

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Angelopoulos v State of Queensland* [2023] QCATA 138

PARTIES: **ANGELOS ANGELOPOULOS**
(applicant/appellant)

v

STATE OF QUEENSLAND
(respondent)

APPLICATION NO/S: APL177-22

ORIGINATING APPLICATION NO/S: ADL003-19

MATTER TYPE: Appeals

DELIVERED ON: 31 October 2023

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Senior Member Aughterson

ORDERS: **1. The appeal is dismissed.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – WHAT IS – GENERALLY – where appellant applied for and was granted burial assistance under the *Burials Assistance Act 1965* (Qld) – where request for additional funding for burial in accordance with religious requirements was refused – where application to the Tribunal was dismissed – where appeal from that decision – whether error by Tribunal in not applying *Human Rights Act 2019* (Qld) – whether proceedings commenced before the commencement of that Act – whether *Human Rights Act 2019* (Qld) applied

Burials Assistance Act 1965 (Qld), s 3, s 4

Human Rights Act 2019 (Qld), s 108(2)

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 35, s 36

Angelopoulos v State of Queensland [2022] QCAT 163

Angelopoulos v State of Queensland [2023] QCATA 124

Tafao v State of Queensland [2020] QCATA 76

APPEARANCES & REPRESENTATION: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and*

REASONS FOR DECISION

[1] This is an appeal from a decision of the Tribunal at first instance, dismissing a complaint of discrimination on the part of the respondent. The applicant had been granted financial assistance under s 3 of the *Burials Assistance Act 1965 (Qld)* ('the BA Act') for the burial of his father. The funding provided for the re-opening of a pre-purchased plot, a graveside service, the funeral director's fee, a coffin and any required preparation of the body, and transportation of the deceased from the morgue to the burial site. However, a term of the funding was that costs associated with the conduct of a Greek Orthodox Service and viewing of the body would not be covered.

[2] Section 3(1) of the BA Act provides:

It shall be the duty of the chief executive to cause to be buried or cremated the body of any person who has died or has been found dead in Queensland, in any case where it appears to the chief executive that no suitable arrangements for the disposal of the body have been or are being made otherwise than by the chief executive.

[3] Section 4(1) then provides:

All expenses incurred by the chief executive under section 3 (including the expense of conveying the body to a morgue or other place) shall be met by the chief executive, and moneys from the consolidated fund are hereby to the necessary extent appropriated accordingly.

[4] In the reasons of the Tribunal at first instance it is stated (footnotes omitted):¹

[6] In the present matter before the Tribunal, Mr Angelopoulos contends that the respondent breached the *Anti-Discrimination Act 1991 (Qld)* ('the Act') by requiring him to bury his father without a church service or private viewing. Mr Angelopoulos contends that the respondent imposed a term that he could not comply with because of his religious beliefs. It is alleged that a higher proportion of people who are not of the Greek Orthodox faith are able to comply with the term and bury family members without a church service or private viewing.

[7] The issue before the Tribunal is whether the respondent engaged in indirect discrimination within the meaning of s 11 of the Act on the grounds of religious belief/activity by refusing Mr Angelopoulos' full request for burial assistance in respect of his father's funeral. More importantly, did the respondent impose a term that was not reasonable namely to decline Mr Angelopoulos' request for his father's body to be transported to a church to enable a private viewing and a Greek Orthodox funeral service to be conducted prior to the burial.

[5] The reasons for the decision of the Tribunal at first instance are set out in the following paragraphs (footnotes omitted):²

[30] The respondent submits and I accept that the chief executive is limited by s 3 and s 4 to provide for the disposal of a deceased body to a burial and

¹ *Angelopoulos v State of Queensland* [2022] QCAT 163.

² *Ibid.*

cremation, where the chief executive is satisfied no satisfactory arrangements have been made. Further to that, the respondent submits and I accept that the BA Act does not provide for the payment of expenses related to religious or cultural ceremonies or civil remembrance ceremonies and associated additional conveyancing costs of those ceremonies.

