DISTRICT COURT OF QUEENSLAND

CITATION:	*Pavlou v Brisbane City Council* [2024] QDC 73
PARTIES:	**PAVLOU, Drew** (appellant) **v** **BRISBANE CITY COUNCIL** (respondent)
FILE NO/S:	2880/23
DIVISION:	Appellate
PROCEEDING:	Appeal pursuant to s 222 of the *Justices Act 1886* (Qld)
ORIGINATING COURT:	Magistrates Court at Brisbane
DELIVERED ON:	23 May 2024
DELIVERED AT:	Cairns
HEARING DATE:	16 May 2024
JUDGES:	Smith DCJA
ORDER:	**1. The appeal is dismissed.** **2. The orders of the Magistrate are confirmed.**
CATCHWORDS:	CRIMINAL LAW – PUBLIC ORDER – Local Government and Public Assemblies – whether requirement to have a permit to advertise matter in the Queen Street Mall – whether the placard relied on was "advertising matter" – where placard brought attention to Tiananmen Square massacre in China in 1989 and sought to debate the question – whether direction had been given by an authorised officer to remove placards MAGISTRATES – COMMENCMENT OF PROCEEDINGS – PARTICULARS AND CONTENT OF INITIATING PROCESS – DUPLICITY, AMBIGUITY AND UNCERTAINTY – ELECTION – whether charge was duplicitous – where the appellant was charged with displaying "advertising matter" contrary to the Local Law – whether the Magistrate erred in law as to the construction of the charge – where the prosecution made an election – whether the Magistrate permitted to go behind this election CONSTITUTIONAL LAW – whether the provision contrary to implied right of free speech – whether restrictions under the Local Law are reasonable and proportionate HUMAN RIGHTS – whether s 21 of the *Human Rights Act 2019* (Qld) applied– whether the Local Law reasonably

limited such rights under s 13 of the *Human Rights Act 2019* (Qld)

Acts Interpretation Act 1954 (Qld) ss 7, 14A, 14B
Charter of Human Rights and Responsibilities Act 2006 (Vic) s 38
City of Brisbane Act 2010 (Qld) ss 29, 231, 232
Justices Act 1886 (Qld) ss 48, 222, 223
Human Rights Act 2019 (Qld) ss 4, 13, 21, 48
Local Government (Queen Street Mall) Act 1981 (Qld) s 9
Public Land and Council Assets Local Law 2014 ss 2, 15, 17, 46, 47, 59, 68, 72, schedule 1
The Australian Constitution 1901 (Cth)

Allesch v Maunz [2000] HCA 40 ; (2000) 203 CLR 172, applied
Attorney-General for the State of South Australia v Adelaide City and others [2013] HCA 3; (2013) 249 CLR 1; (2013) 192 LGERA 185, applied
Brisbane City Council v Carmody [2018] QMC 16, considered
Deputy Commissioner of Taxation v Rotary Offset Press Pty Ltd (1971) 45 ALJR 518, considered
EMI Australia Pty Ltd v Commissioner of Taxation (1994) 29 ATR 626; (1994) 94 ATC 5008, considered
Ex parte Bowen; Re Blumer (1961) 62 SR (NSW) 215; 78 WN 1177; [1962] NSWR 445, considered
Ex Parte Tziniolis v Harvey (1959) 76 WN (NSW) 686, considered
Hemelaar v BCC [2017] QCA 241; (2018) 2 Qd R 526; (2017) 227 LGERA 254, applied
Innes v Electoral Commission of Queensland (2020) 5 QR 623; [2020] QSC 293, cited
Johnson v Commissioner of Police [2024] QSC 2, applied
Johnson v Miller (1937) 59 CLR 467, applied
Kerrison v Melbourne City Council [2014] FCAFC 130; 228 FCR 87, (2014) 203 LGERA 169; (2014) 314 ALR 241, considered
Monis v R [2013] HCA 92; (2013) 249 CLR 92, cited
R v A2 [2019] HCA 35; (2019) 269 CLR 507; (2019) 373 ALR 214; (2019) 277 A Crim R 539, applied
Robinson Helicopter Co Inc v McDermott [2016] HCA 22; (2016) 331 ALR 550; (2016) 90 ALJR 679, applied
Rotary Offset Press Pty Ltd v Deputy Commissioner of Taxation (1972) 46 ALJR 609, cited

COUNSEL: Mr A Morris KC for the appellant
Mr A Scott KC with Ms S Marsh for the respondent

SOLICITORS: Self-represented appellant
City Legal Brisbane City Council for the respondent

Introduction

[1] The appellant appeals a decision made in the Brisbane Magistrates Court on 3 October 2023 by which he was convicted of one offence of failing to obtain consent contrary to s 68 of the *Public Land and Council Assets Local Law 2014* ("the Local Law") and one charge of failing to comply with an oral direction contrary to subsection to 72(1) of the Local Law.

