

**CITATION:** James Frizelle's Automotive Group [2014] QCAT 090

**PARTIES:** James Frizelle's Automotive Group (Applicant)

**APPLICATION NUMBER:** ADL112-13

**MATTER TYPE:** Anti-discrimination matters

**HEARING DATE:** On the Papers

**HEARD AT:** Brisbane

**DECISION OF:** **Member Gardiner**

**DELIVERED ON:** 13 March 2014

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **1. The application for an exemption under the *Anti-Discrimination Act 1991* is dismissed.**

**CATCHWORDS:** ANTI-DISCRIMINATION – automotive industry – traditionally male dominated – exemption from liability to advertise for women employees in sales and service areas – where a specific exemption and defence available as equal opportunity measure – where general exemption granted not considered necessary

*Anti-Discrimination Act 1991* ss 7, 14, 15, 17, 25, 105, 113

*Re A P Eagers Limited* [2012] QCAT 567 followed

## **APPEARANCES and REPRESENTATION (if any):**

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act).

## **REASONS FOR DECISION**

[1] James Frizelle's Automotive Group has applied for an exemption to be allowed to advertise specifically for women applicants to fill many positions

within their large organisation in the sales, service management and technical areas.

- [2] A very similar application was determined by me in 2012 on an application by A P Eagers Limited<sup>1</sup>.
- [3] The automotive industry is traditionally male dominated and James Frizelle says that its women customers want to be served by other women whom they trust and who speak the same language. In addition, James Frizelle says there is a critical shortage of trade skills with 34,000 positions nationally to be filled. To address this national shortage, James Frizelle says it is imperative that women be attracted to the industry. As I commented in the Eagers decision, essentially, employing more women in these customer areas would be good for James Frizelle's business.
- [4] The Frizelle Group has attempted to increase the diversity of their staff by sponsoring Gold Coast Women in Business awards in 2013 and publishing editorial magazine pieces on high profile women within their organisation. The Group has policies covering discrimination and equal opportunity and says discrimination is not tolerated in the organisation.
- [5] As these strategies have not had the desired effect of increasing the numbers of female employees, James Frizelle now seeks an exemption under section 113 of the *Anti-Discrimination Act 1991* from operation of the Act in specific areas.
- [6] As with the Eagers workplace, Frizelle says an exemption is sought to allow the group to advertise in gender specific terms for more female employees in the sales, service management and technical areas of the group.
- [7] Advertising targeted at women only would come within the provisions of the *Anti-Discrimination Act* relating to the personal attribute of sex<sup>2</sup> and in the pre-work, work and provision of goods and services<sup>3</sup> under that Act.
- [8] QCAT is required to provide a copy of the application to the Anti-Discrimination Commissioner and to have regard to any submission made by the Commissioner. A copy of the application was sent to the Commissioner on 3 February 2014. The Commissioner has informed QCAT that he has no objection to the application and makes no submissions on it.
- [9] The Commissioner does point however to the Eagers decision in 2012 noting that in that decision, I comment that Eagers may be assisted by adding a note in any advertisements that are targeting female staff. To indicate the Company's intentions to raise a possible exemption should a complaint be made.

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<sup>1</sup> *Re A P Eagers Limited* [2012] QCAT 567.

<sup>2</sup> *Anti-Discrimination Act 1991* s 7(a).

<sup>3</sup> *Anti-Discrimination Act 1991* ss 14, 15 and 127.

- [10] In considering this application, I adopt my reasons in the earlier Eagers decision.
- [11] I have examined whether an exemption is necessary<sup>4</sup> as conduct first appearing to breach the provisions of the *Anti-Discrimination Act* 1991 may be excused by specific exemptions or defences in the Act and it may not be necessary to grant a general exemption under section 113.
- [12] I am satisfied that section 25 of the Act allows genuine occupational requirements to be imposed in work or work related areas of activities. Work includes both full time and part time employment.<sup>5</sup> If a complaint were to be made against James Frizelle in the area of work, section 25 may be relied upon as a defence of that complaint.
- [13] Guidance as to the meaning of “*genuine occupational requirement*” has been provided by the High Court of Australia<sup>6</sup> explaining that determining if a requirement is an inherent requirement involves consideration as to whether the position would essentially be the same in the absence of the requirement.
- [14] As with the situation in Eagers’, James Frizelle’s staff are of both genders and both can fulfil the roles in the sales, service management and technical areas. Increased numbers of female employees is again ideal but not necessary.
- [15] I am not satisfied that section 25 would be available to James Frizelle as a defence to complaints of discrimination based on the attribute of sex in the work area.
- [16] Next, section 105 of the *Anti-Discrimination Act* provides a person may do an act to promote equal opportunity for a group of people with an attribute if the purpose of the act is not inconsistent with the *Anti-Discrimination Act* 1991. This temporary defence only applies until the purpose of equal opportunity has been achieved. This section, dealing with equal opportunity measures, is an example of positive discrimination.
- [17] Advertising for James Frizelle specifically targeting women would be lawful if Frizelle could establish (as an exemption to any claim of discrimination made against them) that the advertising would promote equal opportunity for women in the automotive industry.
- [18] The Act recognises that everyone should be equal before and under the law and have the right to equal protection and benefit of the law with out discrimination but that the protection of fragile freedoms is best effected by

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<sup>4</sup> Exemption application *Re: Boeing Australia Holdings Pty Ltd & Related entities* [2003] QADT 21.

<sup>5</sup> *Anti-Discrimination Act* 1991 Schedule – Dictionary.

<sup>6</sup> *Qantas Airways v Christie* (1998) HCA 18 at 36.

legislation that reflects the aspirations and needs of contemporary society.<sup>7</sup>

- [19] As with the Eagers decision, I am satisfied that the aspirations and needs of our society require recognition that striving to keep a gender balance in those industries which have traditionally been male dominated is appropriate where the users of the services provided are seeking such services to be provided by female staff.
- [20] I am not satisfied however that it is necessary to grant a specific exemption to James Frizelle in this situation because the provisions of s 105 would seem to be able to be satisfied on the evidence supporting this application.
- [21] It is not the role of this Tribunal to make a decision as to whether an exemption under s 105 applies, but I am satisfied that this section could reasonably be argued should a complaint be made of any of James Frizelle's advertising.
- [22] I see no reason in this matter to depart from the decision I made in the application by A P Eagers Limited.
- [23] As I said and the Anti-discrimination Commissioner referred to in his response to QCAT in this matter, James Frizelle can note in any advertisements that are targeting female staff that "*The James Frizelle's Automotive Group considers this advertisement to be an equal opportunity measure under s 105 of the Anti-Discrimination Act 1991*" to indicate the group's intentions to raise this exemption should a complaint be made.
- [24] For these reasons, the application is dismissed.

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<sup>7</sup> *Anti-Discrimination Act 1991*: Parliaments reasons for enacting: reasons (6)(a) and (b).