



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.4

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**).

4. On 23 August 2019, I dismissed the CCP's application for a proceeding suppression order over the entire contents of the Review Report.¹
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 the 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 that the statement and further documents were relevant to the scope of the inquest. The documents were subsequently added to the coronial brief and distributed to the interested parties.

¹ 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]. I should, perhaps, also note that while the CCP's application was directed to the entire contents of the Review Report, the CCP's argument in respect to the suppression of that Report did not then make any or any significant mention of the references within the Report to the retrospective application of the 'Recidivist Offender Prioritisation Tool' to the circumstances of the Offender, Mr Gargasoulas.

7. On 16 October 2019, the CCP provided the court with a statement of Assistant Commissioner Stephen Fontana dated 15 October 2019 (**Statement of AC Fontana**) together with Attachments ‘SF-1’ to ‘SF-10’ in response to the requested material at paragraphs 5(b) to (e). In their covering letter, the CCP stated that “*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 on the portions of the document over which 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 these documents be accordingly redacted prior to their inclusion in the coronial brief.
10. In respect to 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 their claim for public interest immunity.² However, at that stage the CCP had not provided any evidence setting out the basis for such a claim.
11. The CCP also indicated that he would be seeking a suppression order in respect of Attachment SF-5, Victoria Police ‘Avenues of Inquiry Guide and Checklist’, on the basis that it “*would be contrary to the public interest for details regarding the manner in which the Fugitive Taskforce (and other members of Victoria Police) attempt to locate high risk offenders and what enquiries police make in searching for, and investigating, high to extreme risk fugitive/offenders*”.³ It was indicated that the

² Letter from Ms Jessica Tribe, Principal Solicitor, Victorian Government Solicitor’s Office to the Coroners Court dated 16 October 2019.

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

application for a suppression order would be filed “*as soon as possible once we have had an opportunity to prepare evidentiary material in support of the application*”.

12. 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 of Victoria (**Coroners Court**) were to be made, with supporting affidavit material and written submissions, by 4pm on Tuesday 22 October 2019.
13. 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.

THE SUPPRESSION ORDER APPLICATION AND SUBMISSIONS

The suppression order application

14. On 22 October 2019, the CCP gave notice of an application for a suppression order (**suppression order application**) under section 18(2) of the Open Courts Act over the entire contents of the ROPT. No application for a suppression order was made over Attachment SF-5, contrary to the CCP’s earlier indication. A claim of public interest immunity (**PII claim**) was also made over the green highlighted portions of Attachment SF-9. A separate ruling deals with the PII claim.⁴
15. The suppression order application was supported by the Affidavit of Superintendent Bernie Jackson dated 22 October 2019 (**Affidavit of Supt Jackson**) and written submissions filed on behalf of the CCP.
16. The CCP notified the interested parties of the suppression order application pursuant to section 10(1)(b) of the Open Courts Act. The Court duly notified the media of the suppression order application pursuant to section 11 of the Open Courts Act.

Supporting material

17. The CCP relied primarily on the Affidavit of Supt Jackson in support of its application for a suppression order over the entire contents of the ROPT.

⁴ See Ruling No 3, 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.

Affidavit of Supt Jackson

18. Supt Jackson deposed, among other things, that public disclosure of the ROPT:
- (a) will disclose to the public the way in which Victoria Police rates offenders by reference to offences and other behaviours;⁵
 - (b) has the potential to inhibit the ability of Victoria Police to identify with accuracy and reliability which offenders pose a risk that warrants a prioritised response;⁶
 - (c) would equip offenders with the knowledge to attempt to avoid being identified as a relevant offender under the ROPT;⁷
 - (d) has the potential to deter individuals from seeking police assistance due to a concern it will cause them to receive a rating under the ROPT;⁸
 - (e) has the potential to undermine both the ability of Victoria Police to assess accurately how best to allocate scarce resources to offenders and the effectiveness of the law enforcement response to high risk recidivist offenders, adversely impacting on community safety;⁹
 - (f) has the potential to create a disincentive to offenders to admit to committing specific offences listed under the ROPT;¹⁰ and
 - (g) may create a disincentive for youth to have contact with police or for members of the public to disclose mental health issues to the police.¹¹

