



HIGH COURT OF AUSTRALIA

23 June 2011

WAINOHU v THE STATE OF NEW SOUTH WALES [2011] HCA 24

The High Court today held the *Crimes (Criminal Organisations Control) Act 2009* (NSW) ("the Act") invalid.

In July 2010, the Acting Commissioner of Police for New South Wales applied to a judge of the Supreme Court of New South Wales for a declaration under Part 2 of the Act in respect of the Hells Angels Motorcycle Club in New South Wales ("the Club"). Under the Act, a judge who had been designated an "eligible Judge" by the Attorney-General could make a declaration in relation to an organisation. The eligible Judge had to be satisfied that the members of the organisation associated for the purposes of organising, planning, facilitating, supporting or engaging in serious criminal activity and that the organisation represented a risk to public safety and order in New South Wales. Section 13(2) of the Act provided that an eligible Judge had no obligation to provide reasons for making or refusing to make a declaration. If a declaration was made in respect of an organisation, the Supreme Court was empowered, on the application of the Commissioner of Police, to make control orders against individual members of that organisation. A person the subject of a control order was referred to in the Act as a "controlled member". It is an offence for controlled members of an organisation to associate with one another. They are also barred from certain classes of business and certain occupations.

The plaintiff, Mr Wainohu, is a member of the Club. He applied to the High Court for a declaration that the Act was invalid on the basis that it conferred functions on the Supreme Court and its judges which undermined its institutional integrity in a way inconsistent with Ch III of the Constitution. He also argued that the Act infringed the implied constitutional freedom of political communication and political association. The parties agreed a special case which was referred to the Full Court of the High Court in October 2010.

The High Court held, by majority, that the Act was invalid. The Act provided that no reasons need be given for making a declaration. The jurisdiction of the Supreme Court to make control orders was enlivened by the decision of an eligible Judge to make a declaration. Six members of the High Court held that, in those circumstances, the absence of an obligation to give reasons for the declaration after what may have been a contested application was repugnant to, or incompatible with, the institutional integrity of the Supreme Court. Because the validity of other parts of the Act relied on the validity of Part 2, the whole Act was declared invalid.

The State of New South Wales was ordered to pay Mr Wainohu's costs.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*