
Access denied: standing of a human rights organisation to commence discrimination proceedings

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A recent decision of the Federal Court, *Access for All Alliance (Hervey Bay) Inc v Hervey Bay City Council*, has found that a disability rights organisation did not have standing to commence discrimination proceedings in relation to inaccessible bus stops.

The decision suggests that incorporated bodies may be limited in their ability to commence federal discrimination proceedings in relation to matters affecting their members.

Background

Access for All Alliance (Hervey Bay) Inc ('AAA'), an incorporated association, is a volunteer community group established to ensure equitable and dignified access to premises and facilities for all members of the community.

In 2005, AAA brought proceedings against the Hervey Bay City Council ('the Council') alleging that a number of bus stops that had been built or significantly upgraded since the commencement of the Disability Standards for Accessible Public Transport 2002 ('the Transport Standards') did not comply with those Standards.

Council's application for summary dismissal

The Council sought summary dismissal of AAA's proceedings, on the basis that AAA lacked standing. The application alleged that:

- there was no statutory basis giving standing to a person to enforce a breach of the Transport Standards; and
- AAA was attempting to assert a bare public right or duty, which was only available to a



person with a 'special interest' in the matter, or otherwise the Attorney-General or someone acting with his fiat.

The Court rejected the above arguments. It found that the definition of 'unlawful discrimination' under the *Disability Discrimination Act 1992 (Cth)* ('DDA') clearly included a breach of the Transport Standards. Furthermore, the Court found that standing to commence proceedings for unlawful discrimination under the DDA derived not from general law principles of standing, but from the *Human Rights and Equal Opportunity Commission Act 1986 (Cth)* ('HREOC Act').

The Court held that the HREOC Act made clear that a 'person aggrieved' by unlawful discrimination was entitled to lodge a complaint with the Human Rights and Equal Opportunity Commission ('HREOC'). Upon termination of that complaint by HREOC, the person is entitled to commence proceedings in the Federal Court or Federal Magistrates Court.

'Person aggrieved' – HREOC's acceptance of the complaint

On the question of whether AAA was a 'person aggrieved' by the Council's alleged non-compliance with the Transport Standards, AAA argued that this was a question already determined by HREOC at

the time of accepting the complaint. If the Council had wished to dispute this decision, it's recourse was against HREOC under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* ('AD(JR) Act').

The Court disagreed. It found that such a construction was contrary to Parliament's intent under the HREOC Act of creating a complaints handling procedure that was efficient and unburdened by legal technicalities.

'Person aggrieved' – principles

The Court outlined a number of principles regarding whether an applicant is a 'person aggrieved'. For example, the Court observed that it was not sufficient that an applicant has merely an 'intellectual or emotional' interest in the matter.

The Court also noted that, whilst incorporated associations are typically community organisations and should not ordinarily be equated with trading corporations, they are nevertheless bodies corporate which may sue or be sued in their own name. The interests of its members are therefore 'arguably irrelevant'.

'Person aggrieved' – findings

The Court ultimately found that AAA was not a 'person aggrieved' for the purposes of the HREOC Act in relation to the Council's alleged breaches of the Transport Standards. In essence, the Court was persuaded by the Council's oral arguments that, whilst AAA's members used the relevant bus

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Ian McMinn, Prosecutor

Ian McMinn, 55, has worked in all forms of media and public relations. Currently he practises criminal law in Alice Springs.

In the 1970's he joined Visnews Ltd (now Reuters TV) where he spent time as a writer and satellite producer before being appointed as Acting Bureau Chief East Africa, as a cameraman/correspondent in 1978. Shortly after that he covered the Iran War.

Upon returning to Australia he was appointed to Canberra for Network 10, as a national reporter, before taking up an offer to head the Macquarie Network as Bureau Chief.

He later worked for various commercial channels where he was twice awarded for reporting as National TV Reporter in 1986 and Overseas Reporter of the Year in 1988 for his exclusive interview with Libyan leader,

Colonel Ghaddafi.

McMinn also worked as a freelance writer before joining Telstra in 1995 as the Senior Electronic Media Manager. He stayed with Telstra until 2000 writing speeches on E-commerce, media coaching executives and producing a monthly video magazine.

In 2001 he freelanced for CNN.com and later the ABC's Lateline, covering Tampa and events following September 11.

He enrolled at Charles Darwin University in 2002 and graduated with Honours in Law in 2005. In January 2005 he was appointed a graduate clerk with the DPP in Darwin, and was admitted by the NT Supreme Court to practice law in August 2005.

He now works as a Prosecutor in Alice Springs.

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stops, AAA did not. Consequently, AAA's interest in the Council's non-compliance with the Transport Standards was merely 'intellectual or emotional'.

Possible exceptions

The Court left open the prospect that an incorporated association may have standing as a 'person aggrieved' if a particular matter affected the interests of all of its members. The Court also distinguished the case of unincorporated associations.

The Court also acknowledged that an organisation may be 'aggrieved' where a matter affects the organisation itself, such as if an organisation is refused a lease over premises due to its members having disabilities.

Finally, the Court hinted that an incorporated organisation may be a 'person aggrieved' if it could establish that it was sufficiently recognised as a representative peak body on the issue, although suggested that this was 'of somewhat debatable significance'.

Reflections

The Transport Standards establish a comprehensive code for the accessibility of public transport, covering both conventional public transport (ie. public buses and trains) as well as commercial transport (ie. airline travel and taxis). The Standards were devised following extensive consultation with government and transport representatives, as well as the disability community. The Standards do not establish an ideal standard, but a minimum standard, with which non-compliance is

unlawful.

The Courts have yet to consider the operation of the Transport Standards. It is therefore perhaps unfortunate that the Court's decision in AAA was in the context of an application for summary dismissal and thus without the benefit of complete evidence and argument on the matter.

In particular, a full hearing of AAA's application may have provided a greater opportunity for the Court to consider the purpose, scope and operation of the Transport Standards and whether a broader interpretation of 'person aggrieved' is perhaps necessary and appropriate to ensure that the Transport Standards are fully effective.

Transport provides society's circulation system, infusing and connecting its various facets. It enables employees to go to work, customers to reach shops, and friends and families to socialise and travel. Inaccessibility of public transport and its infrastructure is therefore a concern that transcends the interests of individuals within the disability community. It is a matter that aggrieves society at large.

For a copy of the decision in AAA, go to http://www.austlii.edu.au/au/cases/cth/federal_ct/2007/615.html

For a copy of the submissions filed in AAA by the Acting Disability Discrimination Commissioner as amicus curiae, go to http://www.humanrights.gov.au/legal/submissions_court/amicus/hervey_bay.html.