



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court reference: COR 2017 0325
COR 2017 0327
COR 2017 0328
COR 2017 0329
COR 2017 0343
COR 2017 0465

**INQUEST INTO THE DEATHS OF MATTHEW POH CHUAN SI, THALIA HAKIN,
YOSUKE KANNO, JESS MUDIE, ZACHARY MATTHEW BRYANT AND
BHAVITA PATEL**

RULING NO.3

BACKGROUND

1. The hearings in the inquest into the deaths of Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel are scheduled to commence on Monday, 18 November 2019 and continue until Friday, 20 December 2019, with further hearings scheduled to take place from Monday, 17 February 2020 to Wednesday, 4 March 2020.
2. Following a timetable set at the directions hearing held on 2 April 2019, the coronial brief was prepared and provided to the legal representatives for the Chief Commissioner of Police (CCP). At that stage, the coronial brief (**Version 2**) was comprised of more than 4,000 pages, including statements, exhibits, multimedia and a Victoria Police Operation Titan Critical Incident Review prepared by Assistant Commissioner Stephen Fontana (**Review Report**). The coronial brief has undergone further iterations as additional material has become available and been distributed to the interested parties. The current version of the coronial brief is Version 4 and continues to include the Review Report in its entirety.
3. On 31 May 2019, the CCP made application for a proceeding suppression order over the entire contents of the Review Report (amongst other documents) on the grounds

that disclosure would be contrary to the public interest pursuant to section 18(2)(b) of the *Open Courts Act 2013* (Vic) (**Open Courts Act**). At that time, the CCP stated that, save for a pseudonym order to protect the identities of members of the Special Operations Group and State Surveillance Unit, “*the CCP makes no public interest immunity claim over any of the information contained in Version 2 of the Inquest Brief*”.¹

4. On 23 August 2019, I dismissed the CCP’s application for a suppression order over the entire contents of the Review Report.²
5. The Review Report contained references to a number of internal and organisational reviews that were being undertaken by Victoria Police at the time at which the Review Report was drafted, which appeared to fall within the scope of the inquest. Consequently, on 3 September 2019 I asked the CCP to provide additional documents and statements in relation to these matters, including:
 - (a) a copy of the Recidivist Police Intelligence Tool;
 - (b) a statement addressing the current status and any findings and recommendations resulting from the “*broader organisational review to improve processes into the future*” insofar as it related to requests for urgent triangulation;
 - (c) a statement addressing the Recidivist Offender Management Project and development of the Offender Management Practice Doctrine;
 - (d) a statement addressing the current status of the recommendation of Assistant Commissioner Fontana for the development of a practice guide for members on dealing with high risk fugitives; and
 - (e) a statement addressing the development of the CBD Vehicle Incursion Plan.
6. On 30 September 2019, the CCP provided an additional statement and further documents including the Recidivist Offender Prioritisation Tool (**ROPT**) relevant to the request at paragraph 5(a) above. It was indicated that the CCP may apply for a suppression order over those documents, including the ROPT, if the documents were to be included in the coronial brief. I considered the statement and further documents

¹ Letter from Ms Jessica Tribe, Victorian Government Solicitor’s Office to the Coroners Court dated 31 May 2019, [5].

² Ruling No 1, Inquest into the deaths of Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel dated 23 August 2019, [203].

were relevant to the scope of the inquest. The documents were subsequently added to the coronial brief and distributed to the interested parties.

7. On 16 October 2019, the CCP provided the Coroners Court of Victoria (**Coroners Court**) a Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019 together with Attachments ‘SF-1’ to ‘SF-10’ (**Statement of AC Fontana**) in response to the requested material at paragraphs 5(b) to (e). In their covering letter, the CCP stated “*the CCP makes a claim of public interest immunity over portions of Attachment SF-9*”.
8. Attachment SF-9, ‘Victoria Police – North West Metro Division 1 – Practitioner Guide: Response to Significant Security Event – Vehicle Borne Attacks in CBD’ contained green highlighting over the portions of the document that the CCP made a claim of public interest immunity.
9. Attachments SF-4 and SF-9 contained purple highlighting over direct telephone numbers of various police units which the CCP requested to be redacted prior to distribution to the interested parties due to privacy issues. I considered that the direct telephone numbers of various police units identified by the CCP in Attachments SF-4 and SF-9 were not relevant to the scope of the inquest and ordered that they be redacted prior to inclusion in the coronial brief.
10. In respect of the claim of public interest immunity, the CCP indicated that this was made on the basis that “*disclosure of the information highlighted in green, if it became known to the public, has the potential to prejudice the police response to vehicle borne attacks in the CBD in the future*”. The CCP requested an opportunity to provide evidence and/or make submissions in the event I was not minded to grant his claim for public interest immunity.³ However, at that stage the CCP had not provided any evidence setting out the basis for such a claim.
11. On 18 October 2019, I held a final directions hearing prior to the commencement of the inquest. I ordered that any public interest immunity or suppression order applications by the CCP in respect of the material provided to the Coroners Court were to be made, with supporting affidavit material and written submissions, by 4pm on Tuesday 22 October 2019.

³ Letter from Ms Jessica Tribe, Principal Solicitor, Victorian Government Solicitor’s Office to the Coroners Court dated 16 October 2019.