[2] Without convictions being recorded, the appellant was fined $1,000 on both charges and ordered to pay court costs of $2,000 together with a filing fee. He was given three months to pay the fine. In default of payment the matter was referred to SPER.

[3] The appellant raises a number of grounds of appeal in his notice of appeal. I will return to these later in the judgment.

[4] This appeal is by way of rehearing.[1] As a consequence, I need to review the evidence led below giving due weight to the Magistrate's findings. The appeal should not be allowed unless the order the subject of the appeal is the result of some legal, factual or discretionary error[2]. As to findings of fact, an appeal will not be allowed unless the Judge's findings of fact are clearly wrong.[3]

Charges

[5] The charges were brought by way of complaint and summons.

[6] Charge 1 read:

> "On 17 May 2022 at Brisbane in the State of Queensland being within the central division of the Brisbane Magistrates Court District, Drew Pavlou did fail to obtain consent to carry out a regulated activity contrary to s 68 of the *Public Land and Council Assets Local Law 2014*.
>
> Particulars:
>
> On 17 May 2022, Drew Pavlou did communicate an advertising matter by means of a placard on Adelaide Street, Brisbane, which abuts the Queen Street Mall.
>
> Communicating advertising matter by means of any placard, board, banner or article of a similar nature is a regulated activity under the *Public Land and Council Assets Local Law 2014*.
>
> A regulated activity requires the consent of Brisbane City Council.
>
> No consent was given by Brisbane City Council to Drew Pavlou for the regulated activity."

[7] Charge 2 read:

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1 Section 223 of the *Justices Act 1886* (Qld).
2 *Allesch v Maunz* [2000] HCA 40 ; (2000) 203 CLR 172 at pp 180-181.
3 *Robinson Helicopter Co Inc v McDermott* [2016] HCA 22; (2016) 331 ALR 550; (2016) 90 ALJR 679 at [43].

> "On 17 May 2022 at Brisbane in the State of Queensland being within the central division of the Brisbane Magistrates Court District, Drew Pavlou did fail to comply with an oral direction contrary to s 72(1) of the *Public Land and Council Assets Local Law 2014*.
>
> Particulars:
>
> On 17 May 2022, Drew Pavlou was given an oral direction by an authorised person to stop engaging in conduct in contravention of the *Public Land and Council Assets Local Law 2014* in that Drew Pavlou was directed by Luke Laine an authorised person to stop communicating advertising matter by means of a placard, being a regulated activity for which Drew Pavlou failed to obtain consent.
>
> Drew Pavlou did not comply with the oral direction."

Proceedings below

[8] The trial proceeded on 12 September 2023. The prosecutor tendered a certificate dated 28 August 2023 pursuant to sections 231 and 232 of the *City of Brisbane Act 2010* proving that Luke Laine was an authorised officer pursuant to ch 3, Pt II of the Act and the Council's Local Laws. Additionally, the exhibit contained a copy of the Local Law. Exhibit 2 was a document which showed that Queen Street Mall had legally been established.

[9] There was no dispute at the trial that the Queen Street Mall covered the eastern footpath of Adelaide Street between George and Edward Street where the appellant was located.[4]

[10] Luke Laine was then called to give evidence. He was the Senior Customer Liaison Officer with the Brisbane City Council. His duties involved investigating alleged Local Law breaches within the Queen Street Mall and other malls. On 17 May 2022, he was notified about a potential Local Law breach in the mall precinct. On arrival at the scene, he observed Queensland Police in attendance with a member of the public and they obtained information from the police. He observed the appellant sitting at a foldaway table with placards around the table. He determined there had been breaches of the Local Law. The location was outside 79 Adelaide Street, Brisbane City. Mr Laine then made the appellant aware of the breaches that were occurring and directed him to cease the activities. Mr Laine formed the view there were breaches of the Local Law because the applicant was displaying placards in support of a political campaign and he had set up a structure obstructing the walkway.

[11] Four photographs of the appellant with a sign "nothing happened June 4 1989 change my mind", a Senate sign and a political brochure were taken and tendered as Exhibit 3. The appellant was advised that if he did not cease the activity, he would receive a penalty infringement notice. He did not appear to cease conducting the activity and the infringement notice was issued. Mr Laine allowed the appellant several minutes to cease the activity and to stop displaying the placards, but it became obvious the direction was not going to be followed, so he issued an oral

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[4] Queensland Government Gazettes No 51 5 June 1998 and No 65 12 March 2010.

compliance direction under the Local Law to cease the activity. The appellant did not follow that direction and another penalty infringement notice was issued.

