

SUPREME COURT OF QUEENSLAND

CITATION: *Hemelaar v Brisbane City Council* [2017] QCA 241

PARTIES: **HEMELAAR, Ryan Nicholas**
(applicant)
v
BRISBANE CITY COUNCIL
(respondent)

FILE NO/S: CA No 15 of 2017
DC No 3922 of 2016

DIVISION: Court of Appeal

PROCEEDING: Application for Leave s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Brisbane – [2017] QDC 17 (Everson DCJ)

DELIVERED ON: 17 October 2017

DELIVERED AT: Brisbane

HEARING DATE: 29 August 2017

JUDGES: Morrison JA and Boddice and Flanagan JJ

ORDERS: **1. That leave to appeal be granted.**
2. That the appeal be dismissed.
3. That the applicant pay the respondent’s costs of the appeal, to be assessed on a standard basis.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – where the applicant was convicted in the Magistrates Court at Brisbane of eight breaches of the *Public Land and Council Assets Local Law 2014* (Qld) – where the applicant was unsuccessful in his appeal from those convictions in the District Court – where the applicant now seeks leave to appeal that District Court decision – whether there is substantial injustice or a reasonable argument that there is an error arising from the District Court decision sufficient to justify leave to appeal being granted – whether the *Peaceful Assembly Act 1992* (Qld) provides legal immunity to the applicant for the relevant breaches of the *Public Land and Council Assets Local Law 2014* (Qld)

City of Brisbane Act 2010 (Qld)
District Court of Queensland Act 1967 (Qld), s 118 (3)
Justices Act 1886 (Qld), s 222
Peaceful Assembly Act 1992 (Qld), s 2, s 3, s 4, s 5, s 6, s 7, s 8, s 9, s 10, s 12

Public Land and Council Assets Local Law 2014 (Qld) s 15, s 16, s 17, s 46, s 47, s 48, s 49, s 68, Sch 1

COUNSEL: F C Brohier, with S C Fisher, for the applicant
M J Copley QC for the respondent

SOLICITORS: No appearance for the applicant
City Legal, Brisbane City Council for the respondent

- [1] **MORRISON JA:** I have read the reasons of Boddice J and agree with those reasons and the orders his Honour proposes.
- [2] **BODDICE J:** On 20 September 2016, the applicant was convicted of eight breaches of the *Public Land and Council Assets Local Law 2014* (“the Local Law”) which was promulgated under the *City of Brisbane Act 2010*. The convictions related to activities undertaken by the applicant in the Queen Street Mall, Brisbane.
- [3] On 7 February 2017, the District Court of Queensland dismissed the applicant’s appeal from those convictions, brought pursuant to s 222 of the *Justices Act 1886*.
- [4] The applicant now seeks leave, pursuant to s 118(3) of the *District Court of Queensland Act 1967*, to appeal that decision. At issue on the application for leave is whether the appeal is necessary to correct a substantial injustice to the applicant and whether there is a reasonable argument that there is an error to be corrected in that decision.
- [5] At issue on the appeal, should leave be granted, is whether the provisions of the *Peaceful Assembly Act 1992* (“the Act”) provide legal immunity to the applicant for any breach of the Local Law.

Background

- [6] The applicant is a member of an organisation known as Operation 513. That organisation engages in public activities intended to make known to members of the public the message of the bible. The means by which the organisation undertakes that endeavour includes public addresses through an amplification system, literature distribution and signs and banners.
- [7] As part of those activities, the respondent gave numerous notices of intention to hold a public assembly, pursuant to the Act, to the Queensland Police Service and the Brisbane City Council. Those notices included notice of an intention to hold a public assembly in the Queen Street Mall, the purpose of which assembly was “to make known to as many people as possible, both verbally and in writing, the message of the bible. This may include, but is not limited to: public addresses, literature distribution, free bibles and resource tables, a sketch board and easel, and signs and banners”. Each notice specified an intention to use an amplifying device as part of those activities.
- [8] The respondent did not challenge the applicant’s intention to hold a public assembly in the Queen Street Mall in accordance with those notices. However, the applicant was advised of the need to obtain the respondent’s consent in relation to the use of an amplifier and other materials as part of the holding of the foreshadowed assembly in

the Mall. That consent required an application by the applicant and was subject to the payment of the applicable fee. The applicant did not make application or pay the requisite fee.

