



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2015 4327
COR 2016 2914
COR 2017 1028
COR 2017 2630

INQUEST INTO THE DEATHS OF

CHILD 1

CHILD 2

CHILD 3

CHILD 4

RULING NO.1

BACKGROUND

1. The first part of the inquest into the deaths of above children is scheduled to commence on Monday 14 February 2022 and continue until Friday 24 February 2022.
2. On 12 November 2021, at the first directions hearing in this matter, I made an interim suppression order (**Interim Order**) pursuant to s 20 of the *Open Courts Act 2013* (Vic) (**Open Courts Act**) prohibiting publication of any information that would identify or tend to identify a child, their immediate family members, any child protection practitioners or witness in this matter.
3. The *Open Courts Act 2013* (Vic) (**Open Courts Act**) governs the making of suppression orders by Victorian courts and tribunals. A coroner may make a proceeding suppression order in the case of an investigation or inquest into a death, if the coroner reasonably believes that an order is necessary because disclosure would be likely to prejudice the fair trial of a person

or be contrary to the public interest.¹ In determining whether to make a suppression order, the court is to have regard to the principle of open justice and the free communication and disclosure of information. The court is only to make a suppression order if satisfied that the specific circumstances of a case make it necessary to override or displace this principle.²

SUPPRESSION ORDER APPLICATION

4. On 25 January 2022, the Department of Families, Fairness and Housing (**DFFH**) made formal application that the Interim Order be made on a final basis (a Proceeding Suppression Order). It was submitted that the identity of deceased children, their immediate family members, any child protection practitioner and any witness in this matter, be suppressed to ensure that there is no inadvertent breach of s 534 of the *Children Youth and Families Act 2005* (**CYF Act**). DFFH submitted that the Proceeding Suppression Order be made on a final basis for a period of 5 years (the maximum allowable duration of a suppression order under the Open Courts Act).
5. Section 534 of the CYF Act relevantly provides that:
 - a. a person must not publish or cause to be published any particulars likely to lead to the identification of the particular venue of the Children’s Court in which a proceeding was heard; or a child or other party to the proceeding; or a witness in the proceeding, except with the permission of the President of the Children’s Court;³ and
 - b. Particulars that are considered likely to lead to the identification of a person include:
 - i. The name of the person;
 - ii. The names of any relative of the person or any other person having the care of the person;
 - iii. The name or address of any place of residence of the person, or the locality in which the residence is situated; and
 - iv. The name or address of any place of education, training or employment attended by the person or the locality in which that place is situated.
6. No other interested party or media entity sought to be heard on the application.

SUBMISSIONS BY INTERESTED PARTIES

¹ *Open Courts Act 2013*, s 18(2).

² *Open Courts Act 2013*, s 4

³ *Children, Youth and Families Act 2005*, s 534(1)

7. DFFH submitted that:
- a. there is a clear public interest in suppressing the identity of deceased children and members of immediate family named in child protection proceedings and in light of the operation and policy reasoning for s 534 of the CYF Act;
 - b. publication of the identity of deceased children or a witness in the proceeding could inadvertently breach section 534 of the CYF Act;
 - c. the suppression order, as drafted in the Interim Order, appropriately balances the public interest in allowing publication against the public interest in ensuring no inadvertent breach of the CYF Act by suppressing very limited information from publication and would allow publication of the circumstances of the proceeding including any appropriate recommendations to prevent similar deaths;
 - d. given the narrowness of the terms sought, granting the application for a Proceeding Suppression Order would not cause difficulties in the running of the inquest; and
 - e. it is unnecessary and inappropriate to identify individual child protection practitioners employed by DFFH who could be identified by their working titles.