12. I further ordered that any affidavits or written submissions in response made on behalf of any interested party, including the media, in respect of the application(s) made by the CCP were to be filed with the Coroners Court by 4pm on Thursday 31 October 2019, and that the application(s) would be determined by me on the papers as soon as practicable and prior to 18 November 2019.
13. On 21 October 2019, the CCP requested that I consider redacting limited portions of Attachment SF-1 and Attachment SF-5 to the Statement of AC Fontana on the grounds that the identified portions were not relevant to any of the issues identified in the scope of the inquest. Attachment SF-1 comprised the Victoria Police Manual – Procedures and Guidelines ‘Telecommunications Interceptions’ and the Victoria Police Manual – Policy Rules ‘Investigation Support’. Attachment SF-5 comprised the Victoria Police ‘Avenues of Inquiry Guide & Checklist’.
14. The suggested redactions to Attachments SF-1 and SF-5 related in part to direct internal and external facsimile, email and telephone contact details and other matters that I considered were not relevant to the scope of the inquest. I ordered that the proposed redactions be made prior to inclusion in the coronial brief.

THE PII CLAIM AND SUBMISSIONS

The PII claim

15. On 22 October 2019, the CCP filed a claim of public interest immunity (**PII claim**) over highlighted portions of Attachment SF-9, ‘Victoria Police – North West Metro Division 1 – Practitioner Guide: Response to Significant Security Event – Vehicle Borne Attacks in CBD’. The PII claim was supported by an Affidavit of Acting Superintendent Kelvin Gale (**Affidavit of A/Supt Gale**) and written submissions filed on behalf of the CCP. An application was also made for a suppression order over the ROPT (**suppression order application**) pursuant to section 18(2) of the Open Courts Act. A separate ruling deals with the suppression order application.⁴

⁴ See Ruling No 4, Inquest into the deaths of Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel dated 11 November 2019.

16. The material over which the CCP claims public interest immunity essentially centres over four limbs:
- (a) operational equipment and methodologies of the Critical Incident Response Team (**CIRT**);
 - (b) operational tactics in respect of vehicle intercepts;
 - (c) identification of actual resources deployed and operational availability of Victoria Police units in the Melbourne Central Business District (**CBD**); and
 - (d) the private mobile telephone number of the Transit Safety Division Local Area Commander (**LAC265**).
17. On 23 October 2019, a copy of Attachment SF-9 was added to the coronial brief and distributed to the interested parties with the green highlighted portions redacted.⁵
18. The Affidavit of A/Supt Gale indicated that the CCP no longer pursued a claim of PII over the police radio channel referenced on pages 5 (under paragraph 4.4.2) and 7 (under paragraph 5.2) of Attachment SF-9.⁶ However, the CCP did not provide the court or interested parties with a copy of Attachment SF-9 with amended highlighting to reflect this change in position.
19. On review of Attachment SF-9, it appeared that the references to the police radio channel were under paragraphs 4.4.1 and 5.2, not paragraphs 4.4.2 and 5.2 as indicated by A/Supt Gale. The court requested clarification from the CCP on this point. On 29 October 2019, the CCP confirmed *via* email that the reference to the police radio channel under paragraph 4.4.2 was correct. I am satisfied however that the only relevant paragraphs to which radio channels are referenced in Attachment SF-9 are in the aforementioned paragraphs 4.4.1 and 5.2. Accordingly, I directed that a copy of Attachment SF-9 with the references to the police radio channel at paragraphs 4.4.1 and 5.2 unredacted be distributed to the interested parties.

Supporting material

20. The CCP relied primarily upon the Affidavit of A/Supt Gale in support of his PII claim.

⁵ The copy of Attachment SF-9 included in the coronial brief also contained redactions over the direct telephone numbers of various police units, in accordance with my order detailed at paragraph 9.

⁶ Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [6].

Affidavit of A/Supt Gale

21. A/Supt Gale deposed, among other things that:

- (a) in most instances, operational tactics, equipment and methodologies deployed by Victoria Police are only effective when the public has no, or little, knowledge of such information. These tactics, equipment and methodologies become significantly ineffective when they become publicly known;⁷
- (b) production of the material would reveal:
 - (i) sensitive operational equipment and methodologies of the CIRT;
 - (ii) operational tactics in respect of vehicle intercepts;
 - (iii) identification of the actual resources deployed by Victoria Police to combat vehicle borne attacks in the Melbourne Central Business District (CBD) and the operational availability of Victoria Police units in the CBD, including details of when and how those resources will be deployed; and
 - (iv) a private mobile number only available to police personnel;⁸
- (c) disclosure of operational equipment and methodologies of specialist units such as CIRT would give those who engage in serious crime information that may enable them to anticipate and defeat those operational tactics, procedures, equipment and methodologies, thereby increasing risks to which police members and the community are exposed;⁹
- (d) disclosure of operational procedures and methodologies regarding vehicle intercept tactics used and not used by Victoria Police would give those who engage in crime information that would enable them to anticipate when and how police may attempt to intercept a vehicle and the manner in which police would and would not attempt to engage to intercept a vehicle, significantly increasing the risks to which police members and the community are exposed;¹⁰

⁷ Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [7].

⁸ Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [8]

⁹ Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [12]

¹⁰ Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [14]

- (e) public knowledge of the operational availability and resources of additional Victoria Police units including CIRT may encourage a person to plan an attack outside of the times such resources are available, thereby limiting the responsiveness of those units;¹¹ and
- (f) disclosure of the private mobile number of the LAC 265 would allow the general public to make contact with this number for collateral or improper reasons and hinder the capacity of the LAC 265 to respond to police members.¹²

The submissions of the CCP

22. By written submissions, the CCP contends, among other things, that:

- (a) whilst the Coroners Court is not bound by the rules of evidence, it may inform itself in any reasonable manner it sees fit and “*may consider it appropriate*” to apply the provisions of section 130 of the *Evidence Act 2008 (Vic)* (**Evidence Act**);¹³
- (b) a court may direct that evidence not be adduced in the public interest if the document or evidence “*relates to matters of State*” and if it concludes that the public interest in admitting the document or evidence is outweighed by the public interest in preserving its secrecy or confidentiality;¹⁴
- (c) a claim of public interest immunity is to be determined by a three-step process:
 - (i) determination of whether there is a risk that production would be injurious to the public interest;
 - (ii) determination of whether the public interest in the administration of justice requires disclosure; and

¹¹ Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [15]-[16]

¹² Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [17]

¹³ Submissions on behalf of the Chief Commissioner of Police: Public Interest Immunity Claim dated 22 October 2019, [5].

