/affidavit-proforma>

VCAT will list the application for hearing and you will be sent a notice of hearing advising you of the date, time and place of the hearing.

At the hearing, VCAT will consider your application and all parties will be given an opportunity to provide further information regarding the application.

If the exemption order is revoked, VCAT will publish a notice of revocation in the Government Gazette. The revocation does not take effect until at least three months after the revocation has been published.

Do I need to pay a fee when I apply to VCAT?

Yes, there is a fee for this application. Please refer to the schedule of fees at:

www.vcat.vic.gov.au

The Tribunal cannot proceed with your application until the fee is paid.

How can I pay the application fee?

The application form will outline payment methods. They include:

Mail – If you are posting your application, you can attach a cheque or money order made out to the Victorian Civil and Administrative Tribunal. If you wish to pay using a credit card, please complete a **‘Payment by**

Credit Card’ form and attach to your application.

<https://www.vcat.vic.gov.au/resources/credit-card-payment-form>

In person – If you are lodging your application in person, you can pay by cash, cheque, money order, eftpos or credit card

at William Cooper Justice Centre, Level 5, 223 William St, Melbourne.

Office hours: 9am-4.30pm Monday to Friday

Email: If you are emailing your application to humanrights@vcat.vic.gov.au you will need to complete and attach a completed **‘Payment by Credit Card’** form

<https://www.vcat.vic.gov.au/resources/credit-card-payment-form>

What happens when I lodge my application?

The exemption application and supporting affidavit will be referred to a VCAT Member for consideration.

If there is insufficient information to make a decision, the VCAT Member may request further information from you. The further information must be supplied on an affidavit.

VCAT **may** also list the application for a directions or final hearing. If your application proceeds to hearing, you will be sent a notice of hearing advising you of the date, time and place of the hearing.

Is a hearing fee payable?

No hearing fee is payable unless the matter is listed for a second day of hearing. Please refer to the fees page of the VCAT website.

How do I lodge an application with VCAT?

Applications can be lodged via

Email: humanrights@vcat.vic.gov.au

Mail:

Human Rights List
Victorian Civil and Administrative Tribunal
PO Box 13193 VIC 8010

Delivering it in person to:

Human Rights List
Victorian Civil and Administrative Tribunal
William Cooper Justice Centre
Level 5 / 223 William Street
MELBOURNE
Office hours: 9am-4.30pm Monday to Friday

Contact VCAT

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Email: humanrights@vcat.vic.gov.au

Note: VCAT staff and Members cannot provide legal advice.

Further information

Find the Act at www.legislation.vic.gov.au.
Follow the links under 'Victorian Law Today'.
You can access previous VCAT exemption decisions by visiting www.austlii.edu.au.

Where can I get legal advice?

The following agencies may be able to provide free or low cost legal advice and/or referral:

Victorian Equal Opportunity & Human Rights Commission

www.humanrightscommission.vic.gov.au

☎ 1300 292 153

Victoria Legal Aid

www.legalaid.vic.gov.au

☎ 03 9269 0120

Law Institute of Victoria

www.liv.asn.au

☎ 03 9607 9550

Federation of Community Legal Centres

www.communitylaw.org.au

☎ 03 9652 1500