Breaches

- [9] The eight breaches of the Local Law were committed whilst the applicant was undertaking an assembly in accordance with such notices. The particulars of the breaches were that the applicant, contrary to s 68 of the Local Law, advertised in the Queen Street Mall without the consent of the respondent; that contrary to s 72(1) of the Local Law failed to comply with an oral direction of an authorised officer of the respondent to remove an advertising sign; contrary to s 72(4) of the Local Law, used an amplifying device without the consent of the respondent; contrary to s 68 of the Local Law, distributed written material without obtaining the consent of the respondent; and contrary to s 72(4) of the Local Law, failed to comply with two compliance notices issued by the respondent. The breaches all occurred in late 2015 and early 2016.

Magistrate's decision

- [10] The Magistrate found that whilst the applicant had given the requisite notices in accordance with s 8 of the Act, and such notices had complied with the requirements of s 9 of that Act, the activities undertaken by the applicant did not fulfil the purpose for which that Act was enacted by the legislature.
- [11] Further, the respondent retained the power to regulate the activities of the Queen Street Mall pursuant to s 5(4) of the Act. The respondent's requirement for the obtaining of approval and for compliance with directions and notices under the Local Law, was not inconsistent with the Act. The Local Law did not prohibit a person's right of peaceful assembly, it regulated that activity in the Queen Street Mall.

District Court decision

- [12] In the District Court, there was no issue on appeal as to the giving of requisite notice by the applicant, the activities undertaken by the applicant and the circumstances in which the applicant was found to have breached the Local Law. At issue was whether, as a matter of statutory construction, the provisions of the Act prevailed over the Local Law such that the applicant's activities the subject of each breach were not unlawful.
- [13] Two issues were relevant to the determination of that statutory question. First, whether the Act applied to an assembly of the nature foreshadowed by the applicant in his notices given pursuant to the Act. It was submitted those activities were not an assembly for the purposes of the Act. Second, that by giving a notice of intention to hold a public assembly pursuant to the Act, each of the activities undertaken by the applicant was an authorised public assembly and therefore not subject to s 5(4) of the Act. The Local Law therefore had no application.
- [14] As to the first issue, the primary Judge found that the rights conferred by the Act were broad rights in respect of public assemblies in general. Those rights were not restricted to peaceful assemblies for political purposes or restricted to the right of public assembly in a similar way. Assembly was to be given its ordinary meaning, namely, "a company of persons gathered together, usually for the same purpose,

whether religious, political, educational or social”. Accordingly, the activities of the applicant fell within the definition of an assembly to which the Act had operation.

- [15] As to the second issue, the primary Judge found that the right to assemble peacefully provided by s 5 of the Act was subject to the provisions of s 5(4) of the Act which allowed the regulation of assemblies in pedestrian malls. Further, the immunity conferred by the Act as a consequence of an assembly having become an authorised public assembly under s 7 of the Act was limited to immunity from civil or criminal liability because of the obstruction of a public place.
- [16] The primary Judge concluded that an authorised public assembly under the Act was merely a particular type of peaceful assembly. The rights and obligations pursuant to s 5 were not supplanted by an assembly becoming an authorised public assembly pursuant to s 7 of the Act. The designation as an authorised public assembly was relevant to the provision of the limited immunity conferred by s 6 of the Act.
- [17] Finally, the primary Judge found there was a clear legislative intent that Local Laws in respect of pedestrian malls were applicable to peaceful assemblies under the Act, despite the other provisions of the Act in respect of authorised public assemblies. Accordingly, the Local Law applied and the applicant committed the breaches the subject of the appeal.

