



# SAT

State  
Administrative  
Tribunal

Western Australia

## **HUMAN RIGHTS**

### **DECISIONS BULLETIN**

**for the period 1 February 2009 - 28 February 2009**

---

This Bulletin contains summaries of all written reasons for decisions published by the Tribunal in the Human Rights stream for the period 1 February 2009 - 28 February 2009. The full text of decisions and reasons can be found on the Tribunal's website at [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au). If you would like the monthly bulletin emailed to you directly, please enter your email address and details at our subscription page.

---

<b>EQUAL OPPORTUNITY ACT 1984 (WA)</b>	<b>1</b>
IN THE MATTER OF AN APPLICATION FOR EXEMPTION UNDER S 135 OF THE EQUAL OPPORTUNITY ACT 1984 BY CHIMES SPA RETREAT [2009] WASAT 21	1
<b>GUARDIANSHIP AND ADMINISTRATION ACT 1990 (WA)</b>	<b>2</b>
AM AND WSS [2009] WASAT 20	2
KC AND CP [2009] WASAT 29	3

### **EQUAL OPPORTUNITY ACT 1984 (WA)**

**IN THE MATTER OF AN APPLICATION FOR EXEMPTION UNDER S 135 OF THE EQUAL OPPORTUNITY ACT 1984 BY CHIMES SPA RETREAT [2009] WASAT 21  
5 FEBRUARY 2009  
MS J TOOHEY (SENIOR MEMBER), MS M JORDAN (SENIOR SESSIONAL MEMBER)**

**Discrimination - Age - Application for exemption - Holiday accommodation - Adult retreat - Whether refusal to accept children discrimination in provision of services and availability of facilities - Whether exception for health and safety reasons applicable - Whether exemption should be granted - Whether applicants' commercial interests outweigh detriment flowing from discriminatory conduct**

The applicants owned and operated holiday accommodation for adults. They sought an exemption from provisions of the *Equal Opportunity Act 1984 (WA)* which make it unlawful to discriminate in the area of goods, services and facilities on the ground of age.

The applicants maintained that providing 'adults only' accommodation did not constitute unlawful discrimination within the meaning of the *Equal Opportunity Act 1984 (WA)* and that, in any event, there was a relevant exception in the Act by virtue of which their conduct was not unlawful. However, following a complaint to the Commissioner for Equal Opportunity, they had agreed to apply for an exemption and let the Tribunal determine the matter.

The applicants argued that, if refusing to accept children was unlawful, they should be allowed an exemption. The Commissioner for Equal Opportunity opposed the granting of an exemption.

The Tribunal was satisfied that, absent a relevant exception or the granting of an exemption, the applicants' conduct would constitute unlawful discrimination contrary to s 66ZF of the *Equal Opportunity Act 1984 (WA)*.

The Tribunal was not satisfied there was any applicable exception in the *Equal Opportunity Act 1984* (WA). In particular, it did not accept that the exception in s 66ZM(1)(e) of the *Equal Opportunity Act 1984* (WA) relating to health and safety considerations applied. The Tribunal found it would be contrary to public policy and would undermine the purpose of the Act if an applicant could design services or facilities with the exclusion of children in mind and then rely on the exception.

The Tribunal found that the only interest to be served by granting the exemption would be the applicants' commercial interests, which were outweighed by the detriment that would flow from the discriminatory conduct. The Tribunal did not consider it appropriate to grant the exemption and dismissed the application.

## **GUARDIANSHIP AND ADMINISTRATION ACT 1990 (WA)**

**AM AND WSS [2009] WASAT 20**

**3 FEBRUARY 2009**

**MS M JORDAN (SENIOR SESSIONAL MEMBER)**

**Application for revocation of EPA and appointment of administrator - EPA application withdrawn and administration application dismissed**

An application was made by AM on 26 August 2008 for the appointment of himself as administrator for his grandmother WSS.

A further application was made by AM on 28 August 2008 pursuant to s 109(1)(c) of the *Guardianship and Administration Act 1990* (WA) to revoke an existing enduring power of attorney (EPA) made by WSS in favour of his uncle KS.