The submissions of the CCP

19. By written submissions, the CCP contends, among other things, that:
- (a) the factors identified in section 18(1) of the Open Courts Act continue to inform the content of the public interest in section 18(2), though not expressly enumerated therein;¹²
 - (b) the test of necessity is subsumed within the public interest test under section 18(2) – specifically, “*a suppression order is made if the coroner believes the*

⁵ Affidavit of Superintendent Bernie Jackson dated 22 October 2019, [7].

⁶ Affidavit of Superintendent Bernie Jackson dated 22 October 2019, [8].

⁷ Affidavit of Superintendent Bernie Jackson dated 22 October 2019, [8].

⁸ Affidavit of Superintendent Bernie Jackson dated 22 October 2019, [8].

⁹ Affidavit of Superintendent Bernie Jackson dated 22 October 2019, [9].

¹⁰ Affidavit of Superintendent Bernie Jackson dated 22 October 2019, [10].

¹¹ Affidavit of Superintendent Bernie Jackson dated 22 October 2019, [11].

¹² Submissions on behalf of the Chief Commissioner of Police: Suppression Order dated 22 October 2019, [5].

*order is necessary because disclosure would be contrary to the public interest”;*¹³

- (c) the word ‘necessary’ sets the ‘bar high’ and there should be derogation from open administration of justice “*only where there are exceptional circumstances or where a high standard of satisfaction is reached*”;¹⁴
- (d) the publication of the ROPT would be injurious to the ability of Victoria Police to carry out its functions to protect the public and undermine policing in Victoria;¹⁵
- (e) release of the methodology outlined in the ROPT has the potential to inhibit the ability of Victoria Police to identify with accuracy and reliability those offenders who pose a risk which warrants a prioritised response under the ROPT and to provide offenders with the knowledge to attempt to avoid being identified as a relevant offender under the ROPT;¹⁶
- (f) public knowledge of the specific offences included for the calculation of specific values in the ROPT has the potential to create a disincentive to offenders to admit to committing those offences;¹⁷ and
- (g) there is no significant countervailing public interest in this case.¹⁸

20. In respect to the practical impact of the orders sought, the CCP submitted:

*While the suppression order will mean that the ROPT cannot be published, the parties will, and are entitled to have access to that information and cross-examine witnesses in relation to it. The effect of the proposed suppression order is that information with the potential to jeopardise police practices and operations and to put the safety of members of Victoria Police and their families at risk will not be able to be published.*¹⁹

¹³ Submissions on behalf of the Chief Commissioner of Police: Suppression Order dated 22 October 2019, [5].

¹⁴ Submissions on behalf of the Chief Commissioner of Police: Suppression Order dated 22 October 2019, [6], referring to *DPP v Pomeroy* [2002] VSC 178 at [11]; *Fairfax Digital Australia & New Zealand Pty Ltd v Ibrahim* (2012) 263 FCR 211 at 8 and [46]; *Herald and Weekly Times v The Magistrates’ Court of Victoria* [1999] 2 VR 672 at 678-679; *John Fairfax Publications Pty Ltd v District Court of New South Wales* (2004) 61 NSWLR 344 at 353 and *Herald & Weekly Times v DPP* [2007] VSC 71 at [22]-[24].

¹⁵ Submissions on behalf of the Chief Commissioner of Police: Suppression Order dated 22 October 2019, [8].

¹⁶ Submissions on behalf of the Chief Commissioner of Police: Suppression Order dated 22 October 2019, [9(a)-(b)].

¹⁷ Submissions on behalf of the Chief Commissioner of Police: Suppression Order dated 22 October 2019, [9(c)].

¹⁸ Submissions on behalf of the Chief Commissioner of Police: Suppression Order dated 22 October 2019, [10].

¹⁹ Submissions on behalf of the Chief Commissioner of Police: Suppression Order dated 22 October 2019, [10].

