

# SUPREME COURT OF QUEENSLAND

CITATION: *Palmer v Commonwealth Director of Public Prosecutions*  
[2026] QSC 147

PARTIES: **CLIVE FREDERICK PALMER**  
(applicant)  
v  
**COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
(first respondent)  
and  
**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
(second respondent)  
and  
**SHARON THERESA CONCISOM**  
(third respondent)

FILE NO/S: BS 2219 of 2026

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 19 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 19 June 2026

JUDGE: Kelly J

ORDER: **The originating application filed 20 May 2025 is dismissed.**

CATCHWORDS: HUMAN RIGHTS – JURISDICTION AND PROCEDURE – QUEENSLAND – where the applicant sought declarations as to the proper construction of s 49(3) of the *Human Rights Act 2019* (Qld)– where the Magistrates Court referred two questions to the Supreme Court under s 49(2) of the Act – where a judge of the Trial Division decided it was inappropriate to answer the questions referred – where the applicant appealed to the Court of Appeal – whether a referral under s 49(2) of the Act remains pending after having been determined by a judge of the Trial Division and where a party has appealed to Court of Appeal

*Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334, cited  
*SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362, considered

*Civil Proceedings Act 2011* (Qld), s 10

*Human Rights Act 2019* (Qld), s 49

COUNSEL: K Byrne for the applicant  
A Freeman KC and G Morgan for the respondents

SOLICITORS: Robinson Nielsen Legal for the applicant  
Office of the Director of Public Prosecutions (Cth) for the respondents

[1] By an originating application filed on 20 May 2026, the applicant seeks a declaration concerning the construction of s 49 of the *Human Rights Act 2019* (Qld) (“the Act”).

[2] The statutory provision is as follows:

**“49 Referral to Supreme Court**

- (1) This section applies if, in a proceeding before a court or tribunal—
  - (a) a question of law arises that relates to the application of this Act; or
  - (b) a question arises in relation to the interpretation of a statutory provision in accordance with this Act.
- (2) The question may be referred to the Supreme Court if—
  - (a) a party to the proceeding has made an application for referral; and
  - (b) the court or tribunal considers the question is appropriate to be decided by the Supreme Court.
- (3) If a question is referred under subsection (2), the court or tribunal referring the question must not—
  - (a) make a decision about the matter to which the question is relevant while the referral is pending; or
  - (b) proceed in a way or make a decision that is inconsistent with the Supreme Court’s decision on the question.
- (4) If a question is referred under subsection (2) by the Trial Division of the Supreme Court, the referral is to be made to the Court of Appeal.
- (5) Despite any other Act, if a question arises of a kind mentioned in subsection (1), the question may only be referred to the Supreme Court under this section.”

[3] On 12 September 2025, the Magistrates Court of Queensland referred questions to the Supreme Court under s 49(2) of the Act. The referral was filed in this Court’s civil registry on 8 October 2025. The filing was by the Magistrates Court (PD 27 of 2019). Upon the filing, the referral was given a proceeding number in the civil registry of the Trial Division (BS 4544 of 2025). Upon the filing, the registry was required to list the matter before an Applications Judge for directions (PD 27 of 2019). On

20 February 2026, the proceeding was heard before a judge of the Trial Division, Hindman J. On 26 March 2026, Hindman J made an order that it was “inappropriate to answer any of the questions referred from the Magistrates Court”. On 13 April 2026, by the filing a notice of appeal, the applicant appealed to the Court of Appeal from the decision of Hindman J. The appeal proceeding is CA1574 of 2026.

- [4] The proposed declaration is in these terms:

“On the proper construction of s 49(3) of the [Act], the referral of questions in Magistrates Court of Queensland proceeding No MAG-44652/20(o) made under s 49(2) of the [Act] are pending until the determination of Court of Appeal proceeding CA1574 of 2026”

- [5] The parties are agreed that the proposed declaration concerns a pure question of construction of the Act. There is no dispute about the principles governing the question of construction. In *SZTAL v Minister for Immigration and Border Protection*, Kiefel CJ, Nettle and Gordon JJ stated:<sup>1</sup>

“The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose. Context should be regarded at this first stage and not at some later stage and it should be regarded in its widest sense. This is not to deny the importance of the natural and ordinary meaning of a word, namely how it is ordinarily understood in discourse, to the process of construction. Considerations of context and purpose simply recognise that, understood in its statutory, historical or other context, some other meaning of a word may be suggested, and so too, if its ordinary meaning is not consistent with the statutory purpose, that meaning must be rejected.”

