



## HIGH COURT OF AUSTRALIA

14 March 2013

### ASSISTANT COMMISSIONER MICHAEL JAMES CONDON v POMPANO PTY LTD & ANOR

[2013] HCA 7

Today the High Court unanimously upheld the validity of provisions of the *Criminal Organisation Act 2009 (Q)* ("the Act") which relate to "criminal intelligence" relied upon in support of applications to the Supreme Court of Queensland to have an organisation declared a "criminal organisation". The High Court held that the provisions were not inconsistent with the institutional integrity of the Supreme Court.

On 1 June 2012, the Assistant Commissioner of the Queensland Police Service filed an application in the Supreme Court seeking a declaration that the Finks Motor Cycle Club, Gold Coast Chapter, and Pompano Pty Ltd, said to be a part of that Chapter (together "the respondents"), constituted a criminal organisation under s 10 of the Act ("the substantive application"). In support of the substantive application, which is still pending, information which the Supreme Court had previously declared to be criminal intelligence is relied upon. Information which is criminal intelligence relates to actual or suspected criminal activity, the disclosure of which could reasonably be expected to "prejudice a criminal investigation", "enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement", or "endanger a person's life or physical safety".

As required by ss 66 and 70 of the Act, the Supreme Court heard the application to declare that particular information was criminal intelligence without notice to the respondents and in a "special closed hearing". Because the Supreme Court made the declaration sought, it will be required by s 78(1) of the Act to order any part of the hearing of the substantive application in which the criminal intelligence is to be considered a closed hearing. The effect is that the criminal intelligence will be kept secret from the respondents.

In the High Court, the respondents contended that those provisions of the Act (among others) were invalid because they denied procedural fairness to a respondent to an application to have an organisation declared a criminal organisation. The parties agreed to submit a special case to the High Court asking whether such provisions were invalid for impairing the institutional integrity of the Supreme Court, thereby infringing Ch III of the Constitution.

The High Court upheld the validity of the provisions. The Court held that while the provisions may depart from the usual incidents of procedure and judicial process, the Supreme Court nonetheless retains its capacity to act fairly and impartially. The Court held that the provisions do not impair the essential characteristics of the Supreme Court, or its continued institutional integrity.

- *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.*