[12] In cross-examination, the witness explained the date stamps on the photographs. He conceded that the hand-written sign did not offer any product for sale nor was he doing anything of a commercial nature. The witness conceded that at one point the appellant turned over the printed placard so it could not be seen but the activity of displaying the other placards did not cease after the direction. The other placards included the one he was holding about 1989. At that point in time the video recording of Mr Laine was played. The witness gave evidence that CCTV footage from the City Safe Camera was not useful as it was obstructed. He said that at one point the appellant and his associates argued their activities did not constitute breaches as the constitution gave them immunity to carry out their activities. After being played the recordings, he admitted he did not hear the word constitution being mentioned but persisted with his evidence that it was said that day. He admitted using the word "displaying advertising material". The witness contended that the appellant was communicating the contents of the sign to people in the mall. He agreed that the appellant had placed one sign a centimetre off the ground facing down. He didn't dispute that his colleague Mr Menhere had said to him "it can be hard if they aren't displaying anything." After the appellant complied with his direction to put the sign down no one saw what was on the sign. He admitted saying to the appellant that he could have him arrested. The words "nothing happened June 4 1989 change my mind" did not convey anything to him. It was information on a placard. It is possible it informed someone of something. He had not identified a person to whom information had been communicated. There was no reason why Mr Menhere was not called to give evidence.

[13] In re-examination he said that after the oral compliance notice was given the appellant did nothing but hold the sign one centimetre off the ground. He believed there were three placards in total, but the photos only showed two. He could not recall where the other signs were while he was hiding the sign one centimetre off the ground. 79 Adelaide Street is the ground floor of the Commonwealth Bank building.

[14] The recording was marked as Exhibit 4.

[15] The appellant's lawyer submitted there was no case to answer. Assuming there was a lawful direction to cease doing what he did, the only witness for the prosecution was incapable of saying whether the second placard that was on display after he had given the direction said anything. It is submitted that the words "nothing happened June 4 1989 change my mind" communicated nothing. It was not advertising and it could not be understood to be promoting or putting forward anything or encouraging. For the charge to be made out there needed to be a communication of advertising matter. The most the placard would do, was to cause people to stop, look and think and wonder what it was about. Also, the section 21 of the *Humans Right Act* 2019 (Qld) ("the HRA") applied and the Local Law should be read subject to that section.

[16] The prosecution submitted that the elements of the offence were made out. The images showed the appellant advertising his candidacy for the Democrat Alliance. The second placard clearly referred to the Tiananmen Square massacre.

[17] With respect to freedom of political expression, the prosecution relied on the High Court decision of *Attorney-General for the State of Australia v Adelaide City Corporaion* [5] and *Hemelaar v BCC.*[6] The BCC can make laws for the peace order and good government. The Local Law did not prevent the appellant from communicating his message. It just required consent to do so beforehand. After the direction was given to stop he did not comply with this and continued to display the placard. There was a case to answer.

[18] The Magistrate after considering the submissions returned to the Court and suggested there may have been duplicity in Charge 1 as there were a number of signs involved. The prosecution submitted that the Court only had to find that one or both of the placards displayed advertising matter to find the appellant guilty. Alternatively, there was a power under s 48 of the *Justices Act* where there was a variance in evidence to amend the complaint to a "placard or placards".

[19] The defence submitted that there was duplicity in the charge and as a consequence it was for the prosecution to "nail its colours to its mast" and say which placard it relied upon. It may be the handwritten one, the printed one or the brochure on the table. The defence had run the case on the basis that it was handwritten placard. If the prosecution chose to rely on more than one placard, then the trial should be aborted.

[20] After taking instructions, the prosecution elected to proceed on the basis that the placard alleged for Charge 1 was the placard stating, "nothing happened on the 4th June 1989 change my mind".

[21] The appellant's counsel submitted that the no case submission was infinitely stronger. The placard was meaningless to the council officer. It did not give information to the public. At worst it was a piece of satire. In any event, it was permitted under the HRA. The appellant would not have committed the offence if on the other side of Adelaide Street. The man was simply expressing an opinion widely held by right thinking people in the community.

[22] The prosecution relied upon the Magistrate's decision in *BCC v Carmody.*[7] The message was clearly political about a political matter. There was no requirement it be understood by anybody. The prosecution tendered written submissions on the question of political communication.

[23] The matter was then adjourned to 3 October .