The submissions of the families

21. On 30 October 2019, the legal representatives of the families (**the families**) of Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel filed written submissions in response to the suppression order application and the PII claim.
22. The families formally submitted that the appropriate and proper contradictor to the suppression order application is the relevant media organisation, but thereafter contended that:
 - (a) the CCP bears the onus of identifying with particularity the precise information it submits should be subject to a proceeding suppression order;
 - (b) there is no compelling reason provided by the CCP as to why the entirety of the ROPT should be suppressed;
 - (c) the CCP had not discharged the onus of demonstrating to the Court that the orders should be made under section 18(2) of the Open Courts Act;
 - (d) the CCP had not explained how the granting of the suppression order would affect the hearing of the inquest in open court and the publication of the findings in relation to the inquest; and
 - (e) the CCP's proposed procedure would accordingly be unworkable in an open court and would make the writing and publication of the Coroner's findings and judgment extremely difficult.²⁰
23. The families highlighted various provisions of the Open Courts Act and made submissions concerning the principles of open justice, particularly in the coronial jurisdiction.²¹ Specifically, the families noted that any order made for suppression of material tendered in an inquest "*has the potential to compromise the principles, and attainment, of open justice*".²²
24. The families noted that the grounds set out in section 18(1) of the Open Courts Act are expressly excluded for the Coroners Court. In this regard, the families referred to the CCP's submission that the factors in section 18(1) of the Open Courts Act continue to

²⁰ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [4].

²¹ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [6]-[11].

²² Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [11].

inform the content of the ‘public interest’ referred to in section 18(2). The families noted that no authority was offered for this statement, that section 18(1) expressly stated that the grounds set out in section 18(1)(a)-(f) did not apply to the Coroners Court and that section 18(2) did not make any express reference to the grounds in section 18(1).²³

25. It was submitted that the Coroners Court may only make a proceeding suppression order if satisfied of the following three preconditions:

- (a) the coroner reasonably believes;
- (b) that an order is necessary; and
- (c) because disclosure would be contrary to the public interest.²⁴

26. It was submitted that in considering whether to make an order, the Coroners Court:

*...must be satisfied that the grounds for making the order are established on the basis of evidence or ‘sufficiently credible information that is satisfactory to the court or tribunal’. The fact that a high government official has sworn an affidavit testifying that production should be withheld is not sufficient to grant automatic protection from disclosure and the Court must make its own assessment.*²⁵

27. The families referred to the limitations set out at sections 12 and 13 of the Open Courts Act; namely, that a suppression order must:

- (a) specify the period of operation, not exceeding five years;
- (b) specify with precision the scope of the order;
- (c) be limited to achieving the purpose for which the order is made; and
- (d) be limited to applying only to that information which is necessary to achieve the purpose for which the order is made.²⁶

28. The families highlighted a number of issues with the proposed suppression order and contended, among other matters, that:

²³ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [18].

²⁴ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [13]-[15].

²⁵ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [16], referring to *Commonwealth Director of Public Prosecutions v Barry Thomas Brady* [2015] VSC 246 [61].

²⁶ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [23]-[24].

- (a) the CCP had not referred to or specified the period of operation of the proposed order;²⁷
- (b) it would be “*difficult, if not impossible*” for me to provide findings without referring to the suppressed material and a “*blanket*” suppression order of the kind proposed by the CCP may cause practical problems in the hearing of the matter and subsequent publication of any findings;²⁸
- (c) disclosure of the way in which offenders are rated does not, of itself, reveal any public interest factors in favour of suppression, and the Affidavit of Supt Jackson does not provide evidence in support of the arguments advanced beyond an assertion of the ‘potential’ for the risks raised such as instances of offenders tailoring their behaviour by reference to documents or policies publicly available in the past;²⁹
- (d) it is necessary for the CCP to identify specifically how manipulation or exploitation by offenders of the policy is likely to occur and the specific risks are unexplained;³⁰
- (e) it is common knowledge that police have a record of, and may focus attention upon, those who have committed offences in the past, that assertions such as “*a history of contact with police as a youth, especially when very young, has been identified as a relevant factor for future criminal offending*” and “*a history of mental health issues*” is a “*relevant factor for future criminal offending*” (as referred to in the Affidavit of Supt Jackson at [11](a) and(b)) are hardly examples of secret police methodology and that there is no evidence to support the assertion that knowledge that such offences are referred to in the ROPT would affect the likelihood of an offender making admissions to such offences;³¹
- (f) any person requesting police intervention is aware that a record will be made of it, and there is no evidence to support the assertion that the particular

²⁷ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [24].