- [6] The power to grant declaratory relief is conferred by s 10 of the *Civil Proceedings Act 2011* (Qld) and by the Court’s inherent jurisdiction. Whilst the power is recognised as a broad, discretionary power, a declaration will traditionally not be made where it lacks utility or concerns a hypothetical question.<sup>2</sup> The respondents did not contend that the application for a declaration involved an abuse of the Court’s process. The respondents submitted that, as a matter of discretion, the declaration ought not be made because it was hypothetical. That submission referenced an issue raised by the respondents in a notice of contention filed in the appeal proceedings. The issue concerns a threshold question said to go to the “validity” of the subject referral, namely whether it involved a question in the proceeding before the Magistrates Court. I reject the submission that the proposed declaration is hypothetical. It is apparent on the material that there is a real dispute between the parties as to whether, despite the trial judge’s decision on the referral which is binding on the parties, “the referral is pending” within the meaning of s 49(3)(b) by reason of the applicant having commenced the appeal to the Court of Appeal. That dispute is resonating in positions being adopted by the parties in the conduct of the Magistrates Court proceedings.

<sup>1</sup> (2017) 262 CLR 362 at [14].

<sup>2</sup> *Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334 at [47]-[49].

- [7] In support of his construction the subject of the proposed declaration, the applicant submitted that a referred question which had been answered “at first instance but is under appeal remains undecided and awaits decision” and so should be regarded as “pending”. It was submitted that, in circumstances where an appeal had been commenced, a construction which permitted the referral to be regarded as pending until the Court of Appeal had decided the appeal was the construction “most compatible with human rights”. It was submitted that to permit a criminal proceeding to advance before referred questions had been finally determined by the Court of Appeal in the circumstances of an appeal would “put at risk the applicant’s right to a fair hearing and his rights in criminal proceedings”.
- [8] I reject the applicant’s suggested construction.
- [9] Under s 49 of the Act, questions are referred by a court or tribunal to the Supreme Court. It may be accepted that the Supreme Court is divided into two divisions, namely the Court of Appeal and the Trial Division.<sup>3</sup> In the specific situation where a referral originates in the Supreme Court, the Act makes clear that the referral is by a judge of the Trial Division to the Court of Appeal (s 49(4)). That is, in all cases, a referral is made by a court or tribunal, not a litigant. The appeal to the Court of Appeal has been initiated or started by the applicant and in no sense is it properly regarded as part of “the referral” under s 49 of the Act. The language of s 49 of the Act distinguishes between two different circumstances: the circumstance where “the referral is pending” (s 49(3)(a)) and the circumstance where there is in existence “the Supreme Court’s decision on the question” (s 49(3)(b)). In the present case, where the question was referred by the Magistrates Court, the decision of the trial judge constitutes “the Supreme Court’s decision on the question”. The applicant’s unilateral conduct in commencing an appeal from that decision, does not have the consequence of altering the status of the trial judge’s decision as “the Supreme Court’s decision on the question”. The appeal was instituted by the applicant and is a separate proceeding to the referral. Having regard to the text of the statutory provision and the context in which it appears, I am satisfied that in circumstances where a Magistrates Court refers a question to the Supreme Court under s 49 of the Act and a judge of the trial division makes a decision in respect of the referred question, that decision is to be regarded as “the Supreme Court’s decision on the question” for the purpose of s 49(3)(b) of the Act. Any appeal from such a decision is not properly to be regarded as part of a “pending referral”.
- [10] The applicant’s suggested construction would also achieve anomalous consequences. The applicant properly conceded during argument that, according to its construction, the meaning of “the Supreme Court’s decision on the question” within s 49(3)(b) of the Act could vary from time to time depending upon whether one party decided to commence an appeal. According to that construction, “the Supreme Court’s decision on the question” would be the decision of the judge of the Trial Division but only in circumstances where there was no appeal. That construction countenances a situation where, for a period of time after the decision of a trial judge, there could be a decision which was the “Supreme Court’s decision on the question” meaning that there would be no “referral pending” but upon the later commencement of an appeal, there would then be no such decision and there would then be a “referral pending”. That consequence appears, in my consideration, to be highly anomalous and would

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<sup>3</sup> *Supreme Court of Queensland Act 1991* (Qld), s 5(1)(b).

undermine the operation of the provision in practice. Such a construction is not to be preferred.<sup>4</sup> Nor is the construction I have preferred to be regarded as in any sense undermining human rights. The applicant has appealed to the Court of Appeal and his appeal will be heard in accordance with the usual processes of an appeal to the Court of Appeal. It is a matter for the applicant whether he considers it in his interests to apply for any kind of interlocutory order in the Magistrates Court proceeding or in the Court of Appeal pending the outcome of his appeal.

- [11] For these reasons, I decline to make the declaration and dismiss the application.
- [12] I will hear the parties as to costs.

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<sup>4</sup> Herzfeld and Prince, *Interpretation*, 2<sup>nd</sup> ed [9.30].