Ruling by the Magistrate

[24] The Magistrate said that the prosecution maintained its position with respect to the drafting of Charge 1 in that it was not duplicitous. This seems to ignore the election by the prosecution previously. The Magistrate found there was evidence capable of supporting a guilty verdict in light of the fact the case involved all of the placards and the no case submission was rejected.

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5 [2013] HCA 3; (2013) 249 CLR 1; (2013) 192 LGERA 185; (2013) 87 ALJR 289.

6 [2017] QCA 241; [2018] 2 Qd R 526; (2017) 227 LGERA 254. I note special leave was refused in this case- [2018] HCASL 1.

7 [2018] QMC 16.

[25] The defence submitted that in light of that ruling, there was no alternative open but for the Court to enter verdicts of guilty and proceed to sentence.

[26] The Magistrate referred to the charges and the evidence. He then referred to the provisions of the Local Law. He was satisfied that the handwritten placard "nothing happened June 4 1989 change my mind" was clearly a political message to capture the attention of the public. He was satisfied the written placard was communication of an advertising matter. He was further satisfied that the printed placards evidenced in the photographs were also such a communication.

[27] The Magistrate referred to sections 13 and 21 of the HRA and found that the Brisbane City Council under the Local Law was not attempting to restrict a human right or freedom of expression. The provisions of the Local Law do not constitute unnecessary or unreasonable restrictions on that right. He found the elements of Charge 1 proved.

[28] With respect Charge 2, the Magistrate referred to the evidence of Mr Laine. The appellant did turn over one printed placard but there were still placards around the table. The appellant was given an oral direction to pack up the signs but failed to do so. In the circumstances, he found the appellant guilty of Charge 2.

[29] The sentence then proceeded and the orders to which I referred to earlier were made.

Submissions of the Appellant

[30] Firstly, despite the prosecution electing to proceed only on the handwritten placard for charge 1, the Magistrate relied on all of the placards to convict on Charge 1. This is an error of law and constitutes a denial of natural justice.

[31] Secondly, it is submitted the Magistrate erred in law in concluding that the handwritten placard constituted "advertising matter" as defined in column 1 of table 1 in sch 1 to the Local Law. It conveyed no intelligible information and was not "advertising".

[32] Thirdly, the Magistrate erred in concluding that the act of the appellant in displaying the written placard was not protected by s 21(2) of the HRA bearing in mind the placard was near the consulate of The People's Republic of China.

[33] Fourthly, it is submitted that the footpath did not form part of the Queens Street Mall in any relevant, practical or operational sense. In those circumstances, contrary to the HRA the Local Law unreasonably restricted his rights.

[34] Fifthly, the Magistrate erred in concluding that the act of the appellant in displaying the handwritten placard was not protected by the implied freedom of political communication under the Australian Constitution.

[35] Sixthly, as regards to Charge 2, the only direction was a direction to "pack up" and was not an oral compliance direction under s 59 of the Local Law. In any event, the appellant complied with a direction by placing any advertising material face down.

[36] In oral argument Mr Morris KC submitted that the case of *Deputy Commissioner of Taxation v Rotary Offset Press Pty Ltd*[8] was not distinguishable and supported the contention there was a restricted meaning to the words given the earlier reference to "written material."

[37] It was also submitted that ss 4 and 48 of the HRA required that the words of the Local Law to be interpreted in conformance with section 21 of the HRA given the ambiguity present.

Submissions of the respondent

[38] The respondent submits that the Local Law is made under s 29 of the *City of Brisbane Act 2010* (Qld). The object of the Local Law includes provision for the management and regulation of activities in or on malls in the city. Chapter 7 of the Local Law provides the requirement to seek consent. Section 68 of the Local Law is the offence provision for failing to obtain consent and s 59 of the Local Law provides a power on an authorised person to direct a person from stopping the conduct.

[39] With respect to the ground concerning duplicity, it is submitted that the Court was entitled to have regard to all of the context of the evidence. It is submitted there was no prejudice in the Magistrate taking the approach which he did. There was no denial of natural justice.

[40] As to the ground that the written placard did not constitute "advertising material" it is submitted that the meaning of "communicating any advertising matter" is a matter of statutory construction. The respondent relies on *BCC v Carmody*.[9] There is no requirement for proof of a commercial aspect.

[41] As to grounds 3, 6 and 9 (the rights and freedom grounds) it is submitted that the rights in s 21 of the HRA may be limited by reason of s 13.[10] The Magistrate was correct in finding that the Local Law did not constitute unnecessary or unreasonable restrictions of the s 21 HRA right. Also, there was no implied protection in this case. The appropriateness of the restrictions need to be considered.[11] The case of *Kerrison v Melbourne City Council*[12] is also relied on.