²⁸ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [25], [35].

²⁹ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [28]-[29].

³⁰ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [28].

³¹ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [31].

administrative use that police may make of that information is likely to have any impact upon the willingness of members of the public to contact or report matters to the police;³²

- (g) the suppression order application extends to information well beyond that necessary to achieve the purpose for which the order is sought;³³ and
- (h) there is a public interest in the publication and public discussion of the ROPT and to the extent that specific mechanisms may prevent offenders from being prioritised, and that such issues are an issue in the inquest and are properly the subject of public debate.³⁴

The submissions of the media

- 29. On 31 October 2019, The Age Company Pty Limited (**The Age**) filed written submissions in response to the suppression order application. No other media entity filed submissions in response.
- 30. It should be noted that as The Age is not an interested party to the proceeding, it did not have the benefit of reviewing the ROPT at the time that the written submissions were filed. In this regard, The Age submitted that it was unable to make submissions in respect of suppression of the ROPT itself as it had not reviewed the document.³⁵
- 31. The Age submitted that the suppression order application should be refused and contended, amongst other matters, that:
 - (a) it appeared that the suppression order application had been made over two categories of evidence:
 - (i) the ROPT itself, including the methodology used to rate and rank criminal behaviour for the purpose of preventing future offending; and
 - (ii) evidence in respect of the ROPT, which would include the circumstances of how the ROPT was applied in the events leading up to the subject of the proceedings;³⁶

³² Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [32].

³³ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [33].

³⁴ Submissions on behalf of the families of the victims in relation to the application for a proceeding suppression order and PII order made by the Chief Commissioner of Police dated 30 October 2019, [34].

³⁵ Submissions on behalf of The Age Company Pty Limited dated 31 October 2019, [6].

³⁶ Submissions on behalf of The Age Company Pty Limited dated 31 October 2019, [5].

- (b) the suppression order application ought to be refused at least insofar as it seeks to suppress evidence in respect of the ROPT, as distinct from the ROPT itself, noting the limitations of the submissions as detailed in paragraph 30 above;³⁷
- (c) the Affidavit of Supt Jackson did not explain any concern regarding the broader category of evidence in respect of the ROPT, which would include how it was applied (or not applied) in a certain circumstance;³⁸
- (d) no evidence had been provided by the CCP as to why disclosure of the evidence in respect of the ROPT would be contrary to the public interest, and accordingly there is insufficient evidence to grant the suppression order application;³⁹
- (e) the media ought to be able to report on the nature of the ROPT document itself and what its purpose is and on how the ROPT was applied or used in the events leading up to the subject of this inquest. It was noted that details of the ROPT are already within the public domain,⁴⁰ namely that the ROPT “*rates and ranks accused in criminal, family violence, and road policing seriousness and recidivism to calculate overall risk, which may then lead to a Recidivist warning flag on LEAP*”.⁴¹
- (f) reporting on the matters set out in paragraph 31(e) would not be contrary to the public interest because that reporting would not in and of itself disclose any methodology as to how criminals are ranked using the ROPT;⁴² and
- (g) it is in the public interest to report on the matters set out in paragraph 31(e) as it relates to the response of Victoria Police to the events leading up to the subject of this inquest.⁴³

Other interested parties

32. No other interested party has taken a position supporting or opposing the orders sought by the CCP.

³⁷ Submissions on behalf of The Age Company Pty Limited dated 31 October 2019, [6].

³⁸ Submissions on behalf of The Age Company Pty Limited dated 31 October 2019, [8].

³⁹ Submissions on behalf of The Age Company Pty Limited dated 31 October 2019, [9].

