



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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**IN THE HIGH COURT OF AUSTRALIA
CANBERRA REGISTRY**

C3/2024, S24/2024, C4/2024

BETWEEN:

COMMONWEALTH OF AUSTRALIA

Appellant

and

MR STRADFORD (A PSEUDONYM)

First Respondent

HIS HONOUR JUDGE SALVATORE PAUL VASTA

Second Respondent

STATE OF QUEENSLAND

Third Respondent

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BETWEEN:

STATE OF QUEENSLAND

Appellant

and

MR STRADFORD (A PSEUDONYM)

First Respondent

HIS HONOUR JUDGE SALVATORE PAUL VASTA

Second Respondent

COMMONWEALTH OF AUSTRALIA

Third Respondent

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BETWEEN:

HIS HONOUR JUDGE SALVATORE PAUL VASTA

Appellant

and

MR STRADFORD (A PSEUDONYM)

First Respondent

COMMONWEALTH OF AUSTRALIA

Second Respondent

STATE OF QUEENSLAND

Third Respondent

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**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE
STATE OF SOUTH AUSTRALIA (INTERVENING)**

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Part I: CERTIFICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

Part II: OUTLINE OF ORAL SUBMISSIONS

2. The Commonwealth and Queensland submit that officers who act in obedience with an apparently valid warrant of commitment issued by an inferior court may rely upon a common law defence against false imprisonment: CS, [33]-[47]; QS, [41]-[70]. The common-sense that runs through the numerous historical authorities relied upon by the Commonwealth and Queensland is that “the governor’s duties would become impossible if he was called upon to decide upon the validity of a warrant good on the face of it”: *Smith v Collis* (1910) SR NSW 800, 813 (Cullen CJ) (V7, T96).
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3. South Australia submits that the same legal result emerges by an alternate analytical route, the force of which rests upon the same commonsensical foundation. That approach, described as “[m]odern” by Justice Dixon, focusses upon construing powers conferred on magistrates or other inferior courts in a manner that tends “to sustain the authority of orders until they are set aside”: SA, [19]; *Posner v Collector for Inter-State Destitute Persons (Vict)* (1946) 74 CLR 461, 483 (V4, T37). This approach to construction is, of course, now familiar in the context of construing administrative powers: *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355.
4. The approach to construction employed in *Posner* has now been applied on numerous occasions by Australian courts in upholding the validity of irregularly issued warrants in favour of prison authorities defending claims of false imprisonment: SA, [19]; *Robertson v The Queen* (1997) 92 A Crim R 115 (V6, T90); *Tulloh v Chief Executive Officer of the Department of Correctional Services* [2020] WASCA 10; *Abdulrahim v Adult Parole Board of Victoria* [2023] VSC 432 (V6, T42); *Cosenza v State of South Australia* [2024] SASC 97. The implied statutory power of the Federal Circuit Court to issue warrants of commitment should be construed in the same way: SA, [17]-[21].
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Dated: 14 August 2024

MJ Wait SC

30 Solicitor-General for South Australia

JF Metzger

Counsel for the Attorney-General (SA)