



HIGH COURT OF AUSTRALIA

Public Information Officer

2 August 2007

JOSEPH TERRENCE THOMAS v GRAHAM MOWBRAY, FEDERAL MAGISTRATE;
MANAGER, COUNTER-TERRORISM – DOMESTIC, AUSTRALIAN FEDERAL POLICE;
AND COMMONWEALTH OF AUSTRALIA

The High Court of Australia today upheld the constitutional validity of that part of the anti-terrorism laws under which an interim control order was made in respect of Mr Thomas.

Mr Thomas allegedly undertook paramilitary training, including in the use of firearms and explosives, at Al Qa'ida's Al Farooq training camp in Afghanistan in 2001. He was arrested in Pakistan in 2003 and in 2004 was charged in Australia with terrorism-related and passport offences. Mr Thomas was convicted in the Victorian Supreme Court of intentionally receiving funds from a terrorist organisation and of possession of a false passport. The Victorian Court of Appeal set aside the convictions in August 2006 and last December ordered a retrial which has yet to be held. After the convictions were quashed, the AFP applied, with the consent of the federal Attorney-General, for an interim control order (ICO) under Division 104 of the *Criminal Code Act*. At a hearing on 27 August 2006, Federal Magistrate Mowbray issued the ICO on grounds that related to allegations concerning Mr Thomas's Al Qa'ida training and his links to extremists. The ICO imposed conditions which include a midnight to 5am curfew, reporting to police three times a week, and prohibitions from contacting particular individuals and from using certain communications technology.

A Federal Magistrates Court hearing to determine whether the ICO should be confirmed for a specified period was listed for 1 September 2006 but was postponed until after Mr Thomas's challenge to the validity of Division 104 was heard by the High Court. The questions agreed by the parties for determination by the Court were whether Division 104 is invalid because it confers on a federal court non-judicial power contrary to Chapter III of the Constitution, whether it is invalid because in so far as it confers judicial power on a federal court it authorises the power to be exercised in a manner contrary to Chapter III; and whether it is invalid because it is not supported by one or more express or implied heads of legislative power under the Constitution.

By a 5-2 majority, the High Court held that Subdivision B of Division 104 is valid. It held that the subdivision is supported by at least the defence power. The Court held that the defence power is not limited to external threats or to war between nations but extends to protecting the public from terrorist acts. Mr Thomas contended that Subdivision B invalidly confers non-judicial power on federal courts. This contention was rejected. The functions exercised in making ICOs, and the standards according to which they are to be exercised, are such that they involve an exercise of judicial power and thus may be conferred upon the federal judiciary.

- *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.*