[31] On a fair reading of the BA Act as a whole, the chief executive is required to dispose of the relevant body by burial or cremation only that includes conveying the body to a morgue or other place. In my view, the words ‘other place’ would include, for example, a site for burial such as a cemetery or a site for cremation. The costs associated with the burial or cremation are paid from the consolidated fund. Had the legislature intended the chief executive to pay the expenses associated with a religious or cultural ceremony or a civil remembrance service, the BA Act would clearly stipulate that the chief executive is to provide a service and that such expenses are to be paid by the chief executive.

...

[37] The respondent’s conduct is in all of the circumstances reasonable and is otherwise exempt under s 106 of the Act on the basis that the conduct was necessary to comply with or is specifically authorised by the BA Act. The reason for Mr Angelopoulos’ application being approved with conditions and the decision to refuse additional funding for the religious service that includes a viewing was a decision properly made by the chief executive under the BA Act and not because of Mr Angelopoulos’ or his deceased father’s religious or cultural beliefs.

[6] The grounds of appeal raise a question of law and are as follows:³

- 1) Whether the Member, in making the decision dated 11 May 2022, properly applied the *Human Rights Act 2019* (Qld), which required the following mandatory consideration:
 - a) The relevant provisions of the *Burials Assistance Act 1965* (Qld) (including sections 3 and 4) must to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights: sub-section 48(1) *Human Rights Act 2019* (Qld);
 - b) If the relevant provisions of the *Burials Assistance Act 1965* (Qld) (including sections 3 and 4) could not be interpreted in a way that is compatible with human rights, the provision must, to the extent possible that is consistent with its purpose, be interpreted in a way that is most compatible with human rights: sub-section 48(2) *Human Rights Act 2019* (Qld).
 - c) The provisions of the *Human Rights Act 2019* (Qld) relevant to the section 48 inquiry and mandatory construction may have included:
 - i) section 15 (Recognition and equality before the law);
 - ii) section 20 (Freedom of thought, conscience, religion and belief);and

³ On 30 August 2023, an application by the applicant to amend the grounds of appeal was refused: *Angelopoulos v State of Queensland* [2023] QCATA 124.

iii) section 27 (Cultural rights – generally).

- [7] Each of the grounds of appeal relate to what is said to be the applicability and operation of the *Human Rights Act 2019 (Qld)* ('the HR Act') in the present case. As submitted by the respondent, an immediate barrier to the appellant's grounds of appeal is s 108(2) of the HR Act, which provides that the Act:
- (a) does not affect proceedings commenced or concluded before the commencement; and
 - (b) does not apply to an act, or decision made, by a public entity before the commencement.
- [8] The commencement for the HR Act was 1 January 2020. For the purposes of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, s 35 of that Act provides that the principal registrar may accept an application or referral, while s 36 provides: 'A proceeding starts when the principal registrar accepts an application or referral, whether or not on conditions'.
- [9] The decision in relation to the appellant's application for burial assistance was made on 19 July 2018. The appellant's complaint to the then Anti-Discrimination Commission was dated 25 October 2018, while the referral to the Tribunal was signed on 18 January 2019 and stamped as received by the Tribunal on 21 January 2019.⁴ Five separate sets of directions were issued by the Tribunal in relation to the matter throughout the course of 2019.
- [10] It is clear that the Tribunal Member at first instance was aware of s 108(2)(a) of the HR Act, the Member having stated: 'I am satisfied that the HR Act does not apply to the present matter because Mr Angelopoulos' complaint was made prior to its commencement'.⁵
- [11] There was no error of law as alleged on the part of the Tribunal at first instance, in particular given that the proceedings before the Tribunal commenced prior to the commencement of the HR Act.
- [12] The appeal is dismissed.

⁴ There is an evident administrative error in the reasons of the Tribunal at first instance in that it is stated that the matter 'was referred to the Tribunal on 15 January 2020'. It is then stated that this was 'prior to the commencement of the *Human Rights Act 2019 (Qld)*': see *Angelopoulos v State of Queensland* [2022] QCAT 163, [15].

⁵ *Ibid.* Reference was also made to *Tafao v State of Queensland* [2020] QCATA 76, [18].