IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No B59 of 2012

BETWEEN

ASSISTANT COMMISSIONER MICHAEL JAMES CONDON

Applicant

And

POMPANO PTY LTD (ACN 010 634 689)

First Respondent

And

FINKS MOTORCYCLE CLUB, GOLD COAST CHAPTER

Second Respondent

SUBMISSIONS OF THE FIRST AND SECOND RESPONDENTS

(Following Form 27A as the moving parties on the Special Case)

PART I: Internet publication

1 These submissions are in a form suitable for publication on the Internet.

PART II: Issues

2 The parties have formulated a special case pursuant to Rule 27.08. The special case poses eight questions for determination by this Court identifying the impugned provisions of the *Criminal Organisation Act* 2009 (Qld) ("**the Act**") that are germane to the matter. The identified provisions are secs 9, 10, 66, 70, 76, and 78 of the Act.

3 Questions (i) to (v) of the special case are concerned with the manner in which "criminal intelligence" information is declared and dealt with under the Act and are addressed together for convenience. Question (vi) concerns a challenge to the nature of the judgment that the Supreme Court of Queensland is required to make by para 10(1)(c) of the Act. Question (vii) involves a consideration of whether the mandated procedural timelines which the Supreme Court is obliged to enforce involve an impermissible departure from accepted requirements of procedural fairness. Question (viii) concerns the matter of costs consequent upon the determination of the prior questions.

Filed on behalf of the first and second respondents
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4 The issue raised by the special case is whether the impugned provisions, or any of them, are invalid on the ground that they infringe Chapter III of the *Commonwealth Constitution* in requiring the Supreme Court of Queensland to conduct its proceedings in a fashion repugnant to or incompatible with that Court's institutional integrity and therefore rendering its character and processes to be incompatible with the proper discharge of the Court's functions as a repository of the judicial power of the Commonwealth by:

(a) *requiring* the Supreme Court to conduct the hearing of an application for a declaration that certain information is criminal intelligence information in the absence of a respondent to any existing or possible substantive application under the Act, and in the absence of that respondent's legal representatives;

(b) *requiring* the Supreme Court, to conduct any part of a hearing of a substantive application under the Act in which declared criminal intelligence is considered in the absence of the respondent and the respondent's legal representatives;

(c) *prohibiting* the Supreme Court from disclosing to a respondent, or to a respondent's legal representatives, evidence relied upon by the Commissioner of the Police Service ("**the Commissioner**") against a respondent in an application under sec 8;

(d) *prohibiting* the Supreme Court from receiving such information about an informant as might reasonably be necessary for the Supreme Court to evaluate the reliability of that evidence in an application under sec 8 of the Act;

(e) *permitting* the Supreme Court, in an application under sec 8 of the Act, to have regard to declared criminal intelligence in circumstances where the Supreme Court is *prohibited* from permitting a respondent to that application, or that respondent's legal representatives, to hear or receive that information;

(f) *requiring* the Supreme Court, pursuant to para 10(1)(c) of the Act, to make an executive or legislative policy judgment that is incompatible with or repugnant to the judicial process;

(g) *denying* to the Supreme Court any power, on an application by a respondent or of its motion, to extend the very limited period afforded to a respondent to file a response to an application under sec 8, even in circumstances where such extension is necessary to ensure fairness to the respondent.

PART III: Section 78B of the *Judiciary Act* 1903 (Cth)

5 Notices pursuant to sec 78B of the *Judiciary Act* 1903 (Cth) were filed in this Court and served on the Attorneys-General on 25 October 2012.

PART IV: Citations

6 The matter was removed into this Court pursuant to sec 40 of the *Judiciary Act* 1903 (Cth) and there are no relevant judgments below on the issues in the special case.

PART V: Facts

7 On 1 June 2012, the applicant filed an Originating Application in the Supreme Court of Queensland seeking a declaration pursuant to sec 8 of the Act that the second respondent, the Finks Motorcycle Club, Gold Coast Chapter, is a "criminal organisation"[1], and that the first respondent, Pompano Pty Ltd, is "part" of that organisation {Originating Application [1]-[2]}.

8 The grounds of the application alleged are that the respondents jointly comprise an organisation consisting of a group of more than three people based inside Queensland, that its members associate for the purposes of engaging in or conspiring to engage in serious criminal activity as defined in secs 6 and 7 of the Act, and that the organisation is an unacceptable risk to the safety, welfare and order of the community {Originating Application [22]}.

