

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Brisbane Housing Company Ltd (No 1)* [2024] QCAT 5

PARTIES: **BRISBANE HOUSING COMPANY LTD**  
(applicant)

APPLICATION NO/S: ADL015-23

MATTER TYPE: Anti-discrimination matters

DELIVERED ON: 9 January 2024

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Senior Member Fitzpatrick

ORDERS:

1. **The Brisbane Housing Company Ltd is granted an exemption, for a period of five years with effect from 15 March 2023, from the operation of sections 81, 82, 83, 124 and 127 of the *Anti-Discrimination Act* 1991 (Qld) ('AD Act') in respect of the provision of accommodation at premises located at 5 Green Square Close, Fortitude Valley, Queensland, in relation to:**
  - (a) **attributes referred to in s 7 of the AD Act, being relationship status (s 7(b)), pregnancy (s 7(c)), parental status (s 7(d)), family responsibilities (s 7(o)), association with, or relation to, a person identified on the basis of any of these attributes (s 7(p)); and**
  - (b) **attributes referred to in s 7 of the AD Act, being age (s 7(f)), and impairment (s 7(h)) insofar as the effect of one or both of those attributes in any particular case is that a person is not able to live alone.**

CATCHWORDS: HUMAN RIGHTS – DISCRIMINATION LEGISLATION – SPECIAL MEASURES – where a not-for-profit housing company applied for an exemption from specified provisions of the *Anti-Discrimination Act* 1991 (Qld) – where the company provides affordable housing to low income people – where the company seeks an exemption in relation to potential discrimination on the basis of relationship status, pregnancy, parental status and family responsibilities – whether the exemption should be granted – whether granting the exemption would place a reasonable and demonstrably justifiable limit on relevant human rights under the *Human Rights Act* 2019 (Qld)

*Anti-Discrimination Act* 1991 (Qld), s 7, s 8, s 81, s 82, s 83, s 113, s 124, s 127, s 174A(b), s 174C  
*Housing Act* 2003 (Qld), s 33, s 37D(1)(b), Schedule 1  
*Housing Regulation* 2015 (Qld), s 18(1), s 34  
*Human Rights Act* 2019 (Qld), s 9(1)(h), s 10(3)(b)(vi), s 13, s 15, s 24, s 25, s 58, s 59

*Bare v Independent Broad-Based Anti-Corruption Commission* (2015) 48 VR 129  
*Burleigh Town Village Pty Ltd* [2022] QCAT 285  
*Director of Housing v Sudi (Residential Tenancies)* [2010] VCAT 328  
*Fernwood Womens Health Clubs (Australia) Pty Ltd* [2021] QCAT 164  
*Innes v Electoral Commission of Queensland (No 2)* [2020] QSC 293  
*Miami Recreational Facilities Pty Ltd* [2021] QCAT 378  
*Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273  
*Re: Boeing Australia Holdings Pty Ltd & Related Entities* [2003] QADT 21  
*Re Brisbane Housing Company Ltd (Greensquare Close)* [2018] QCAT 81  
*River Glen Haven Over 50s Village* [2021] QCAT 26  
*Re Lifestyle Communities Ltd (No 3)* (2009) 31 VAR 286  
*WBM v Chief Commissioner of Police* [2012] VSCA 159  
*Wotton v Queensland (No 5)* [2016] FCA 1457

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

## REASONS FOR DECISION

- [1] On 14 March 2018<sup>1</sup> this Tribunal granted the Applicant a five-year exemption from the operation of specified sections of the *Anti-Discrimination Act* 1991 (Qld) ('AD Act') arising out of the provision of low-cost accommodation by Brisbane Housing Company Ltd ('BHC'), at premises located at 5 Green Square Close, Fortitude Valley, Queensland.
- [2] BHC applied for a renewal of the exemption on 9 March 2023. BHC seeks a further five-year exemption. The exemption period expired whilst the Tribunal has been processing the application. Subject to the exercise of the Tribunal's discretion in favour of a further exemption I am satisfied that an exemption can be granted with retrospective effect from 15 March 2023.<sup>2</sup>
- [3] BHC filed submissions with its application and further submissions were filed on 17 April 2023 to address a concern by the Queensland Human Rights Commission that

<sup>1</sup> *Re Brisbane Housing Company Ltd (Green Square Close)* [2018] QCAT 81.

