

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS11254/21

Applicants: DYLAN MARK JOHNSTON & ORS

and

Respondent: KATRINA RUZH CARROLL APM, COMMISSIONER OF
THE QUEENSLAND POLICE SERVICE

NUMBER: BS12168/21

Applicants: SHAUN SUTTON & ORS

and

Respondent: KATARINA RUZH CARROLL APM, COMMISSIONER OF
THE QUEENSLAND POLICE SERVICES

**SUBMISSIONS OF THE QUEENSLAND HUMAN RIGHTS COMMISSION –
EFFECT OF REVOCATION OF COMMISSIONER’S DIRECTION**

1. The Queensland Human Rights Commission (**QHRC**) has intervened in each of these proceedings pursuant to s 51 of the *Human Rights Act 2019* (Qld) (**HR Act**).
2. At the time of filing these submissions, the Respondent’s position on the effect of the revocation of the relevant Commissioner’s Direction¹ (**the direction**) upon the reserved decision is unknown. The QHRC reserves its position to respond to any submissions filed henceforth. Presumably, it will be contended that the revocation of the direction deprives the proceedings of utility, and therefore tends against the exercise of discretion to grant remedies, and potentially, deprives the applicants of standing.
3. If framed as an issue of standing, the HR Act does not provide an independent basis to ground standing. This is because s 59(1) together with s 59(5) permits relief sought on the grounds of unlawfulness under s 58(1) to be argued only “*if a person may seek any relief or remedy*” on non-human rights grounds. Whether or not this requires ‘factual



¹ *Instrument of Commissioner’s Direction No. 14* (14 December 2021), revoked by *Instrument of Commissioner’s Direction No. 16* (22 December 2022).

Intervenor’s submissions

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availability’ (the bringing of the other cause of action) or ‘abstract availability’ (merely the right to bring the other action), standing to bring an action on non-human rights grounds is first required.²

4. Rights recognised in the HR Act are private and not public rights and thus are capable of enforcement and determination through judicial remedies where s 59(1) is engaged. Vindication of such rights may also ground a sufficient interest for a public remedy such as a declaration of invalidity.
5. As to any contended discretion to decline relief, human rights grounds carry their own significance. In some circumstances, and consistent with the principles recently articulated by the High Court in *Unions NSW v New South Wales (No. 3)*,³ past infringements of human rights may be sufficient to ground declaratory relief even without other legal consequences. The High Court reaffirmed that sufficiency of interest is a matter of degree and the categories of interests that may be protected by judicial orders are broad.
6. The preparedness of Ginnane J in *Loiello v Giles*⁴ to make a declaration with respect to a revoked curfew direction had the plaintiff been successful, and the declarations actually made by the High Court of New Zealand in *Borrowdale v Director-General of Health & Ors*⁵ and Mallon J in *Grounded Kiwis Group Inc v Minister of Health*⁶ with respect to lapsed frameworks, are not inconsistent with *Unions NSW*. Whether or not a declaration in such circumstances will still have a foreseeable consequence will be a matter of degree, depending upon the nature of the personal rights and interests affected and the circumstances of any unlawfulness.

P Morreau
Counsel for the QHRC
6 April 2023

² See the discussion of Forbes J in *Thorpe v Head, Transport for Victoria* (2021) 66 VR 56; [2021] VSC 750 at [24], [147]-[171].

³ *Unions NSW v New South Wales (No 3)* (2023) 97 ALJR 150; [2023] HCA 4 at [21]-[22].

⁴ *Loiello v Giles* (2020) 63 VR 1; [2020] VSC 722 at [267].

⁵ *Borrowdale v Director-General of Health* [2020] NZHC 2090 at [288]-[291]

⁶ *Grounded Kiwis Group Inc v Minister of Health* [2022] NZHC 832 at [430]-[433].