¹⁴ Submissions on behalf of the Chief Commissioner of Police: Public Interest Immunity Claim dated 22 October 2019, [5].

- (iii) a balancing exercise as to which of the competing interests ought to prevail;¹⁵
- (d) police methodology is conduct of a government agency covered under section 130(4)(f) of the Evidence Act, as *“disclosure of that information would prejudice the proper functioning of the government of the State or Commonwealth”*;¹⁶
- (e) the type of specialist weapons and equipment which the CIRT carry when deployed to high risk critical incidents, including vehicle-borne attack incidents, is highly sensitive information that, if revealed, may significantly hamper the effectiveness of the CIRT in responding to such incidents;¹⁷
- (f) disclosure of tactics not endorsed by Victoria Police in relation to vehicle intercept strategies is contrary to the public interest as it would give those who engage in crime information that *“has the potential to enable them to anticipate when and how police may attempt to intercept and the manner in which police would and would not attempt to engage to intercept a vehicle”*;¹⁸
- (g) disclosure of the operational availability of police units, including the CIRT, in the Melbourne CBD would not be in the public interest as it would *“reveal to the public the additional allocation of resources in the CBD and that those resources only work during certain times”*, *“may encourage a person to plan an attack outside those times”*, and has the potential to *“hinder the ability of those units...to respond to high risk and potentially dangerous situations”*;¹⁹ and
- (h) disclosure of the green highlighted portions of Attachment SF-9 would *“jeopardis[e] the policing measures utilised by Victoria Police to respond to*

¹⁵ Submissions on behalf of the Chief Commissioner of Police: Public Interest Immunity Claim dated 22 October 2019, [7].

¹⁶ Submissions on behalf of the Chief Commissioner of Police: Public Interest Immunity Claim dated 22 October 2019, [17]. I note that although not specifically relied upon by the CCP, section 130(4)(c) could also be considered a relevant provision, insofar as the information may *“prejudice the prevention, investigation or prosecution of an offence”*.

¹⁷ Submissions on behalf of the Chief Commissioner of Police: Public Interest Immunity Claim dated 22 October 2019, [17(a)].

¹⁸ Submissions on behalf of the Chief Commissioner of Police: Public Interest Immunity Claim dated 22 October 2019, [17(b)].

¹⁹ Submissions on behalf of the Chief Commissioner of Police: Public Interest Immunity Claim dated 22 October 2019, [17(c)].

*vehicle-borne attacks in the CBD” and would enable those “minded to behave in anti-social ways...to anticipate and potentially... neutralise such tactics and strategies”.*²⁰

The submissions of the families

23. On 30 October 2019, the legal representatives of the families (**families**) of the six deceased filed written submissions in response to the PII claim and the suppression order application.
24. The families stated that they “*do not press any objections*” to redaction of the green highlighted portions of Attachment SF-9.

Other interested parties

25. No other interested party has taken a position supporting or opposing the PII claim.

Publication of relevant material

26. The Coroners Court identified that material relating to equipment used by CIRT and the operational hours of protective services officers was publicly available via Victoria Police materials, television productions and open content online encyclopedias.²¹
27. On 8 November 2019, the Coroners Court advised the CCP of this material and sought clarification as to whether the CCP wished to pursue these parts of its PII claim.
28. On 11 November 2019, the CCP informed me that he no longer presses a claim of public interest immunity over the operational hours of PSOs or the CIRT equipment referred to on page 7 of Attachment SF-9.²²

²⁰ Submissions on behalf of the Chief Commissioner of Police: Public Interest Immunity Claim dated 22 October 2019, [18].

²¹ 3AW, *Behind the Line – Critical Incident Response Team* (24 July 2014) (<https://www.youtube.com/watch?v=2afrbHcbLZ8>) (Television Production) Accessed 31 October 2019; Victoria Police, ‘Critical Incident Response Team’ (16 April 2019) (https://www.youtube.com/watch?v=e_hEuR4GxZI) (Television Production) Accessed 31 October 2019; Wikipedia, *Critical Incident Response Team* (27 September 2019) (https://en.wikipedia.org/wiki/Critical_Incident_Response_Team) Accessed 31 October 2019; Victoria Police, ‘Protective Services Officers – about the role’ (19 September 2019) (<https://www.police.vic.gov.au/psa-about-role>) Accessed 31 October 2019; Career One, ‘PSO information flyer’ (<http://content.careeronecdn.com.au/vfair-content/victoria-police/PSO-Information-Flyer.pdf>) Accessed 31 October 2019.

²² Email from Ms Jessica Tribe, Principal Solicitor, Victoria Government Solicitor’s Office to the Coroners Court dated 11 November 2019.

