

IW v The City of Perth and others (1997 HCA 30)

1) Reference Details

Jurisdiction: High Court of Australia

Date of Decision: 31 July 1997

Link to full case:

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1997/30.html?query=discrimination>

2) Facts

The complainant was a member of an incorporated association People Living With Aids (PLWA) and was HIV positive. The Association submitted that it hoped to use certain premises as a drop-in-centre for people with HIV and accordingly submitted an application to the City of Perth for approval. The application was subsequently rejected by 13 votes to 12 by the Town Planning Committee. Though no reasons were given for the rejection, five of the majority voted against the motion on the grounds related to the HIV status of the PLWA's members.

The complainants alleged that the Council had unlawfully discriminated against them in refusing services in breach of the provisions of the Equal Opportunity Act (1984), and lodged a complaint to this effect with the Equal Opportunity Commission. The Equal Opportunity Tribunal held that the respondents had engaged in unlawful discrimination on the ground of impairment but this judgment was reversed on appeal by the Supreme Court of Western Australia on the basis that PLWA itself was a notional person which did not have the attribute of "impairment" under the Act but had few or more characteristics of a "person" under the Act. The complainants subsequently appealed to the High Court of Australia.

3) Law

- Equal Opportunity Act 1984

4) Legal Arguments

The Complainants

The complainants argued that they had been discriminated against on the basis of their HIV status in the refusal to allow them use of facilities to set up a drop-in centre.

The Respondent

The respondent argued that it was not responsible for the attitudes of the general public, and that it had not acted in a discriminatory manner.

5) Decision

The Court considered the following points: (a) whether the City Council provided a service while dealing with the application for approval; (b) whether the association rather than the complainant was the aggrieved person for the purposes of the statute; (c) whether the Council's decision was tainted with bias; and (d) whether there was a sufficient comparator.

The Court ruled that the Equal Opportunity Act did not apply to the Council as such legislation is limited to the providing of services, the definition of which does not include a refusal to exercise the statutory discretion awarded to the Council to approve the use of premises. It therefore held that the Council of the City of Perth did not discriminate against the complainant. It also held that under the Act the "impairment" was applicable to individuals and not artificial legal personalities.