

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

No. S30 of 2019

BETWEEN:



DAMIEN CHARLES VELLA

First Plaintiff

JOHNNY LEE VELLA

Second Plaintiff

MICHAEL FETUI

Third Plaintiff

and

COMMISSIONER OF POLICE (NSW)

First Defendant

STATE OF NEW SOUTH WALES

Second Defendant


**REVISED OUTLINE OF ORAL ARGUMENT OF THE ATTORNEY-GENERAL
FOR THE STATE OF VICTORIA (INTERVENING)**

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This outline is in a form suitable for publication on the internet.

<p>1. The SCPO Act is forward-looking and protective, not punitive. It does not involve adjudging and punishing criminal guilt.</p>	VS [24]
<p>It thus follows that the SCPO Act:</p> <ul style="list-style-type: none">(a) does not undermine the criminal justice system; and(b) does not enlist the courts in administering a different or lesser grade of criminal justice.	VS [51]-[53], [57]
<p>2. <i>ASIC v Rich</i> does not assist the Plaintiffs. “That case concerned a different field of discourse, namely the application of the body of law concerning privileges against penalties and forfeitures”:</p> <ul style="list-style-type: none">• <i>Albarran v Companies Auditors and Liquidators Disciplinary Board</i> (2007) 231 CLR 350 at 356 [9] (Gleeson CJ, Gummow, Hayne, Callinan, Heydon and Crennan JJ) — extract handed up. <p>3. Contrary to the Plaintiffs’ submissions, the distinction between laws having a punitive purpose and laws having a non-punitive (protective) purpose is relevant to determining the validity of a law by reference to Ch III.</p> <ul style="list-style-type: none">• <i>Fardon v Attorney-General (Qld)</i> — Joint Book Tab 27, p 1148 at CLR 597 [34] (McHugh J), 653-4 [214]-[217] (Callinan and Heydon JJ)• <i>Thomas v Mowbray</i> — Joint Book Tab 41, p 1912 at CLR 330 [18] (Gleeson CJ), 347-8 [79] (Gummow and Crennan JJ; Callinan J agreeing at [600], Heydon J agreeing at [651])• <i>Falzon v Minister for Immigration and Border Protection</i> — Joint Book Tab 26, p 1119 at CLR 341 [17], 342 [24], 358-9 [93]-[94] (Kiefel CJ, Bell, Keane and Edelman JJ)	cf Reply [6]
<p>4. An SCPO is analogous to an apprehended violence order, save that it is directed to protecting the public, rather than protecting a particular individual. Legislation of that kind is longstanding and accepted to be valid, even though it prohibits conduct that is not otherwise unlawful, such as approaching a person or being in a particular place.</p> <ul style="list-style-type: none">• <i>Thomas v Mowbray</i> — Joint Book Tab 41, p 1912 at CLR 330 [16] (Gleeson CJ), 347-8 [79] (Gummow and Crennan JJ; Callinan J agreeing at [600], Heydon J agreeing at [651])• <i>Eg Intervention Orders (Prevention of Abuse) Act 2009</i> (SA), ss 6, 12	VS [36], [64]


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