ANALYSIS AND DETERMINATION OF THE APPLICATION

8. As has been extensively set out in the submissions on behalf of DFFH, there are clear and important public policy reasons for protecting the identity of children the subject of child protection proceedings. Section 534(1) of the CYF Act operates to protect the identity of children such as the deceased children in this inquest who have been subject to child protection proceedings, and any party or witnesses to those proceedings.
9. Helpfully, section 534(4) details the particulars that may lead to the identification of a person for the purposes of section 534(1) and 534(3) and includes for the purpose of this proceeding:
- a. the name of the person;
 - b. the names of any relative of the person; or any other person having the care of the person; or
 - c. the name or address of any place of residence of the person, or the locality in which the residence is situated; and
 - d. the name or address of any place of education, training or employment attended by the person, or the locality in which the place is situated.

10. In this case, this relevantly precludes publication of:
 - a. the names of any deceased children being investigated in this inquest;
 - b. the names of any deceased children's family members;
 - c. the names of frontline workers from Mallee Family Care, VACCA, Darebin City Council and Northwestern Mental Health who worked with the deceased children and/or their family members; and
 - d. the names of child protection workers who provided care for the deceased children.
11. On its face, section 8(1A) of the Open Courts Act expressly precludes the court from making a suppression order where such information is already prohibited by the operation of other legislative provisions including section 534 of the CYF Act.
12. In this respect, I note that in the Second Reading of the *Open Courts and Other Acts Amendment Bill 2019*, it was stated:

This Bill will amend the Open Courts Act to make clear that suppression and closed court orders are exceptions, based on necessity, to the principles of open justice.

The Open Courts Act provides that it does not affect the operation of provisions in other legislation which prohibit or restrict the publication of information...It will also prohibit courts and tribunals from making a suppression order under the Open Courts Act where any of the provisions listed in section 8 apply to the publishing the information. This will reduce the number of suppression orders being made under the Open Courts Act where other legislation operates. [My emphasis added].
13. This is also reflected in the Explanatory Memorandum to the amending Bill.
14. The legislative intent of section 8(1A) is to reduce duplication where other legislative provisions operate to prohibit or restrict the publication of information. I consider that the making a suppression order is appropriate in the current circumstances as only some the deceased children were the subject of child protection proceedings in the Children's Court where others were not.
15. I acknowledge the concerns raised by DFFH as to the risk of inadvertent breach of the CYF Act. To assist parties in ensuring compliance, I will direct that:
 - a. a notice be placed on the door of the court alerting attendees that section 534 of the CYF Act applies and that any particulars likely to lead to the identification of the deceased are prohibited and those particulars include, but are not limited to:

- i. the names of any deceased children being investigated in this inquest;
 - ii. the names of any deceased children's family members;
 - iii. the names of frontline workers from Mallee Family Care, VACCA, Darebin City Council and Northwestern Mental Health who worked with the deceased children and/or their family members; and
 - iv. the names of child protection workers who provided services for the deceased children.
 - b. a notice be provided by electronic means to those attending the inquest remotely;
 - c. pursuant to section 55(2)(e), where in this proceeding, it is necessary to refer to the identities of persons set out in paragraph 20(a)(i) to (vii) of this Ruling, in published documents, a pseudonym will be applied as per the attached Schedule of Pseudonyms;
 - d. the Schedule of Pseudonyms, as annexed to this Ruling, will be provided to authorised media entities to assist in their reporting of the proceeding; and
 - e. my bench clerk will alert attendees to the operation of the CYF Act at the commencement of the inquest hearing and at the beginning of each hearing day thereafter.
16. For the avoidance of doubt, I do not consider that section 534 of the CYF Act applies to the following witnesses who have been called to give evidence at the inquest in this matter:
- a. Shane Wilson, Director of Child Protection, DFFH
 - b. Tracy Beaton, Chief Practitioner and Executive Director of the Office of Professional Practice, DFFH
17. I do not reasonably believe it is necessary in the public interest to suppress the identity of these witnesses, who hold public and senior leadership positions within organisations that appear as interested parties in this inquest.

