



Court of Appeal
Supreme Court
New South Wales

Case Name: Raul Bassi v Commissioner of Police (NSW)

Medium Neutral Citation: [2020] NSWCA 109

Hearing Date(s): 06 June 2020

Date of Orders: 6 June 2020

Decision Date: 9 June 2020

Before: Bathurst CJ, Bell P, Leeming JA

Decision:

1. To the extent necessary grant the appellant leave to appeal.
2. Appeal allowed.
3. Declare that the assembly the subject of the notice which is Annexure “B” to the affidavit of Raul Bassi affirmed on 5 June 2020 is an authorised public assembly.
4. No order as to costs.

Catchwords:

APPEAL – whether appeal involved a violation of s 27(2) of the Summary Offences Act 1988 (NSW).

PUBLIC ASSEMBLY – Summary Offences Act 1988 (NSW) – whether public assembly was authorised – whether Commissioner of Police had communicated non-opposition to notification of a proposed public assembly within the meaning of s 23(1)(f) of the Summary Offences Act – whether amendment of particulars to timely notification amounted to a new notice of intention.

Legislation Cited: Summary Offences Act 1988 (NSW) ss 23, 24, 25, 26, 27

Summary Offences Regulation 2015 (NSW) cl 13, Sch
1

Category: Principal judgment

Parties: Raul Bassi (Appellant)
Commissioner of Police (NSW) (Respondent)

Representation: Counsel:
S Lawrence, F Graham (Appellant)
M Spartalis (Respondent)

Solicitors:
Peter O'Brien, O'Brien Criminal and Civil Solicitors
(Appellant)
Nicholas Regener, Makinson d'Apice Lawyers
(Respondent)

File Number(s): 2020/170442

Publication Restriction: N/A

:

Court or Tribunal: Supreme Court of New South Wales

Jurisdiction: Common Law

Date of Decision: 05 June 2020

Before: Fagan J

File Number(s): 2020/168403

[Note: The Uniform Civil Procedure Rules 2005 provide (Rule 36.11) that unless the Court otherwise orders, a judgment or order is taken to be entered when it is recorded in the Court's computerised court record system. Setting aside and variation of judgments or orders is dealt with by Rules 36.15, 36.16, 36.17 and 36.18. Parties should in particular note the time limit of fourteen days in Rule 36.16.]

HEADNOTE

[This headnote is not to be read as part of the judgment]

On 6 June 2020, a public assembly was conducted involving an initial gathering at the Sydney Town Hall and then a procession to Belmore Park. Notice of Intention to hold a public assembly had been given by the Appellant to the Commissioner of Police (NSW) (the Commissioner) on 29 May 2020 in accordance with s 23 of the *Summary Offences Act 1988* (NSW) and a form prescribed by the *Summary Offences Regulation 2015* (NSW). As originally notified, the Appellant as organiser of the proposed assembly had contemplated a vigil of up to 50 people at Belmore Park.

In the course of the week leading up to the proposed assembly, the Appellant became conscious of the fact that many more than 50 people were likely to convene and that a new venue would be required. In a meeting with the Police on 4 June 2020, he suggested that an assembly of up to 5000 would convene at the Sydney Town Hall and process to Belmore Park.

The Appellant understood that the Commissioner agreed with this change of proposal and did not oppose the conduct of an assembly in amended form. An email sent by the Police to the Appellant on 4 June 2020 appeared to support this view. On 5 June 2020, however, the Commissioner of Police commenced proceedings to prohibit the conduct of the proposed public assembly.

In an urgent hearing in the afternoon and early evening of 5 June 2020, the primary judge held that the Commissioner had not in fact agreed to the assembly in amended form on 4 June 2020, that the amendment amounted to a new notice of intention within the meaning of the *Summary Offences Act* and, not having been made within 7 days of the proposed assembly, the Appellant was required to obtain authorisation from the Court for the proposed assembly in amended form pursuant to s 26 of the *Summary Offences Act*. The primary judge refused an oral application for authorisation on the basis that public health considerations associated with the COVID-19 pandemic outweighed the importance of orderly public protest.

The principal issues on appeal were:

- (1) whether the primary judge erred in concluding that the Appellant had not given notice on 29 May 2020 under section 23(1) of the *Summary Offences Act* in relation to the public assembly to be held on 6 June 2020;

- (2) whether the primary judge erred in holding that the amendment of the notice on 4 June 2020 had the effect that a new notice had been given;
- (3) whether the primary judge erred in not granting the declaration sought to the effect that the Commissioner had notified the Appellant that the Commissioner did not oppose the holding of a public assembly as described in the notice amended on 4 June 2020.

