

CITATION: *Burleigh Town Village Pty Ltd* [2017] QCAT 161

PARTIES: Burleigh Town Village Pty Ltd
(Applicant)

APPLICATION NUMBER: ADL049 -16

MATTER TYPE: Anti-discrimination matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Stilgoe OAM**

DELIVERED ON: 22 May 2017

DELIVERED AT: Brisbane

ORDERS MADE: **1. Burleigh Town Village Pty Ltd, its employees, agents and officers, are exempt from the operation of ss 45, 46, 76, 77, 82 and 83 of the *Anti-Discrimination Act 1991* (Qld) in relation to the attribute referred to in s 7(f) of the Act from 20 July 2016 to 19 July 2021 in respect of their activities in relation to the manufactured home park known as Burleigh Town Village, Township Drive, West Burleigh.**

CATCHWORDS: HUMAN RIGHTS – DISCRIMINATION – SPECIAL MEASURES – where manufactured home park marketed and sold as ‘over 55s’ – where tribunal previously granted exemption – where exemption expired – where new application for exemption – whether grounds for exemption

Anti-Discrimination Act 1991 (Qld) ss 7(f), 45, 46, 76, 77, 82, 83, 113
Manufactured Homes (Residential Parks) Act 2003 (Qld)
Retirement Villages Act 1999 (Qld)

Body Corporate for Village Green (Caloundra)
[2015] QCAT 101
Burleigh Town Village Pty Ltd Rental

Management Services Pty Ltd [2011] QCAT 646
Savannah FNQ Developments Pty Ltd [2016]
QCAT 141

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] In 2011, I granted an exemption from the operation of the *Anti-Discrimination Act 1991* (Qld) to Burleigh Town Village Pty Ltd, its employees, agents and officers, so that it could restrict its accommodation services to persons over the age of 50.¹
- [2] I granted the exemption for the maximum period of five years. That period has expired. Burleigh Town Village has again applied for an exemption from the operation of ss 45, 46, 76, 77, 82 and 83 of the Act. Without an exemption, its operation of the manufactured home park known as Burleigh Town Village would be a breach of s 7(f) of the Act: - discrimination on the basis of age.
- [3] Section 113 of the Act gives me the power to grant an exemption. In considering whether to grant an exemption I must consider:
- a) Whether any other persons or bodies support the application.
 - b) Whether the exemption is in the community interest.
 - c) The effect of not granting the exemption.
 - d) Whether there are other non-discriminatory ways of achieving the objects or purposes for which the exemption is sought.

Do any other persons or bodies support the application?

- [4] The application has the support of the residents of Burleigh Town Village, evidenced by a letter dated 19 December 2016 from the president of the home owners' association.
- [5] Councillor Pauline Young, the Gold Coast representative for Division 12 in which Burleigh Town Village is located, supports the application, evidenced by a letter dated 25 January 2017.
- [6] The Hon Karen Andrews, Federal Member for McPherson in which Burleigh Town Village is located, supports the application, evidenced by a letter dated 3 March 2017.

¹ *Burleigh Town Village Pty Ltd Rental Management Services Pty Ltd* [2011] QCAT 646.

- [7] The Anti-Discrimination Commission Queensland opposes the application. I will deal with its submissions during the course of these reasons.

Is the grant of an exemption in the community interest?

- [8] The Commission is concerned with whether there is a public interest in quarantining a segment of the community in a community of their own away from the general population.
- [9] “Quarantine” means that isolation has been imposed on a person.² If a segment of the community was forced into age-specific manufactured homes, then I would agree that this is contrary to the public interest. However, each of the home owners in Burleigh Town Village has made a conscious decision to become part of the park community, knowing the age restrictions. It is not the tribunal’s function to prevent like-minded people living together if that is their free and conscious choice.
- [10] The Commission is concerned about whether the homes and facilities cater for an ageing demographic. It says that homes and facilities intended for older people should be designed and built to universal design standards.
- [11] A mere concern, without evidence, is not enough to demonstrate that an exemption is contrary to the public interest. In any event, Burleigh Town Village has provided additional affidavit material to show that the park caters for its residents to age in place. I have considered the evidence, in particular the report from Dr Sandra Woodbridge, and I am satisfied that the homes and facilities do provide an opportunity for ageing in place.
- [12] Burleigh Town Village has provided significant data to support its submission that granting an exemption would be in the public interest.
- a) It noted that the proportion of the Australian population over 65 is increasing.
 - b) It provided an extract from an Australian Bureau of Statistics publication, ‘Reflecting a nation: stories from the 2011 Census Where and how do Australia’s Older People live?’³ which shows that elderly women are more likely to be living alone. The report was, otherwise, of limited assistance.
 - c) It provided an extract from the Senate Economics References Committee report, ‘Out of Reach? The Australian housing affordability challenge’ dated May 2015. Chapter 12 of the report records that home ownership rates for older Australians are declining and that there is a need to ensure that the rental market, community

² Susan Butler (ed), *Macquarie Dictionary* (Macquarie Dictionary Publishers, 7th ed, 2017) ‘Quarantine’.

³ The Australian Bureau of Statistics, *Where and how do Australia’s Older People Live?* (17 April 2013)
<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features602012-2013>>.

housing and housing services are able to meet the needs of older Australians. It noted that non-homeowners have poorer outcomes in terms of social integration and participation. It noted the benefits of 'rightsizing' – matching the right home to the resident's current needs.