⁴⁰ Submissions on behalf of The Age Company Pty Limited dated 31 October 2019, [10(a)].

⁴¹ The Honourable Paul Coghlan QC, *Bail Review: Second advice to the Victorian Government* (1 May 2017), footnote 161.

⁴² Submissions on behalf of The Age Company Pty Limited dated 31 October 2019, [10(b)].

⁴³ Submissions on behalf of The Age Company Pty Limited dated 31 October 2019, [10(c)].

RELEVANT PRINCIPLES

33. In determining this application, I have had regard to the principles applicable to the coronial jurisdiction and considered the relevant provisions of the Open Courts Act. These principles are comprehensively set out in my previous Ruling in this proceeding.⁴⁴

ANALYSIS AND DETERMINATION OF THE APPLICATION

34. The CCP's primary submission is that disclosure of the ROPT would be "*injurious to the ability of Victoria Police to carry out its functions to protect the public and undermine policing in Victoria*"⁴⁵ and relied on the Affidavit of Supt Jackson that release of the ROPT has the 'potential' to, in substance:
- (a) inhibit the ability of Victoria Police to identify with accuracy and reliability those offenders who pose a risk which warrants a prioritised response; and
 - (b) create a disincentive to offenders to admit to committing certain offences.
35. Neither the families nor The Age disputed that for the purposes of section 18(2) of the Open Courts Act, there could, in specific circumstances, be a public interest in protecting particular police operational procedures and methods from public dissemination. However, I note that this does not imply that there is always necessarily a dominating public interest in protecting *all* police operational details and procedures from examination and disclosure.
36. In determining whether it is necessary to suppress the contents of the ROPT on the grounds that disclosure would be contrary to the public interest, I have had regard to relevant matters including:
- (a) the confidentiality or secrecy of the ROPT;
 - (b) the effect of publication of the contents of the ROPT;
 - (c) the importance of the ROPT to the inquest; and
 - (d) the practicalities of making the suppression order sought.

Confidentiality or secrecy of the ROPT

⁴⁴ 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]-[88].

⁴⁵ Submissions on behalf of the Chief Commissioner of Police: Suppression Order dated 22 October 2019, [8].

37. The Affidavit of Supt Jackson does not state directly that the ROPT is either secret or in some manner kept confidentially within Victoria Police. The document does not appear to be marked 'secret' or 'confidential' and Supt Jackson does not depose to any practical or other steps put in place by Victoria Police to prevent the details of the ROPT becoming public.
38. Whilst it appears that the ROPT is used regularly by serving police officers, it is not clear that those police members have been instructed that the specific scores and method utilised in the ROPT must be kept confidential. If the methodology of the ROPT is sensitive, it does seem surprising that no evidence has been given of steps taken within Victoria Police to keep it secret or confidential.
39. In this regard, I note that it appears the ROPT was before The Honourable Paul Coghlan QC in the Bail Review conducted in 2017. It is not clear that the ROPT was treated as a secret or confidential document in that context.
40. Further, the ROPT is referred to in several parts of the Review Report, including in respect to the application of it retrospectively to the Offender. It is not apparent that in those references the ROPT had any special status or applicable level of secrecy or confidentiality beyond other aspects of police methodology and assessment.⁴⁶

Effect of publication

41. The ROPT is a risk rating tool used by Victoria Police to identify and rate an offender's risk of recidivism, based on their history of police involvement, recidivism and recency of involvement with police. The tool does not disclose information about what is to be done once the offender has been prioritised, which is, rightly, a matter for police command and operations.
42. Having considered the contents of the ROPT, it is not readily apparent to me how it is that public knowledge of the details of the ROPT alone, including the knowledge of factors that elevate an individual's score in the ROPT, would widely deter individuals from seeking police assistance, incrementally affect the likelihood that an offender would admit to offending or realistically be likely to lead to "*at least a significant proportion of...individuals, and others in the community*"⁴⁷ becoming less willing to notify the police of mental health issues, as deposed by Supt Jackson.

