



HIGH COURT OF AUSTRALIA

14 November 2014

KUCZBORSKI v THE STATE OF QUEENSLAND

[2014] HCA 46

Today the High Court, by majority, rejected a challenge to the validity of certain provisions of the *Criminal Code* (Q) and the *Liquor Act* 1992 (Q). The Court also held that the plaintiff lacked standing to challenge the *Vicious Lawless Association Disestablishment Act* 2013 (Q) ("the VLAD Act") and certain other provisions of the *Criminal Code* and the *Bail Act* 1980 (Q) introduced by the *Criminal Law (Criminal Organisations Disruption) Amendment Act* 2013 (Q) ("the Disruption Act").

The Disruption Act and the *Tattoo Parlours Act* 2013 (Q) inserted new offences into the *Criminal Code* and *Liquor Act* respectively, elements of which involved being a "participant" in a "criminal organisation", or wearing symbols of membership of a "declared criminal organisation". The VLAD Act introduced penalties for a person convicted of a designated offence, which were more severe than would otherwise be applicable, if that individual was also proved to be a "participant in the affairs of an association". The Disruption Act amended the *Criminal Code* by providing for mandatory minimum penalties and increasing the maximum penalties for certain existing offences, in circumstances where the individual charged was found to be a participant in a criminal organisation. It also amended the *Bail Act* by introducing more stringent criteria for the grant of bail, in circumstances where a person was alleged to be a participant in a criminal organisation.

In March 2014, the plaintiff commenced proceedings in the original jurisdiction of the Court seeking declarations that the challenged laws were invalid on the ground that they were incompatible with the institutional integrity of the Supreme Court of Queensland. The plaintiff had not been charged with, and did not suggest that he had committed, or intended to commit, any offence. Accordingly, no restriction was imposed upon the plaintiff's freedom of action by the VLAD Act, the new penalty provisions of the *Criminal Code* or the new provisions of the *Bail Act*. The High Court unanimously held that the plaintiff lacked standing to seek a declaration that those laws were invalid.

The plaintiff argued that the laws creating the new offences in the *Criminal Code* and the *Liquor Act* impermissibly enlisted the court to give effect to the Parliament's or the executive's intention to destroy criminal organisations. This argument was not accepted. The majority of the Court held that these laws did not require the courts to proceed otherwise than in accordance with the processes which are understood to characterise the exercise of judicial power.

- *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.*

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