



Office of Martin Foley MP

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Subordinate Legislation Act 1994

HUMAN RIGHTS CERTIFICATE

(Section 12D)

DIRECTOR OF HOUSING DETERMINATIONS - SECTION 142E HOUSING ACT 1983

I, Martin Foley, Minister for Housing, Disability and Ageing and Minister responsible for administering s 142E of the **Housing Act 1983**, certify under s 12D(2) of the **Subordinate Legislation Act 1994** that, in my opinion the Director of Housing Determinations made to:

- a. establish eligibility criteria that must be met by an applicant to be eligible for a tenancy in social housing;
- b. establish priority categories for the purposes of identifying the relative needs of eligible applicants for social housing; and
- c. establish priority criteria that must be met by an eligible applicant for a particular priority category to apply to that eligible applicant –

limit but are compatible with the human rights set out in the **Charter of Human Rights and Responsibilities Act 2006**.

The human right that is limited by the Determinations is the right to equality under s 8 of the Charter. The right to equality provides that every person has the right to enjoy their human rights without discrimination, and that every person is equal before the law and is entitled to the equal protection of the law without discrimination. Discrimination is defined by reference to the definition in the **Equal Opportunity Act 2010**, and includes both direct and indirect discrimination on the basis of each of the attributes on the basis of which discrimination is prohibited under that Act. These attributes relevantly include age, marital status (which includes non-marital domestic relationships) and parental status. Direct discrimination is defined as occurring if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute.

Part 3 of the Determinations sets the income eligibility thresholds that apply to social housing applicants. If an applicant exceeds the income limit for the category they are applying for, they are not considered eligible for that category. Different income limits apply on the basis of whether the applicant household is comprised of a single person; a couple with no dependents; or a family (one or two parents) with dependent children. The highest

(per adult person) income limits apply to families with dependent children, followed by single person households. The lowest income limits (per person) apply to couples with no dependents. In applying different income thresholds on the basis of an applicant's marital and parental status, Part 3 of the Determinations amounts to prima facie direct discrimination and therefore a limit on the right to equality. However, in my opinion any such limit is reasonable and demonstrably justifiable under s 7(2) of the Charter. It is necessary to apply different income thresholds on the relevant grounds to reflect the practical needs and expenses, including housing related expenses, that flow from the composition of different households. For example, families with dependent children are responsible for additional costs associated with caring for children, and people in single person households do not have the benefit of sharing basic living costs with a partner. The application of different thresholds is therefore an important and direct mechanism aimed at prioritising housing assistance according to relative need, and goes no further than what is required in order to meet this objective.

Part 5 of the Determinations sets out Priority Categories for social housing as a means of prioritising people who are in urgent housing need. One such category is for applicants who are eligible for social housing and are also aged 55 years and over. In having a priority category based on age, Part 5 of the Determinations amounts to prima facie discrimination and therefore a limit on the right to equality. However, in my opinion any such limit is reasonable and demonstrably justifiable under s 7(2) of the Charter. The purpose of the limitation is to reduce the particular disadvantages and vulnerabilities faced by older persons in the context of housing stress and homelessness. Such disadvantages include a range of factors which prevent older persons from competing equally for rental properties and maintaining a tenancy. The target group for this priority category is older persons who rely on a limited income due to having exited the workforce. This makes private rental unsustainable for many of these households, particularly those that rely on fixed incomes and are likely to face increasing rents over time. Also, older persons are more likely to experience the loss of a partner, which can result in an abrupt fall in income, putting these individuals at higher risk of housing break-down.

Additionally, as older persons age, there is generally an increased need for property modifications, which are often refused in the private rental market. Older persons are also generally more restricted in their choice of location due to a greater dependence on health and allied support services and connections with their family and friends. The difficulties experienced by persons aged 55 years and over in relation to securing and sustaining suitable housing are predicted to worsen as the proportion of older persons within the general population continues to increase and levels of home-ownership amongst this demographic continue to fall.

Applicants for social housing in the 55 years and over priority category will still be required to meet the base eligibility criteria applicable to all applicants for social housing, as well as meeting priority access income and asset eligibility limits, meaning that only those older persons most in need (but who do not meet the requirements for one of the higher priority categories such as the Homeless with Support, Supported Housing, or Special Housing Needs priority category) will be eligible. As such, the limit on the right to equality is appropriately confined and tailored to its purpose.

For these reasons, I am satisfied that applying different income thresholds on the basis of an applicant's marital and parental status and creating a priority category for low income persons aged 55 years and over constitute reasonable, proportionate and demonstrably justifiable limits on the right to equality.

Dated:

The Hon Martin Foley MP
Minister for Housing, Disability and Ageing

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