⁴⁶ See Victoria Police Operation Titan Critical Incident Review, 20, 30, 65, 96, 144-157, 227.

⁴⁷ Affidavit of Superintendent Bernie Jackson dated 22 October 2019, [11(b)].

43. Youth contact and mental health involvement factors appear to have only a modest effect on the calculation of the overall risk score, with these areas only accounting for a maximum additional score of two in each area on the overall risk score. The primary focus of the ROPT is directed to the seriousness, impact, recency and number of offences an individual has committed throughout their history, and other risk factors including family violence, road policing, drug addiction and offending. Many of those factors have been identified in both the Review Report and the Bail Review conducted by The Honourable Paul Coghlan QC.
44. It seems to me that the Affidavit of Supt Jackson does not give any firm support to the actual or likely effect of the publication of the details of the ROPT upon any ability of Victoria Police to accurately and reliably identify high risk and recidivist offenders, or upon the likely willingness of offenders to admit to committing certain offences, disclose mental health issues or to having had contact with police as a youth. At most, it expresses a sequence of opinions, that it is *possible* an offender may be less inclined to admit offending behaviour, disclose a mental illness or having had contact with police as a youth, if they had knowledge of the existence and details of the ROPT.
45. Indeed, as noted by the families, the Affidavit of Supt Jackson did not identify either:
- (a) what particular aspect of the ROPT would be open to exploitation and/or manipulation; or
 - (b) how such manipulation or exploitation of any such aspect of the ROPT might specifically occur.
46. While it may be accepted that effects of that kind are theoretically ‘possible’, at least in an isolated case, the Affidavit of Supt Jackson gives no demonstrated example of such effects ever having occurred, ever having been threatened, or having at any earlier time been anticipated by police command as likely widely to occur if the fact and details of the ROPT were to become public. It appears to me that the certainty and true effect of these apprehended effects is, at the very least, open to debate.
47. Further, it is not unreasonable to consider that many offenders will be disinclined to admit offending, mental illness or other such behaviour to start with. In those circumstances, the Affidavit of Supt Jackson does not specifically address what the degree of incremental disinclination of such a group of offenders might be if they were to have access to the detail of the ROPT.

48. In addition, if individuals were inclined to avoid being identified as a relevant offender under the ROPT, that inclination could be given effect to by not offending or by not committing further crimes that could potentially bring such an offender within the remit of the ROPT. Such an outcome could firmly be said to be in the public interest, rather than contrary to it.
49. Considerations of this nature, of course, proceed upon an assumption that an offender might be able to manipulate the scoring in the ROPT to his or her advantage. The factors bearing upon the scoring in the ROPT seem to be common sense in nature and the weight given to particular scores seems unsurprising. That is not to say that the ROPT is not the product of research and science; rather that to observe that the science and research would seem to confirm common sense.
50. In these circumstances, it is not clear to me how likely it really is that the ROPT would be widely or regularly manipulated so as to give rise to distinctly antisocial outcomes if the method prescribed within it were to be publicised. Whilst I must and do give weight to the opinions of Supt Jackson concerning the apprehended effects of disclosure of the ROPT, it appears to me that his Affidavit essentially speaks of no more than a 'potential' for such consequences, the certainty and true effect of any of which seems to me to be, at the very least, open to debate.

Importance of ROPT to the inquest

51. It is a matter of public record that the offender was on bail for a number of serious offences at the time of the Bourke Street event, and had an extensive history of prior offending.⁴⁸ The means by which Victoria Police identify and respond to high-risk recidivist offenders and manage escalating behaviour, such as that exhibited by the offender in this matter, is of course an important area of consideration for the inquest and part of the sequence of events that culminated in the tragic deaths of Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel.
52. In this regard, the inquest will be specifically examining:
 - (a) the police response to the grant of bail, including monitoring of the offender's bail conditions;

⁴⁸ *DPP v Gargasoulas* [2019] VSC 87, [61], [68], [73], [111]-[122]

