



# New South Wales Branch

## Australian Men's Shed Association

**SHOULDER TO SHOULDER**

### Discrimination in a Men's Shed

Over the last month I have had a number of conversations about whether females have a right to join a shed or do sheds have the right to deny a request from a female wanting to become a member.

Given that many sheds welcome female members this issues has raised some interesting discussions with lots of 'bush lawyers' ready to offer their opinions. That many sheds welcome females as full members while others place restrictions on their activities further complicates the discussions.

As the discussions have continued I decided the best way to become educated on the matter was to refer to the NSW Anti-Discrimination Law. My searching took me to the Attorney General & Justice (AG&J) Lawlink pages and then to the sections that related to volunteers and voluntary organizations (given this is where the majority of sheds fit).

So what does the NSW AG&J have to say about volunteers and voluntary organizations?

#### **Are volunteers covered by the NSW Anti- Discrimination Act?**

Because volunteers are not generally regarded as employees, they may not be covered by most parts of the NSW Anti-Discrimination Act (ADA).

However, the ADA's sexual harassment provisions do cover volunteers, so it is against the law for a volunteer to be sexually harassed during their voluntary work.

In some circumstances, it may also be against the law to discriminate against or harass a volunteer on the other grounds covered by the ADA. This may be the case if they receive a benefit that is more than out of pocket expenses in return for their voluntary work.

However, it is good practice not to discriminate against or harass any volunteer workers, in the same way that the law prohibits discrimination against and harassment of paid workers.

#### **What is a voluntary body?**

A voluntary body is a body that is not established by an Act of Parliament, and its activities are not for profit. Examples of voluntary bodies are charities, Rotary clubs, societies, etc. *In most instances Men's Sheds could be added here (my comment)*

## Do voluntary bodies have to comply with anti-discrimination law?

Voluntary bodies must comply with anti-discrimination law in relation to both employment practices and service delivery. In general, they must ensure that there is no unlawful harassment or discrimination in relation to:

- recruitment procedures and decisions;
- how people are treated while they are employed; and
- separation/termination procedures and decisions.

## What about membership rules?

Section 57 of the Anti-Discrimination Act says that non-profit bodies (other than registered clubs, building or friendly societies, credit unions and some cooperative housing societies) **can discriminate in relation to their admission to membership and the provision of benefits, facilitates or services to members.** (*my highlight*)

Ref:- NSW Government/ Lawlink/ [Anti-Discrimination Law](#) > *Volunteers and voluntary organisations*

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A Victorian Men's Shed applied to the Victorian Civil and Administration Tribunal (VCAT) seeking clarification on the issue of females joining sheds. While the same issue in NSW must be read through the NSW Anti- Discrimination Act the explanation below is, I think, very clear.

This article appeared in the [Australian Equal Opportunity Tracker](#)

**Men's Shed did not need permission to exclude women**

28 February 2014

The Victorian Civil and Administrative Tribunal (VCAT) has found that a Men's Shed, set up to encourage men's social inclusion and participation in various activities, did not need to apply for an exemption from the *Equal Opportunity Act 2010* in order to lawfully exclude women from membership.

VCAT found that the Men's Shed was not a club as defined in the Act, as it did not have a licence to supply alcohol. However, it was providing a service for the purposes of the Act.

Section 88 of the *Equal Opportunity Act 2010* provides that a person may establish special services, benefits or facilities that meet the needs of people with a particular attribute and may limit eligibility for such services to people with the particular attribute. A person does not discriminate by establishing special services, benefits or facilities, or by limiting eligibility for such services.

Regarding the nature of Men's Sheds, VCAT noted that: "Men's Sheds seek to address issues of men's health, isolation, loneliness and depression which are becoming major issues, not only for men but also for their families and communities. Men's Sheds target vulnerable, disadvantaged and isolated men, including men with disabilities and those experiencing major life changes, including chronic illness, bereavement and family

breakdown. The applicant seeks to encourage mateship, communication and a sense of self worth by connecting men with each other through the sharing of practical and creative skills in a non-threatening environment. Many isolated and disadvantaged men struggle to relate to women and feel uncomfortable in their presence. These feelings can limit the attendance of men.”

On the evidence VCAT found that applicant’s Men’s Shed program was a special service, established to meet the special needs of men. As such, it fell within the s 88 exception and did not need to apply for an exemption under s 89.

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In summary there is also a feeling that if females apply to join a shed, and are insistent that they be allowed to do so, it may be best to agree with their request rather than having them create issues within the community. In these cases it may be that the request is simply to ‘press the point’ and with a shed agreeing to membership they may never attend.

Sheds have raised the question about females wanting to join a shed and this paper hopefully answers some of their concerns. It is however up to each individual shed to make decisions that suit their members and this paper should not be considered a legal response to these questions. It is intended to simply clarify the discussions taking place.



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