29. The CCP's change of position in this regard appears appropriate. As noted by the Court of Appeal in *State of Victoria v Brazel*:

It has long been accepted that prior publication is a very significant obstacle to the upholding of a PII claim...To confer immunity on documents sought by a person who has long since been in possession of the information which they contain would be to achieve 'a result...little short of being ridiculous'.²³

RELEVANT PRINCIPLES

Coronial jurisdiction

30. In determining this application, I have had regard to the principles applicable to the coronial jurisdiction. To avoid unnecessary duplication, these principles are comprehensively referred to in my previous Ruling in this proceeding.²⁴

Evidence Act

31. The statutory test for a claim of public interest immunity is set out in section 130 of the Evidence Act. The Coroners Court is not bound by the rules of evidence in holding an inquest.²⁵ However, the privileges set out in Part 3.10 of the Evidence Act (save for sections 128, 128A and 131A), including exclusion of evidence in the public interest, apply to both inquests and investigations.²⁶
32. In accordance with section 130(1) of the Evidence Act, I may direct that information or a document that relates to matters of state not be adduced as evidence, if the public interest in admitting into evidence that information or document is outweighed by the public interest in preserving secrecy or confidentiality in relation to that information or document.
33. A direction under section 130(1) may be given either on my own initiative or on the application of any person.²⁷ Section 130(3) provides that I may inform myself in any way I think fit in deciding whether to give such a direction.²⁸

²³ *State of Victoria v Brazel* [2008] VSCA 37 at [54].

²⁴ See Ruling No 1, Inquest into the deaths of Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel dated 23 August 2019, [66].

²⁵ *Coroners Act 2008* (Vic) s 62.

²⁶ *Coroners Act 2008* (Vic) s 42A and s 58.

²⁷ *Evidence Act 2008* (Vic) s 130(2).

²⁸ *Evidence Act 2008* (Vic) s 130(3).

34. This provision reflects the principles governing public interest immunity applicable at common law.²⁹ Specifically, it sets out the balancing exercise that must be undertaken between the competing public interests of preserving the secrecy or confidentiality of matters of state which would be injurious to the public interest to disclose, and the public interest in disclosing such material for the administration of justice.³⁰
35. Section 130(4) sets out a non-exhaustive list of matters that relate to “*matters of state*” for the purposes of section 130(1). This includes, namely, information or a document that, if adduced as evidence, would –
- (a) prejudice the security, defence or international relations of Australia; or
 - (b) damage relations between the Commonwealth and a State or between two or more States; or
 - (c) prejudice the prevention, investigation or prosecution of an offence; or
 - (d) prejudice the prevention or investigation of, or the conduct of proceedings for recovery of civil penalties brought with respect to, other contraventions of the law; or
 - (e) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information relating to the enforcement or administration of a law of the Commonwealth or a State; or
 - (f) prejudice the proper functioning of the government of the Commonwealth or a State.

Police methodology and tactics

36. The CCP relied solely upon section 130(4)(f) and specifically, that the purported disclosure of police methodology in the green highlighted portions of Attachment SF-9 would “*prejudice the proper functioning of the government of the Commonwealth or a State*”.³¹
37. There is a clear public interest in safeguarding the proper functioning of the police in the execution of their duties. The release of police methodology or tactics into the

²⁹ *Ryan v State of Victoria* [2015] VSCA 353 at [58].

³⁰ *Conway v Rimmer* [1968] AC 910 at 940; *Sankey v Whitlam* [1978] HCA 43 at 526.

³¹ Submissions on behalf of the Chief Commissioner of Police: Public Interest Immunity Claim dated 22 October 2019, [17].

public domain, has the potential to allow such methodology or tactics to be undermined and subverted by those committing criminal offences.³²

38. As was accepted by the Court of Appeal in *Ryan v Victoria*,³³ section 130(4)(f) extends to “*protecting the information or documents reflecting the workings or operations of those who are responsible for the governmental function of the maintenance of social peace and order, the police*”, including police methodology and tactics.
39. However, whether in any individual case, the balance lies in favour of disclosure or non-disclosure under section 130(1) will depend upon the balancing exercise to be undertaken in the circumstances of the case in accordance with the factors discussed below at paragraphs 48 and 49.³⁴
40. To this point, Lord Reid notes that whilst it is “*essential*” that there should be no disclosure of anything which might give any useful information to those who organise criminal activities, particularly pending prosecution, after a verdict has been given or it has been decided to take no proceedings, “*there is not the same need for secrecy*” and there should be “*no greater need for protection*” of police methodology or procedures than in the case of other departments of government.³⁵

Balancing exercise

41. It is the duty of the court, not the privilege of the executive government, to decide whether a document will be produced or withheld. As noted by Gibbs ACJ in *Sankey v Whitlam*:

*The court must decide which aspect of the public interest predominates, or in other words whether the public interest which requires that the document should not be produced outweighs the public interest that a court of justice in performing its functions should not be denied access to relevant evidence. In some cases, therefore, the court must weigh the one competing aspect of the public interest against the other, and decide where the balance lies.*³⁶

³² *Ryan v State of Victoria* [2015] VSCA 353 at [105].

³³ [2015] VSCA 353 at [105].

³⁴ *Ryan v Victoria* [2015] VSCA 353 at [118].

³⁵ *Conway v Rimmer* [1968] AC 910 at 921.

³⁶ *Sankey v Whitlam* (1978) 142 CLR 1 at 38-9.

42. The balancing exercise involves a three-step determination process, as highlighted by the CCP:
- (a) whether there is a risk that production and inspection of the documents in question would be injurious to the public interest;
 - (b) whether there is a public interest in a party having access to those documents in the interests of the fair administration of justice; and
 - (c) whether the public interest in the fair administration of justice outweighs the desirability that the information not be disclosed.³⁷
43. In respect of the first step, the nature of the injury to the public interest must be “*of so grave a character that no other interest, public or private, can be allowed to prevail over it*”.³⁸
44. This high threshold was highlighted by Maxwell P, Buchanan and Vincent JJA in *State of Victoria v Brazel* where it was stated:
- It is one thing to acknowledge that the proper functioning of a government agency is in the public interest. The same might be said – controversially – about any government department or agency. It is quite another thing to accept that particular information in possession of a government agency is of such sensitivity, and its disclosure would therefore cause such injury to the public interest, that information of that type should be treated as capable of attracting PII. Unless that threshold is passed, no question of balancing arises.*³⁹
45. Proper evidence must be led on the basis for public interest immunity and sufficient evidence put for a claim to be sustained.⁴⁰ It is necessary for the party asserting a claim of public interest immunity to identify with precision the “*character of the particular information in issue and the nature of the particular litigation*” in which the public interest issue arises in order to satisfy the threshold outlined at paragraph 41 above.⁴¹
46. In this regard, the Victorian Court of Appeal has noted:
- Since immunity would not be lightly conferred, it should not be lightly claimed...It is never enough merely to assert – as if it were self-evident – that disclosure of the information in question will harm some particular aspect of the public interest. The claim for immunity must be*