CONCLUSIONS AND DETERMINATION

18. Having considered the:
- a. application of the DFFH;
 - b. affidavit of Tracy Beaton, Chief Practitioner and Executive Director, Office of Professional Practice, DFFH;

- c. submissions received on behalf of the DFFH, and
- d. relevant provisions of the *Children, Youth and Families Act 2005* (Vic) and *Open Courts Act 2013*

I find the circumstances of this cluster inquest justifies the making of a suppression order which prohibits or restricts publication or other disclosure of information which may already be prohibited or restricted from publication by operation of section 534 of the CYF Act, in accordance with section 8(1A) of the Open Courts Act.

ORDER

1. The Interim Order dated 12 November 2021 and Pseudonym Order dated 9 November 2021 are hereby revoked.
2. Pursuant to section 55(2)(e) of the *Coroners Act 2008*, where in this proceeding, it is necessary to refer to the identity of:
 - a. the names of any deceased children being investigated in this inquest;
 - b. the names of any deceased children's family members;
 - c. the names of frontline workers from Mallee Family Care, VACCA, Darebin City Council and Northwestern Mental Health who worked with the deceased children and/or their family members; and
 - d. the names of child protection workers who provided services for the deceased children.

in published documents, that a pseudonym will be applied as per the attached Schedule of Pseudonyms.

Signature:



JUDGE JOHN CAIN

STATE CORONER

Date 11 February 2022

NOTE: Under section 23 of the *Open Courts Act 2013* a person must not engage in conduct that constitutes a contravention of an interim order. The maximum penalty for an individual is 5 years imprisonment or 600 penalty units or both, and 3000 penalty units for a body corporate.

SCHEDULE OF PSEUDONYMS

Name	Relationship/Title	Pseudonym(s)
[REDACTED]	Deceased	Child 1
[REDACTED]	Mother of the deceased	AA
[REDACTED]	Father of the deceased	AB
[REDACTED]	Sibling of the deceased	AC
[REDACTED]	Sibling of the deceased	AD
[REDACTED]	Sibling of the deceased	AE
[REDACTED]	Senior Case Worker	AF
[REDACTED]	Family Services Manager	AG
[REDACTED]	Deputy Area Manager	AH
[REDACTED]	Deceased	Child 2
[REDACTED]	Mother of the deceased	BA
[REDACTED]	Father of the deceased	BB
[REDACTED]	[REDACTED] former partner	BC
[REDACTED]	Senior Program Manager	BD
[REDACTED]	Team Manager	BE
[REDACTED]	Senior child protection practitioner	BF
[REDACTED]	Deceased	Child 3
[REDACTED]	Mother of the deceased	CA
[REDACTED]	Father of the deceased	CB
[REDACTED]	[REDACTED] partner	CC
[REDACTED]	Sibling of the deceased	CD
[REDACTED]	Sibling of the deceased	CE
[REDACTED]	Sibling of the deceased	CF
[REDACTED]	Deceased's foster carer	CG
[REDACTED]	Deceased's partner	CH
[REDACTED]	Deceased's close friend	CI
[REDACTED]	Deceased's close friend	CJ
[REDACTED]	Team Manager	CK
[REDACTED]	Child protection practitioner	CL
[REDACTED]	Case worker	CM
[REDACTED]	Case manager	CN

██████████	Deceased	Child 4
██████████████████	Mother of the deceased	DA
██████████	Father of the deceased	DB
██████████	Sibling of the deceased	DC
██████████	Sibling of the deceased	DD
██████████	Sibling of the deceased	DE
██████████	Child Health Nurse	DF
██████████	Psychiatric Nurse	DG
██████████	Team leader	DH
██████████	Child Protection Practitioner	DI
██████████	Team Manager	DJ

*** This is not an exhaustive list of individuals covered by this ruling and suppression order. Please use a suitable pseudonym or reference to professional title for individuals not specifically named above but still covered by the proceeding suppression order.**