

1. The applicant, who had been diagnosed with bipolar affective disorder and mild non-psychotic querulous paranoia, claimed that in contravention of the *Discrimination Act 1991*, the respondents discriminated against him because of his disabilities. After the applicant moved into his unit, he noted structural and building services noises which caused him sleep disturbance and exacerbated his mental illness.
2. The respondents were the principals of the strata management company of the building.
3. The applicant alleged that the respondents:
 - (a) failed to act to rectify defects and treated him differently, in that they arranged for other defects to be rectified ahead of those affecting his apartment;
 - (b) effectively “boycotted” him by refusing to answer his phone calls (insisting he communicate with them by email) and failed to provide access to documents;
 - (c) disabled his access to the owners’ portal preventing access to documents; and
 - (d) refused to provide him with the phone numbers or email addresses of members of the executive committee.
4. The orders sought by the applicant included:
 - (a) That the respondents should not treat him with discriminatory behaviour;
 - (b) That they urgently identify and rectify the building defects;
 - (c) That he and his family be provided with temporary accommodation;
 - (d) That the respondents provide him with copies of all past and future expert reports;
 - (e) Payment of \$315,877 for past, ongoing and future loss or damage.
5. It was necessary for the Tribunal to be satisfied that any unfavourable treatment or disadvantage experienced was “because of” his protected attribute (ie his disability). As stated by the High Court in *Purvis v New South Wales*: “[T]he central question will always be – *why* was the aggrieved person treated as he or she was? If the aggrieved person was treated less favourably was it “because of”, “by reason of” [a protected attribute]?”¹
6. The Tribunal Member’s reasoning was set out under five main headings.

¹ *Purvis v New South Wales* [2003] HCA 62 at [236], cited in *Pedrotta v Communities@Work* [2022] ACAT 84

That the respondents discriminated against him by failing to address defects affecting his apartment and by treating him differently

7. While it was readily understandable that the applicant was concerned that defects in his apartment were yet to be rectified, it was clear that the respondents arranged for multiple on-site investigations to be conducted. Relevantly, the assessment of the applicant's apartment was included in a wider program of rectification works, the prioritisation of which was the responsibility of the owners corporation, not the respondents. Likewise, it was a decision for the owners corporation as to whether the applicant be offered alternative accommodation.

That the respondents refused to provide services through the way they communicated with him

8. The applicant contended that the respondents treated him unfavourably through a decision to no longer communicate with him by telephone, indicating to him that all future contact with them should be by email.
9. The respondents stated that the applicant's communication with them included "swearing, yelling, sarcasm" and "what we deem to be threatening behaviour." The applicant did acknowledge that in the course some telephone conversations he had made inappropriate comments, including swearing. In their submissions, the respondents contend that while "mental health is not something to be taken lightly", others should be able to "take reasonable steps" to protect themselves from personal abuse. On balance, ACAT held it was reasonable for the respondents to advise him that future communication should be by email.
10. While it was apparent that there were delays in responding to some emails, there was no evidence to suggest that any such delays were "because of" the applicant's disability. The volume of other work required of the respondents, as well as awaiting information from other sources in order to answer his enquiries, were reasonable alternative explanations.

That the respondents failed to provide the applicant with services in that they refused access to requested documents

11. The applicant stated that he requested access to written reports provided by consultants in relation to the defects but that these were not provided. He further contended that, knowing that his concentration level was low because of his disability, the respondents considered that by them delaying, the applicant would be likely to give up on his request.
12. The respondents refute this assertion, stating that:
 - (a) the documents were covered by legal professional privilege;
 - (b) there were privacy issues involved; and

(c) in order to provide as much information as they could, they held information sessions that all owners were invited to attend.

13. The Tribunal Member was persuaded that there were reasonable explanations (other than the alleged discrimination) for the respondents' actions. It was not unreasonable to rely on advice from the lawyers representing the owners corporation and the respondents took reasonable steps to keep all building owners informed.

That the respondents discriminated against the applicant by denying him access to the owners' portal

14. The respondents acknowledged that the applicant's access to the owners' portal was removed for a period of time. They stated that they temporarily disabled access due to the applicant's behaviour while they sought further advice in relation to the behaviour that they felt posed a genuine concern to the safety of their staff and the reputation of their business. They considered that the applicant was undertaking a sustained effort to bring the manner in which they ran their business into disrepute.
15. ACAT was not persuaded that the action was undertaken "because of" the applicant's disability, given that there was a reasonable alternative explanation for the respondents' decision.

That the respondents did not provide phone numbers or email addresses of the executive committee

16. ACAT accepted the respondents' contention that to have provided such details would have been a breach of the committee members' privacy.
17. In conclusion, the complaints of unlawful discrimination against AB and CD were not made out under any of the above five headings and the application was dismissed.