<sup>2</sup> *Miami Recreational Facilities Pty Ltd* [2021] QCAT 378, [104]-[107]; *Burleigh Town Village Pty Ltd* [2022] QCAT 285, [29].

insufficient information was originally given to establish why the proposed exemptions are necessary and appropriate, and further noting that human rights were not addressed in the application.

- [4] Upon being provided with a copy of the further submissions the Human Rights Commissioner advised the Tribunal that it did not wish to make any other submission in the matter. The Tribunal was also advised that there are no current complaints against Brisbane Housing Company Ltd. BHC has recently confirmed that is the case.

### **Tribunal's jurisdiction**

- [5] The Tribunal is given the function under s 174A(b) of the AD Act of granting exemptions from the AD Act. By s 113 of the AD Act the Tribunal may grant an exemption after having regard to any submissions made by the Queensland Human Rights Commissioner and by s 174C may exercise its powers to determine the application.
- [6] The Tribunal is acting in an administrative capacity in determining the application and must interpret relevant legislation and make its decision in a way that is compatible with human rights, under the *Human Rights Act 2019 (Qld)* ('HR Act').
- [7] Apart from the human rights considerations which I will address later, factors relevant to the exercise of the Tribunal's discretion under s 113 of the AD Act include whether:
- (a) the exemption is necessary;
  - (b) the exemption is appropriate;
  - (c) there are any non-discriminatory ways of achieving the objects or purposes for which the exemption is sought;
  - (d) the exemption is in the community interest; and
  - (e) whether other persons support the application.<sup>3</sup>

### **Exemption sought by BHC**

- [8] BHC seeks an order for a period of five years from the operation of section 81 (prohibition on discrimination in the accommodation area), section 82 (pre-accommodation), section 83 (accommodation), section 124 (unlawful request for information) and section 127 (discriminatory advertising) of the AD Act in respect of premises located at 5 Green Square Close, Fortitude Valley, Queensland, in relation to:
- (a) attributes referred to in s 7 of the AD Act, being relationship status (s 7(b)), pregnancy (s 7(c)), parental status (s 7(d)), family responsibilities (s 7(o)), association with, or relation to, a person identified on the basis of any of these attributes (s 7(p)); and

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<sup>3</sup> *Re: Boeing Australia Holdings Pty Ltd & Related Entities* [2003] QADT 21; *River Glen Haven Over 50s Village* [2021] QCAT 26.

- (b) attributes referred to in s 7 of the AD Act, being age (s 7(f)), and impairment (s 7(h)) insofar as the effect of one or both of those attributes in any particular case is that a person is not able to live alone.

### **BHC**

- [9] BHC is a not-for-profit community housing provider established to provide affordable housing to low-income persons in Brisbane. BHC assists low-income persons eligible for public housing who might be at risk of homelessness.
- [10] BHC is an Australian Public Company limited by shares. It is an independent company said to be at arm's length from the State of Queensland; however, the State of Queensland owns two of the three issued shares with the remaining share held by Brisbane City Council. BHC is registered with the Australian Charities and Not-for-profits Commission as a large charity and is a Public Benevolent Institution.<sup>4</sup>
- [11] Relevantly, BHC is a tier 1 community housing provider.<sup>5</sup> A community housing provider is an entity providing or required to provide housing services using funds provided by the Department of Communities, Housing and Digital Economy. As such BHC is subject to a regulatory framework in its operations.