9 The Originating Application contains a large number of allegations with respect to each of the respondents, and in respect of persons alleged to be members, former members, and nominee members of the alleged organisation {[3]-[5], [9]-[11]}. Under the heading, "Information Supporting the Grounds" {page 8}, the Originating Application pleads various allegations concerning, inter alia, the criminal and traffic histories of alleged members, former members and nominee members of the pleaded organisation, and alleged interactions of those persons with police {[23]-[484]}. The Originating Application further pleads that a number of those persons have engaged in and/or been convicted of identified criminal offences {[485]-[613]}.

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[1] Whilst sec 8 of the Act purportedly permits such a pooling of individuals to constitute a party to the proceedings, of course the "second respondent" submits that it is impermissible as not relating to any known notion of a legal entity or even as an unincorporated association. The "second respondent" accepts its status as a party for the purposes only of complying with the Rules in properly framing an application under sec 40 of the *Judiciary Act* and reproducing the "parties" as they appear in the Supreme Court application for the purposes of the hearing.

10 In addition to the expressly pleaded conduct, the Originating Application pleads that information supporting the grounds of the application is contained in information which is "declared criminal intelligence" within the meaning of sec 63 of the Act {[613]}. The nature and content of that material is not particularised.

11 The reference to "declared criminal intelligence" in the Originating Application indicates that, at a time unknown to the respondents, the Commissioner (or the Commissioner's delegate) successfully made an application to the Supreme Court to declare particular information as "criminal intelligence" under sec 63 of the Act. The respondents had no notice of that application and were not afforded an opportunity to be heard in respect of that application.

12 Consistent with the terms of secs 66, 70 and 82 of the Act, the declared criminal intelligence has not been made available to either the respondents or their legal representatives.

13 The material comprising the Originating Application is voluminous. In addition to the declared criminal intelligence, the applicant's Originating Application indicates that the applicant intends to rely on 135 affidavits in support of the application {pages 89-94}. Those affidavits, together with their exhibits, are Appendix A to the Originating Application, and run to four volumes and 2045 pages. The Originating Application also includes four further appendices: Appendix B is one volume (528 pages) of photographs; Appendix C is one volume (307 pages) of transcript from sentencing proceedings involving alleged members, former members or nominee members of the alleged organisation; Appendix D is two volumes (411 pages) of criminal and traffic histories for alleged members, former members or nominee members of the alleged organisation; and Appendix E is two volumes (780 pages) of "other documents".

14 On 21 June 2012, the Supreme Court of Queensland (Boddice J) made orders by consent extending the time by which the respondents are required to put on a response to the Originating Application and any affidavits in support of that response, pending determination of the application for removal to this Court.

PART VI: Argument

The Scheme of the Act

15 The Act creates a regime whereby the Commissioner may apply to the Supreme Court for a declaration that an organisation is a "criminal organisation" (sec 8). By sub-s

10(1) of the Act, the court may make an declaration where satisfied of various matters, including that the members of the organisation associate for the purpose of engaging in, or conspiring to engage in, serious criminal activity, and that the organisation is an unacceptable risk to the safety, welfare or order of the community. Applications under sec 8 are governed by the civil standard of proof (sec 110).

16 An application filed by the Commissioner under sec 8 must be served on a respondent, and must state a return date for the application within 35 days after the date of filing (sec 8(5)). A respondent may file a response to the application (sub-s 9(1)). Such response "must" be filed at least five business days before the return date stated in the application (sub-s 9(3)). By sec 106 of the Act, the applicant to an application under sec 10 (i.e., the Commissioner) may apply to extend the return date. By its terms, sec 106 would not permit the respondent to make an application to extend the return date, and no other provision of the Act empowers the Court to extend a return date either at the request of a respondent or of its own motion.

17 Several consequences may flow from a declaration that an organisation is a "criminal organisation" under the Act. Such a declaration is a necessary prerequisite for the Supreme Court, upon application by the Commissioner, to make a control order in respect of a person (secs 16, 18). Section 18 provides that the Supreme Court may make a control order where satisfied, inter alia, that the respondent is a member of a criminal organisation or associates with any member of a criminal organisation for the purpose of engaging in, or conspiring to engage in, serious criminal activity. Where a control order is made, the Court may impose various conditions on the subject of a control order, including conditions limiting the person's ability to associate with specified persons or classes of person, to enter or be at specified places, and to undertake stated employment (sec 19).[2] Contravention of a control order is a criminal offence punishable by imprisonment (sec 24).

