

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 8613/20

Applicant: ATTORNEY-GENERAL (QUEENSLAND)
and
Second Respondent: JONATHAN SRI
and
Third Respondent: JARRAH ROBERT KERSHAW
and
Fourth Respondent: LAURA ANN LOUISA HARLAND
and
Intervenor: QUEENSLAND HUMAN RIGHTS COMMISSION

OUTLINE OF SUBMISSIONS

FOR THE QUEENSLAND HUMAN RIGHTS COMMISSION (INTERVENING)

1. The Queensland Human Rights Commission ('QHRC') relies upon its previous submissions made on 8 August 2020 – and attached – subject to these brief additional submissions.
2. On that date, Applegarth J made orders prohibiting a similar protest that was then to be held on 8 August 2020.¹
3. In doing so, his Honour considered the *Human Rights Act* in detail and found it was a relevant consideration in exercising his discretion.²
4. In balancing the competing rights of protesters compared to those of the broader community, his Honour found that the limitation on 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 which the Attorney-General has invoked. This was particularly so in circumstances where protesters had expressed an intention to ignore police directions to move on and intended to remain sitting indefinitely.³

¹ *Attorney-General for the State of Queensland v Sri & Ors* [2020] QSC 246

² *Ibid*, [3], [20] and [27] – [29]

³ *Ibid* [35] – [36]

5. His Honour found it unnecessary to rely upon the additional argument advanced by the Attorney-General, that the enforcement of public rights that arise from the *Public Health Act 2005* and the relevant Direction made by the Chief Health Officer regarding gatherings in public.⁴ His Honour suggested a threatened breach of the *Public Health Act* would provide an additional ground to grant the order in the absence planned reasonable steps by the protesters to alleviate the risk of COVID-19 including COVID safety teams, social distancing, and limiting the level of close physical contact.
6. His Honour identified relevant considerations for when a protest of this kind may justify the granting of an injunction. The specific circumstances of each protest must be considered, particularly given the ‘exceptional’ nature of the Attorney-General’s application and the impact on the right to peaceful assembly (and other related rights) in a free and democratic society.⁵ In this case, the type of protest that was planned, including the indefinite timeframe of the planned sit-in and the impact it was likely to have on all lanes of traffic, were features of significance.⁶ His Honour distinguished these facts from other types of protests considered in comparative jurisdictions and held from time to time in Brisbane.⁷
7. The QHRC acknowledges that the protection afforded by the right to peaceful assembly is conditional on the assembly not being violent or creating a real and significant risk to public safety. An act of civil disobedience involving an ‘indefinite sit-in’ across a major arterial road such as the Story Bridge, at the present time, being an assembly that has not been authorised under the *Peaceful Assembly Act* and/or facilitated by the QPS, does post a safety risk.
8. Accordingly, in respect of the orders sought in respect of the planned protest on 15 August 2020, the QHRC withdraws its previous submission⁸ that the Attorney-General had not met the onus required to warrant the Court exercising its discretion.
9. That does not mean, however, that any and every protest planned to be staged on the Story Bridge would be of that kind. The situation may be different where there is a specific timeframe for any sit-in, where traffic may still proceed across the bridge in unobstructed lanes and/or where COVID-safe precautions are taken. Such an assembly may also be authorised under the *Peaceful Assembly Act* and/or facilitated by the QPS.

P Morreau

Counsel for the QHRC (intervening)

12 August 2020

⁴ Ibid [37]

⁵ Ibid [41] See also HR Act, section 13(1)

⁶ Ibid, [33]-[35]

⁷ Ibid, [16] – [22], [38]

⁸ Par [49] of earlier written submissions.