

HUMAN RIGHTS LIST

EXEMPTION

APPLICATION NO H386/2024

The Victorian Civil and Administrative Tribunal has considered an application under section 89 of the *Equal Opportunity Act 2010* ('the Act') by Geelong Grammar School ('the applicant') to renew an exemption under section 89 of the Act made 7 March 2019 ('the earlier exemption'). The application for renewal of the earlier exemption is to enable the applicant to:

- (a) structure waiting and enrolment lists to target prospective students of either gender;
- (b) offer places to students of either gender to maintain a gender balance;
- (c) reject applications based on gender to maintain a co-educational balance;
- (d) advertise for prospective male or female students in any year level where future waiting lists show a gender imbalance;
- (e) offer scholarships to students of a minority gender at a particular year level and advertise the availability of such scholarships; and
- (f) grant incentive rebates or discounts to parents of a minority gender in a particular year level to achieve a co-educational balance and advertise that such rebates or discounts are available. (together, 'the exempt conduct').

so as to continue to promote, establish and maintain a sex/gender balance of students across the entire school.

The term 'boy' includes males and people whose gender identity is male, and the term 'girl' includes females and people whose gender identity is female.

UPON READING the material filed in the current application, including the affidavits of Luke Mandouit, Vice-Principal, and Brendan Mcaloon, Director of Community Engagement, the oral evidence they provided at the hearing, and the written submissions received by the Tribunal in response to the notice of the application, the Tribunal is satisfied that it is appropriate to grant an exemption from sections 38, 44, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

In granting this exemption, the Tribunal notes:

- The applicant is an independent private school established in 1855. Co-education was introduced in 1972. The applicant is an open entry school that supports entry to students of all faiths, abilities, interests, genders and backgrounds. The school has four campuses and runs classes from kindergarten to year 12. Co-education is provided across all levels and all campuses at the school.
- The applicant states that it believes that a co-educational environment provides an all-rounded education, encouraging a sound intellectual, emotional, physical and social base which allows students to flourish. It better prepares the students for living, working and learning for life in a mixed gender society. The aim is for the students to leave Geelong Grammar School as confident and resilient young adults, strengthened in their capacity to develop meaningful relationships and are well prepared for life beyond school. The applicant believes that for a co-

educational school environment to work best, it is essential that there be, as far as practical, equal numbers of female and male students across all year levels.

- The applicant has been granted a number of exemptions in the past. The most recent exemption was granted on 31 March 2019 and expired on 30 March 2024. An interim exemption was granted on 16 May 2024 to 29 August 2024 to allow the applicant to continue to undertake the exempt activity while the current application was processed.
- There is no exception or exemption in the Act that already applies to the exempt activity, and in the absence of an exemption, the exempt conduct would amount to prohibited discrimination.
- When making decisions about exemptions, the Tribunal is required to consider whether the proposed exemption is a reasonable limitation on the right to equality set out in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('Charter'). The Tribunal has considered the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, and the relationship between the limitation and its purpose, and any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.
- The applicant has complied with the directions of the Tribunal to advertise the application for exemption and invite submissions from members of the school community and prospective school community. The school community received the notice, it was prominently placed on the school website and a notice was published in a newspaper as required. The Victorian Equal Opportunity and Human Rights Commission has not intervened.
- The Tribunal has also considered the written submissions received in response to the notice of the application. Two written submissions were received. One was clear in support of the exemption, and the second expressed its deep concern due to the detrimental effect that the exemption has on male students and the opportunity for males to be part of the co-educational experience.
- The most recent statistics describe the overall gender balance at the school is 55% male and 45% female. The percentages are different across the various campuses, including a higher percentage of girls at Timbertop while significantly lower percentage currently at the Toorak campus. The number of female students is slightly below the median percentage from 2019 to 2023.
- The Tribunal accepts that this exemption would limit the right to equality, and in particular, the right to equal and effective protection against discrimination of some prospective students. It would allow Geelong Grammar School to discriminate against some prospective students on the basis of sex or gender identity. The reasons provided in support of the exemption note the importance of co-education in preparing students for living in a mixed gender society, enriching their educational experience and their social development, and providing a safe, supportive and diverse experience for all its students.
- The Tribunal has granted exemptions for similar conduct in the past, recognising the importance of ensuring co-educational school experiences in the community. Section 39 of the Act specifically permits discrimination by single-sex schools on the basis of sex. An exemption to allow discrimination for the purpose of providing a co-educational experience would involve less discrimination than a single sex-school relying on section 39. The Tribunal notes the exempt conduct would not prevent any prospective student from accessing education at another school.
- The Tribunal is satisfied the exempt conduct is specific and focused to ensure Geelong Grammar School can achieve its purpose of maintaining a gender balance of students across the entire school.



- The Tribunal accepts that Geelong Grammar School undertakes a number of less restrictive strategies to improve the gender balance in the prospective student applications and its student cohort. Given the nature of its current education program, Geelong Grammar School has a particular challenge encouraging female boarders in years 7 and 8. It was discussed that parents of female students had particular concerns for this experience at this formative age. Conversely, the year 9 Timbertop campus is a very popular experience and has a balanced waiting list for entrants. Geelong Grammar has decided, from 2027, to expand its Toorak campus to include year 7 and 8. It is envisaged that this change will encourage female students to remain at the school, in Melbourne and in a day program through these two years and then commence the boarding aspect of the school in year 9. It is hoped that this will encourage parents to choose Geelong Grammar as an educator of choice for the extended period and address the loss of female students that exists at present after completing year 6. It is noted that the number of students at the Toorak campus are a small proportion of the overall school cohort as dictated by the smaller size of that particular campus.
- Geelong Grammar School's published materials feature male and female students. Female students and alumni are profiled in their media showcasing their achievements, published materials for families address the benefits of co-education, and personal campus tours are provided. The present School Council is almost equal in gender representation and the staff leadership profile demonstrates the school ethos of equal opportunity and equal gender representation.
- The Tribunal accepts the applicant's submissions that despite continuing to implement the less restrictive strategies to manage the gender balance of their student cohort, the applicant is unable to maintain that balance without the use of the exempt activity. The statistics provided by the applicant indicate that without the exemption and the ability to undertake the exempt activity there would be a significant increase in the proportion of male students, which would result in an imbalance in the student cohort. This would undermine the applicant's ability to offer a co-educational environment and the benefits that it offers to all the students, including the male students at the school.

On the evidence before it, the Tribunal is satisfied that in all the relevant circumstances, the limits imposed by this exemption are reasonable and justified under the Charter.

The Tribunal hereby grants an exemption from the operation of sections 38, 44, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

This exemption is to remain in force from the day on which notice of the exemption is published in the Government Gazette until 1 August 2029.

Dated this 25 July 2024.

Member Stuart Webb

