

## ***SF v Department of Education* [2021] QCAT 10 (13 January 2021) – Queensland Civil and Administrative Tribunal**

‘Administrative law’ – ‘Applicant and children in hiding to escape domestic violence’ – ‘Application for home education registration’ – ‘Confidentiality provisions’ – ‘Following, harassing monitoring’ – ‘Human rights’ – ‘Non-disclosure of registered address’ – ‘Ongoing risk of harm’ – ‘People with disability and impairment’ – ‘Separation’

Proceedings: Application for external review of the Department’s decision to deny an application for home education registration.

Facts: The applicant and her children had moved in an attempt to escape domestic violence and were forced to hide their location to keep the family safe. The applicant’s former partner had used numerous unlikely resources to locate her. One of the applicant’s children had been diagnosed with conditions affecting their ability to learn, and the applicant applied to the Department of Education to home school the child. Although her application met the requirements for home education, the Department did not grant the application as the applicant did not provide her street number, street name and town name. Where the approved form required details of “residential address” and “address where the home education will be delivered”, the applicant inserted “address suppressed (due to privacy, see attached)” with a town name, a postal address and mobile phone number.

Decision and reasoning: The decision of the Department of Education was set aside and substituted with a decision to grant home education registration for the student.

The Tribunal found that none of the provisions of the *Education (General Provisions) Act 2006* (Qld), read together or in isolation, imposed an express obligation on the applicant to disclose her street number, street name and town name (at [9]-[16]). In addition, while the approved form – which was required for the application – asked the applicant to provide details of her “residential address” and “address where the home education will be delivered”, the Tribunal found that the requirements of this will vary according to the individual circumstances of the case, within the context of the overarching objects and guiding principles. Here, the form could not operate “to require SF to disclose these details in circumstances where it compromises her and her family’s safety contrary to those objects and guiding principles” (at [17]-[26]).

The Department made a number of submissions, including that the confidentiality provisions of the Act and its own internal policies were sufficient to ameliorate the risk of unauthorised disclosure. However, the Tribunal was not satisfied that these were sufficient to ameliorate the risk, based on the applicant's evidence and submissions regarding the circumstances of her and her children (at [29]). As at [30]-[31]:

“The risk for SF is that the confidentiality provisions and policies repose a discretion in departmental officers about the use and disclosure of information, require interpretation by departmental officers and leave it open for a person to apply to the department to access the information under the *Right to Information Act 2009* (Qld) and *Information Privacy Act 2009* (Qld). Moreover, adding another layer of people with access to SF's information increases the opportunity for human error or failure, with potentially tragic and irreversible consequences.

The more information SF is required to disclose and the more people who have access to that information, the greater the risk to her and her children...”

Moreover, while it was not strictly necessary to consider the substantial compliance provisions of the *Acts Interpretation Act 1954* (Qld) as the Tribunal found that the applicant had provided sufficient information to meet the procedural requirements of the application form, the Tribunal was satisfied of substantial compliance in any event (at [35]-[41]).

Finally, the Tribunal's decision and interpretation of the statutory provisions was compatible with the *Human Rights Act 2019* (Qld). As at [46]-[47]:

“SF and her children have moved to escape domestic violence. They are still at risk of harm. The child she seeks to home school has a dual diagnosis of conditions affecting the child's ability to learn, sufficient to constitute an impairment and therefore a protected attribute under the *Anti-Discrimination Act 1991* (Qld). SF has identified that her child learns best with one-on-one educational support and has tailored a detailed, goal-directed home education program suited to the child's needs. An interpretation that would mandate SF to provide her street number, street name and town name before granting her application for home education in these circumstances, is not an interpretation that least infringes her and her family's human rights.

Moreover, the Tribunal does not accept this interpretation limits human rights only to the extent that is reasonable and demonstrably justifiable. The Tribunal accepts SF's evidence of the serious risk to her and her family from an interpretation mandating her to disclose her street number, street name and town name. The Tribunal does not accept that the confidentiality provisions of the Act and the Department's own internal policies are sufficient to uphold her children's right to protection in their particular circumstances.”

An interpretation requiring the applicant to disclose her street number, street name and town name was not necessary to achieve the purposes of ensuring the child was properly registered and the applicant was able to be contacted in circumstances where she had provided a postal address, mobile number and details of her circumstances (at [48]).