The Court held (Bathurst CJ, Bell P and Leeming JA), allowing the appeal:

- (1) The primary judge erred in concluding that the Appellant had not given notice on 29 May 2020 under section 23(1) of the *Summary Offences Act* in relation to the public assembly to be held on 6 June 2020.
- (2) The primary judge erred in holding that the amendment of the notice on 4 June 2020 had the effect that a new notice had been given.
- (3) The primary judge erred in not granting the declaration sought to the effect that the Commissioner had notified the Appellant that the Commissioner did not oppose the holding of a public assembly as described in the notice amended on 4 June 2020.
- (4) Observations by the Court on the operation of Part 4 of the *Summary Offences Act*.

JUDGMENT

THE COURT:

Introduction

- 1 On Saturday, 6 June 2020, at approximately 2.45 pm, we allowed an appeal from orders that had been made the previous evening by Fagan J (**the primary judge**) in proceedings that had been commenced earlier that day by the Commissioner of Police (**the Commissioner**) in the Common Law Division of the Supreme Court of New South Wales. The appeal was lodged shortly before noon on 6 June 2020.
- 2 In addition to allowing the appeal, we also declared that the assembly the subject of the notice in Annexure B of the affidavit of Raul Bassi affirmed 5 June 2020 is an authorised public assembly.
- 3 These are our reasons for those orders.

Context of proceedings and appeal

- 4 The proceedings before the primary judge related to a proposed public assembly set to commence in Sydney at 3.00 pm on Saturday, 6 June 2020.

- 5 The assembly had been organised by the appellant (**Mr Bassi**) in response to the tragic death of Mr George Floyd in Minneapolis in the United States of America on 25 May 2020, in furtherance of the Black Lives Matter cause in general and in particular memory of an indigenous Australian, Mr David Dungay.
- 6 Mr Floyd's death and the circumstances in which it occurred have sparked public protests throughout the United States and indeed throughout the world. These protests have been occurring, however, at a time when the world including Australia, has been dealing with the COVID-19 pandemic. One of the public health measures deployed in response to the pandemic has been "social distancing" with related restrictions being placed upon public gatherings. These measures have been designed to minimise the scope for community transmission of the coronavirus.
- 7 Competing public interests of great importance were thus potentially engaged but, as we shall explain, the issues before this Court were very narrow. Our decision did not ultimately turn on a difficult weighing exercise that resolution of that competition would necessarily have required; rather, the appeal was allowed by reason of the operation of the provisions of the *Summary Offences Act* in the context of a notice of intention to hold a public assembly (**the Notice of Intention**) which had been given pursuant to that Act by Mr Bassi to the Commissioner on 29 May 2020.
- 8 Where we differed from the primary judge was in the view that we took of the circumstances in which the Notice of Intention was modified in the course of the week leading up to the proposed assembly, and the legal significance of that modification.
- 9 It follows from what has already been said that identification of the statutory context in which public assemblies and rallies may be held in New South Wales is of first importance in understanding both the decision at first instance and our subsequent decision on appeal.

Statutory context

- 10 The procedure in New South Wales for the holding of an authorised public assembly is governed by Part 4 of the *Summary Offences Act*, entitled "Public Assemblies".
- 11 For the purposes of that Part, a "public assembly" is defined as meaning "an assembly held in a public place, and includes a procession so held". "Public place" is defined as meaning "a public road, public reserve or other place which the public are entitled to use".
- 12 Broadly speaking, Part 4 of the *Summary Offences Act* creates a regime whereby a proposed public assembly may secure the status of an "authorised public assembly". A person who participates in such an assembly, so long as it is conducted substantially in accordance with the previously notified details, will not be guilty of any offence relating to participating in an unlawful assembly or the obstruction of any person, vehicle or vessel in a public place.
- 13 The key statutory provisions of the *Summary Offences Act* are as follows:

"24 Participation in authorised public assembly

If an authorised public assembly is held substantially in accordance with the particulars furnished with respect to it under section 23 (1) (c) or, if those particulars are amended by agreement between the Commissioner and the organiser, in accordance with those particulars as amended and in accordance with any prescribed requirements, a person is not, by reason of any thing done or omitted to be done by the person for the purpose only of participating in that public assembly, guilty of any offence relating to participating in an unlawful assembly or the obstruction of any person, vehicle or vessel in a public place.