[42] Many of the same arguments are made concerning the other grounds of appeal.

[43] As to the direction that he was told to pack up, the evidence made it clear that the oral compliance direction was given to cease displaying the material. In any event, packing up falls within s 59 of the Local law. The evidence justifies the conclusions reached by the Magistrate.

[44] In oral submissions Mr Scott KC sought to distinguish *Rotary Offset* bearing in mind the context in which the words were used.

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8 (1971) 45 ALJR 518.
9 [2018] QMC 16.
10 *Innes v Electoral Commission of Queensland* (2020) 5 QR 623; [2020] QSC 293.
11 *Attorney-General for the State of South Australia v Adelaide City Corporation* [2013] HCA 3; (2013) 249 CLR 1; (2013) 192 LGERA 185; (2013) 87 ALJR 289.
12 [2014] FCAFC 130; (2014) 228 FCR 87; (2014) 203 LGERA 169; (2014) 314 ALR 241.

[45] It was stressed that the context of the Local Law supported the contention that the words were of wide import bearing in mind the mischief the statute was attempting to address– foot traffic.

[46] It was also submitted that the HRA was not of much relevance bearing in mind the words can easily be understood, but regardless the restriction was reasonable. It did not ban political communication.

Discussion

The duplicity point

[47] Having considered all of the evidence and the submissions, in my respectful opinion the Magistrate erred in his approach to this matter. The prosecution had clearly taken instructions on the issue of duplicity and clearly elected to proceed only with respect to the handwritten placard.

[48] The importance of an election being made in the case of a duplicitous charge sheet was discussed in *Johnson v Miller*[13] where Dixon J noted the importance of a defendant being apprised of the transaction relied on by the prosecution. It is incumbent on the prosecution to specify exactly what matters are relied on.[14]

[49] In those circumstances, I consider that it was an error without hearing further submissions or amending the complaint to rely on all of the signs and placards for the purpose of Charge 1.

[50] In the circumstances, the prosecution, absent further argument, should have kept to its election that Charge 1 involved the handwritten placard. It was unfair to do otherwise.

[51] I will then approach the rehearing on the basis that Charge 1 relates solely to the handwritten placard.

Were the elements of Charge 1 proved

[52] Section 68 of the Local Law provides:

> "**68 Failure to obtain consent**
>
> A person must not fail to obtain a consent required by this local law.
>
> Maximum penalty — consent required under Chapter 3, as set out in Column 2 of Table 1 of Schedule 1."

[53] Table 1 column 1 provides that regulated activity is "distributing any written material, or communicating any advertising matter by means of any placard, board, banner or article of a similar nature."

[54] The charge itself here read "communicate an advertising matter by means of a placard." The question here is whether the placard "nothing happened June 4 1989:

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13 (1937) 59 CLR 467 at p 489.
14 (1937) 59 CLR 467 at p 491.

change my mind" communicated "advertising matter". Contrary to the defence submissions, I think the placard was capable of communicating. The placard drew attention to itself and communicated a proposition. I note that section uses the word "communicating" not communicated.

[55] I think the real issue here is whether the placard was communicating "advertising matter."

[56] In construing the meaning of words in a statute, one must have regard to the approach taken by the High Court. In *R v A2*[15] Kiefel CJ and Keane J noted that:

(a) One must first consider the words of the statute, but the matter does not end there.

(b) The context of the statute however may point to against an ordinary meaning of the words. Therefore the context needs to be considered.

(c) Context includes the surrounding statutory provisions and the statute as a whole. This extends to the mischief the statute is trying to remedy.

(d) Though the actual words should not be lost sight of and the general purpose of the statute may not detract from the words .

[57] Provisions of the *Acts Interpretation Act 1954* (Qld) may also be relevant[16] including:

(a) An interpretation to best achieve the Act's purpose (section 14A).

(b) Extrinsic material may be used in some case (section 14B).[17]

[58] The term "advertising matter" is not defined in the Local Law.

[59] The respondent relies on *Brisbane City Council v Carmody*[18]. Magistrate Previtera referred to the Macquarie Dictionary definition which states;

> "1. to give information to the public concerning, make public announcement of, by publication and periodicals, by printed posters, by broadcasting out of the radio, television, etc: to advertise a reward.
>
> 2. to offer (an article) for sale or (a vacancy) to applicants etc: by placing an advertisement in a newspaper, magazine etc."

[60] In *Carmody* the defendant was carrying a billboard which made a political statement concerning refugees. The Magistrate found that the billboard comprised advertising matter within the meaning of the Local Law. This case is not binding on the court.