Peaceful Assembly Act

- [18] As a determination of the appeal turns upon the proper construction of the Act, it is necessary to set out the relevant provisions.
- [19] Section 2 of the Act specifies the objects of the Act:
- “(1) The objects of this Act are –
- (a) to recognise the right of peaceful assembly; and
 - (b) to ensure, so far as it is appropriate to do so, that persons may exercise the right to participate in public assemblies; and
 - (c) to ensure that the exercise of the right to participate in public assemblies is subject only to such restrictions as are necessary and reasonable in a democratic society in the interests of –
 - (a) public safety; or
 - (b) public order; or
 - (c) the protection of the rights and freedoms of other persons; and
 - (d) to ensure that the right of persons to participate in public assemblies may be exercised without payment of a fee, charge or other amount for a licence, permit or other authorisation.
- (2) In subsection (1)(c)(iii), a reference to the rights of persons includes a reference to –

- (a) the rights of members of the public to enjoy the natural environment; and
- (b) the rights of persons to carry on business.”

[20] Section 3 of the Act deals with the Act’s relationship with other laws:

- “(1) This Act has effect despite any other law relating to –
- (a) the right of peaceful assembly; or
 - (b) the movement of traffic or pedestrians; or
 - (c) loitering; or
 - (d) the use or obstruction of a public place; or
 - (e) the payment of a fee, charge or other amount for a licence, permit or other authorisation relating to a public assembly.
- (2) Despite subsection (1), nothing in this Act affects the common law of trespass and, in particular, the right of a person in, or entitled to, possession of land –
- (a) to request a trespasser to leave the land; and
 - (b) if the trespasser refuses to leave on being requested – to remove the trespasser from the land.
- (3) In this section –
- law* includes an Act, a statutory rule and the common law.”

[21] Section 4 of the Act contains the relevant definitions. They include:

“4. **Definitions**

In this Act –

...

assembly notice means a notice of intention to hold a public assembly mentioned in section 7.

...

place of assembly, in relation to an assembly that is a procession, includes a place at or through which it is proposed the assembly will stop or pass;

...

public assembly means an assembly held in a public place, whether or not the assembly is at a particular place or moving;

public place includes –

- (a) a road; and
- (b) a place open to or used by the public as of right; and

- (c) a place for the time being open to or used by the public, whether or not –
 - (i) the place is ordinarily open to or used by the public; or
 - (ii) by the express or implied consent of the owner or occupier; or
 - (iii) on payment of money;”

[22] Sections 5 through to 10 of the Act provide the right of peaceful assembly and for the giving of notices for the approval of public assembly such that the assembly becomes an authorised public assembly. They provide:

“5. Right of peaceful assembly

- (1) A person has the right to assemble peacefully with others in a public place.
- (2) The right is subject only to such restrictions as are necessary and reasonable in a democratic society in the interests of –
 - (a) public safety; or
 - (b) public order; or
 - (c) the protection of the rights and freedoms of other persons.
- (3) In subsection (2)(c), a reference to the rights of persons includes a reference to –
 - (a) the rights of members of the public to enjoy the natural environment; and
 - (b) the rights of persons to carry on business.
- (4) Nothing in this section limits the power of a local authority to regulate pedestrian malls, but the power is subject to the right mentioned in subsection (1).

6. Legal immunity for participant in public assembly

- (1) If a public assembly –
 - (a) is an authorised public assembly; and
 - (b) is peaceful; and
 - (c) is held substantially in accordance with –
 - (i) the relevant particulars; and
 - (ii) any relevant conditions;

a person who participates in the assembly does not, merely because of the participation, incur any civil or

criminal liability because of the obstruction of a public place.

(2) In this section –

relevant condition means a condition specified in relation to the assembly in –

- (a) a notice under section 10(2)(a) or (b); or
- (b) an order of a Magistrates Court under section 12 or 14;

relevant particulars means the particulars given in the assembly notice for the assembly (except so far as any of the particulars are inconsistent with a relevant condition).

