



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### GYPSY JOKERS MOTORCYCLE CLUB INCORPORATED v COMMISSIONER OF POLICE

The High Court of Australia today upheld the validity of Western Australian legislation concerning judicial review of fortification removal notices.

The Gypsy Jokers owns a clubhouse in an industrial area of Maddington in Perth. The clubhouse had a concrete front wall, surveillance cameras, steel doors and modified timber doors. In 2004, the Western Australian Police Commissioner applied to the Corruption and Crime Commission (CCC) for a fortification warning notice in respect of the clubhouse. The notice, issued on 31 March 2004, said the CCC was satisfied that there were reasonable grounds for believing that the clubhouse was “heavily fortified” and was “habitually used as a place of resort by members of a class of people a significant number of whom may reasonably be suspected to be involved in organised crime”. The Gypsy Jokers’ solicitors wrote back explaining that the fortifications were necessary because the area had high rates of burglary and car theft, 10 valuable customised Harley Davidson Big Twin motorcycles were stored there, and the fortifications had received necessary approvals. The letter did not address the CCC’s belief that people involved in organised crime used the clubhouse. On 5 May 2004, the Commissioner issued a fortification removal notice listing for removal the concrete wall, the gates attached to the wall, surveillance cameras and monitors and an internal door.

The Gypsy Jokers applied pursuant to section 76(1) of the *Corruption and Crime Commission Act* to the WA Supreme Court for review of the fortification removal notice. Section 76(2) provided that the Police Commissioner may identify information as confidential if its disclosure might prejudice police operations and such information would then be for the Court’s use only and not disclosed in any way. The Gypsy Jokers received only an edited version of an affidavit provided by the Commissioner to the Court. The affidavit listed 59 members, all but one of whom the Commissioner alleged had criminal records, and 130 charges with which the Commissioner alleged members or associates had been charged. The Gypsy Jokers challenged the validity of section 76(2) and Justice Peter Blaxell referred the issue to the Court of Appeal. The review of the fortification removal notice has yet to be adjudicated. The Court of Appeal, by majority, upheld the validity of section 76(2). The Gypsy Jokers appealed to the High Court, arguing that section 76(2) purported to exercise an impermissible form of control over the exercise by the Supreme Court of its jurisdiction and constituted a denial of procedural fairness.

The High Court, by a 6-1 majority, dismissed the appeal. The Court held that it was for the Supreme Court, not for the Police Commissioner, to determine whether disclosure of information provided by the Commissioner might prejudice police operations. Section 76(2) of the CCC Act did not render unexamined by the Supreme Court the decision of the Commissioner. It did not direct the Supreme Court how to exercise its jurisdiction so as to impair the character of the Court as independent and impartial. The High Court held that without section 76(2), a public interest immunity could apply, which meant that the Supreme Court could not consider information subject to the immunity and consequently could not exercise its review function.

- *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.*