



## HIGH COURT OF AUSTRALIA

2 August 2023

### DISORGANIZED DEVELOPMENTS PTY LTD & ORS v STATE OF SOUTH AUSTRALIA [2023] HCA 22

Today, the High Court allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of South Australia. The appeal concerned the validity of two Regulations ("the Cowirra Regulations"), each of which purported to declare land in Cowirra, South Australia ("the Cowirra land"), as a "prescribed place" for the purposes of s 83GD(1) of the *Criminal Law Consolidation Act 1935* (SA) ("the 1935 Act"). That provision makes it an offence for a "participant in a criminal organisation" to enter or attempt to enter a "prescribed place". A "prescribed place" is defined to mean a place declared by regulation, and the 1935 Act confers on the Governor in Council a general power to make regulations.

The first appellant ("Disorganized Developments") is the registered proprietor of the Cowirra land. The second and third appellants, Mr Stacy and Mr Taylor, are the directors and only shareholders of Disorganized Developments. They are also members of the Hells Angels Motorcycle Club, which is a criminal organisation for the purposes of s 83GD(1) of the 1935 Act. If the Cowirra Regulations were valid, then Mr Stacy and Mr Taylor would commit an offence if they entered or attempted to enter the Cowirra land.

The Cowirra Regulations were drafted as a "variation" to earlier regulations, adding the Cowirra land to a list of places declared to be prescribed places. The Cowirra Regulations did not, in their terms, "declare" the Cowirra land to be prescribed places. The Court of Appeal had found that the Cowirra Regulations were valid because they "impliedly" declared the Cowirra land to be prescribed places.

In the High Court, the appellants argued that: (1) the Court of Appeal erred in finding that the Cowirra Regulations validly declared the Cowirra land to be prescribed places; and (2) the Cowirra Regulations were invalid as they were made in breach of a duty to afford procedural fairness to the appellants as owners and occupiers of the Cowirra land.

As to (1), the High Court unanimously held that the Cowirra Regulations were ineffective to declare the Cowirra land to be a prescribed place, and were therefore invalid. This was because there was no available interpretation of the Cowirra Regulations that included declaring the Cowirra land to be prescribed places. As to (2), a majority of the Court (Kiefel CJ, Gageler, Gleeson and Jagot JJ; Steward J dissenting) held that the Cowirra Regulations were invalid on the basis that the Governor failed to afford the appellants, as owners and occupiers of the Cowirra land, procedural fairness before making the Cowirra Regulations. No aspects of the 1935 Act (such as the unfettered nature of the regulation-making power, the fact the Governor was the repository of the power, parliamentary oversight of the regulation-making power, or the Parliament's alternative power to make regulations by primary statute) were sufficient to displace the common law presumption that the legislature does not intend to deny procedural fairness where a power directly affects the rights or interests of a particular individual. The Court stated that procedural fairness would require reasonable notice to be given to an owner or occupier of a proposal to declare a place to be a prescribed place, to give them an opportunity to respond.

- *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.*