7. Authorised public assembly

A public assembly is an authorised public assembly if –

- (a) notice of intention to hold the assembly has been given under section 8; and
- (b) the notice complies with section 9; and
- (c) the assembly is taken to have been approved under section 10.

8. Giving of assembly notice

(1) An assembly notice is to be given –

- (a) to the Commissioner; and
- (b) if it is proposed that the assembly will be held in, or pass through, a place that is a park, reserve, pedestrian mall, square or other public place – to any local authority having jurisdiction in relation to the place.

(2) The notice is to be given –

- (a) in the case of the Commissioner – by leaving it at, or by sending it to, an appropriate police office; and
- (b) in the case of a local authority – by leaving it at, or by sending it to, the office of the clerk of the local authority.

9. Requirements for assembly notice

(1) An assembly notice must –

- (a) be in writing; and
- (b) be addressed to the Commissioner or the relevant local authority, as the case requires; and
- (c) be signed by the organiser.

(2) The notice must contain the following particulars –

- (a) the name of the person responsible for organising and conducting the assembly;
- (b) the address for service on the organiser of any notice under this Act;
- (c) the name and address of the person by whom the notice is given;
- (d) the day on which the assembly is proposed to be held;
- (e) the place at which the assembly is proposed to be held;
- (f) the time at which it is proposed that persons will assemble to participate in the assembly;
- (g) the times at which it is proposed that the assembly will begin and end;
- (h) if the assembly is a process –
 - (i) the proposed route of the procession; and
 - (ii) any places at which it is proposed that the procession will stop; and
 - (iii) the length of time it is proposed that the procession will remain at each such place;
- (i) the expected number of participants;
- (j) the purpose of the assembly;
- (k) a description of any sound amplification equipment proposed to be used during the assembly.

10. Approval of public assembly

- (1) A public assembly is taken to have been approved for the purposes of section 7(c) if, after the giving of the assembly notice for the assembly –
 - (a) the required notice of permission for the assembly has been given to the organiser of the assembly; or
 - (b) if the assembly notice was given not less than 5 business days before the day on which the assembly is held – a Magistrates Court has not made an order under section 12 refusing to authorise the holding of the assembly; or
 - (c) if the assembly notice was given less than 5 business days before the day on which the assembly is held – a Magistrates Court has made an order under section 14 authorising the holding of the assembly.

- (2) The required notice of permission for a public assembly is –
- (a) a notice by the Commissioner stating that the Commissioner does not oppose the holding of the assembly; and
 - (b) if the assembly notice was given to a local authority – a notice by the local authority stating that the authority does not oppose the holding of the assembly; and
 - (c) if the place of assembly is a place for the time being open to or used by the public by the express or implied consent of the owner or occupier or on payment of money – a notice by the owner or occupier of the place consenting to the holding of the assembly.
- (3) A notice mentioned in subsection (2) must be in writing.”

[23] Finally, s 12 of the Act provides for the recipient of an assembly notice under s 8 of the Act to apply to the Magistrates Court for an order refusing to authorise the holding of the assembly the subject of the notice.

Local Law

[24] The Local Law deals with a variety of circumstances relevant to the operation of the City of Brisbane. The objects of the Local Law include the management and regulation of activities in the Queen Street Mall. Chapter 3 deals specifically with malls. Section 15 provides that Chapter 3 is about:

“managing and regulating activities in malls, in particular:

- (a) providing consistent management and regulation of activities in the public spaces in the inner city including King George Square;
- (b) regulating activities in or abutting Queen Street Mall, Chinatown Mall, the Valley Mall, and King George Square –
 - (i) to safeguard the health, safety and amenity of persons using those area or affected by activities in or abutting those areas; and
 - (ii) to enhance the appearance of those areas.
- (c) providing for Council consent to be required for certain activities.”