### **BHC's submissions**

- [12] Green Square Close is one of a number of residential properties operated by BHC. It is a complex located in Fortitude Valley where, as at June 2022, 600 people are said to be on a wait list for public or affordable housing.<sup>6</sup>
- [13] The building offers low-cost rental accommodation to single persons in a studio or to couples in a one-bedroom apartment. The building provides high density accommodation through small studios which give private space, bathroom, kitchen, living area and balcony. The studios are said not to be suitable for parents with children. One-bedroom apartments are said to be suitable for couples, but not for housing parents and children together.
- [14] Tenants are vulnerable and high need. BHC works with local support agencies to support tenants to sustain their tenancies.<sup>7</sup>
- [15] The number of tenants in the building is capped to enable appropriate fire safety compliance, liveability for all tenants and management of resources needed for building maintenance.
- [16] BHC suggests there is potential for a contravention of the AD Act to occur when more people than are intended to be accommodated in a studio or apartment seek to live in a studio or apartment.

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<sup>4</sup> 'Department of Housing Annual Report 2022-23 – Government bodies', *Department of Housing* (Web Page) <[https://www.housing.qld.gov.au/\\_data/assets/pdf\\_file/0018/37521/annual-report-2022-23-government-bodies.pdf](https://www.housing.qld.gov.au/_data/assets/pdf_file/0018/37521/annual-report-2022-23-government-bodies.pdf)>.

<sup>5</sup> 'About Us', *Brisbane Housing Company Ltd* (Web Page) <<https://bhcl.com.au/about-bhc/>>; State of Queensland, 'About the national regulatory system for community housing', *Business Queensland* (Web Page).

<sup>6</sup> Submissions accompanying Application for exemption filed 9 March 2023, extracting Department of Housing and Public Works graph of demand for public housing.

<sup>7</sup> Brisbane Housing Company Ltd registered charity report.

- [17] Further, there is potential for a contravention of the AD Act to occur when BHC utilises its tenant transfer policy to meet a need for immediate transfer which may be due to extreme circumstances such as violence, rent stress and changes in family circumstances such as death, medical requirements, additional children, or the need to move closer to employment opportunities or family support.
- [18] In these events tenants at Green Square Close are considered, with high priority, for transfer to a more suitable property owned by BHC or other community housing providers and public housing.
- [19] BHC says that the tenant transfer policy is reviewed by the Queensland Government to ensure compliance with the National Community Housing Standards. I note that the Tenant Transfer Policy provided to me appears to be out of date insofar as it refers to compliance with a superseded government policy. Nevertheless, there is a statutory context within which BHC operates. I will address this point later in the decision.
- [20] BHC says that in making decisions as to occupancy it has a management plan which takes into account the high density accommodation at the building and the impact on liveability given the social mix in the building, fire safety compliance, domestic violence responses (higher risk of poor outcomes if domestic violence occurs in a studio apartment) and the fact that alternative housing options exist within the BHC portfolio of properties for families and children and people with specific needs.
- [21] BHC submits that it has received advice it is not a public entity required to comply with the HR Act. No basis for the assertion is given.
- [22] BHC says it understands the human rights relevant to the provision of housing include the right to recognition and equality before the law, the right to property, the right to privacy and reputation, the right to protection of families and children, cultural rights of Aboriginal peoples and Torres Strait Islander peoples and the right to liberty and security.
- [23] I have been provided with a copy of the general tenancy agreement entered into by BHC with its tenants. The agreement is made in accordance with the *Residential Tenancies and Rooming Accommodation Act* 2008 (Qld). Some special conditions form part of the agreement. A tenant has the obligations and protections offered by that Act.
- [24] BHC submits that its preference is to be transparent with its tenants and prospective tenants in relation to an exemption from the AD Act so that it can confidently assist tenants to seek alternative housing if circumstances change and current housing is unsuitable.

**The purpose of BHC's conduct (which may be discriminatory)**

- [25] I understand BHC's purpose in managing who may occupy a studio or apartment and when they may be required to leave, is to ensure that the accommodation it provides is appropriate to the circumstances and needs of its tenants and prospective tenants, and to others in the complex. If the accommodation is not appropriate or ceases to be appropriate BHC wants to ensure it can operate with flexibility, without risk of a discrimination claim being made against it. I infer that BHC is concerned such a claim may result in a person occupying a studio or apartment which is not

appropriate to their circumstances and may conflict with the interests of others in the complex.

