

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

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

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

1.	Construction of s 5(1) of the SCPO Act, in light of comparative UK authorities	
	(a) The power is discretionary. <ul style="list-style-type: none">• <i>Cf Totani</i> — Joint Book Tab 38, p 1662 at CLR 55 [97]-[99], 151 [405], 160 [435] (b) The test in s 5(1)(c) has two distinct aspects — first, the <u>end</u> to be achieved by the order must be to “protect the public”; second, the <u>means</u> by which the public is to be protected is by “preventing, restricting or disrupting” the person’s future engagement in serious crime. (c) <i>R v Hancox</i> Joint Book Tab 35, p 1615 at [4], [9]-[12]	VS [8] VS [12]-[17] cf Reply [14]



	<ul style="list-style-type: none"> - There must be a real or significant risk that the subject of the application will commit further serious offences in the future; a bare possibility, or a low risk, will not suffice. - In determining what order is “appropriate”, the court must engage in a form of proportionality analysis. It must weigh up various factors, including the nature and extent of the past serious criminal activity, the magnitude of risk of future serious criminal activity, the extent to which the order will disrupt such activity and the effects on the subject. - The European Convention on Human Rights was only part of the basis for adopting that approach. - This requires, in practice, that the order be necessary to prevent or disrupt serious crime. - An SCPO is protective, not punitive. 	<p style="text-align: right;">VS [21]</p> <p style="text-align: right;">VS [23], [62(1)] cf Reply [4]</p> <p style="text-align: right;">VS [10]</p>
<p>3.</p>	<p>The SCPO Act is forward-looking and protective, not punitive. It does not involve adjudging and punishing criminal guilt.</p> <p>It thus follows that the SCPO Act:</p> <p>(a) does not undermine the criminal justice system; and</p> <p>(b) does not enlist the courts in administering a different or lesser grade of criminal justice.</p> <p><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] — extract handed up. <p>Contrary to the Plaintiffs’ submissions, the distinction between laws having a punitive purpose and laws having a 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], 653-4 [214]-[217] • <i>Thomas v Mowbray</i> — Joint Book Tab 41, p 1912 at CLR 330 [18], 347-8 [79] • <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] <p>The SCPO Act is analogous to an apprehended violence order under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW), save that it is directed to protecting the public, rather than protecting an individual person. Legislation of that kind is valid.</p>	<p style="text-align: right;">VS [24]</p> <p style="text-align: right;">VS [51]-[53], [57]</p> <p style="text-align: right;">cf Reply [6]</p> <p style="text-align: right;">VS [36], [64]</p>

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