[25] Section 16 of the Local Law provides that the Chapter applies in addition to and without limiting Chapter 5 “Use of Council Assets”. Section 17 provides that any activity specified in column 1 of Table 1 of Schedule 1 of the Local Law requires Council consent and that any activity specified in column 1 of Table 2 of Schedule 1 is prohibited. Council may also consent to an activity not provided for in this part

and may make further provision about regulated and prohibited activities in malls by subordinate Local Law.

[26] Schedule 1 contains details of the activities allowed in malls. It provides:

“

Activities in malls	
Table 1 – Regulated activities and prescribed penalties	
Column 1	Column 2
Regulated activity	<i>Maximum penalty for sections 68 and 69</i> (penalty units)
Distributing any written material, or communicating any advertising matter by means of any placard, board, banner or article of a similar nature	20
Delivering any public address except at a location designated by council	50
Soliciting, gathering or collecting subscriptions or contributions	20
Carrying on or soliciting for any business	50
Singing, chanting, playing a musical instrument, dancing, busking, reciting, miming or entertaining other persons	20
Setting up or using any stall, stand or cooking or beverage facility for the purpose of offering for sale any goods, or for the pursuit of any business	50
Mall outdoor dining	50
Operating a mall venue	50
Stacking or storing any goods	20
Selling or exposing for sale any goods	20
Setting up any stall, stand, table or chair or cooking or beverage facility for the purposes of offering mall outdoor dining	50
Operating any tool or machinery, or using an amplifying device to amplify any word, music or sound – (a) in a mall area; or (b) on land or from a building abutting a mall; if the noise generated by the operation of the tool or machinery, or the amplified word, music or sound, is audible in the mall.	50

Activities in malls

Table 2 – Prohibited activities and prescribed penalties

Column 1	Column 2	
Prohibited activity	Maximum penalty for Section 71 (penalty units)	
	Individual	Corporation
Affix any notice, advertisement, sign, placard or the like to any post, tree, building, wall barrier, fence or other structure	50	
Walk on, run on or otherwise interfere with gardens or plants	20	
Throw or discharge any missile or object	20	
Spit in a mall or area abutting a mall	20	
Climb or interfere with any tree, statue or structure	20	
Wade, swim, wash or interfere with the water in any pool or pond	20	
Engage in any sporting game whether organised or impromptu	20	
Conduct a public assembly which is not authorised under the <i>Peaceful Assembly Act 1992</i>	20	
Deliberately or maliciously interrupt, disturb or frustrate other mall users and/or the conduct of any authorised ceremony or lawful gathering of people	50	
Obstruct or unreasonably disturb any person lawfully using a mall	50	
Camp, lodge, sleep rough or stay over night	20	

[27] Chapter 5 of the Local Law contains restrictions and conditions on the use of Council assets. Section 24 provides:

“A person may go on to, or stay on, or use, or attempt to use, council assets only –

- (a) as provided in this local law; or
- (b) as provided in an agreement with council; or
- (c) as authorised under another law.”

[28] Chapter 7 of the Local Law provides for the Council’s consent. Relevantly, s 46 provides that a person may apply to Council for a consent by lodging an application in the appropriate form accompanied by any prescribed application fee and other relevant material. Section 47 provides matters to be taken into account by Council assessing the application. Section 48 provides the Council may approve or refuse the

application or approve the application subject to conditions. The subject matter for those conditions are broad ranging and are specified in s 49 of the Local Law.

- [29] Section 68 of the Local Law provides that it is an offence for a person to fail to obtain consent as required by the Local Law.

Applicant's submissions

- [30] The applicant submits that leave to appeal ought to be granted as the primary Judge made a clear error of law in finding that an authorised public assembly under the Act was subject to the constraints contained in s 5(4) of the Act. That error has resulted in a substantial injustice for the applicant in that he has been convicted of the breaches. Further, the correction of the primary Judge's interpretation has general importance, having regard to the objects of the Act.
- [31] The applicant submits the primary Judge erred because a proper interpretation of the Act, in accordance with its objects, results in a conclusion that once the requisite notices have been given in accordance with the Act, such that the assembly becomes an authorised public assembly, there can be no further restriction imposed on the conduct of that authorised public assembly provided it is peaceful and in accordance with the conditions set out in that notice. The Local Law is inconsistent with the correct interpretation of the Act. The Act has precedence in such circumstances.

