

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Wednesday, 13 November 2019

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting:	Mr C. Winneke QC Ms M. Tittensor
Counsel for Victoria Police	Ms R. Enbom SC Ms K. Argiropoulos
Counsel for State of Victoria	Mr C. McDermott
Counsel for Nicola Gobbo	Mr R. Nathwani
Counsel for DPP/SPP	Ms A. Martin Ms K. O'Gorman
Counsel for CDPP	Ms A. Haban-Beer
Counsel for Police Handlers	Mr G. Chettle Ms L. Thies
Counsel for John Higgs	Ms C. Dwyer
Counsel for AFP	Ms I. Minnett
Counsel for Chief Commissioner of Police	Mr P. Silver

1 PROCEEDINGS IN CAMERA:

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12:40:58 3 COMMISSIONER: Yes, Ms Fayman.

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12:41:00 5 MS FAYMAN: Commissioner, I'd ask that the last few minutes
12:41:03 6 of what has occurred not be live streamed.

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12:41:05 8 COMMISSIONER: Well, it has - this story has been being
12:41:09 9 live streamed.

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12:41:11 11 MS FAYMAN: Until I've made my argument I just seek that my
12:41:15 12 appearance and the details of my firm be removed from the
12:41:19 13 live stream.

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12:41:22 15 COMMISSIONER: That's a fairly - - -

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12:41:24 17 MS FAYMAN: Together with the evidence that's just been
12:41:26 18 given in relation to my client being referred to.

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12:41:30 20 COMMISSIONER: Because you're appearing for a person,
12:41:32 21 you're a lawyer - - -

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12:41:39 23 MS FAYMAN: Your Honour, it's in relation to the evidence
12:41:41 24 where my client's being referred to as [REDACTED]
12:41:45 25 [REDACTED]. I'd ask that that not be live streamed at this
12:41:48 26 stage because that is, the crux of the application relates
12:41:51 27 directly to that.

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12:41:52 29 COMMISSIONER: All right. We might be able to shortcut
12:41:55 30 this. We'll take out the reference to [REDACTED]
12:42:00 31 at this stage where it refers to this and not be live
12:42:03 32 streamed. But that term has been used earlier in today's
12:42:06 33 proceedings.

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12:42:07 35 MS FAYMAN: I understand.

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12:42:08 37 COMMISSIONER: I did actually suggest the we use the most
12:42:12 38 recent pseudonym, which would probably be a better way of
12:42:14 39 non-identifying the witness, but that wasn't embraced by
12:42:17 40 Ms Argiropoulos, so that's why we continued with the other
12:42:21 41 phrase. Would you be content if we used the new pseudonym?

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12:42:27 43 MS FAYMAN: The difficulty that I have, as I understand it,
12:42:30 44 Commissioner, is that my client's been referred to as [REDACTED]
12:42:33 45 [REDACTED] but then additional evidence has been
12:42:36 46 given which would tend to identify my client and in those
12:42:40 47 circumstances even if the pseudonym was used, in my