³⁷ *Sportsbet Pty Ltd v Harness Racing Victoria (No 4)* [2011] FCA 196, Per Mansfield J at [4]

³⁸ *Conway v Rimmer* [1968] AC 910 at 940, applied in *Sankey v Whitlam* (1978) 142 CLR 1 at [37].

³⁹ *State of Victoria v Brazel* [2008] VSCA 37 at [25].

⁴⁰ *Sankey v Whitlam* (1978) 142 CLR 1 at 96; *State of Victoria v Brazel* [2008] VSCA 37 at [68].

⁴¹ *Ryan v State of Victoria* [2015] VSCA 353 at [55].

*articulated with rigour and precision, and supported by evidence demonstrating the currency and sensitivity of the information, so as to constitute a compelling case for secrecy. Anything less will be unlikely to suffice.*⁴²

47. In determining a claim of public interest immunity, it is necessary for me to carefully scrutinise what is said to be the potential damage to the public interest if the information is disclosed, and equally, what is said to be the significance of the information in the litigation.⁴³ Documents may be withheld from disclosure only if, and to the extent that, the public interest renders it necessary.⁴⁴
48. In undertaking the balancing exercise, I may take into account a range of factors, some of which are set out in section 130(5) of the Evidence Act, namely:

(a) the importance of the information or the document in the proceeding;

[...]

(c) the nature of the offence, cause of action or defence to which the information or document relates, and the nature of the subject matter of the proceeding;

(d) the likely effect of adducing evidence of the information or document, and the means available to limit its publication;

(e) whether the substance of the information has already been published;

*[...].*⁴⁵

49. Other factors relevant to determination of a public interest immunity claim include:
- (a) whether the objection to the disclosure is a class claim or a content claim;
 - (b) whether a representative of government has supported nondisclosure of the information or document;
 - (c) the subject matter of the information or document;
 - (d) whether the information or document relates to Cabinet deliberations or lower levels of government;

⁴² *State of Victoria v Brazel* [2008] VSCA 37 at [68].

⁴³ *State of Victoria v Brazel* [2008] VSCA 37 at [47].

⁴⁴ *Sankey v Whitlam* (1978) 142 CLR 1, per Gibbs ACJ at 528.

⁴⁵ *Evidence Act 2008* (Vic) s 130(5), excluding ss 130(5)(b) and (f) as these factors relate to criminal proceedings only.

- (e) whether the information or document has contemporary importance or is only of historical interest; and
- (f) whether the information or document was required on the basis that it would be kept confidential.⁴⁶

Importance and relevance of information

50. As noted in paragraph 48(a) above, I may take into account the importance of the information or the document in the proceeding in conducting the balancing exercise. This necessarily involves consideration of whether the documents in dispute are of relevance to the proceeding.⁴⁷
51. In determining the relevance and importance of the information over which public interest immunity has been claimed, I have had regard to the scope of the inquest which will specifically examine, amongst other matters:
- (a) The co-ordination and effectiveness of the Victoria Police response to the circumstances leading up to the 20 January 2017 events including:
 - (i) strategic and tactical options available to Victoria Police;
 - (ii) Victoria Police communications in circumstances of significant operations and critical incidents;
 - (iii) police pursuits;
 - (iv) relevant Victoria Police Manuals, policies and procedures; and
 - (v) the co-ordination and effectiveness of the Victoria Police response to the events on 20 January 2017 from the time the offender entered the Melbourne CBD until his arrest;
 - (b) identification of remedial changes that have been implemented by Victoria Police and other bodies in response to the events from 14 to 20 January 2017;
 - (c) policing practices in respect of the use of vehicles as weapons; and

⁴⁶ *Murdesk Investments Pty Ltd v The Secretary to the Department of Business and Innovation* [2011] VSC 436 at [23].

⁴⁷ *Ryan v Victoria* [2015] VSCA 353 at [125].

- (d) identification of further prevention opportunities.⁴⁸

Inspection of document

52. I have had the benefit of inspecting the contents of the green highlighted portions over which the CCP claims public interest immunity. It was necessary for me to do so in order to have a good appreciation of the substance of the information that the CCP contends is “*confidential police methodology*”, to ascertain the potential damage that would likely result if the information were disclosed in the context of this inquest and to properly weigh the merits of the competing interests.⁴⁹
53. Other than the CCP, the interested parties have only been provided with a copy of Attachment SF-9 with the green highlighted portions redacted.⁵⁰ Counsel for the families had proposed a possible “*confidentiality access regime*” at the final directions hearing to allow them to inspect the contents of the green highlighted portions.⁵¹ However, no such formal application was made, and in any event, the families have not raised any objection to the PII claim.

ANALYSIS AND DETERMINATION OF THE PII CLAIM

54. The PII claim centres essentially over three limbs, namely:
- (a) operational tactics in respect of vehicle intercepts;
 - (b) identification of actual resources deployed and operational availability of Victoria Police units in the CBD⁵²; and
 - (c) the private mobile telephone number of the Transit Safety Division Local Area Commander (**LAC265**).
55. Whilst neither the families or any other interested party has made any objection to the proposed PII claim over the green highlighted portions of Attachment SF-9, it is incumbent upon me to be satisfied that the public interest in admitting into evidence information or a document that relates to matters of state is outweighed by the public

⁴⁸ Scope of Inquest dated 18 October 2019, [2]-[5].