### **Consideration**

#### *Community interest*

- [26] It is uncontroversial that homelessness is a severe social problem in Brisbane at this time. Providing low-cost accommodation to high need persons is a complex task, but it is very valuable work from a community perspective. I consider there is a risk of that work being undermined by a potential for the level of occupancy and tenant mix being so altered as a result of litigation that there will be poor outcomes for all persons residing at Green Square Close.
- [27] That makes the successful provision of affordable housing a matter in the community interest.

#### *Necessary*

- [28] Provision of appropriate affordable housing to vulnerable persons is consistent with the objectives of the AD Act to enable people to live dignified lives. The question is whether the exemptions sought are necessary and appropriate and whether there are other non-discriminatory ways of achieving the purpose for which the exemption is sought.
- [29] Arguably the areas of anticipated discrimination raised by BHC would offend sections 81, 82, 83, 124 and 127 of the AD Act. I note that the specific exemptions relevant to discrimination in the accommodation area are unlikely to be relevant. Of the general exemptions set out in Part 5 of the AD Act, s 106 may apply in terms of compliance with fire safety legislation insofar as there is a cap on occupants of the building, s 104 (being an act done for the benefit of members of a group) may have some application, and s 110 with respect to a document that provides exclusively for charitable benefits may have some application.
- [30] Given the wide range of circumstances which might arise in the management of tenancing at Green Square Close one could not say with certainty that the statutory general exemptions will always apply. To that extent a general exemption under s 113 of the AD Act is necessary.

#### *Appropriate and reasonable and other non-discriminatory ways of achieving BHC's purpose*

- [31] As to whether the exemption sought is appropriate and reasonable and whether there are other non-discriminatory ways of achieving BHC's purpose, I note that no submissions have been made as to other non-discriminatory ways of BHC achieving its purpose. The Queensland Human Rights Commissioner has not objected to the application.
- [32] The Tribunal has granted five-year exemptions in the same terms as currently sought in preceding years. The Tribunal has in each case expressed satisfaction that the exemption is appropriate and reasonable and there are no other non-discriminatory ways of ensuring BHC's purpose of providing appropriate affordable low-cost housing to people is met. That is a matter which is noted, but it is not determinative of the current application which must be considered afresh.

- [33] The *Housing Act* 2003 (Qld) provides that regulations may prescribe requirements relating to the provision of housing services for which a funded provider receives funding.<sup>8</sup> The Act requires compliance with a national regulatory code which prescribes that a community housing provider is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients particularly in relation to, inter alia, determining and managing eligibility, allocation, and termination of housing assistance.<sup>9</sup>
- [34] The *Housing Regulation* relevant to community housing providers, requires policies and information which set out prescribed eligibility criteria for housing including the number of people who live in the housing, identity and income, when people become an occupant and when people stop being an occupant.<sup>10</sup> Upon a Direction to provide further current documents to the Tribunal, BHC provided an Eligibility and Allocation Policy, Managing and Sustaining Tenancies Policy, Managing Tenancies Procedure, and two procedure manuals. The materials are largely consistent with the policies published by the Department of Communities, Housing and Digital Economy. BHC also provided special conditions which form part of residential tenancy agreements and the tenant transfer policy.
- [35] The point is that the very conduct which may give rise to an AD claim is conduct which is consistent with policies made pursuant to subordinate legislation. I infer on that basis that there are no evident non-discriminatory means of meeting BHC's objects and purpose.
- [36] In considering the matter I have reflected on some factors which may mitigate the effect of an exemption from the AD Act.
- [37] Despite the view expressed by BHC, I observe that there is some justification for thinking BHC is a public entity by reference to s 9(1)(h) and s 10(3)(b)(vi) of the HR Act. I have been provided with no submissions on this point but mark it for the serious consideration of BHC. In particular, I note a requirement for compliance with the HR Act in Department policy documents which appear to apply to BHC,<sup>11</sup> and that Department policy documents are said to be consistent with the HR Act.<sup>12</sup>
- [38] Given the over-arching statutory obligations as to fairness, I am satisfied that the statutory framework around the conduct of a community housing provider offers a measure of protection to applicants for housing and tenants in Green Square Close if the protections of the AD Act are not available.
- [39] Finally, it is relevant that the prescribed eligibility criteria for housing feeds into the *Residential Tenancies and Rooming Accommodation Act* 2008 (Qld) and the mutual obligations and protections offered by that Act.