18 A declaration that an organisation is a "criminal organisation" also facilitates the making of public safety orders against a person or group of persons under sec 28, and the making of fortification removal orders under sec 43. Contravention of a public safety order is a criminal offence punishable by imprisonment (sec 38), as is hindering

[2] As no control orders are presently sought in the Originating Application, the validity of the "anti-association" provisions are not challenged on this occasion by any respondents.

the removal or modification of a fortification in accordance with a fortification removal order (sec 56).

19 The Act contemplates that in any "substantive application" under the Act, including an application under sec 8, the Commissioner may rely on "criminal intelligence" as defined in sub-s 59(1). Section 63 of the Act permits the Commissioner to apply to the Supreme Court for a declaration that particular information is criminal intelligence.

20 Section 63 provides that the Supreme Court must consider the criminal intelligence application without notice of it having been given other than to the Criminal Organisation Public Interest Monitor ("**COPIM**"). Similarly, sec 70 provides that the hearing of a criminal intelligence application is a closed hearing and that the court "must" exclude all persons other that the applicant (i.e., the Commissioner), the applicant's legal and other representatives, the COPIM, any witness called to give evidence, and court staff necessary for the hearing.

21 By sub-s 63(5) of the Act, where any of the information said to be "criminal intelligence" is provided by an "informant" (see Sch 2), that application may exclude "identifying information" (see sec 59A) about the informant, and such information may not otherwise be required to be given to the court. Section 64(2) provides that an informant cannot be called or otherwise required to give evidence (see also sub-s 71(2), 80(2)). The Commissioner is required to file an affidavit by an officer of the "relevant agency" (see sec 59A) providing certain details relating to the informant (sub-s 64(3), (4)), however, details as to an informant's criminal history or past professional misconduct need only be given in general terms (sub-s 64(6), (7)). Sub-section 64(8) prevents the Court from requiring any additional information about an informant's criminal history or past allegations of professional misconduct against the informant.

22 In determining a criminal intelligence application, the Court may declare that the information is criminal intelligence if satisfied that it is information relating to actual or suspected criminal activity, whether in Queensland or elsewhere, the disclosure of which could reasonably 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 (sub-ss 59(1), 72(1)). In exercising that discretion the court may have regard, inter alia, to any unfairness to the respondent (sub-s 72(3)).

23 A criminal intelligence declaration takes effect when made and remains in force until revoked (sec 73). The only mechanism by which a criminal intelligence declaration may be revoked is upon further application by the Commissioner (sub-s 74(1)). A respondent cannot make such an application, nor can the Supreme Court revoke the declaration of its own motion.

24 Where a criminal intelligence declaration has been made, the court "must" order a closed hearing for any part of a substantive application in which the declared criminal intelligence is to be considered, and "must" exclude all persons other than the Commissioner, a police officer, an officer of a relevant "external agency" (see sec 59A), the Commissioner's legal representatives and nominees, the COPIM, and court staff necessary for the hearing (sec 78). The effect is that the Court must exclude the respondent to the application, and the respondent's legal representatives, during any portion of the application in which declared criminal intelligence is being considered. Similarly, the respondent and the respondent's legal representatives are precluded from obtaining a transcript of any proceedings in which criminal intelligence is considered (sec 109).

The Respondents' Constitutional Contentions

25 It is well established by this Court's decision in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 and the authorities that further draw out and explain its principal rationale that a State legislature cannot confer upon a State court a function which substantially impairs, or which is incompatible with or repugnant to, the institutional integrity of the court and its role under Ch III of the *Constitution* as a repository of federal jurisdiction and as part of the integrated Australian court system; see *Wainohu v New South Wales* (2011) 243 CLR 181 at 208-209 [44]-[45] per French CJ and Kiefel J; 228-229 [105] per Gummow, Hayne, Crennan and Bell JJ; *South Australia v Totani* (2010) 242 CLR 1 at 47 [69] per French CJ, 82 [205], 83 [212] per Hayne J, 157 [426] per Crennan and Bell JJ.