- d) Chapter 16 of the Senate Economics References Committee report looked at particular housing needs. It noted developers' reluctance to bear the cost of ageing in place measures, and their reluctance to take on new designs or processes that were untested in the market. It noted that economic and social well-being and health was connected to 'good housing'. 'Good housing' included a link to support services. It noted the reduction in the availability of social or public housing.
- e) Burleigh Town Village provided an extract from a manufactured homes survey published by the Department of Housing and Works in 2013. The report noted that most manufactured home owners are of retirement age, with 88% aged over 65. The home owners reported modest incomes, with 90% receiving Commonwealth Rent Assistance and the Queensland seniors' electricity subsidy. Most relied on the aged pension as their primary source of income. The report also noted that residents moved to a manufactured home park as part of a deliberate retirement plan. Residents chose a manufactured home over a retirement village because there were no exit fees and the manufactured home park was a more affordable option. Residents valued the social and community benefits, the security and safety, the facilities and activities, and the freedom from maintenance and service tasks. Residents found manufactured home park living affordable. The report noted that residential parks are increasingly serving as an alternative form of retirement village style living.
- f) Taylor Byrne has provided a report showing there is a limited supply of affordable detached housing in the Gold Coast area, outside of manufactured home parks.

[13] I have already mentioned Dr Woodbridge's report. She has detailed the significant economic and social benefits of the affordable community living offered by Burleigh Town Village.

[14] I am satisfied that there is a community benefit in maintaining the park as an 'over 55s' community. There is no utility, and much potential damage, to the community in removing this form of retirement living from the options available to Gold Coast residents. There is a need for affordable housing for retirees. There is a need for affordable housing in a convenient location, which gives retirees access to services and community engagement.

[15] I note the concerns about the manufactured homes park model for retirees recorded at paragraphs 16.36 and 16.37 of the Senate Economics

References Committee report. Members of National Seniors Australia expressed disquiet about tenure, park operators' focus on development potential, and the lack of a regulatory environment to ensure consumer protection and risk management if there was a problem with the operator.

- [16] Those general concerns do not override the particular need for an exemption for Burleigh Town Village.

What is the effect of not granting the exemption?

- [17] Burleigh Town Village has been operating as an 'over 55s' facility since 1998. By letter of 25 November 1997, the Commission advised the then owners of the park that the proposed restriction to persons over 55 was 'permissible'. Burleigh Town Village relied on that letter as 'permission' until 2010, when its lawyers alerted it to the need for a formal exemption.⁴
- [18] All residents in the park are over the age of 50. The age restrictions are widely advertised and of the last 122 new entrants to the park, 80% were over the age of 65.⁵ 74% of residents are over the age of 75.⁶ Twenty residents have lived in the park for at least 25 years.⁷
- [19] If I refuse to grant the exemption, elderly long term residents, who entered the park on a particular expectation, will be faced with the potential for a significant change in their lifestyle. The model for achieving certainty – successive applications for a 'temporary' exemption – is not ideal. However, I would require significant persuasion to refuse an exemption on ideological grounds when it may have a significant adverse practical effect on the amenity of elderly residents.

Is there a non-discriminatory way of achieving the objects or purposes for which the exemption is sought?

- [20] I have previously published decisions in which I took the view that an exemption should not be used to circumvent the application of the more onerous *Retirement Villages Act* 1999 (Qld).⁸ The comments need to be considered in context. In both cases, the villages had been operating without the protection of an exemption in circumstances where the need for an exemption should have been well known to the operators long before the applications were made.
- [21] As I have already observed, there is no utility and much potential damage in expecting Burleigh Town Village, a park that has operated on a particular basis for a long time, to convert from a manufactured home park to a retirement village.

⁴ Affidavit Geoffrey Ernest Allen sworn 28 March 2017.

⁵ Affidavit of Brendan Beck, affirmed 8 July 2016, at [5].

⁶ Ibid at [11].

⁷ Ibid, Attachment B.

⁸ *Body Corporate for Village Green (Caloundra)* [2015] QCAT 101; *Savannah FNQ Developments Pty Ltd* [2016] QCAT 141.

- [22] I also accept that the residents of Burleigh Town Village chose to live in the park because of the perceived financial benefits of the park over a retirement village. There is no non-discriminatory way of achieving the objects for which the exemption is sought.
- [23] Burleigh Town Village submits that there is no reasonable basis to say that an owner of a manufactured home park might legitimately offer age restricted accommodation only through converting it to a retirement village. It says the home ownership and title arrangements in manufactured home parks make them incompatible with the ways that title and ownership arrangements are structured under the *Retirement Villages Act*.
- [24] I accept the validity of those comments, however, I question whether the home ownership and title arrangements are necessarily incompatible or a product of the park owners' private financial arrangements.
- [25] Burleigh Town Village points out that the definition of 'premises' in the *Retirement Villages Act* expressly excludes 'site' under the *Manufactured Homes (Residential Parks) Act 2003 (Qld)*. I accept that distinction. That simply highlights the fact that retirement villages are different from manufactured home parks.
- [26] The Commission says that, in the absence of clear legislative policy to the contrary, the manufactured home park model of affordable housing should be available to all age groups and not become exclusive to people aged 50 and over. It says that temporary exemptions should not be used for a permanent arrangement, or to circumvent existing legislation or government policy.
- [27] It is not my task to comment on legislative policy. I agree that a series of temporary exemptions is not ideal. It does not provide certainty for the operators or the residents. I agree that the manufactured home park of retirement living does not offer the same protection as a retirement village but I acknowledge that this form of retirement may come at a lower cost to the residents.
- [28] For that reason, each application for an exemption must be carefully examined to determine whether there is merit in supporting an exemption where an alternative model is available. Manufactured home park owners should not expect that the development, advertising, sale and operation of an age-limited park will necessarily result in an automatic grant of an exemption.
- [29] The problem of appropriate affordable housing for older Australians is likely to be more acute as the Baby Boomer cohort ages. There is a need for another legislative solution.