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<sup>8</sup> *Housing Act* 2003 (Qld), s 33.

<sup>9</sup> *Ibid*, s 37D(1)(b), Schedule 1.

<sup>10</sup> *Housing Regulation* 2015 (Qld), s 18(1), s 34; Allocations Policy for Funded Social Housing Providers, effective date 11 September 2020; Community Housing Tenancy Management Policy, effective date 11 September 2020; SPPR01: Allocations procedures for funded social housing providers, dated 11 September 2017; SPPR02: Exit procedures for managing tenants exiting from transitional housing; SPPR03: Transfer procedures for funded social housing providers dated May 2016.

<sup>11</sup> 'Social Housing Eligibility Criteria', Department of Communities, Housing and Digital Economy (Web Page) <[https://www.chde.qld.gov.au/\\_\\_data/assets/pdf\\_file/0022/4981/SocialHousingEligibilityCriteria.pdf](https://www.chde.qld.gov.au/__data/assets/pdf_file/0022/4981/SocialHousingEligibilityCriteria.pdf)>.

<sup>12</sup> Allocations Policy for Funded Social Housing Providers, effective 11 September 2020.

- [40] For all these reasons I am able to conclude that an exemption is necessary, appropriate, in the community interest and that there are no evident non-discriminatory ways of achieving the objects or purposes for which the exemption is sought.
- [41] I am also satisfied that even if an exemption from the AD Act is granted, people are entitled to fair treatment under the other legislative requirements imposed on BHC.
- [42] Before reaching a final conclusion, I will consider the human rights implications if I were to grant the general exemption.

### **Human Rights**

- [43] I am acting in an administrative capacity in making this decision.<sup>13</sup> By s 58(1)(a) of the HR Act I have a substantive obligation not to make a decision in a way that is incompatible with human rights; and by s 58(1)(b) I have a procedural obligation not to fail to give proper consideration to relevant human rights in making a decision.

*Substantive obligation: Identification of human rights – limitation of human rights – whether reasonable and justified*

- [44] In relation to the substantive limb, by s 8 of the HR Act an act or decision is compatible with human rights if:
- (a) it does not limit a human right; or
  - (b) it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HR Act.
- [45] Section 13 of the HR Act sets out the factors which may be relevant to deciding if a limit on human rights is reasonable and justifiable.
- [46] A decision will limit a human right if it ‘places limitations or restrictions on, or interferes with, the human rights of a person.’<sup>14</sup>
- [47] Whether an exemption under s 113 of the AD Act would engage a person’s human rights can be determined by reference to the effect of the exemption if granted.<sup>15</sup>
- [48] In this case that effect would be to determine availability of tenancy and ongoing tenancy by reference to, amongst other things, relationship status, pregnancy, parental status, age, impairment and association with a person having those attributes. As well, enabling requests for information on which unlawful discrimination might be based and enabling discriminatory advertisements.
- [49] An exemption from the operation of the AD Act within the terms of the application, will limit the human right set out at s 15 of the HR Act, which provides:

Recognition and equality before the law

(1) Every person has the right to recognition as a person before the law.

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<sup>13</sup> *Re Lifestyle Communities Ltd (No 3)* (2009) 31 VAR 286, [44]; followed in *Fernwood Women’s Health Clubs (Australia) Pty Ltd* [2021] QCAT 164, [29]-[30].

<sup>14</sup> *Innes v Electoral Commission of Queensland (No 2)* [2020] QSC 293, [291]; followed in *Owen-D’Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273, [130].

