



SUPPRESSION ORDER

PURSUANT TO SECTION 58 (1) (b)

RE: INQUEST INTO THE DEATH OF ANTHONY CLARKE

I, **KIM PARKINSON**, Coroner

hereby order:

1. That there be no report or publication of any evidence given at the inquest into the death of Anthony Clarke relating to or in respect of the tasking or manning of Victoria Police units. This order does not apply to the tasking and manning of Traffic Management Units and Regional Traffic Tasking Units within the Victoria Police Region 4 on 23 and 24 April 2005.
2. Order 1 will operate until further order.
3. Leave is granted to Counsel for the Chief Commissioner of Police to renew his application.
4. Liberty to apply.

KIM M. W. PARKINSON
CORONER
23 September 2009

IN THE MATTER of an Inquest into the death of Senior Constable Anthony Clarke
Case Number 1376 /05

RULING AND ORDERS

This is the hearing of the inquest into the death of Senior Constable Anthony Clarke, who in the course of his duty as a police officer, lost his life on 24 April 2005. At the commencement of the inquiry on 21 September, 2009, application was made by Mr Maguire of Counsel appearing for the Chief Commissioner of Victoria Police, pursuant to s58 1 (b) of the Coroners Act 1985 for suppression orders in relation to certain evidence likely to be called, on the grounds that publication would be against the public interest.

After some consideration as to the nature of the orders sought, Mr Maguire undertook to review and refine the nature of the orders sought. On 22 September, Counsel filed a further draft of proposed orders. This ruling is in relation to those draft orders.

The orders sought are as follows:

1. That there be no report made of the inquest touching upon the death of Anthony Hogarth Clarke or any part of the proceedings of the said inquest or of the publication of any evidence given at the said inquest relating to or in respect of:
 - (a) The contractual terms and arrangement between Victoria Police in respect of tendering and/or purchasing of tactical or operational equipment for use by Victoria Police as set out in Annexure "A" hereto; or
 - (b) The single officer patrol review other than in the edited form marked "produced for Media Release";
 - (c) The tasking or manning of Victoria Police units with the exception of the tasking and manning of Traffic Management Units and Regional Traffic Tasking Units within the Victoria Police Region 4 on 23 and 24 April 2005; or
 - (d) The operational and defensive tactics, procedures and methodologies of or used by members of the Victoria Police Force; or
 - (e) The operational Capabilities of any weapons, holsters or other equipment used by members of the Victoria Police Force with the exception of the capability of any

weapon, holster or other equipment used by Senior Constable Anthony Clarke on the 23 and 24 April 2005; or

- (f) The training practices of the Victoria Police Force in so far as they relate to –
 - I. The operational and defensive tactics, procedures and methodologies of or used by members of the Victoria Police force; or
 - II. The operational capabilities of any weapons, holsters or other equipments used by members of the Victoria Police Force.

2. This order to remain in force until further order.

As to draft orders (a) and (b), neither the Annexure A, nor the Edited Form Document referred to in those sub- paragraphs have been produced for consideration by me at this stage of the application. In those circumstances, I expressed the view that the scope of the application is not immediately apparent and that in the absence of that material, it would not be possible to determine that part of the application. It was conceded by counsel for Victoria Police that this aspect of the application would properly be determined at a later date. At this stage I decline to make the orders sought in draft orders paragraphs (a) and (b). Counsel has leave to renew his application in relation to those matters if he considers it necessary.

I turn to the remaining aspects of the application.

The brief to the Coroner contains some 19 volumes of materials, including numerous witness statements and documents, including internal police department reports, reviews and training materials. Mr Maguire does not identify the particular evidence, including the particular documents or materials which fall within the prohibitions contained in the orders sought as paragraphs (c) to (f).

On 21 September, I invited amendment to the proposed orders by the identification of that evidence and in particular the documents which were sought to be suppressed. It is understandable having regard to the extent of the materials that it would be a complex task to identify all of the relevant materials. However the public interest considerations raised by Mr Maguire must be weighed against the public interest in enabling the reporting of proceedings which are conducted in public.

In the absence of identification of the particular evidence, including documents sought to be suppressed, I consider that some of the orders sought are too wide and too vague to be able to

be properly understood or interpreted and my ability to reasonably form a view as to the public interest is constrained.

The nature of this case is that it will necessarily involve the taking of evidence as to procedures and processes, both general and specific to Senior Constable Clarke. In the case of general operational matters, not directly touching upon the circumstances of Senior Constable Clarke's death, the public interest may require that evidence be the subject of some limitation.

That is the case with draft order (c). As to draft order(c) Mr Maguire submitted that the reporting of details of the manning of Victoria Police units generally, and in particular the methods and criteria by which decisions as to manning were made and the duties to which they were allocated, was information which if in the public domain may place members of the Victoria Police at risk and would inhibit law enforcement. This is because of concerns that information as to the manner in which stations, units and even individual rostering and manning arrangements were made, may be misused by certain members of the community.

Subject to the exceptions relating to the particular circumstances of the Units in Region 4 on 23 and 24 April, 2005, I am satisfied that there is a substantive issue as to police members safety and law enforcement capacity and that it is in the public interest that the general operational methods and criteria of rostering and manning and tasking not be reported.

Order (e) although directed to a similar mischief, and reliant upon the same public interest matters, suffers from the difficulty that it has the capacity to preclude the reporting of evidence going directly to matters in issue in this inquest, in particular matters of design as to the holsters on issue and complaints made in that regard. I am not satisfied that as to this matter the public interest in being informed as to evidence in open court, is outweighed by possible safety or operational issues. The language used in the proposed order, that is the expression, "the operational capabilities" of any weapons, holsters or other equipment, has the potential for a very broad interpretation and this creates a difficulty in enabling those attempting to apply the order. In balancing the public interest consideration, I cannot reasonably form the view that the publication of such evidence would be against the public interest. It is of note that the media reporting to date has already directed itself to some of these issues.

In the absence of identification of the particular evidence, including documents sought to be suppressed, I am of the view that the remaining orders sought in paragraphs (d) and (f) are also too wide and too vague to be able to be properly understood or interpreted by those who would be required to apply any order. A more appropriate course, although I acknowledge potentially time consuming, would be for Counsel to renew his application where he considers it to be relevant in the course of the evidence in the inquest and in light of the particular evidence and documents under consideration.

For the reasons given above, I make the following orders:

ORDERS

1. That there be no report or publication of any evidence given at the inquest into the death of Anthony Clarke relating to or in respect of the tasking or manning of Victoria Police units. This order does not apply to the tasking and manning of Traffic Management Units and Regional Traffic Tasking Units within the Victoria Police Region 4 on 23 and 24 April 2005.
2. Order 1 will operate until further order.
3. Leave is granted to Counsel for the Chief Commissioner of Police to renew his application.
4. Liberty to apply.

K.M.W. PARKINSON
CORONER
23 SEPTEMBER 2009