Respondent's submissions

- [32] The respondent submits that leave to appeal should be refused because no error requiring correction has been identified by the applicant and there is no substantial injustice to the applicant. There is also no matter of general principle to be corrected.
- [33] The respondent submits that s 5 of the Act enshrines an individual's right to assemble provided it is peaceful. Section 5(4) of the Act provides an exception in relation to assemblies in pedestrian malls. The right to assemble in those areas may properly be the subject of regulation. The provisions of the Local Law regulate the right of assembly in the Queen Street Mall. It is valid and in accordance with the Act.
- [34] The respondent submits the giving of notice in accordance with the Act, thereby engaging an authorised public assembly under the Act, does not alter the operation of s 5(4) of the Act. The purpose of a participant in an assembly issuing the appropriate notice is that the assembly becomes an authorised public assembly, thereby ensuring the participant in that assembly has immunity from civil or criminal liability for obstruction of a public place in the course of that assembly.
- [35] The respondent submits the immunity so granted is limited to obstruction of a public place. It does not apply to other offences. It does not limit a participant's liability, both civilly and criminally in relation to conduct which does not constitute obstruction of a public place but which is otherwise unlawful.

Discussion

- [36] A consideration of the objects of the Act establishes two premises. First, the Act enshrines a person's right to participate in a peaceful assembly in public. Second, the exercise of that right is subject to such restrictions as are necessary and reasonable in the interests of public safety, public order and the protection of the rights and freedoms of other persons. That latter reference relates to a balance of the right of

persons to participate in peaceful assembly against the rights of other members of the public to enjoy the natural environment and to carry on business.

- [37] The proper interpretation of the inter-relationship between sections 5 and 7 of the Act must be considered in the context of those objects. Allowing for those objects, there is no inconsistency between those provisions.
- [38] Section 5 enshrines a person's right to assemble peacefully with others in a public place, subject to such restrictions as are necessary and reasonable in the interest of public safety, public order and the protection of the rights and freedoms of other persons. However, s 5(4) provides that in respect of the exercise of a right to assemble peacefully in pedestrian malls, the power of a local authority to regulate those areas is not limited by s 5, subject to a person's right to assemble peacefully with others in a public place.
- [39] Section 7 deals with a specific type of public assembly. It provides that where an appropriate notice of intention to hold the public assembly has been given and that notice complies with the requirements of the Act, a public assembly held in accordance with the particulars of the notice and any relevant conditions attached to the assembly is an authorised public assembly. An authorised public assembly held substantially in accordance with the relevant particulars and relevant conditions provides a specific legal immunity for its participants.
- [40] That legal immunity is not unlimited. The legal immunity only relates to the incurring of civil or criminal liability "because of the obstruction of a public place". The immunity does not prevent a participant in an authorised public assembly from liability for other offences or conduct undertaken in the course of that public assembly which does not constitute obstruction of a public place.
- [41] Once it is understood that sections 5 and 7 of the Act are complimentary provisions, there is no inconsistency between the operation of s 5(4) of the Act and an authorised public assembly in a pedestrian mall. An authorised public assembly held in a pedestrian mall must still comply with the requirements of the relevant local authority, provided those requirements do not constitute unnecessary and/or unreasonable restrictions on the person's right to assemble peacefully with others in that pedestrian mall.
- [42] The provisions of the Local Law do not constitute unnecessary or unreasonable restrictions on that right. Chapter 3 of the Local Law regulates activities within pedestrian malls which of their very nature contain large numbers of persons seeking to enjoy the natural environment and/or carry out their business. Section 15 of the Local Law expressly acknowledges that purpose in the management and regulation of pedestrian malls.
- [43] Against that background, requirements that permission first be obtained for specified regulated activities, including the distribution of written material and the operation of amplifying equipment, are necessary and reasonable requirements. The distribution of material and the use of such equipment directly impacts on the ability of users of the Mall to enjoy its natural environment and its businesses.
- [44] If the holders of that public assembly wish to distribute written material or communicate otherwise, including by use of an amplifying device, they must make