12:42:46 1 respectful submission that would tend to identify him.
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12:42:49 3 COMMISSIONER: The difficulty, Ms Fayman, is that we do
12:42:52 4 have to tell a public story here and I'm very conscious of
12:43:00 5 the fact that your client needs to be protected, his
12:43:03 6 identity and whereabouts in particular needs to be
12:43:06 7 protected. The reality is that everybody who was involved
12:43:10 8 in this episode knows who your client is. So the orders
12:43:20 9 that have been made - and everybody's who's been following
12:43:25 10 this Commission closely already knows, very closely like
12:43:29 11 the media and lawyers for parties potentially affected and
12:43:33 12 so forth, they all know who your client is because it's
12:43:41 13 semipublic knowledge already. Your client needs to be
12:43:45 14 protected from those who might be casual observers of the
12:43:51 15 work of the Commission and members of the public and that's
12:43:56 16 very important that that be protected. Now there is of
12:44:00 17 course a non-publication order in respect of any evidence
12:44:03 18 that could identify or tend to identify many of them in
12:44:07 19 fact from other sources, apart from the Commission, but
12:44:10 20 also from the Commission, and I'm thinking that maybe that
12:44:14 21 one needs to be amended so it also includes any evidence
12:44:18 22 tending to identify, identify or tending to identify the
12:44:24 23 whereabouts of your client. That would be a bit tighter
12:44:28 24 than it is at the moment in terms of protection. But the
12:44:31 25 story has to be told in a general way so that there's as
12:44:36 26 little as possible that specifically identifies.
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12:44:38 28 Before the transcript is put on the website it goes
12:44:41 29 through a PII process and we take out specific dates and so
12:44:47 30 forth. So I'm inclined to think that if we used the newest
12:44:55 31 pseudonym and we take out those dates and keep it in a
12:45:00 32 general form, that would still protect your client from
12:45:04 33 anybody who didn't intimately know this story. And that,
12:45:09 34 coupled with the non-publication order, I think would give,
12:45:14 35 subject to what you've got to say, would give sufficient
12:45:18 36 protection to his welfare and that of his family.
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12:45:23 38 MS FAYMAN: Yes. In the circumstances I do persist with
12:45:27 39 the application. I hear what the Commissioner says in
12:45:33 40 relation to adopting the pseudonym and I respectfully agree
12:45:37 41 with - - -
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12:45:39 43 COMMISSIONER: It's better than using [REDACTED]
12:45:41 44 [REDACTED].
12:45:42 45
12:45:43 46 MS FAYMAN: It is.
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12:45:44 1 COMMISSIONER: I think it is, it's less identifying.
12:45:45 2
12:45:46 3 MS FAYMAN: It definitely is. However, we've still got
12:45:48 4 this issue where it's not being addressed in very general
12:45:52 5 terms, it is being publicly - it's a public hearing and
12:45:55 6 it's being live streamed and we still have that risk that
12:45:59 7 in my - - -
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12:46:00 9 COMMISSIONER: Not quite live streamed, we have the
12:46:02 10 15-minute delay.
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12:46:03 12 MS FAYMAN: Yes.
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12:46:04 14 COMMISSIONER: Which means that any errors or glitches
12:46:07 15 which are picked up can quickly be corrected.
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12:46:11 17 MS FAYMAN: But it's certainly accessible to the public in
12:46:14 18 a way that if it were to occur in a closed hearing it would
12:46:18 19 minimise the risk to my client's safety. And if it were to
12:46:23 20 be in a closed hearing the media would still be present,
12:46:26 21 they'd be capable of reporting within the confines of the
12:46:31 22 Commission's non-publication orders and various other
12:46:35 23 suppression orders that do exist. The position on behalf
12:46:37 24 of my client is that if there is to be evidence that's
12:46:41 25 given relating to my client, firstly the pseudonym should
12:46:45 26 most definitely be used, and it should be done in a more
12:46:48 27 general way if it is to be in a public hearing, and if it
12:46:53 28 is to be - if it's a matter that counsel assisting wish to
12:46:56 29 go into detail about, the hearing should be closed.
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12:47:03 31 COMMISSIONER: Yes, all right. I understand your
12:47:05 32 submission. Thanks Ms Fayman. Did you want to say
12:47:08 33 anything?
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12:47:10 35 MS TITTENSOR: I think, Commissioner, you're well aware of
12:47:13 36 the arguments. We seek to elicit the story as publicly as
12:47:20 37 we can and as safely as we can. We do think that that can
12:47:24 38 be achieved by use of the 15-minute delay where those
12:47:28 39 glitches do occur.
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12:47:30 41 COMMISSIONER: We could also, when Victoria Police is doing
12:47:35 42 the PII process for the transcript, what goes on the
12:47:40 43 website, we can also give that to Ms Fayman so she can make
12:47:45 44 submissions about whether too in case there's anything she
12:47:46 45 wants redacted.
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12:47:48 47 MS TITTENSOR: Yes, Commissioner.

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12:47:49 2 MS FAYMAN: I would seek a redaction of today's transcript
12:47:51 3 before it is published in relation to references to [REDACTED]
12:47:54 4 [REDACTED].
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12:47:55 6 COMMISSIONER: Yes, yes.
12:47:56 7
12:47:57 8 MS FAYMAN: And perhaps that can be replaced with a
12:47:59 9 pseudonym.
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12:47:59 11 COMMISSIONER: Certainly. So all the references to [REDACTED]
12:48:01 12 [REDACTED] before being published will now be replaced
12:48:06 13 with the [REDACTED].
12:48:09 14
12:48:09 15 MS TITTENSOR: Yes, Commissioner.
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12:48:11 17 COMMISSIONER: We'll certainly take care. We have already
12:48:13 18 been redacting certain bits, dates and things, as we've
12:48:21 19 gone through so it's as broad as possible but with still
12:48:26 20 telling the story publicly, which I think is very important
12:48:30 21 given the High Court's judgment and the public interest in
12:48:33 22 finally knowing exactly what happened between Nicola Gobbo
12:48:37 23 and Victoria Police.
12:48:41 24
12:48:42 25 MS FAYMAN: Thank you, Commissioner.
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12:48:43 27 COMMISSIONER: Thank you for your submissions. As to the
12:48:45 28 order of 31 July 2019, paragraph 2, which was subject to
12:48:51 29 any further there is to be no publication of any material,
12:48:54 30 statements, information or evidence given made or referred
12:48:57 31 to before the Commission which could identify or tend to
12:49:01 32 identify the person referred to as, your client, by this
12:49:05 33 pseudonym or any previous pseudonym, I'll amend that to say
12:49:10 34 by this or any other pseudonym, and add to that or his
12:49:16 35 whereabouts, which then makes it a little broader and
12:49:18 36 tighter. So that amendment will be made and a copy of it
12:49:24 37 posted on the hearing room door.
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12:49:26 39 MS FAYMAN: Thank you, Commissioner.
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12:49:27 41 COMMISSIONER: I think that deals with your application.
12:49:30 42
12:49:31 43 MS FAYMAN: There is just one other matter that I'd seek to
12:49:33 44 raise in relation to that and that relates to the fact that
12:49:36 45 I'm not in a position to monitor the feed.
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12:49:39 47 COMMISSIONER: I understand.