[61] Other cases have considered the term before.

[62] In *Ex Parte Tziniolis v Harvey*[19] Moffitt AJ was concerned with a case where a person was found guilty of advertising that he was entitled to practice medicine. The

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15 [2019] HCA 35; (2019) 269 CLR 507; (2019) 373 ALR 214; (2019) 277 A Crim R 539.
16 Noting they apply to statutory instruments - see section 7.
17 The parties did not contend here there was relevant extrinsic material.
18 [2018] QMC 16.

relevant sign read "Dr Tziniolis, Physician. Registered in Athens. Not registered in NSW." The conviction was upheld. It was held that "advertising" means to call a matter to the attention of another or make a matter known generally to the public or a section of the public.

[63] In *Ex parte Bowen; Re Blumer*[20] the News South Wales Full Court was concerned with a case where the defendant was found to have contravened Veterinary Surgery regulations, namely he advertised contrary to the regulations. In this case there appears to have been an article and photographs of him in Women's Day. The court held that "advertise" should be considered widely.

[64] In *Deputy Commissioner of Taxation v Rotary Offset Press Pty Ltd*[21] Gibbs J considered a case where a company published a free weekly publication containing particulars of properties on the market and general matters of interest to owners, buyers and tenants. The issue was whether the publication was exempt from sales tax. It was not exempt if it "advertised matter." His Honour found that the word 'advertise" is to make generally or publicly known or to give the public notice of. But in the context of the regulations it had a more limited meaning restricted to published announcements of a business kind. His Honour held that the subjective purpose is not the test. It is to be viewed objectively in light of the surrounding circumstances.

[65] *Rotary Offset* was followed by Hill J in the Federal Court in *EMI Australia Pty Ltd v Commissioner of Taxation*[22] where his honour held that the inserts had to be viewed objectively without regard to the intention of those publishing them.

[66] There is a reasonable argument that the Sales tax cases may be distinguished as the context of the Statute involved business activities.

[67] I now turn to the context of the statute.

[68] Section 2 of the Local Law sets out the objects which include the management and regulation of activities in or on malls. Chapter 3 is about Malls. Section 15 provides it is about regulating activities in or abutting the Queen Street Mall to safeguard the health safety and amenity of persons using those areas and to enhance the appearance of those areas.

[69] Section 46 of the Local Law sets out the means of application for consent.

[70] Section 47 sets the factors to which the council may have regard in considering the application as follows:

> "**47 Assessing applications**

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19 (1959) 76 WN (NSW) 686 at p 689.

20 (1961) 62 SR (NSW) 215; (1961) 78 WN 1177; [1962] NSWR 445.

21 (1971) 45 ALJR 518. Upheld in *Rotary Offset Press Pty Ltd v Deputy Commissioner of Taxation* (1972) 46 ALJR 609

22 (1994) 29 ATR 626; (1994) 94 ATC 5008.

(1) In considering an application, council may have regard to the following—

(a) any constraints arising under its tenure of the relevant land, or applicable planning instruments;

(b) whether the proposed activity may pose a risk to the environment, health or safety of the public or wildlife and vegetation in the area in which the proposed activity is to be carried out;

(c) the effect in a park, or on the neighbourhood surrounding the site of the proposed activity, that the level of light, noise, dust or pollution associated with the activity may have;

(d) the cumulative effect of the proposed and any current activities;

(e) the security, traffic (including parking) and crowd controls and emergency procedures, necessary to ensure the safety, protection and convenience of council employees and the public;

(f) the likely impact on the effectiveness and efficiency of council services;

(g) whether adverse impacts can be adequately mitigated by compliance with conditions imposed on any consent;

(h) whether approvals required by other laws have been obtained; and

(i) the public interest.

(2) In considering the matters under subsection (1), council may—

(a) consult with the occupiers of premises that council determines may be affected by consent to the application; and

(b) consult with other regulatory authorities about the application.

(3) Council may in a subordinate local law specify additional criteria to those set out in subsection (1).

[71] In my opinion in context, the mischief sought to be controlled is an activity which may interfere with the amenity of the mall and the convenience of the public. The effect of the activity is important. Crowd control is also important or as the respondent submitted– foot traffic.

[72] In my respectful opinion "advertising matter" means is to bring "matter" to the attention of the public or a section of the public.

[73] Insofar as the HRA is concerned, section 4 of the HRA requires the court to interpret statutory provisions to the extent possible consistent with their purpose in a way compatible with human rights. This is consistent with section 48 of the HRA. These provisions are engaged here.[23] I would accept that the words are sufficiently ambiguous to allow the HRA to be considered.[24]

[74] For the reasons which later follow I consider that the law is reasonable and proportionate. In my view it is not incompatible with section 21 of the HRA to interpret the words "advertising matter" widely, given the limited restrictions imposed here.