⁴⁹ *Ahmet v Chief Commissioner of Police* [2014] VSCA 265 at [28].

⁵⁰ Whilst an unredacted duplicate of Attachment SF-9 appears elsewhere in the coronial brief, as discussed at paragraphs 56 to 59 of this Ruling, neither the CCP or the families referred to this in their submissions.

⁵¹ Transcript of Proceedings, Directions Hearing on 18 October 2019, Inquest into the deaths of Mathew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel, 15.

⁵² This aspect of the claim no longer extends to the operational hours of PSOs, as detailed at paragraph 26 to 29 above.

interest in preserving secrecy or confidentiality in relation to the information or document.⁵³

56. Prior to considering each limb of the PII claim, I must first note that an unredacted copy of Attachment SF-9 ‘Response to Significant Security Event – Vehicle Borne Attacks in the CBD’ appears separately in the coronial brief at pages 472 to 481 of the Review Report (**unredacted duplicate**). The interested parties have had access to the unredacted duplicate in the coronial brief since about 7 June 2019.
57. The CCP has not made a claim of public interest immunity over the unredacted duplicate. Indeed, as noted above, the CCP informed me on 31 May 2019 that he *“makes no public interest immunity claim over any of the information contained in Version 2 of the Inquest Brief”* which included the unredacted duplicate.
58. Notwithstanding the CCP’s apparent change in position over the sensitivity over the green highlighted portions of the document, the CCP has not provided me with any indication as to whether their PII claim also extends to the unredacted duplicate. It would appear to defeat the purpose of making the PII claim were it not to extend to the material in the unredacted duplicate. Accordingly, for the purpose of determining this application, I have taken the PII claim to extend to the unredacted duplicate.
59. For completeness, I should note that I do not consider the unredacted duplicate to amount to prior publication for the purposes of section 130(5)(a) of the Evidence Act. The distribution of this document remains limited to the interested parties and a translator for the family of Yosuke Kanno (**information recipients**) as part of the coronial brief. As at the date of this Ruling, the coronial brief remains under an order pursuant to subsections 115(2) and (3) of the Coroners Act prohibiting the information recipients from providing copies, publishing or disseminating the documents, or any part thereof, to any other person/s or entity other than for the purpose of the provision of legal advice and for the purpose of complying with any other statutory obligations.

Operational tactics in respect of vehicle intercepts

60. The first limb of the PII claim concerns the disclosure of a tactic not endorsed by Victoria Police (**the specific tactic**) in relation to vehicle intercept strategies. The CCP submits that disclosure of such information *“may enable [those who engage in crime]*

⁵³ Evidence Act 2008 (Vic) ss 130(1) and (3).

to anticipate when and how police may attempt to intercept and the manner in which police would and would not attempt to engage to intercept a vehicle” and would “significantly increase the risks to which police members and the community are exposed”.⁵⁴

61. The evidence of A/Supt Gale is significant, and I have given it weight. However, the Affidavit of A/Supt Gale did not identify either:
- (a) what particular aspect of knowledge of the specific tactic could be open to exploitation and manipulation; or
 - (b) how such manipulation or exploitation of any such aspect of such knowledge might specifically occur.
62. In this regard, I note that knowledge of the specific tactic *not* endorsed by Victoria Police does not disclose information about the range of other tactics that are available or may be utilised by Victoria Police when attempting to intercept a vehicle, or how such tactics may in fact be implemented in a given situation. That rightly, is a matter for police command and operations, having regard to relevant principles and tools such as the Operational Safety Tool ‘SAFE TACTICS’.
63. I further note that A/Supt Gale does not state directly that the endorsement (or otherwise) of the specific tactic is either secret or in some manner kept confidentially within Victoria Police. At most, that is a premise of the Affidavit, although, as I say, it is not stated directly.
64. It is, perhaps, significant that the Affidavit does not depose to any practical or other steps put in place by Victoria Police to prevent the details of the specific tactic becoming public. Attachment SF-9 does not seem to be marked ‘secret’ or ‘confidential’. Notably, the specific tactic is referred to in several parts of the Review Report, but it is not apparent that in those references the specific tactic had any special status or applicable level of secrecy or confidentiality beyond other aspects of police methodology and assessment.⁵⁵ Specifically, AC Fontana notes that the specific tactic is *‘highly risky, dangerous and unpredictable’*.⁵⁶

⁵⁴ Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [14].

⁵⁵ Victoria Police, Operation Titan Critical Incident Review, 421-460.

⁵⁶ Victoria Police, Operation Titan Critical Incident Review, 74, 454.