Present at the hearing on 7 October 2008 were AM the applicant, WSS the proposed represented person, KS her son who is the donee of the EPA represented by Mr Bogue, SS the wife of KS, DB the accountant for WSS, DF and SK from the Office of the Public Advocate. Also present at the hearing observing were RM brother of AM and CM the partner of AM.

In the applications, AM stated that he was concerned about WSS's fiscal security due to the imminent sale of her home, being her last asset and only means of monetary support other than the pension. AM had been told by KS that the proceeds of sale were to be used to pay a \$250,000 fee to the residential facility in which WSS has been residing since about July 2008 and the balance of the proceeds were to be placed in a trust managed by KS who held her EPA.

AM raised issues related to what he said were evidence of past mismanagement of WSS's finances and he claimed that KS was not therefore a suitable person to be managing the affairs of WSS.

On 30 September 2008, AM had placed a caveat over the property of WSS to prevent a sale from being finalised pending the outcome of the proceedings he had filed in this Tribunal.

The Tribunal received evidence from the medical practitioner for WSS that she was not capable of handling her financial affairs.

At the hearing, held on 7 October 2008, Mr Bogue representing KS submitted that WSS was capable of making decisions regarding her finances and hence the appointment of an administrator was not required. He further submitted that the affairs of WSS were well administered by KS pursuant to the EPA and that WSS was informed in a general sense of all decisions made and that they were made with her agreement.

At the conclusion of the hearing, the Tribunal found that WSS was a person for whom an administration order could be made, in that she is unable by reason of a mental disability to make reasonable judgments in respect of matters relating to her estate, but that there

was no need to appoint an administrator if a less restrictive alternative was available, being the EPA that she had granted to KS on 26 July 2002.

The Tribunal was satisfied that the issues raised by AM concerning his uncle's administration were not made out and the Tribunal did not revoke the EPA.

AM sought leave to withdraw his application seeking revocation of the application to revoke the EPA and asked the Tribunal to decide the issue of the appointment of him as administrator. The Tribunal granted leave for AM to withdraw his application and the application was withdrawn. The application for appointment of AM as administrator was dismissed and AM was ordered to withdraw the caveat he had placed over the property of WSS on or before close of business 10 October 2008. The parties were informed of the Tribunal's decision accordingly.

**KC AND CP [2009] WASAT 29  
18 FEBRUARY 2009  
MS D DEAN (MEMBER)**

**Application for guardianship - Application for administration - Capacity to make reasonable judgments - Less restrictive alternative to making a guardianship order - Need for an administrator - Need for an independent decision-maker**

Applications were made to the Tribunal for both guardianship and administration orders by the daughter of CP, an elderly man who suffered a stroke some months ago, leaving him significantly cognitively disabled. CP proposed herself in both roles.

Evidence before the Tribunal was that CP had lived a solitary life with few friends and no family support. His ex-wife and daughter moved to another State when the daughter was an adolescent. The Tribunal heard conflicting evidence in relation to the amount of contact between CP and his daughter during the years until her move back to Perth after he suffered the stroke.

The Tribunal dismissed the application for guardianship after finding that there was no need for a guardianship order, as the daughter was in the process of arranging suitable nursing home accommodation for CP and, as the nearest relative, was making medical treatment decisions for him. There was no evidence before the Tribunal that these decisions were not being made in CP's best interests.

The Tribunal found there was a need for an administrator to be appointed to manage CP's estate and appointed the Public Trustee plenary administrator. The Tribunal found that the daughter was not suitable to take on the role of administrator because she did not accept CP's significant cognitive impairment which made it impossible for him to make reasonable judgments, particularly in relation to his estate. Evidence had been provided that the daughter frequently asked CP for money and had attempted to gain possession of his bank book and personal papers. The daughter had also attempted to access CP's bank account by way of an authority she had CP sign. The daughter acknowledged that she intended to use the money for her own purposes. The Tribunal found that the daughter did not fully understand the role of an administrator and, because of her past actions, could not be relied on to act in the best interests of CP and was not a suitable person to take on the role of administrator of his estate.