[75] I consider that "advertising matter" would include content of a political nature on a placard. I do not consider the words should be restricted to commercial advertising for example. I consider they are of wide import.

[76] It is my view that the handwritten placard sought to communicate with members of the public or a section thereof. It sought to communicate or bring to the attention or notice to the public or a section of the public, a message. In other words it was a challenge to members of the public or a section thereof or indeed members of the Chinese consulate to engage in political discourse about Tiananmen Square. It may well have been a sardonic statement on the part of Mr Pavlou, but it was still "matter".

[77] Viewed objectively I conclude the handwritten placard advertised matter as contained in the Local Law. I find this element was proved beyond reasonable doubt.

Application of the HRA

[78] There are two relevant provisions to be considered namely s 13 and s 21 of the HRA.

[79] Section 21 of the HRA provides:

> "**21 Freedom of expression**
>
> (1) Every person has the right to hold an opinion without interference.
>
> (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether—
>
> (a) orally; or
>
> (b) in writing; or
>
> (c) in print; or
>
> (d) by way of art; or

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23 *Innes v Electoral Commission of Queensland* [2020] QSC 293; (2020) 5 QR 613 at [211].

24 *Johnson v Commissioner of Police* [2024] QSC 2 at [191]-[199].

(e) in another medium chosen by the person."

[80] Section 13 provides:

> "**13 Human rights may be limited**
>
> (1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.
>
> (2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection (1), the following factors may be relevant—
>
> (a) the nature of the human right;
>
> (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
>
> (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
>
> (d) whether there are any less restrictive and reasonably available ways to achieve the purpose;
>
> (e) the importance of the purpose of the limitation;
>
> (f)the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
>
> (g) the balance between the matters mentioned in paragraphs (e) and (f)."

[81] There is no doubt that the Local Law here imposes a restriction or limitation on the section 21 HRA rights. The question is whether the limitation is unnecessary or unreasonable. To a certain an extent this issue is intertwined with the issue concerning the implied freedom to express political views. It is in that context I turn to the cases.

[82] In *Hemelaar v Brisbane City Council,*[25] the Queensland Court of Appeal was concerned with the convictions of an applicant of eight breaches of a Local Law related to activities undertaken by him in the Queen Street Mall. The applicant was a member of an organisation known as "Operation 512" which intended to make known to members of the public the message of the Bible. This organisation undertook public addresses, literature distribution and had signs and banners. The applicant gave notices of intention to hold a public assembly. The applicant was advised of the need to obtain the council's consent in relation to the use of an amplifier and other materials as part of this assembly. This required payment of a fee. The applicant did not make application or pay the requisite fee. Like in this

[25] [2017] QCA 241; [2018] 2 Qd R 526; (2017) 227 LGERA 254.

case, the applicant had been convicted of a breach of s 68 of the Local Law and failing to comply with a direction of an authorised officer. The Magistrate held that the Council retained the power to regulate the activities of the Queen Street Mall pursuant to s 5(4) of the Act. The Local Law did not prohibit a person's right of peaceful assembly. It regulated that activity in the Queen Street Mall. An appeal to the District Court was dismissed.

[83] The Court of Appeal referred to the *Peaceful Assembly Act 1992* (Qld) and then the relevant Local Law. The Court noted that the *Peaceful Assembly Act* enshrined a person's right to participate in a peaceful assembly in public, but the exercise of that right is subject to such restrictions as necessary and reasonable in the interests of public safety, public order and the protection of the rights and freedoms of other people. Legal immunity in the *Peaceful Assembly Act* is not unlimited. Once it was understood that sections 5 and 7 of the Act were complimentary there was no inconsistency between 5(4) of the Act and an authorised public assembly and a pedestrian law. An authorised public assembly must still comply with the requirements of the relevant local authority provided the requirements do not constitute unnecessary and/or unreasonable restrictions on the person's right to assemble peacefully. In this case, the convictions were valid.

[84] In my opinion, the case is very similar to the present one. Of course, it was decided before the HRA was implemented but the relevant sections considered are very similar to sections 13 and 21 of the HRA in the present case.

