

CASE NOTE:

Attorney-General for the State of Queensland v Sri & Ors [2020] QSC 246

Court/tribunal	Supreme Court
Cause of action	Mandatory injunction to prevent protests
Application of Human Rights Act 2019	HR Act relevant to the exercise of the Court's inherent jurisdiction, potentially via section 5 (direct application), although that was not determined.
Rights engaged	Right to peaceful assembly and freedom of association (section 22); Freedom of movement (section 19)
Outcome	Injunction granted
Commission intervened?	Yes
Year	2020

Background

On 8 August 2020, the Attorney-General successfully sought a mandatory injunction (court order) in the Supreme Court to prevent a planned sit-in protest organised by a group that advocates for the rights of refugees. The protest was to take place on the Story Bridge, a major traffic route in Brisbane, and be a 'sit-down and not-move-on assembly' during which arrests would be expected.

The Attorney-General sought the injunction in order to protect the rights of the public to use the bridge, as well as arguing emergency services vehicles relied on the route. At the time of the planned protest, restrictions on gatherings due to the COVID-19 public health emergency and 'social distancing' requirements were in force.

The Attorney-General relied on her power under s 7 of the *Attorney-General Act 1999* to 'bring proceedings to enforce and protect public rights'. The application asked the Court to exercise its inherent jurisdiction, which is not provided for in legislation, but instead an independent and separate source of jurisdiction exercised by Australian Supreme Courts.

The Queensland Human Rights Commission intervened, arguing that the *Human Rights Act* and human rights protection for all people must be considered by the Court in exercising its discretion.

Considerations

The Court acknowledged that it must consider human rights, particularly the importance of freedom of peaceful assembly, freedom of association, and freedom of expression in a democracy. In considering this application, the Court was required to balance the legitimate right to peaceful assembly, which would however create significant obstruction of traffic and 'extreme disruption', against the public interest during a health emergency. Justice Applegarth noted that this was 'an exceptional case' as the Court was being asked to prevent behaviour that would ordinarily be dealt with by the criminal law.

Outcome

The Court found that the effects of limiting the freedom of movement of the broader community outweighed the rights of the protesters, and therefore it was an appropriate case to exercise the jurisdiction. The orders granted were specifically about this protest at this time. The Court noted that other forms of lawful protest are held in Brisbane from time to time, and unlike protests considered by courts in other jurisdictions, there was no evidence the organisers were taking reasonable steps to alleviate the risk of COVID-19 transmission.

The injunction was granted, requiring the respondents to post material on Facebook indicating the protests had been cancelled. They were also prevented from participating, or encouraging others to participate in the protest.

Note

A second protest was planned for the following week, and the Attorney-General sought a similar injunction. In hearing the application, Justice Dalton also noted the importance of the right to peaceful assembly, but cited the threat of COVID-19 infection from the particular form of protest as a relevant consideration in her decision to grant the injunction.

The Commission's submissions are [available on the QHRC website](#).

The judgment of Justice Applegarth provides a useful summary of the factors which led the court to conclude the planned protest was an unreasonable interference with public rights, and is available at:

[*Attorney-General for the State of Queensland v Sri & Ors \[2020\] QSC 246*](#)