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12:49:40 2 MS FAYMAN: The difficulty is that while counsel are
12:49:44 3 retained, I certainly didn't have any notice of this today.
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12:49:48 5 COMMISSIONER: Yes.
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12:49:48 7 MS FAYMAN: I haven't been in a position to brief counsel
12:49:52 8 to attend and make the application. The difficulty from my
12:49:55 9 client's perspective is that he's simply not a position to
12:50:00 10 fund, nor arrange for somebody to be monitoring the feed to
12:50:06 11 ensure that we don't have a situation where there is
12:50:09 12 additional information that's provided that may well breach
12:50:17 13 that non-publication order or tend to identify my client.
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12:50:21 15 COMMISSIONER: Yes. Well given the position that your
12:50:24 16 client is in, his current circumstances, I would expect
12:50:27 17 Victoria Police would be looking after his interests to
12:50:32 18 some extent and would be conscious of that. I don't think
12:50:40 19 if you had briefed counsel they could have said anything
12:50:43 20 more.
12:50:44 21
12:50:45 22 MS FAYMAN: Yes.
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12:50:46 24 COMMISSIONER: Or more eloquently than you said it, so your
12:50:49 25 client can certainly be comforted by that. But we will
12:50:52 26 remain conscious of the fact of the very real need to
12:51:00 27 protect your client's welfare and that of his family.
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12:51:03 29 MS FAYMAN: Thank you, Commissioner. If I could simply be
12:51:05 30 advised or put on notice if an issue like this does arise
12:51:08 31 and my client can be heard in respect of a matter that may
12:51:11 32 require an application to be made.
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12:51:13 34 COMMISSIONER: Fair enough.
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12:51:15 36 MS FAYMAN: Thank you, Commissioner.
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12:51:17 38 MS ENBOM: Commissioner, may I be heard very briefly?
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12:51:19 40 COMMISSIONER: Yes, of course.
12:51:20 41
12:51:21 42 MS ENBOM: We are doing our absolute best sitting here
12:51:23 43 monitoring the live transcript to try and make an
12:51:27 44 assessment as to whether too much precision has been given.
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12:51:31 46 COMMISSIONER: Yes.
12:51:31 47

12:51:32 1 MS ENBOM: But it's difficult and it does really concern me
12:51:36 2 that we don't know who might be sitting at a computer
12:51:41 3 watching, wanting to identify the person, waiting for
12:51:47 4 little bits of information that they then record so they
12:51:51 5 can then pull it all together and identify the person in
12:51:55 6 order to cause that person harm.

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12:51:57 8 COMMISSIONER: The main thing is that their identity and
12:52:00 9 whereabouts is protected. Those people who are in that
12:52:03 10 category, Ms Enbom, the reality is they're very likely to
12:52:09 11 know already the original identity of this person. They're
12:52:12 12 very likely to know that. It's semi in the public sphere
12:52:21 13 already, on websites.

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15 MS ENBOM: I accept some people already know and there
12:52:25 16 might be some other people who would like to do harm that
12:52:25 17 don't know and that's why we're so anxiously sitting here
18 trying to pick up those little bits of information that
12:52:34 19 might be pulled together to identify the person but we'll
12:52:34 20 do our best and we'll continue to try and do our best.

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22 COMMISSIONER: It's a balancing exercise we've got to try
12:52:37 22 and do.
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12:52:41 24
12:52:41 25 MS ENBOM: Yes.

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27 COMMISSIONER: I think at the moment we're getting it
12:52:42 27 right. We're not perfect, but we are getting it right.
12:52:43 28 We'll keep trying our hardest, all of us. Thanks very much
12:52:47 29 Ms Fayman.
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12:52:52 32 MS FAYMAN: Thanks, Commissioner. May I be excused?
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12:52:54 34 COMMISSIONER: Yes, of course. We're in open hearing again
12:53:08 35 now.

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