26 That basal principle manifests itself in various ways. It prevents a State legislature from directly enlisting State courts capable of exercising the judicial power of the Commonwealth in the implementation of the legislative or executive policies of the State; *Totani* 242 CLR at 52 [82] per French CJ, 67 [149] per Gummow J, 92 [236] per Hayne J, 173 [481] per Kiefel J. It also prevents State legislatures from requiring a court capable of exercising federal jurisdiction to depart to a significant degree from the

methods and standards which have historically characterised the exercise of judicial power; *Totani* 242 CLR at 62-63 [131] per Gummow J, 157 [42] per Crennan and Bell JJ; *International Finance Trust Co v New South Wales Crime Commission* (2009) 240 CLR 319 at 353 [52] per French CJ; *Thomas v Mowbray* (2007) 233 CLR 307 at 355 [111] per Gummow and Crennan JJ; *Forge v Australian Securities and Investments Commission* (2006) 228 CLR 45 at 76 [63] per Gummow, Hayne and Crennan JJ. In this latter respect, State legislation that mandates a departure from recognised standards of procedural fairness in the exercise of judicial power may be incompatible with, and repugnant to, that court's institutional integrity; *Wainohu* 243 CLR at 208-309 [44] per French CJ and Kiefel J; *International Finance* 240 CLR at 354-355 [55] per French CJ; 379-380 [141] per Heydon J; *Leeth v The Commonwealth* (1992) 174 CLR 455 at 469-470 per Mason CJ, Dawson and McHugh JJ.

27 Applying these principles, the respondents contend that seven aspects of the Act presently in issue between the parties, taken individually or in their cumulative operation, are incompatible with, and repugnant to, the institutional integrity of the Supreme Court as a repository of federal jurisdiction and as part of the integrated Australian court system established by the *Constitution*.

Questions (i)-(v)

28 First, by their terms, secs 66 and 70 direct the Supreme Court to conduct a criminal intelligence application in the absence of the person or organisation to whom that information relates and their legal representatives, and without notice of the application being given to that person or organisation. That is so notwithstanding that a criminal intelligence application will generally be made in contemplation of a substantive application against an identified respondent (see sub-s 72(2), (7)). Moreover, unlike the short term *ex parte* orders upheld in *Mowbray*, a criminal intelligence declaration, once made, remains in force until revoked, and the person or organisation to whom that information relates has no power to seek to challenge those orders (see secs 73 and 74); cf *International Finance* 240 CLR at 364 [89] per Gummow J, 386 [159]-[160] per Heydon J. The *ex parte* process mandated by secs 66 and 70, when considered in light of the unlimited and unassailable nature of such orders once made, is incompatible with, and repugnant to, the institutional integrity of the Supreme Court; *International Finance* 240 CLR at 354-355 [54]-[56] per French CJ, 364 [89] per Gummow and Bell JJ, 379 [141] per Heydon J.

29 Secondly, sec 78 is invalid to the extent that is requires the Supreme Court to exclude a respondent and a respondent's legal representatives from any part of a substantive hearing in which declared criminal intelligence is to be considered. In *Bass v Permanent Trustee Co* (1999) 198 CLR 334 at 359 [56], six members of this Court described the judicial process as requiring "that the parties be given an opportunity to present their evidence and to challenge the evidence led against them." The entitlement to challenge an opponent's evidence is of particular and longstanding significance in the context of criminal proceedings; see *R v Davis* [2008] 1 AC 1128 at 1137 [5] per Lord Bingham of Cornhill, 1154 [49] per Lord Carswell, 1160 [68] per Lord Mance.
10 Though proceedings under sec 8 of the Act are governed by the civil standard of proof, they are, in reality, a predicate step in a predominantly criminal law process. The effect of sec 78 is that a respondent to criminal organisation application may be severely prejudiced in its ability to refute a substantial portion of the evidence put against it in those proceedings. Any such prejudice will likely carry over into control order and other proceedings brought following a criminal organisation declaration.

30 Notably, sec 78 does not merely exhort the Supreme Court to have regard to confidentiality; rather, it expressly prevents the court from permitting a respondent or its legal representatives access to any part of the declared criminal intelligence. Moreover, any notion that the role of the COPIM offers any substantive protection is
20 discarded when one considers that he or she is not permitted to make submissions in the presence of a respondent or their legal representative and may even be excluded from the hearing whilst those people are present (sub-ss 89(3) and (4)), let alone what would be the transparently fair process of allowing the respondent or their legal representative to make representations to the COPIM. The statutory denial to the Supreme Court of any discretion to balance the demands of secrecy with the respondent's legitimate interest to ensure that any adverse evidence is properly tested is repugnant to the judicial process because it compromises the ability of the Court to ensure, so far as practicable, fairness between the parties; see *International Finance* 240 CLR 355 [55] per French CJ. It also distinguishes sec 78 from the similar provisions upheld in *K-*
30 *Generation v Liquor Licensing Court* (2009) 237 CLR 501 at 526 [73] per French CJ, 542-543 [147] per Gummow, Hayne, Heydon, Crennan and Kiefel JJ, and *Totani* 242 CLR at 61 [123]-[124] per Gummow J.

