



SENSITIVE: LAW ENFORCEMENT
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BIKIES DEFEATED

IN HIGH COURT BATTLE

Inside

PAROLE BREACHES ✚ CYBER SECURITY ✚ NEW ALCOHOL PLAN

Police win the challenge

Rebels OMCGs lose epic court battle to overturn serious crime prevention orders.

STORY **ALAANA WOOLDRIDGE**
CRIME DISRUPTION &
SPECIAL INQUIRIES LAW

In a huge legal win for the NSW Police Force, the High Court has rejected a legal challenge to serious crime prevention laws brought by members of the Rebels outlaw motorcycle gang.

The Commissioner sought to impose serious crime prevention orders (SCPOs) on three men that would restrict their movements, prevent them from associating with each other and apply a curfew.

These men challenged the laws claiming they were an attack on individual freedoms which undermined the integrity of the courts. Lawyers for the men argued the Act establishing the SCPOs was unconstitutional because it gave the executive government too much power over the court system.

The High Court rejected that argument, explaining that the courts have substantial discretion under the Act to make orders and tailor them to the circumstances and that the courts are not simply acting at the behest of

the executive.

In handing down its findings, the High Court identified six steps that are required before an SCPO can be imposed.

1. The person the order is sought against must be at least 18 years old.
2. The person must have been convicted of, or there is proof that they're involved in serious criminal offending.
3. The court agrees there is a 'real likelihood' or 'a real or significant risk' that they will be involved in serious crime-related activity.
4. The court has considered whether the facts establish reasonable grounds to believe that the order would prevent, restrict or disrupt their involvement in serious crime-related activities.
5. The court must agree that the prohibition, restrictions, requirements and other provisions of the proposed order are appropriate for protecting the public by preventing, restricting or disrupting the person's involvement in crime-

related activities.

6. And the court has considered whether to use its discretion not to make an order.

Director of Crime Disruption & Special Inquiries Law, Natalie Marsic said these six steps provide a useful framework for future applications.

"A wide range of offences punishable with five years or more can attract similar orders," she said.

General Counsel Sally Webb said this decision is significant because SCPOs can apply to people who have not been convicted of a serious criminal offence.

"SCPOs use the civil standard of proof (on the balance of probabilities) rather than the criminal standard (beyond reasonable doubt)," she said.

"The court needs to be satisfied that it's *more likely than not* that the person has engaged in serious criminal activity, irrespective of whether they were charged, tried, acquitted or had a conviction quashed.

"The court can also accept hearsay evidence, which is mostly excluded from criminal trials as unreliable."



SCPOs were first imposed on five Nomads and five Finks OMCG members last year following escalating violence between rival gangs in Newcastle and surrounds over the previous year.

All 10 were hit with significant restrictions that banned them for 12 months from associating with each other, travelling in any vehicle at night, using encrypted communications or exhibiting their gang insignia.

Strike Force Raptor's Det Ch Insp John Walke led Strike Force Duces at Newcastle with Det Sgt Luca Altamura, and said these are powerful orders that had never been imposed in NSW prior to that.

"A turf war had been brewing between the Newcastle chapters of the Nomads and Finks that saw a string of retaliatory attacks



that included drive-by shootings and arson attacks using Molotov cocktails that didn't discriminate against their friends or family members," he said.

In one incident in March last year, 20 rounds of .223 military grade ammunition was fired into a home of the Finks state president while his partner and child were sleeping inside.

Two days later shots were fired into the home of the Finks treasurer, wounding a man who was asleep inside. Both gangs were also stockpiling firearms, crossbows, tasers and explosive detonators.

Ch Insp Walke said the effectiveness of the SCPOs used in this capacity can't be understated.

"Among all the proactive targeting and investigative work

(including the execution of more than 40 criminal organisation search warrants) that was put into the conflict between the two gangs, it was the specific conditions in the orders that broke the cycle of violence and interfered with the ability of key players to continue directing and taking part," he said.

"We've received specific feedback from gang members themselves confirming this and thankfully, since the significant police actions and granting of SCPOs at the Supreme Court, we haven't had further violent conflict between those two gangs."

Ch Insp Walke said the work of those involved in the application process – from Strike Force Raptor, Police Prosecutions & Licensing Enforcement Command and the Office of General Counsel,

particularly Sgt Belinda Hughes and the police prosecutors under her command – was well placed and provided significant results.

"The application for SCPOs against the three Rebels OMCG members was a carefully considered, proactive strategy under the watchful command of Det Supt Deborah Wallace, Commander of the Criminal Groups Squad, and Strike Force Raptor through Det Ch Insp David Adney

and Det Ch Insp Darren Beeche.

"Again, the work by all involved has been well placed and provided a significant result," he said.

"The validation of the SCPO legislation by the High Court against these appeals by members of the Rebels is a win for police and safety of the public in NSW. Such orders are a legitimate tool for police to consider when dealing with those suspected of committing serious criminal activity.

SCPOs can be made for theft, fraud, money laundering, extortion, violence, bribery, corruption, harbouring criminals, blackmail, homicide, obtaining or offering a secret commission, perverting the course of justice, tax or revenue evasion, illegal gambling, forgery, obtaining financial benefit from the crime of another and drug offences.