application to the local authority, such application requires the payment of a fee. That requirement is not inconsistent with the provisions of the Act.

- [45] Whilst s 2 of the Act specifies that one of the objects of the Act is to ensure the right of a person to participate in public assemblies may be exercised without payment of a fee, charge or other amount for a licence, permit or other authorisation, the regulated activities in Table 1 of Schedule 1 of the Local Law do not impose the payment of a fee on a person's right to participate in a public assembly in the Queen Street Mall. That right may be exercised without the payment of a fee.
- [46] That conclusion is not affected by the prohibited activities specified in Table 2 of Schedule 1 of the Local Law. Those prohibited activities, which include conducting a public assembly which is not authorised under the Act must be read in the context that the Act provides for the holding of both authorised and non-authorised public assemblies. A person has a right to participate in a public assembly pursuant to s 5 of the Act, even though that person has not complied with the requirements of s 7 of that Act. Such a public assembly, if held peacefully, is authorised by the Act. The Act also authorises the holding of what is a defined authorised public assembly. The difference between those two assemblies is the existence of an immunity for the participants in an authorised public assembly from civil or criminal liability because of the obstruction of a public place.
- [47] These conclusions are consistent with statutory construction principles. The existence of a limited and specific immunity supports a construction which excludes the general immunity contended for by the applicants. The existence of such a general immunity is inconsistent with the intent of the legislature.
- [48] These conclusions are also consistent with a consideration of the relevant extrinsic material. That material reveals that the genesis for the passing of the Act was that a person's right to participate in public assemblies had previously been severely restricted by legislative and other restraints. The Act was intended to ensure that right was enshrined by legislation, subject to necessary and reasonable restrictions in the interests of public safety, public order or the protection of others' rights and freedoms. In the second reading speech, the Attorney-General specifically noted the existence of such restrictions and, further, that peaceful assemblies may be both authorised and unauthorised, with unauthorised assemblies being required to conform to traffic laws and relevant by-laws and regulations.¹
- [49] There is no inconsistency between the provisions of s 5(4) and s 7 of the Act. The holding of an authorised public assembly in accordance with the relevant particulars of the notice given in respect of that public assembly is still subject to the requirements of the Local Law where that authorised public assembly is held in a pedestrian mall such as the Queen Street Mall.
- [50] The requirements of the Local Law that the holder of an authorised public assembly, even where notice has been given of the intention to use amplifying equipment and to distribute written material, must first make application to the relevant local authority for authorisation under the Local Law is not contrary to the provisions of the Act. Such a requirement is consistent with the express terms of s 5(4) of the Act, which operates in respect of an authorised public assembly held in accordance with the notice given under the Act.

¹ Queensland Parliamentary Debates Legislative Assembly, 21 May 1992, 5546.

Conclusions

- [51] The primary Judge correctly concluded that no error had been demonstrated in the decision of the learned Magistrate. No error has been established in the primary Judge's decision to dismiss the appeal. The proposed appeal lacks merit.
- [52] As the issue to be considered in the appeal gave rise to a matter of general importance I would, notwithstanding the lack of merit on the appeal itself, grant leave to appeal but dismiss the appeal.

Orders

- [53] I would order:
1. That leave to appeal be granted.
 2. That the appeal be dismissed.
 3. That the applicant pay the respondent's costs of the appeal, to be assessed on a standard basis.
- [54] **FLANAGAN J:** I agree with the reasons and orders proposed by Boddice J.