31 Thirdly, to the extent that secs 82 and 109 of the Act operate to deny to the Supreme Court any discretion to take steps to provide any declared criminal intelligence, or information disclosed in a hearing of a criminal intelligence application, to a respondent or a respondent's legal representatives, those provisions are invalid on the same aforementioned grounds or affirm the construction placed by the respondents on secs 66, 70 and 78.

32 Fourthly, sec 76 and sub-ss 63(5), 64(2), 64(8), 65(4), 71(2) and 80(2) establish a regime by which evidence sourced from informants may be used against a respondent to an application under sec 8, in circumstances where both the Supreme Court and the respondent are denied a proper basis to evaluate, and opportunity to test, that evidence. As Heydon J observed in *International Finance* 240 CLR at 380 [143], *ex parte* proceedings carry with them an inherent risk that the Court will reach "unsound conclusions", even where the party in attendance acts it the utmost good faith. That risk is compounded where the court cannot require the informant to give evidence in person (sub-s 64(2)), where the court receives only cursory information relevant to the informant's credibility (sub-s 64(6), (7)), and where the court cannot require further information concerning matters relevant to credibility (sub-s 64(8)): see e.g *McDermott v The King* (1948) 76 CLR 501 at 511-515 per Dixon J; *Dietrich v The Queen* (1992) 177 CLR at 363 per Gaudron J. In *Bass* 198 CLR at 359 [56], a majority of this Court identified judicial power to involve the "application of the relevant law to facts as found in proceedings conducted in accordance with the judicial process". The cumulative effect of the Act's provisions concerning evidence by informants is that the Court is required to assess the reliability of informant evidence without any of the usual tools and techniques of judicial fact-finding. That approach is inimical to the judicial process, and, hence, repugnant to the institutional integrity of the Court.

33 As noted above at [29], whist the proceedings under sec 8 are not criminal, they form the basis of a process that is predominantly criminal in nature. The speeches in *R v Davis* were expressly concerned with identifying an English constitutional history which was said to equate with standards in Strasbourg. In *R v Hughes* [1986] 2 NZLR 129 at 148, Richardson J described the right to confront an adverse witness as "basic to any civilised notion of a fair trial". The common law has for centuries trenchantly opposed the civil idea of a well-resourced magistrate tasked with curial self-informing.

34 The Confrontation Clause in Sixth Amendment to the United States Constitution springs not from some indigenous ideal but from a desire to follow the English common law rights[3] as distinct from the civil law system and more importantly, as distinct from the processes that the English were thrusting upon the colonists in proceedings such as those under the Stamp Act before vice-admiral courts: see generally *Crawford v Washington* 541 US 36 (2004). As the leading academic authority on the Clause in the United States, Professor Friedman, the editor of *The New Wigmore*, says "...[i]t expresses a right that has a life of its own: giving the accused the right to confront the witnesses against him is a fundamental part of the way we do judicial business"[4].

10 35 The present point is simply that the "procedures" for dealing with criminal intelligence under the Act offend everything about the way common law courts "do judicial business". There is no process, either through cross-examination or other methods, including seeking the instructions of one's client for contrary evidence to be put before the Court, for the reliability of the "intelligence" to be tested, including as to the motives and veracity of "testifying" individuals. As Wigmore said, a defendant demands confrontation "...not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross-examination"[5]

36 Fifthly, the cumulative effect of the provisions of the Act relating to declared criminal intelligence are such that sub-s 10(2) of the Act is invalid to the extent that it permits
20 the Supreme Court to have regard to declared criminal intelligence in an application under sec 8 by operation of the principles described above. The offensiveness of such an approach is magnified by the support that sub-section 10(2) purports to give to an impuissant application relying on the untested and unknown criminal intelligence by, in its first consideration for the Court, setting the anaemic standard to support a declaration that there be "...information 'suggesting' a 'link' exists between the organisation and serious criminal activity": sub-para 10(2)(a)(i). On its face, that allows a declaration to be considered on the basis of the prompting of an inkling, without explanation, of a connection, whether material or immaterial. The use of the standard of "suggesting" is replicated in sub-paras 10(2)(a)(iii) and (iv).