25 Prohibition by a Court of a public assembly

(1) The Commissioner may apply to a Court for an order prohibiting the holding of a public assembly in respect of which a notice referred to in section 23 (1) has been served if the notice was served 7 days or more before the date specified in the notice as the date on which it is proposed to hold the public assembly.

(2) The Commissioner shall not apply for an order under subsection (1) relating to a public assembly in respect of which a notice referred to in section 23 (1) has been served unless:

(a) the Commissioner has caused to be served on the organiser of the public assembly a notice, in writing, inviting the organiser to confer with respect to the public assembly with a member of the Police Force specified in the notice at a time and place so specified, or to make written representations to

the Commissioner, with respect to the public assembly, within a time so specified, and

(b) if the organiser has, in writing, informed the Commissioner that he or she wishes so to confer, the Commissioner has made available to confer with the organiser at the time and place specified in the notice:

(i) the member of the Police Force specified in the notice, or

(ii) if that member of the Police Force is for any reason unavailable so to confer, another member of the Police Force, and

(c) the Commissioner has taken into consideration any matters put by the organiser at the conference and in any representations made by the organiser.

(3) A notice referred to in subsection (2) (a) may be served on the organiser:

(a) personally, or

(b) by registered post, facsimile transmission or email addressed to the organiser at an address, specified in the notice served on the Commissioner under section 23 (1) (e) (ii), as an address for the service of any notice for the purposes of this Part, or

(c) by leaving it with any person apparently of or above the age of 16 years at a postal address so specified.

26 Authorisation by a Court of a public assembly

If:

(a) a notice referred to in section 23 (1) is served on the Commissioner less than 7 days before the date specified in the notice as the date on which it is proposed to hold the public assembly referred to in the notice, and

(b) the Commissioner has not notified the organiser of the public assembly that the Commissioner does not oppose the holding of the public assembly,

the organiser may apply to a Court for an order authorising the holding of the public assembly."

14 The *Summary Offences Regulation 2015* (NSW) is also relevant. Clause 13 of that Regulation provides:

"Notice of intention to hold a public assembly

(1) For the purposes of section 23 (1) (b) and (c) (v) of the Act, the form set out in Schedule 1 is the prescribed form of notice to be served on the Commissioner of Police and the particulars that it contains are the particulars prescribed.

(2) For the purposes of section 23 (2) of the Act, the following address is prescribed as the address of the office of the Commissioner of Police:

Police Headquarters
1 Charles Street
Parramatta NSW 2150”.

15 Schedule 1 to the Regulation prescribes the following form as that to be used by a person seeking to organise a public assembly. That prescribed form (**Form 1**) is as follows:

“To: The Commissioner of Police

1 I, [name] of [address] on behalf of [organisation] notify the Commissioner of Police that on the [day] of [month and year], it is intended to hold:

*(a) a public assembly, not being a procession, of approximately [number] persons, which will assemble at [place] at approximately [time], and disperse at approximately [time], or

*(b) a public assembly, being a procession of approximately [number] persons, which will assemble at [place] at approximately [time], and disperse at approximately [time], and at approximately [time] the procession will commence and proceed:

[Specify route of proposed assembly, any stopping places, the approximate length of the stop and the approximate time of termination. A diagram may be attached if desired.]

2 The purpose of the proposed assembly is: [state purpose].

3 The following special characteristics associated with the assembly would be useful for the Commissioner of Police to be aware of in regulating the flow of traffic or in regulating the assembly:

(a) There will be [number] vehicles and/or floats involved and their type and dimensions are as follows: [state type and dimensions].

*(b) There will be [number] bands, musicians, entertainers etc, entertaining or addressing the assembly.

*(c) The following number and type of animals will be involved in the assembly: [state number and type].

*(d) Other special characteristics of the proposed assembly are as follows: [state characteristics].”

4 I take responsibility for organising and conducting the proposed public assembly.

5 Notices for the purposes of the Summary Offences Act 1988 may be served on me at [address].

Telephone:

Signed:

Date:

Capacity/Title:

* Strike out whichever does not apply."

