



Balancing Rights & Responsibilities for Disability Access

Queensland Webinar



Trends

- Ageing population and higher density living – mix of occupiers
- Ageing building not required to comply with disability access standards
- Scope of body corporate/committee duty to act reasonably is expanding

Anti-Discrimination Act (Qld) 1991

- Is the discrimination occurring in an 'area' covered by the Act?
- If yes, is the discrimination based on an 'attribute'?
- If yes:
 - what is the 'term' being imposed (or proposed to be imposed)? and
 - does that term constitute 'indirect discrimination'?
- If yes, is the indirect discrimination 'exempt' under the Act?
- If no, what are the consequences?

Knox v Body Corporate for 19th Avenue CTS 6625 [2020] QCAT

- High-rise building on the Gold Coast, Palm Beach
- Mrs Knox suffered a stroke and relied on wheelchair for mobility
- In late 2013, Mrs Knox complained about accessing parts of common property
- In August 2016, Mrs Knox complained to the Australian Human Rights Commission
- In May 2017, the Body corporate obtained a disability access audit report of the scheme
- In April 2019, the Body corporate:
 - resolved at general meeting to approve various improvements to common property and the purchase and installation of a pool hoist;
 - did not resolve to approve the expenditure for the pool hoist.

Knox v Body Corporate for 19th Avenue CTS 6625

Mrs Knox made **5 contentions** of indirect discrimination:

Contention 1: Inability to access street frontage (stairs)

Contention 2: Inability to access foyer floor from lift (stairs)

Contention 3: Inability to access pool area (hinged door)

Contention 4: Inability to access the basement carpark (wheelchair catches corner of ramp)

Contention 5: Inability to access the swimming pool (stairs)

Scope of duty to act reasonably

- **BCCMA s 94**

A body corporate must act reasonably in making (or not making) decisions about administering the common property and body corporate assets for the benefit of the owners of the lots included in the scheme

- This **includes making improvements to common property and the access to common property including the building, foyer, basement and swimming pool** (at [19])
- Application to Commissioner's Office?

Is the discrimination occurring in an area covered by the Act?

Accommodation Area (s 83 of the Act)

The Tribunal determined that a body corporate provides “accommodation”. This was not contentious.

Supply services (s 46 of the Act)

- The Tribunal determined that a body corporate supplies “services” in that a body corporate provides access to and use of pool and other facilities that form part of common property.
- Thus, the Act will apply to a body corporate (because at least the above 2 areas apply).

Is the discrimination based on an attribute?

Section 7 of the Act:

- sex
- relationship status
- pregnancy
- parental status
- breastfeeding
- age
- race
- impairment
- religious belief or religious activity
- political belief or activity
- trade union activity
- lawful sexual activity
- gender identity
- sexuality
- family responsibilities
- association with, or relation to, a person identified on the basis of any of the above attributes.

What is the term being imposed (or proposed to be imposed)?

- A term includes condition, requirement or practice, whether or not written
- What is being imposed on the person to access the benefit?
- Examples of terms:
 1. Mrs Knox be able to traverse stairways and use a hydraulic door with a fob
 2. Mrs Knox use an alternative pathway
 3. Mrs Knox be able to swipe a fob and pull the door towards her while using a wheelchair, until the pool door was modified

Does that term constitute indirect discrimination?

- Indirect discrimination happens if a person imposes, or proposes to impose, a term:
 - with which a person with an attribute does not or is not able to comply; and
 - with which a higher proportion of people without the attribute comply or are able to comply; and
 - that is not reasonable.

Does that term constitute indirect discrimination? (continued)

- Contentions 1, 2, 3 and 4 – the terms were not unreasonable – those contentions were dismissed (ie the Tribunal did not consider the foyer floor access, street frontage access, pool area access and basement carpark access involved terms that were unreasonable).
- Why?
 - Suitable alternative pathways/options
 - Delays by Mr Knox (husband) – obstructed the completion

Does that term constitute indirect discrimination? (continued)

- Contention 5 – the term was unreasonable
- Why?
 - Complete restriction from using pool
 - The alternative was relatively inexpensive (circa \$8,000 pool hoist)
- Relevant factors:
 - Reasons for the terms
 - Financial burden of alternative methods
 - Nature and effect of the terms



Is the indirect discrimination exempt under the Act?

- If the person requires special services or facilities to comply with the term, and those services or facilities would impose unjustifiable hardship on the other person, it is not unlawful for a person to discriminate based on the term
- The Tribunal balanced:
 - Cost of pool hoist
 - Funds available to the Body corporate
 - Disbursement of cost across owners
- Exemption did not apply

Remedies

- Broad discretion
- Can include:
 - Private apology
 - Compensation
 - Orders that a person do something
 - Costs
- What happened in Knox:
 - \$5,000 compensation for hurt and distress
 - Private apology
 - Costs to be assessed or agreed

What do we learn?

- Proactive – disability audit report and calling general meetings promptly
- Building standards do not equal disability standards
- Even though the Committee abided by general meeting decision – Body corporate still liable
- Inform owners of legal exposure to outcomes of general meeting motions



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