<sup>15</sup> *Re Lifestyle Communities Ltd (No 3)* (2009) 31 VAR 286, [310].



- (2) Every person has the rights to enjoy the person's human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination.
- (4) Every person has the right to equal and effective protection against discrimination.
- (5) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

[50] The question is whether the limits are reasonable, and demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13(2) of the HR Act sets out factors which may be relevant:

- (a) the nature of the human right;
- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
- (d) whether there are less restrictive and reasonably available ways to achieve the purpose;
- (e) the importance of the purpose of the limitation;
- (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
- (g) the balance between the matters mentioned in paragraphs (e) and (f).

[51] The considerations explored earlier in relation to the purpose of an exemption from the AD Act are analogous to this enquiry.

[52] The right to recognition and equality before the law is a significant pillar of a free and democratic society based on human dignity, equality and freedom. The limitation of those rights would on my earlier analysis be for the purpose of ensuring tenants occupy apartments which are appropriate, taking into account high density, size of accommodation, impact on other tenants, fire ratings and support needs. Related to that purpose is the need to ensure the proper functioning of the accommodation facility. I am satisfied that the purpose is consistent with a free and democratic society based on human dignity, equality and freedom, given that appropriate housing is a fundamental human need.

[53] On this analysis I am satisfied that there is a relationship between the limitation and its purpose, and that the limitation helps to achieve the purpose.

[54] I have no submissions as to whether there are any less restrictive and reasonably available ways to achieve the purpose of the limitation. I infer that whenever a relevant attribute is the reason for refusing accommodation or requiring a tenant to leave, discrimination is likely to occur and a breach of the tenant's human right is likely to occur. The earlier discussion as to whether there is a non-discriminatory way of achieving the purpose for which the exemption is sought is relevant to this

cognate enquiry. For the same reasons I conclude that there is no less restrictive and reasonably available way to achieve the purpose involved in limiting human rights.

- [55] I conclude that the purpose of the limitation is important in terms of the social benefit of the provision of appropriate affordable housing to those at risk of homelessness.
- [56] In balancing the competing considerations, I find that the social benefit of providing appropriate affordable housing outweighs the human right I have identified. That is because insistence on observance of that right, without limitation, may well in the context of Green Square Close, result in persons being accommodated in inappropriate housing for their personal circumstances and outside the legislated eligibility criteria for the accommodation. There is also likely to be a detrimental impact on the functioning of the Green Square Close facility.
- [57] In all, I conclude that the limitation on the identified human right implicit in an exemption from the operation of the AD Act, in the circumstances canvassed in BHC's application for exemption, is reasonable and justified.
- [58] I have also considered whether a limitation of property rights may occur as a consequence of the proposed exemption from the AD Act. Section 24 of the HR Act provides:

Property rights

(1) All persons have the right to own property alone or in association with others.

(2) A person must not be arbitrarily deprived of the person's property.

- [59] Assuming that s 24(2) of the HR Act applies to rights in a residential tenancy (a matter not free from doubt) and that BHC is a public entity bound to observe the HR Act, I do not consider termination of a tenancy because of a tenant's failure to comply with eligibility criteria or application of the transfer policy, is arbitrary within the terms of the section.
- [60] Arbitrariness has been variously defined to include capriciousness, and a lack of proportionality or justification and objective unreasonableness. Put another way the conduct is not proportionate to the legitimate end sought and is not justified.<sup>16</sup>
- [61] I do not think the conduct of BHC which is intended to ensure appropriate housing for those in need and which involves meeting eligibility criteria which falls within legislated policy, could be said to arbitrary.
- [62] I conclude that the human right of property rights is not engaged by BHC's conduct if the exemption is granted.
- [63] The other human right which may be engaged if the exemption is granted is the right to privacy and reputation. Section 25 of the HR Act provides, relevantly:

Privacy and reputation

A person has the right –

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<sup>16</sup> *Director of Housing v Sudi (Residential Tenancies)* [2010] VCAT 328, [63]-[64]; this issue was not the subject of a subsequent appeal. See also *WBM v Chief Commissioner of Police* [2012] VSCA 159, [114] and *Wotton v Queensland (No 5)* [2016] FCA 1457, [716].