30 *Question (vi)*

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[3] And for colonists to avoid the fate of Sir Walter Raleigh, who was at least afforded the opportunity of reading the sworn affidavit of Lord Cobham.
[4] Friedman, "Confrontation: The Search for Basic Principles": 86 *Georgetown Law Journal* 1011 (1998) at 1028.
[5] 5 John Henry Wigmore, *Evidence*, §1395 at 150 (Chadbourn rev 1974).

37 Sixthly, para 10(1)(c) of the Act requires the Supreme Court to consider whether an organisation "imposes an unacceptable risk to the safety, welfare or order of the community". That provision calls for a policy assessment that is devoid of adequate legal standards or criteria capable of judicial application. Unlike the provision at issue in *Mowbray* (and see 233 CLR at 354-355 [107]-[108]), which required the Court to determine whether the order sought would substantially assist in preventing a specified event ("a terrorist act"), or as in *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575 a person convicted of a serious sexual offence still had, on acceptable, cogent evidence an unacceptable risk of recidivism of that type, para 10(1)(c) requires the Supreme Court to make an assessment as to whether an unspecified risk to the safety, welfare or order of the community at large is "unacceptable"; cf *Mowbray* 233 CLR at 352-353 [96]-[103] per Gummow and Crennan JJ. That standard admits of no applicable criteria that the court could apply to established facts, such application being a hallmark or the judicial process as described in *Bass*. Put another way, in the present case, as opposed to provisions such as those under consideration in *Attorney-General (Cth) v Alinta Limited* (2008) 233 CLR 542, the Supreme Court is required to undertake an unacceptable role in the context of an excessive identification of the Judiciary with the policy aims of the Legislature and Executive, aligning the Court too closely with those at large policy objectives. The essential difference between the function of exercising judicial power and the function of exercising administrative or executive power, even where they may concern the same subject matter, turns on the impermissible role of "policy" in the exercise of judicial power: *Precision Data Holdings v Wills* (1991) 173 CLR 167 at 188-189.

Question (vii)

38 Seventhly, secs 9 and 106 of the Act are invalid to the extent that they prevent the Supreme Court from extending the time for a respondent to file its response to an application under sec 8. The Originating Application in the present case is voluminous, and the terms of sec 9 are such as would likely prevent a respondent from being able to adequately prepare its response absent an extension of the return date. The terms of sec 106 appears to leave it to the discretion of the Commissioner whether the Court may consider such an extension. Extraordinarily, notwithstanding the fact that the timing of the application and the amount of time spent in its preparation is a matter exclusively within the province of the Commissioner, the Act only affords that person an

opportunity to apply for an extension of time. Further, the time in which service may take place and the distinction employed between "business" and calendar days by the Act serves to entrench the unfairness. The return date of "35 days" is the outer limit – an earlier period may be provided for, it being only necessary that the return date is "within" 35 days. Coupled with the fact the Commissioner is given seven "business" days to serve the application and the response is required at least five "business" days before the return date, the "opportunity" for a response afforded by the Act is mere window dressing – particularly where it is possible and indeed likely that the application may be one that has been months or even years in the preparation. The effect is that the legislation mandates an impermissible departure from recognised standards of procedural fairness: see *Wainohu* 243 CLR at 208 [44] per French CJ and Kiefel J.[6]

PART VII: Legislation

39 *Criminal Organisation Act* 2009 (Qld) (Reprint No 1B). Reprint No 1B is the version of the Act currently in force and is enclosed with these submissions in its entirety. No "authorised" hard copy version of this reprint presently exists for sale. The reprint is the publicly available electronic version prepared by the Office of the Queensland Parliamentary Counsel.

PART VIII: Orders sought

40 The respondents contend that Questions (i) to (vii) inclusive in the Special Case should all be answered "Yes" and that Question (viii) should be answered "the Applicant".

Dated 9 November 2012

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[6] Whilst no constitutional remedy is sought in this case, the general concerns expressed in *Bodruddaza v MIMIA* (2007) 228 CLR 651 about unrealistic and rigid timelines are equally apt here.