- 16 As shall be seen below, Mr Bassi completed the prescribed form for the purposes of registering his intention to hold a public assembly.
- 17 The following observations may be made about the statutory scheme:
- (i) the *Summary Offences Act* differentiates between public assemblies for which notice has been given to the Commissioner at least seven days prior to the holding of the public assembly, and public assemblies for which notice has only been given less than seven days prior to the proposed assembly;
 - (ii) authorisation of the public assembly may be secured by notified non-opposition to the proposed public assembly by the Commissioner or, depending on the timing of the notice of intention, the absence of an order prohibiting the public assembly (in the case of notice which has been given more than seven days in advance) or an order authorising the public assembly (in the case of notification less than seven days prior) by the Supreme Court or the District Court of New South Wales;
 - (iii) the *Summary Offences Act* expressly contemplates, in s 24, that the particulars of a statutory notice of intention to hold a public assembly may be amended by agreement between the Commissioner and the organiser of the proposed public assembly;
 - (iv) this reflects the scope for negotiation and co-operation between the Police and the organiser as to the details and proposed manner in which the public assembly is to be conducted;
 - (v) the Court only assumes a role in relation to public assemblies in circumstances where:
 - (a) in the case of a notice of intention provided more than seven days prior to the proposed assembly, the Commissioner has not notified non-opposition; or
 - (b) where the notice of intention was served less than seven days prior to the proposed assembly;

(vi) in the former case, the Commissioner in effect assumes the onus under s 25 of the *Summary Offences Act* of securing an order prohibiting the assembly whereas, in the latter case, the onus is placed on the organiser to secure court authorisation for the assembly;

(vii) before the Commissioner may apply for an order prohibiting the proposed public assembly, he or she must first engage in the co-operative process prescribed by s 25(2) of the *Summary Offences Act* with a view to securing, or at least exploring the possibility of securing a consensus in relation to the proposed public assembly;

(viii) whilst the *Summary Offences Act* does not make any express provision for a change of position by the Commissioner where, for example the Commissioner, for any reason, wishes to withdraw a prior notified stance of non-opposition, s 25 of the *Summary Offences Act* provides the route that must be taken by the Commissioner in that event.

18 Before turning to a fuller consideration of the facts relating to Mr Bassi's application for authorisation and the decision at first instance, the provisions of s 27 of the *Summary Offences Act* should also be noted, as s 27(2) was sought to be invoked on behalf of the Commissioner in the appeal. That section provides:

“Applications under Section 25 or 26

(1) The Court to which an application in respect of a public assembly is made under section 25 (1) or 26 shall decide the application with the greatest expedition possible so as to ensure that the application is not frustrated by reason of the decision of the Court being delayed until after the date on which the public assembly is proposed to be held.

(2) The decision of a Court on an application under section 25 (1) or 26 is final and is not subject to appeal.

(3) Not more than one application may be made under section 25 (1) or 26 in respect of the same public assembly.”

The facts

19 As noted above, Mr Bassi emailed the Notice of Intention in the prescribed form to the Commissioner on 29 May 2020. As originally formulated, the particulars provided were for a public vigil of approximately 50 persons which was to assemble at 20 Lee Street Chippendale at 3.00pm on Saturday 6 June 2020. The Notice of Intention went on to outline that the purpose of the

proposed vigil was "to remember the deaths in similar circumstances of David Dungay, in Long Bay Jail, Sydney, on 29 Dec[ember] 2015, and George Floyd, on the streets of Minneapolis, USA, on 25 May 2020".

- 20 The Notice of Intention was modified in a non-material way on 1 June 2020. Nothing turns on that modification for present purposes.
- 21 On Thursday 4 June 2020, the Notice of Intention was further modified in circumstances described in an affidavit of Mr Bassi and also in affidavits of Mr Paul Dunstan, Chief Inspector of Police, and Assistant Commissioner Michael Willing, which were all read at first instance.
- 22 In the course of the week leading up to the proposed assembly, the increased public support for the proposed vigil which was generated through social media channels led Mr Bassi to get in touch with Chief Inspector Dunstan to inform him that a bigger location was required because, by that time, Mr Bassi anticipated that more than 50 people would wish to take part in the assembly. A meeting occurred on Thursday 4 June 2020 at Lee Street, Sydney between Mr Bassi and Chief Inspector Dunstan in relation to the proposed assembly.
- 23 Mr Bassi's affidavit evidence was that it appeared to him that agreement had been reached at this meeting that the assembly could be held in the square in front of the Sydney Town Hall on Saturday 6 June 2020 at 3.00pm, and that there would be a procession thereafter to Belmore Park. Certainly Chief Inspector Dunstan agreed in his affidavit that a proposal to that effect was made by Mr Bassi at their meeting.
- 24 What occurred thereafter is of particular significance. The Police evidently made it clear to Mr Bassi that the new details in relation to the proposed assembly needed to be formalised. With commendable co-operation, it was agreed that Sergeant Hallett who, it may be inferred, also participated in the meeting, would prepare an amended Form 1 to be sent to Mr Bassi to reflect the new particulars of the proposed assembly. In his affidavit, Chief Inspector Dunstan described the document which accompanied an email sent at 12.03pm by Sergeant Hallett to Mr Bassi as "an Amended Notice of Intention". Sergeant Hallett's email was in the following terms:

"To: Raul Bassi

Subject: Amended Form 1 [DLM=Sensitive:Law Enforcement (SLE)]

Hi Raul,

As per our conversation with C/Insp Dunstan, due to you not being able to complete the Form 1 yourself, I have amended your prior Form 1 that you emailed to Sydney City Police on the 29 May 2020.

I have added that the event is a mobile procession as well as a vigil, you will start at Town Hall with about 5,000 people at 3.00pm.

After speeches you will get onto the road in a mobile procession along the following route:

Town Hall > Bathurst St > Castlereagh St > Belmore Park

A Cultural Ceremony and further speeches will be held at **Belmore Park** before the group disperses at 5:30pm.

The timings could NOT be changed due to a couple of buses for our Indigenous Community arriving from regional areas. **Timings remain at 3pm to 5:30pm.**

Could you please confirm that you agree with this amended Form 1 and please bring a signed copy on Saturday 6 June to hand to C/Insp Dunstan.

Regards

Michelle Hallett Sergeant

Events Planning Unit | Sydney City Police Area Command".

- 25 There is no reason to doubt that, as Sergeant Hallett indicated in the email, she had amended the original "Form 1" to reflect the details of what she, Mr Bassi and Chief Inspector Dunstan had discussed that day. The amended Form 1 which she sent to Mr Bassi with the email contained under the signature block the following:

"Date 29/5/2020 (Modified 01/06/2020)(Further modified 04/06/2020)"

- 26 Assistant Commissioner Willing recorded in his affidavit that Mr Bassi acknowledged receipt of the attachment to Sergeant Hallett's email and the attached Form 1 on 5 June 2020.

The decision at first instance

- 27 Published reasons for the primary judge's decision delivered at approximately 7.30pm on the evening of Friday 5 June 2020 were, for obvious reasons, not available at the time a Summons seeking leave to appeal (if necessary) was filed at approximately noon on Saturday 6 June 2020.

- 28 However, the appellant provided a note of his Honour's oral reasons which was made available to the Court shortly before the appeal was heard, and no issue was taken as to its accuracy.
- 29 It is important to note that the proceedings before the primary judge were commenced not by Mr Bassi, but rather by the Commissioner. By Summons filed in the Common Law Division on the afternoon of Friday 5 June 2020, the Commissioner sought an order pursuant to s 25 of the *Summary Offences Act* "prohibiting the holding of a public assembly in respect of which the defendant [Mr Bassi] served a notice in accordance with section 23(1) of the *Summary Offences Act 1988*."
- 30 The Commissioner's application was expressly predicated upon his having received a notice in accordance with s 23 of the *Summary Offences Act*. So much was also implicit in the fact that the Commissioner's application was made pursuant to s 25 of the Act. As has been seen, such an application can only be made in respect of a notice of intention to hold a public assembly served 7 days or more prior to the public assembly.
- 31 Notwithstanding these matters, the primary judge took the view, evidently by reason of what he no doubt considered to be the radical change in the size of the proposed assembly from 50 to 5000 attendees, as well as the change of venue, that there was no notice given on 29 May 2020 for the assembly ultimately proposed, and that the only notice of such a proposed assembly was given within a 7 day period of 6 June 2020, namely on 4 June 2020 following a meeting between Mr Bassi and Chief Inspector Dunstan on that day.
- 32 His Honour declined to make a declaration which it appears was sought orally on behalf of Mr Bassi in the course of the hearing to the effect that the Commissioner had notified Mr Bassi that the Commissioner did not oppose the holding of a public assembly as described in the notice under the *Summary Offences Act* modified on 4 June 2020 as annexed to the affidavit of Mr Bassi sworn 5 June 2020.
- 33 It also emerges from the note of the primary judge's reasons that his Honour considered that it was incumbent on Mr Bassi to seek authorisation pursuant to s 26 of the *Summary Offences Act* for the proposed assembly and, in his final