- (a) Not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with...

- [64] That right appears to cover BHC's conduct in asking for information on which discrimination could be based and potentially ending a tenancy where the transfer policy is engaged if for example the arrival of a child makes the accommodation unsuitable.
- [65] Arguably the grant of an exemption from the operation of the AD Act would have the effect of removing an element of the right which might otherwise be made out by a person complaining of a breach of their human rights under s 25 of the HR Act. That is, the element of unlawfulness. Of course, the benefit of s 25 of the HR Act will only be available to a person if BHC is a public entity bound to observe s 25 of the HR Act.
- [66] Assuming for the purposes of this analysis that BHC is a public entity bound to observe s 25 of the HR Act, the question is whether the limitation resulting from a grant of the exemption is reasonable and justified.
- [67] For the reasons given in relation to the question of whether a limitation of the human right set out in s 15 of the HR Act is reasonable and justified, I conclude that a limitation of the rights set out in s 25 resulting from a grant of the exemption is reasonable and justified.
- [68] By way of final comment, an exemption from the operation of the AD Act will have the effect of limiting any claim for relief or remedy in relation to an act of BHC (if it is a public entity), under s 59 of the HR Act. Clearly an exemption is a serious matter given its impact on human rights. That was not a consideration when BHC made earlier applications for exemption.

#### *Procedural Obligation*

- [69] The Tribunal's procedural obligation under s 58(1)(b) of the HR Act to give proper consideration to human rights, involves, but is not limited to the factors in s 58(5). Those factors are identifying the human rights that may be affected by the decision; and considering whether the decision would be compatible with human rights.
- [70] The preceding analysis and conclusion is relevant. I have identified the human rights which may be affected by this decision as the rights set out in s 15 and s 25 of the HR Act. A decision exempting BHC from the operation of the AD Act in the circumstances identified in its application for exemption would not be compatible with human rights. However, I have concluded that any limitation of that right is reasonable and justified in the circumstances.
- [71] In meeting the obligation under s 58(1)(b) I note the approach taken by the Victorian Courts applying a like provision. A relevant consideration is the identification of countervailing interests or obligations and a balance of competing private and public interests as part of the exercise of justification.<sup>17</sup>
- [72] The latter enquiry throws up the balance between pressing community need for provision of appropriate housing to those at risk of homelessness, with individual rights. The statutory regime applying to community housing providers offers a

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<sup>17</sup> *Bare v Independent Broad-Based Anti-Corruption Commission* (2015) 48 VR 129, 223 [288] applied in *Owen-D'Arcy v Chief Executive, Queensland Corrective Service* [2021] QSC 273, [135].

degree of protection to individuals. The statutory regime also requires policies which may result in discriminatory conduct in the provision of community housing. In the circumstances, I conclude that the public interest outweighs individual rights.

### **Conclusion**

- [73] I am satisfied that it is appropriate and reasonable for BHC to be granted an exemption from the operation of sections 81, 82, 83, 124 and 127 of the *Anti-Discrimination Act* 1991 (Qld) in respect of the provision of accommodation at premises located at 5 Green Square Close, Fortitude Valley, Queensland, in relation to:
- (a) attributes referred to in s 7 of the AD Act, being relationship status (s 7(b)), pregnancy (s 7(c)), parental status (s 7(d)), family responsibilities (s 7(o)), association with, or relation to, a person identified on the basis of any of these attributes (s 7(p)); and
  - (b) attributes referred to in s 7 of the AD Act, being age (s 7(f)), and impairment (s 7(h)) insofar as the effect of one or both of those attributes in any particular case is that a person is not able to live alone.
- [74] Given the long-term nature of BHC's undertaking, I am satisfied that the exemption should be granted for the maximum period allowable under the Act, that is a period of five years. The period will run with retrospective effect from 15 March 2023.