



29 July 2011

Prabha Nandagopal
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Legal Section
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

Dear Prabha

EXEMPTION APPLICATION BY CALOUNDRA GARDENS BODY CORPORATE COMMITTEE

I refer to your email of 29 June 2011 seeking submissions in relation to an application from Ms Paula Collins on behalf of the Caloundra Gardens Body Corporate Committee for a temporary exemption under section 44 of the *Age Discrimination Act 2004* (Cth).

The applicant has also applied to the Queensland Civil and Administrative Tribunal (QCAT) for an exemption under section 113 of the *Anti-Discrimination Act 1991* (Qld) to limit residence in the complex to persons aged of 50 years. To date, there is no published decision on the application to QCAT.

The applicant is the committee for the body corporate of a community title scheme, comprising 75 residential units, a community centre and other common property. The applicant seeks to limit residence in the complex to persons aged of 50 years.

The applicant states that the complex was established as a retirement village over 20 years ago, and that it has not been set up to accommodate and cater for children.

The former Anti-Discrimination Tribunal and QCAT have both granted temporary exemptions under section 113 of the *Anti-Discrimination Act 1991* which effectively limit residential accommodation to persons over 50 years of age. A table of those exemptions is attached.

The exemptions granted to Palmpoint Pty Ltd and J & D Richards Developments Pty Ltd relate to relocatable home parks, where ownership of the freehold is retained by the park operator and the owners of the relocatable homes pay a site fee to the operator.

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The exemptions granted to Miami Recreational Facilities Pty Ltd relate to a community title scheme comprising 134 units, where all the lots are leased to the operator, and the residences are subleased to the residents. The restriction on the age of residents is contained in the sublease documents.

According to the application, it appears that the Caloundra Gardens complex was established and operated for some time in the same or similar manner to the Miami complex. However, the Caloundra Gardens complex is no longer operated on a lease and sublease basis.

The Commission is concerned about:

1. The impact of the proposed exemption on any existing residents who are aged under 50 years; and
2. How the proposed exemption could be implemented.

The applicant has not provided, in this application, any information about the current residents in the complex, including any residents aged under 50 years.

The Commission considers housing is a fundamental human right, and the forced, or constructive, removal of people from the homes because of their age should be avoided.

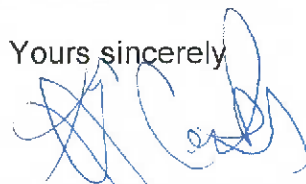
As to how to implement the proposed exemption, in the absence of a lease arrangement in a community title scheme, the place for the proposed age limitation on residents might be the by-laws of the community title scheme.

Under the *Body Corporate and Community Management Act 1997* (Qld), the regulation of, and conditions applying to, the use and enjoyment of lots in the scheme is a matter for the by-laws (section 169). However, the *Body Corporate and Community Management Act 1997* also provides that:

- if a lot may lawfully be used for residential purposes, the by-laws cannot restrict the type of residential use - section 180(3); and
- a by-law must not discriminate between types of occupiers – section 180(5).

The Commission submits that the applicant should address these issues in order for the Australian Human Rights Commission to consider whether to exercise its discretion to grant the exemption sought.

Yours sincerely



KEVIN COCKS AM
Anti-Discrimination Commissioner
Queensland

**Over 50s Accommodation
Exemptions granted by ADT and Applications to QCAT**

ADT

Applicant	Attribute/area	Exempt sections	End date
<u>Palmpoint Pty Ltd</u> [2006] QADT 12 (7 April 2006)	Age in the areas of goods & services, accommodation and disposition of land - to restrict entitlement to purchase homes at Bribie Pines Island Village (relocatable home park) to people aged over 50 years.	Application of s7(1)(f) in relation to ss 45, 46, 76, 77, 81, 82, 83	6 April 2011
<u>J & D Richards Developments Pty Ltd as Trustee for the Little Mountain Trust</u> [2005] QADT 13 (29 July 2005)	Age in the areas of goods & services, accommodation and disposition of land - to restrict entitlement to purchase homes at relocatable home park to people aged over 50 years	Application of s7(f) in relation to ss 45, 46, 76, 77, 81, 82, 83	28 July 2010
<u>Miami Recreational Facilities Pty Ltd</u> [2007] QADT 7 (7 March 2007)	Age in the areas of goods & services, disposition of land and accommodation – to allow a restriction on residents of a complex to people who are more than 50 years old – to provide for the needs of residents in their senior years– circumstances relevant to the availability of accommodation within the community so changeable – granted for 3 years only	Application of s 7(1)(f) in relation to ss 45, 46, 76, 77, 81 to 83	6 March 2010

QCAT

<u>J&D Richards Developments Pty Ltd</u> Unreported 25 August 2010	Renewal of exemption granted on 29 July 2005. See [2005] QADT 13 Age in the areas of goods & services, accommodation and disposition of land - to restrict entitlement to purchase homes at relocatable home park to people aged over 50 years – granted for 5 years.	Application of ss 45, 46, 76, 77, 81, 82 and 83 in relation to 7(f)	27 July 2015
<u>Miami Recreational Facilities Pty Ltd</u> Unreported 6 April 2010	Renewal of exemption granted on 7 March 2007. See [2007] QADT 7 Age in the areas of goods & services, disposition of land and accommodation – to allow a restriction on residents of a complex to people who are more than 50 years old – to provide for the needs of residents in their senior years– circumstances relevant to the availability of accommodation within the community so changeable – granted for 3 years only	Application of ss 45, 46, 76, 77, 81, 82, 83 in relation to 7(f)	16 March 2013
<u>Palmpoint Pty Ltd</u> [2011] QCAT 140 (6 April 2011)	Renewal of exemption granted on 7 April 2006. See [2006] QADT 12 Age in the areas of goods & services, accommodation and disposition of land - to restrict entitlement to purchase homes at Bribie Pines Island Village (relocatable home park) to people aged over 50 years.	Application of ss 45, 46, 76, 77, 81, 82, 83 in relation to 7(f)	6 April 2016