[85] In *Kerrison v Melbourne City Council & Ors,*[26] the Full Court of the Federal Court considered a case where the appellant and other members of a group known as "Occupy Melbourne" were participants in a protest involving the occupation of various gardens in Melbourne. The Melbourne City Council was the local authority responsible for the administering of these gardens and had a power to make local laws. The Local Law prohibited camping in tents and other activities in the gardens unless a permit had been granted. The appellant sought to challenge the validity of these prohibitions and enforcement provisions arguing that the relevant provisions were in breach of the implied freedom of political communication contained in the constitution of the Commonwealth and they contravened s 38(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

[86] It was held ultimately that any burden imposed by the Local Law or regulations were reasonably appropriate and adapted to achieve the object of the preservation, care, maintenance and equitable use of the gardens and the making of the Local Law could not be challenged under s 38(1) of the Charter. Again, I consider that case to be very similar to the present case.

[87] The final case to be considered in this context is the High Court decision of the *Attorney-General for the State of South Australia v Adelaide City Corporation.*[27] In that particular case, Messrs Corneloup were members of an incorporated church. They wished to preach and distribute printed material in Rundle Mall and other public places in the City of Adelaide about their religious beliefs. One of the Local Laws of the City of Adelaide provided that no person should preach or tout for business except at the Speakers Corner or such other authorised place. Permission

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26 [2014] FCAFC 130; 228 FCR 87; (2014) 203 LGERA 169; (2014) 314 ALR 241.

27 [2013] HCA 3; (2013) 249 CLR 1; (2013) 192 LGERA 185; (2013) 87 ALJR 289.

though could be given by the Council in writing. It was an offence to not have such permission. The Corneloup's brought proceedings in the District Court of South Australia seeking declarations that by-laws were invalid. The District Court Judge found that they were invalid. The appeal to the Full Court of the Supreme Court of South Australia was dismissed. It was held that the by-law was inconsistent with the implied constitutional freedom of political communication and was invalid.

[88] The High Court reversed the Supreme Court decision. It was held by the majority that the by-laws were valid. The by-law was not unreasonable. In the circumstances, it did not infringe any implied freedom of communication as it served a legitimate end in a manner compatible with the maintenance of the constitutionally prescribed system of representative and responsible government.

[89] It is my respectful opinion that the Local Law here is reasonable and appropriate. In my view, in those circumstances there is no breach of the HRA. I further find that there is no breach on the implied right of the freedom of political communication.

[90] Section 29 of the *City of Brisbane Act 2010* (Qld) provides that the object of the Local Law includes provision for the management and regulation of activities in or on malls in the city.

[91] More specifically under s 9 the *Local Government (Queen Street Mall) Act 1981* (Qld) the respondent was given all powers to do all things necessary for or incidental to the management operation or use of the Mall

[92] Chapter 3 of the Local Law is about managing and regulating activities in malls including the Queen Street Mall and providing for consent to be required for certain activities. What happened here was a regulated activity as it was specified in column 1 table 1 Sch 1. Chapter 7 of the Local Law provides the process for seeking and obtaining the Council's consent to engage in a regulated activity. Section 47(1) provides the considerations to which the Council must have regard.

[93] I accept the limitation was not unnecessary or unreasonable and was permitted under s 13 of the HRA. The limitation, that is the requiring of a consent, does not impermissibly infringe any human right or infringe the right of political speech. It is important that Council regulates activities in the mall for the amenity and safety of the public.

[94] Whilst it could be said there was some burden on the freedom, in my opinion it was reasonably appropriate and adapted to serve a legitimate end in the matter compatible with the maintenance of the constitutionally prescribed system of representative government.[28]

[95] The laws did not prevent free speech. They simply required a consent (easily obtainable) to exercise it.

[96] In the circumstances, I uphold the Magistrate's decision that there was no breach of the HRA or breach of the implied right to political speech.

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[28] *Attorney-General for the State of South Australia v Adelaide City Corporation* [2013] HCA 3; (2013) 249 CLR 1; (2013) 192 LGERA 185; (2013) 87 ALJR 289 at [67-68]. Also see *Monis v R* [2013] HCA 92; (2013) 249 CLR 92 at [129].

[97] In all of the circumstances then, I am satisfied that the elements of the offence of Charge 1 were proved beyond reasonable doubt and the conviction valid.

[98] I now turn to Charge 2.

[99] Having read all of the evidence and having listened to the recording, I am satisfied that a lawful direction was given by the authorised officer. The appellant was given a clear oral compliance direction according to the evidence. The appellant was also asked to pack up and leave Council land. In my opinion, the evidence was clear he did not cease displaying the handwritten placard and the printed material on the table.

[100] In the circumstances, I am satisfied that the elements of Charge 2 were proved beyond reasonable doubt.

Conclusion

[101] In conclusion, I find that the convictions here were valid.

Orders

1. I dismiss the appeal.
2. The orders made by the Magistrate are upheld