- (b) the police response to the escalation of the offender's behaviour from 14 January 2017;
 - (c) police offender profile, risk assessment and management practice;
 - (d) the strategic and tactical options available to Victoria Police; and
 - (e) relevant Victoria Police Manuals, policies and procedures.⁴⁹
53. The examination of such issues occurs in a wider setting in which in recent years there have been notorious events where high-risk recidivist offenders have committed heinous crimes whilst on bail.⁵⁰
54. It will be necessary to examine the tools, practices, doctrines and resources available to and utilised by Victoria Police for managing high-risk recidivist offenders, which will include, relevantly, the use of and application of Priority Target Management Plans, the ROPT and the Victoria Police Intelligence Doctrine.
55. However, a suppression order of the kind sought would restrict public consideration of that issue and, inevitably, limit the ability to record evidence relating to it in the findings, and any comments and recommendations ultimately to be made, which is contrary to the intent and purpose of the Open Courts Act.

Practicalities of making the suppression order sought

56. The suppression order application has been correctly described by the families as 'blanket' in nature. It is an application to suppress from wider disclosure and public consideration evidence with respect to the entire contents of a document which goes to the heart of key issues associated with this inquest as identified at paragraph 52 above.
57. Any making of a 'blanket' order of the kind sought has the potential to cause considerable practical difficulties in the hearing and, subsequently, in the publication of findings, and any comments and recommendations.
58. As I noted in my previous ruling:

There is the potential for significant if not insoluble problems of lack of definition in the boundaries of a suppression order of the 'blanket' type presently sought. Such difficulties must bear upon the extent to which the Court is realistically able to give the required effect to section 13(1) of the Open Courts Act if such an order were to be made. If such effect realistically cannot be given, that seems to me to raise real questions

⁴⁹ Scope of Inquest dated 18 October 2019, [2].

⁵⁰ *R v Price* [2016] VSC 105; *R v Bayley* [2013] VSC 313.

*about whether an order of that kind should properly be made pursuant to the provisions of the Open Courts Act.*⁵¹

59. The problem is particularly acute in the present instance because the Review Report, which is not subject to a suppression order application, includes extensive consideration of the application of the ROPT, details the factors that will be considered in the ROPT to determine an individual's crime rating or overall risk score under the tool and contains a retrospective assessment of the offender.⁵²
60. In these circumstances, it is not evident how it is that a media representative could be sure that reporting evidence given by a particular witness at the inquest does not also amount to reporting 'evidence in respect of the contents' of the ROPT. If for example, a media representative were to report on such facts emerging in evidence during the inquest, it is unclear whether the reporter would be in breach of an order that prevents any publication of the whole of the contents of the ROPT.

CONCLUSIONS AND DETERMINATION

61. In order to make a suppression order of the kind sought under section 18(2) of the Open Courts Act, I must reasonably believe that it is necessary to make such an order because disclosure of the contents of the ROPT would be contrary to the public interest.
62. As previously noted, this presents a high bar. I must feel an actual sense of persuasion, on the evidence, that it is 'necessary' to make the order in the public interest. It is not simply a question of whether such an order is reasonable or desirable; it must be necessary. In the present circumstances, as I have considered and discussed them, I do not feel the necessary sense of persuasion.
63. Although I have given weight to the Affidavit of Supt Jackson, I am not satisfied that his evidence displaces the statutory presumption in favour of disclosure of information and the principles of open justice stated in section 4 of the Open Courts Act.
64. Further, for the purposes of section 18(2) of the Open Courts Act, I do not reasonably believe that it is necessary in the public interest to make a suppression order in respect to the disclosure of the ROPT or any evidence concerning it given in the inquest.

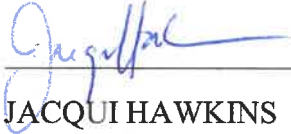
⁵¹ Ruling No 1, Inquest into the deaths of Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel dated 23 August 2019, [168].

⁵² Victoria Police Operation Titan Critical Incident Review, 20, 30, 65, 96, 144-157, 227.

ORDER

65. The application is dismissed.
66. I order that this Ruling be published on the Coroners Court website.

Signature:



JACQUI HAWKINS

Coroner

Date: 11 November 2019