orders, the primary judge ordered (no doubt for the sake of good order and to regularise the record) that a Cross-Summons seeking such relief as well as that referred to at [32] above, be filed by close of business on 8 June 2020. What was in effect a contingent application for authorisation pursuant to s 26 of the *Summary Offences Act* was made on behalf of Mr Bassi.

- 34 In the circumstances of the case, after earnest and no doubt anxious consideration by reference to the powerful competing considerations we have noted at [6]–[7] above and with proper and genuine consideration of the importance of the purpose and aims of the proposed assembly, and in accordance with the statutory obligation in s 27(1) of the *Summary Offences Act* to decide the application with "the greatest expedition possible", the primary judge nevertheless declined to authorise the assembly. In reaching that decision, the primary judge drew on evidence of, amongst others, the Chief Health Officer and Deputy Secretary for Population and Public Health in NSW, Dr Kerry Chant, who had sworn an affidavit that was read in the proceedings at first instance.

The appeal

- 35 Mr Bassi sought leave to appeal (to the extent necessary) on the following four grounds:

“1 Fagan J erred in finding that the Appellant had not given notice on 29 May 2020 under section 23(1) of the *Summary Offences Act 1988* (NSW) in relation to the public assembly to be held on 6 June 2020.

2 Fagan J erred in holding that the amendment of the notice on 4 June 2020 had the effect that a new notice had been given.

3 Fagan J erred in not granting the declaration sought to the effect that the Commissioner of Police had notified the Appellant that the Commissioner did not oppose the holding of a public assembly as described in the notice amended on 4 June 2020.

4 Fagan J erred in jurisdiction by dismissing the application by the Respondent under section 25 of the *Summary Offences Act 1988* (NSW) and requiring the Appellant to apply under section 26 of the *Summary Offences [Act] 1988* (NSW).”

- 36 Leave to appeal, to the extent that it was necessary, was granted.

- 37 We considered that each of the first three grounds of appeal was made out, and that it was not necessary to consider the fourth ground.

- 38 Whilst the primary judge's evident reasoning to which we have referred at [31] above may be readily appreciated, in our opinion, the better view of the matter is that Mr Bassi gave a timely notice, that is to say, a notice of intention to hold a public assembly more than seven days prior to it taking place, and that, although the particulars of this assembly changed very significantly, that did not mean that the original Notice of Intention had ceased to have legal efficacy or that the modified notice issued on 4 June 2020 was a new notice which, because only issued within seven days of the proposed assembly, required Mr Bassi to obtain authorisation pursuant to s 26 of the *Summary Offences Act*.
- 39 It is important to begin by noting that s 24 of the *Summary Offences Act* expressly contemplates that "particulars" of a proposed public assembly may be amended by agreement between the Commissioner and the organiser of the proposed public assembly. As explained above, where we respectfully differ from the primary judge is that we consider that what occurred was an amendment of particulars of a Notice of Intention as opposed to a new notice of Intention and that, accordingly, it was not a matter of Mr Bassi requiring s 26 authorisation, but rather of the Commissioner requiring an order prohibiting the proposed assembly under s 25 of the *Summary Offences Act*.
- 40 These conclusions follow, in our opinion, both as a matter of form and substance. As to form, in the language subscribed by Sergeant Hallett to the final iteration of the Notice of Intention (see [25] above), the Notice of Intention originally filed on 29 May 2020 was "modified" on 4 June 2020. In other words, it was the same notice, albeit in modified form. As a matter of substance, when s 24 of the *Summary Offences Act* speaks about the amendment to particulars by agreement, it is speaking of an amendment to a subsisting notice of intention. Section 24 does not limit the nature of the amendments which may be agreed between the Commissioner and the organiser.
- 41 It is not without significance, and entirely consistent with our analysis above, that the Commissioner took the view that the amendments which had been made to the Notice of Intention originally provided by Mr Bassi on 29 May 2020 did not amount to a new notice of intention. As pointed out at [30] above, the Commissioner's application before the primary judge was both implicitly (by

being made pursuant to s 25 of the *Summary Offences Act*) and explicitly (by referring to "a notice in accordance with section 23(1) of the *Summary Offences Act 1988*") predicated on the original Notice of Intention being of continuing effect, notwithstanding the amendment to the particulars that had been effected.