65. It is not clear to me how likely it really is that knowledge of the specific tactic not endorsed by Victoria Police would enable those who engage in crime to “*anticipate when and how police may attempt to intercept*”, in circumstances where such information does not disclose information about what tactics may be utilised by Victoria Police to attempt to intercept a vehicle, or when and how such tactics may be implemented. Rather, the information simply sets out one specific tactic that has been determined to not be endorsed by Victoria Police in the interests of public safety.
66. Further, it is apparent that actions of Victoria Police in attempting to intercept the offender’s vehicle on 20 January 2017 and their response to the vehicle borne attack will feature prominently in the inquest. Specifically, the strategies and tactical options available to Victoria Police will play a pivotal role in the coronial inquest, and it will be necessary to examine the strategies, tools and tactics available to police officers in responding to and managing such incidents. This examination will necessarily entail considering the appropriateness or otherwise of various tactics that could be utilised by Victoria Police, in order for me to identify any appropriate prevention opportunities.
67. If successful, the PII claim over the specific tactic not endorsed by Victoria Police would restrict public consideration of that issue, and inevitably limit my capacity to identify relevant prevention opportunities or make findings, or any comments and recommendations in relation to vehicle intercept strategies.
68. In light of the evidence of A/Supt Gale, I accept that there could be a potential risk that disclosure of the specific tactic not endorsed by Victoria Police might be injurious to the public interest, however, for the reasons that I have explained, I tend to think that such a risk is improbable and in any event unlikely to be substantial. On the other hand, the interest in the parties being able to access the information contained in the documents in the manner required does seem to me to be substantial given the specific scope of the inquest and outweighs any such countervailing interest. In balancing the considerations, I have had regard to the specific matters referred to above at 48 and 49.
69. Having regard to the above matters, I do not consider the information highlighted green in Attachment SF-9, insofar as it pertains to the endorsement (or otherwise) of a specific tactic for vehicle intercepts, falls within the purview of ‘matters of state’ to which public interest immunity might attach. To this end, I do not consider disclosure would prejudice the proper functioning of the government of the State.

Operational availability and resourcing of Victoria Police units in the CBD

70. The second limb of the application concerns the availability and resourcing of various Victoria Police units in the CBD including:
- (a) Operation Millennial patrol supervisor Aqua 261 (**Aqua 261**);
 - (b) foot and vehicle patrols deployed under Operation Millennial;
 - (c) CIRT Security Teams patrolling the CBD;
 - (d) Divisional Operations Support and Coordination Centre (**DOSCC**); and
 - (e) availability of Tyre Deflation Devices (**TDDs**) in station cars.
71. The CCP submitted that public disclosure of the operational availability and resource allocations of additional Victoria Police units, including the CIRT in the CBD, “*may hinder the ability of those units...to respond to high-risk and potentially dangerous situations, and the effectiveness of police operations*”.⁵⁷ It was further submitted that knowledge of the times in which certain Victoria Police specialist units are available and/or patrolling the CBD “*may encourage a person to plan an attack outside of those times, thereby limiting the responsiveness of those units*”.⁵⁸

Operational hours

72. To my mind, the CCP has exercised careful precision in identifying those units for which disclosure of operational hours may be said to hinder the responsiveness of those units. In this regard, I note that the CCP has made no claim of public interest immunity over the operational hours or availability of duty analysts, the Fusion Centre or the Special Operations Quick Reaction Force.
73. It appears to me that disclosure of the operational hours of additional police units in the CBD has the potential to prejudice the proper functioning of government in disclosing the operations of those responsible for the maintenance of social peace and order.
74. I accept the evidence of A/Supt Gale and consider that public knowledge of the availability of additional resource allocations in the CBD has the potential to encourage a person to plan an attack outside of those times to take advantage of reduced resource

⁵⁷ Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [16].

⁵⁸ Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [16]

allocations. It appears to me that such risk meets the high threshold as highlighted in *Conway v Rimmer*,⁵⁹ insofar as it relates to the operational availabilities of Aqua 261, foot and vehicle patrols deployed under Operation Millennial, CIRT Security Teams and the DOSCC. I am satisfied that disclosure of this information would be injurious to the public interest.

75. As I have determined that there is a risk that production and inspection of the information in Attachment SF-9 would be injurious to the public interest insofar as it relates to the operational availabilities of Aqua 261, foot and vehicle patrols deployed under Operation Millennial, CIRT Security Teams patrolling the CBD and the DOSCC, I must now consider the strength of the countervailing public interest supporting disclosure, namely the public interest in the administration of justice.
76. I consider the public interest in admitting into evidence the information of operational availabilities is outweighed by the public interest in preserving secrecy or confidentiality in relation to that information, having regard to the factors identified in section 130(5) of the Evidence Act. Specifically:
- (a) the operational availability of additional resource allocations in the CBD has limited importance to the scope of the inquest;
 - (b) adducing the information may have the effect of disclosing useful information to those who organise criminal activities, which may enable them to anticipate and take advantage of times when the additional resources are not available; and
 - (c) on the present evidence, there does not appear to have been any prior publication of the operational hours of the additional police units in the CBD.
77. Accordingly, I consider it appropriate to redact the green highlighted portions insofar as they disclose the operational hours of Aqua 261, foot and vehicle patrols deployed under Operation Millennial, CIRT Security Teams and the DOSCC in Attachment SF-9 and the unredacted duplicate.

⁵⁹ *Conway v Rimmer* [1968] AC 910, 940, applied in *Sankey v Whitlam* (1978) 142 CLR 1 at [37]. Also see *State of Victoria* [2008] VSCA 37 at [25].

Tyre deflation device availability

78. In respect of the CCP's claim of public interest immunity over the supply of TDD to station cars, I note that Attachment SF-9 does not disclose any information that could reveal which station cars of those available to Victoria Police carry or do not carry TDDs. Rather, the information merely discloses that such equipment is not available throughout the fleet of station cars.
79. As discussed by AC Fontana in the Review Report, Victoria Police completed a stocktake of TDDs early in 2017, and as part of that process, recommendations were made and approved for regions to redeploy existing stock to maximise their potential use and purchase additional TDDs for the organisation.⁶⁰
80. The availability and resourcing of TDDs is of direct relevance and import to my coronial investigation and in the identification of potential prevention opportunities. Specifically, the inquest will be examining policing practices regarding the use of vehicles as weapons which will necessarily involve consideration of what strategies, tactics and equipment are available to Victoria Police to respond to such events.
81. In such circumstances, if the PII claim were to be successful, the PII claim over the availability of TDDs would restrict public consideration of that issue, and inevitably limit my capacity to identify relevant prevention opportunities or make findings, and any comments and recommendations in relation to vehicle intercept strategies.
82. Having considered the Affidavit of A/Supt Gale, I accept that there could be a potential risk that the disclosure of information about the supply and availability of TDDs to station cars might be injurious to the public interest, however, for the reasons that I have explained, I consider that such a risk is unlikely to be substantial. On the other hand, the interest in the parties being able to access the information in the document concerned is directly relevant to the scope of the inquest, is substantial and outweighs any countervailing interest. In balancing these considerations, I have had regard to the matters referred to above at 48 and 49.
83. Having balanced all of the considerations, I am not satisfied that the information highlighted green in Attachment SF-9, insofar as it pertains to availability of TDDs, falls within the purview of 'matters of state' to which public interest immunity might

⁶⁰ Victoria Police, Operation Titan Critical Incident Review, 73.

attach. To this end, I do not consider disclosure would prejudice the proper functioning of the government of the State.

Telephone number of LAC 265

84. The fourth limb of the application concerns the private mobile telephone number utilised by LAC 265 for communications with police members as required. It is deposed that disclosure of this private mobile number would “*allow the general public to make contact with this number for improper reasons*” and significantly hinder the ability of LAC 265 to respond to police members.⁶¹
85. As I have previously noted, the CCP previously requested that I redact portions of Attachments SF-1, SF-4, SF-5 and SF-9 insofar as they related to, amongst other matters, the direct telephone numbers of various police units. I ordered that such material be redacted as I considered the information was not relevant to the scope of the inquest. It is unclear why a similar approach was not adopted by CCP in requesting redaction of the direct telephone number of LAC 265.
86. I consider that the direct mobile telephone number of LAC 265 has no bearing upon and is not relevant to the scope of inquest. I consider it is appropriate to redact this telephone number from both Attachment SF-9 and page 478 of the Review Report. In light of this decision, I do not consider it necessary or appropriate to determine the PII claim in respect of this information.

CONCLUSIONS AND DETERMINATION

87. In order for me to exclude from evidence, information or a document that relates to matters of state, I must be satisfied that the public interest in admitting that evidence is outweighed by the public interest in preserving secrecy or confidentiality in relation to that information or document.
88. As previously noted, this presents a high bar, and I must be satisfied that the nature of the injury to the public interest is of “*so grave a character that no other interest, public or private, can be allowed to prevail over it*”⁶².

⁶¹ Affidavit of Acting Superintendent Kelvin Gale dated 22 October 2019, [17].

⁶² *Conway v Rimmer* [1968] AC 910 at 940, applied in *Sankey v Whitlam* (1978) 142 CLR 1 at [37].

89. Although I have given weight to the Affidavit of A/Supt Gale, I am not satisfied that his evidence has demonstrated such “*sensitivity of the information, so as to constitute a compelling case for secrecy*”⁶³ insofar as it relates to green highlighted portions of Attachment SF-9 regarding operational tactics in respect of vehicle intercepts and the availability of TDDs. I have found nothing in these highlighted portions which would, in my view, be in any way prejudicial to the proper functioning of the State. I consider the information is relevant to the scope of the inquest and should be disclosed in full.
90. In undertaking the necessary balancing exercise, I have concluded that the public interest in disclosure of the information highlighted in green in Attachment SF-9 regarding operational tactics in respect of vehicle intercepts and the availability of TDDs is not outweighed by the public interest in keeping the information confidential having regard the factors discussed at paragraphs 48 to 49 above and specifically:
- (a) the inquest will be examining a range of matters including the strategic and tactical options available to Victoria Police, identification of remedial changes implemented by Victoria Police in response to the events from 14 to 20 January 2017, policing practices in respect of the use of vehicles as weapons and identification of further prevention opportunities. The tactical options available to Victoria Police in respect of vehicle intercepts, and availability of resources such as the TDDs within the CBD are all matters of direct relevance and importance to the issues for consideration in the inquest;
 - (b) the opinions expressed by A/Supt Gale that it would be injurious to the public interest to disclose the information regarding operational tactics in respect of vehicle intercepts and the availability of TDDs; and
 - (c) the evidence available to me at this time does not give any demonstrated example of the risks A/Supt Gale indicates having ever manifested, ever having been threatened, or having at any earlier time been anticipated by police command as likely widely to occur if the information were to be disclosed.
91. However, I am satisfied that disclosure of the operational hours of Aqua 261, foot and vehicle patrols deployed under Operation Millennial, CIRT Security Teams and the DOSCC would prejudice the proper functioning of the government of the State. I

⁶³ *State of Victoria v Brazel* [2008] VSCA 37 at [25].

consider that the public interest in admitting this information into evidence is outweighed by the public interest in preserving secrecy or confidentiality in relation to this information, and accordingly the green highlighted portions relating to this information should be redacted.

ORDER

92. I order that the following information be redacted from the document 'Victoria Police – North West Metro Division 1 – Practitioner Guide: Response to Significant Security Event – Vehicle Borne Attacks in CBD' as it appears in Attachment SF-9 and pages 472 to 481 of the Review Report:
- (a) operational hours of:
 - (i) Operation Millennial patrol supervisor Aqua 261;
 - (ii) foot and vehicle patrols deployed under Operation Millennial;
 - (iii) CIRT Security Teams patrolling the CBD;
 - (iv) Divisional Operations Support and Coordination Centre; and
 - (b) private mobile telephone number of LAC 265.
93. The PII claim is otherwise dismissed.
94. I order that this Ruling be published on the Coroners Court website.

Signature:



JACQUI HAWKINS
Coroner

Date: 11 November 2019