- 42 In relation to appeal ground 3, we are also of the opinion that the email sent by Sergeant Hallett extracted at [24] above, amounted to a communication of non-opposition by the Commissioner within the meaning of s 23(1)(f) of the *Summary Offences Act*. This is the natural meaning of the email.
- 43 Section 23(1)(f) does not require any particular form of words to be used to communicate the Commissioner's non-opposition. The language employed in the email is consistent only with a position of non-opposition on the part of the Commissioner, at least at the time the email was sent. By requesting Mr Bassi to bring a signed copy of the amended Form 1 on Saturday 6 June 2020 "to hand to C/Insp Dunstan", there was an unequivocal indication that the public assembly in the amended form proposed would occur without opposition from the Commissioner.
- 44 Plainly enough, at some point between the sending of this email on 4 June 2020 on which Mr Bassi was entitled in the circumstances to rely upon and 5 June 2020, the Commissioner's view as to the advisability of the public assembly going ahead changed, and he accordingly and appropriately made an application to this Court. No criticism should be made of that change of stance; we live in challenging and uncertain times where the exigencies of public health are of critical importance and the situation is no doubt extremely fluid. Considerations of public order, or further information becoming known to the Commissioner, may require flexibility of approach.
- 45 It remains to note, albeit briefly, reliance was placed by Mr Spartalis on behalf of the Commissioner on the terms of s 27 of the *Summary Offences Act*, noted at [18] above and sub-section (2) of which provides that "the decision of a Court on an application under section 25 (1) or 26 is final and is not subject to appeal".

- 46 The declaration that was sought orally on behalf of Mr Bassi as referred to at [32] above did not form part of any application pursuant to either ss 25 or 26 of the *Summary Offences Act*. This is a short answer to the argument based on s 27 of that Act. If, as we have held was the case, the Commissioner's non-opposition had been communicated to Mr Bassi on 4 June 2020, Mr Bassi did not need to make an application for authorisation pursuant to s 26 of the *Summary Offences Act*. Until and unless the Commissioner succeeded in an application under s 25, there was an authorised public assembly.
- 47 To the extent that the primary judge dismissed the Appellant's application for authorisation pursuant to s 26 of the *Summary Offences Act*, that was a contingent application and Mr Bassi did not in fact appeal from the dismissal of that application, conscious no doubt of the terms of s 27 of the *Summary Offences Act*.
- 48 Further, by reason of the view his Honour took as to the status of the Notice of Intention, the primary judge did not decide the Commissioner's application pursuant to s 25 of the *Summary Offences Act*, and in fact dismissed the Commissioner's Summons in his final orders. The Commissioner did not appeal from the dismissal of the Summons.
- 49 An attempt was made orally by Mr Spartalis at the "heel of the hunt" in the course of the hearing of the appeal to revive the Commissioner's application under s 25 of the *Summary Offences Act* for prohibition of the assembly by way of a notional cross-appeal. We rejected this course for two reasons. First, although the matter proceeded with great expedition, any such application should have been flagged at the very outset of the urgent hearing. By the time it was made orally, the public assembly was within approximately 20 minutes of commencing.
- 50 Secondly and in any event, such a cross-appeal would have been futile in circumstances where Mr Spartalis was constrained to accept that none of the steps prescribed by s 25(2) of the *Summary Offences Act* had been taken by the Commissioner, these being pre-conditions to the making of an application for prohibition pursuant to s 25(1) of the *Summary Offences Act*.

51 We make it plain that, in circumstances where the entirety of the proceedings at first instance and in this Court were heard and determined within 24 hours, neither party is to be criticised for the lack of precision in the originating process or the form of the orders which were sought and all parties, their legal representatives and the primary judge are to be acknowledged for the utterly professional manner in which complex issues were agitated and determined under circumstances of great urgency.

52 Finally, we note that the declaration we made in the course of allowing the appeal and the terms of which are set out at [2] above was consequential upon our analysis of the issues raised by the appeal and, in the particular circumstances of the case, of considerable utility given the protection afforded by s 24 of the *Summary Offences Act* to those who participate in an authorised public assembly.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.