

*Australian Crime Commission & Anor v LB (No 2)* [2009] NTSC 55

PARTIES: AUSTRALIAN CRIME COMMISSION

And:

THE QUEEN

v

LB

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE  
NORTHERN TERRITORY  
EXERCISING FEDERAL  
JURISDICTION

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JUDGMENT OF: SOUTHWOOD J

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SUBPOENA – Public Interest Immunity

*Australian Crime Commission Act 2002* (Cth) s 7J

*Aboriginal Sacred Sites Protection Authority v Maurice; Re Warumungu  
Land Claim* (1986) 10 FCR 104

*Alister v R* (1984) 154 CLR 404

*Commonwealth v Northern Land Council* (1993) 176 CLR 604

*Conway v Rimmer* [1968] AC 910  
*Sankey v Whitlam* (1978) 142 CLR 1

**REPRESENTATION:**

*Counsel:*

First Applicant:	S Maharaj SC
Second Applicant:	J Renwick
Respondent:	M Abbott QC

*Solicitors:*

First Applicant:	Australian Government Solicitor
Second Applicant:	Office of the Commonwealth Director of Public Prosecutions
Respondent:	North Australian Aboriginal Justice Agency

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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*Australian Crime Commission & Anor v LB (No 2)* [2009] NTSC 55  
No 20916896

BETWEEN:

**AUSTRALIAN CRIME COMMISSION**  
First Applicant

AND:

**THE QUEEN**  
Second Applicant

AND:

**LB**  
Respondent

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Published 22 October 2009)

**Introduction**

- [1] On 12 October 2009 I made a ruling about the extent of access the respondent was to have to certain documents he had subpoenaed from the Australian Crime Commission. The Australian Crime Commission objected to production of large parts of the contents of the subpoenaed documents on the grounds of public interest immunity and relevance. Following are my reasons for the ruling that I made.

## **Background**

- [2] On or about 21 August 2009 the solicitors for the respondent filed in Court a subpoena addressed to the Australian Crime Commission. The subpoena was then served. The subpoena sought production of the following documents:
1. The minutes of the meeting of the Board of the Australian Crime Commission said to have occurred at 2.45 pm on 5 February 2008 at which the Board purported to create by resolution the instrument entitled *Australian Crime Commission Special Intelligence Operation Authorisation and Determination (Indigenous Violence or Child Abuse) 2007*.
  2. The minutes of the meeting of the Board of the Australian Crime Commission said to have occurred at 2.07 pm on 3 December 2008 at which the Board purported to create by resolution the instrument entitled *Australian Crime Commission Special Intelligence Operation Authorisation and Determination (Indigenous Violence or Child Abuse) Amendment No 1 of 2008*.
  3. Any reasons which examiner Anderson recorded pursuant to s 28 of the Act as his reasons for being satisfied that it was reasonable in all the circumstances to issue a s 28 Summons to the respondent.
- [3] On 3 September 2009 Mr Michael Outram, the Executive Director of Operational Strategies at the Australian Crime Commission, swore an affidavit which was filed in Court. He deposed that there were no documents in the possession of the Australian Crime Commission answering the description of the documents specified in paragraph number one of the subpoena.
- [4] The Court was subsequently told that the reason there were no such documents was the resolution of the Board, which is referred to in paragraph

number one of the subpoena, was made under s 7J of the *Australian Crime Commission Act 2002* (Cth) (the Act). As a result, on 8 September 2009 I gave the respondent leave to amend the subpoena by deleting the existing paragraph number one and inserting the following paragraph:

The minutes and any other documents of the Board of the Australian Crime Commission referable to a resolution referred to Board members and by which or as a result of which at 2.45 pm on 5 February 2008 the Board purported to create by resolution the instrument entitled *The Australian Crime Commission Special Intelligence Operation Authorisation and Determination (Indigenous Violence and Child Abuse) 2007*.

[5] After the respondent was granted leave to amend the subpoena, the following documents were produced to the Court by the Australian Crime Commission:

1. Email notification from ACC Secretariat to ACC Board Liaison Officers dated 15 January 2008 at 2.04 pm.
2. Letter from the CEO to Board members dated 15 January 2008.
3. ACC out of session paper entitled, "Indigenous Violence or Child Abuse Special Intelligence Operation Authorisation and Determination".
4. Special Intelligence Operation Authorisation and Determination (Indigenous Violence or Child Abuse) 2007 draft Statement in Support.
5. ACC Notional Financial Impact Statement.
6. Email from the Secretariat Bernice Cropper dated 5 February 2008 at 11.59 am to Chair of ACC enclosing:

- 6.1 Unsigned draft instrument
  - 6.2 Statement in Support of Determination
  - 6.3 Draft letter dated 5 February 2008 from Chair ACC to Minister of Home Affairs together with draft letters to the members of the Inter-Governmental Committee on the Australian Crime Commission regarding determination.
7. Email dated 5 February 2008 at 2.32 pm from Board Secretariat Bernice Cropper to Chair of ACC attaching:
    - 7.1 Voting sheet on ACC Board out of session resolution on determination (“circulated 16 December 2008”), and
    - 7.2 Unsigned memorandum dated 5 February 2008 from Board Secretariat to Chair of ACC concerning votes received on determination.
  8. Note from Board Secretariat Ms Bernice Cropper dated 5 February 2008 to Chair of ACC concerning votes received regarding Determination signed by ACC Chair and containing handwritten notes.
  9. Email from Tony D’Aliosio (Australian Securities and Investments Commission) to ACC Secretariat dated 17 January 2008 at 5.05 pm.
  10. Notification by Mr Barton Hoyle (Australian Securities and Investments Commission) posted at 21 January 2008 at 12.08 pm.
  11. Email from Mr Colin McKenna (Australian Customs and Border Protection Service) to ACC Secretariat dated 18 January 2008 at 9.26 am.
  12. Email and attachment from Ms Nadia Batista (NT Police, Fire and Emergency Services) to ACC Secretariat dated 21 January 2008 at 10.51 am.

13. Notification by MLO (Australian Security Intelligence Organisation) posted at 29 January 2008 at 2.04 pm.
14. Email and attachment from Ms Anita Nedwetzky (Western Australia Police) to Therese Quigg dated 29 January 2008 at 3.29 pm.
15. Notification by Ms Diane Bealey (Tasmania Police) posted at 29 January 2008 at 4.36 pm.
16. Facsimile and attachment from Superintendent Kym Hardwick (South Australia Police) to Ms Maria Kellond dated 30 January 2008 at 8.59 am.
17. Notification by Ms Robin Harawira (New South Wales Police Force) and attachment posted at 30 January 2008 at 1.47 pm.
18. Email from Ms Maria Kellond to Ms Therese Quigg indicating vote from Victoria Police dated 30 January 2008 at 3.16 pm.
19. Notification by Mr Robert Cornall (Attorney-General's Department) posted at 30 January 2008 at 4.35 pm.
20. Email from Ms Bernice Cropper to Therese Quigg forwarding email from Annette Douche (Australian Federal Police) dated 1 February 2008 at 10.08 am.
21. Email from David Jones (Australian Federal Police acting in the Australian Capital Territory) to Ms Therese Quigg dated 4 February 2008 at 1.26 pm, and
22. Facsimile and attachment from Inspector J Aitken (Queensland Police Services) to Ms Therese Quigg dated 5 February 2008 at 1.29 pm.

[6] In addition the Australian Crime Commission produced to the Court copies of the above documents with various parts of most of the documents blacked out. The Australian Crime Commission told the Court that it claimed

immunity from production in relation to the parts of the documents that had been blacked out.

- [7] On 11 September 2009, Mr James Duffy, the General Manager of Groups and Targeting of the Australian Crime Commission, swore an affidavit in support of the Australian Crime Commission's claim to immunity from production. Mr Duffy was formerly the General Manager of National Operations of the Australian Crime Commission. From December 2003 to December 2005 he was the Head of Investigation for the Established Criminal Networks Authorisation and Determination and the High Risk Crime Group Authorisation and Determination within the Australian Crime Commission. During that time he was responsible for all Australian Crime Commission operations conducted nationally under those determinations. He was authorised to swear the affidavit on behalf of the Australian Crime Commission.
- [8] As to the claims for public interest immunity disclosed by the parts of the copy documents which had been blacked out, Mr Duffy deposed that if the parts of the documents which were sought to be kept confidential were disclosed a serious risk would be posed to the continuing investigations into serious and organised crime because such disclosure would reveal: information as to the breadth and scope of Australian Crime Commission activities and intelligence holdings; information about the cooperation of government agencies; information about the relationship between State and Commonwealth governments; and the thinking, priorities, strategy,



deliberations and modus operandi of the Board of the Australian Crime Commission.

- [9] Mr Duffy stated that disclosure of the parts of the document sought to be kept confidential would also reveal details of criminal intelligence and other significant information provided to the Australian Crime Commission and the Board of the Australian Crime Commission by various sources including other law enforcement and government agencies. In Mr Duffy's opinion there was a serious and significant risk that these various bodies, who had provided information to the Australian Crime Commission, would cease to provide such intelligence or would at least feel constrained in making disclosure to the Australian Crime Commission or the Board of the Australian Crime Commission in the future if the communications were disclosed to other persons. If other law enforcement agencies were to reduce the frank and free flow of intelligence to the Australian Crime Commission it would significantly prejudice the ability of the Australian Crime Commission and the Board to carry out their functions as required by the Act.

**The reasons why the respondent sought access to the documents**

- [10] The respondent sought access to the subpoenaed documents to determine if all of the essential or indispensable requirements of the examiners jurisdiction under the Act to require the respondent to take an oath or make an affirmation had been met. Of relevance to the documents that were

produced in response to the amended subpoena, the respondent maintains that for an examiner to have jurisdiction to require a witness to take an oath or make an affirmation there must be a valid resolution of the Board of the Australian Crime Commission authorising the Australian Crime Commission to undertake the special intelligence operation which is the subject of the instrument entitled, *The Australian Crime Commission Special Intelligence Operation Authorisation and Determination (Indigenous Violence and Child Abuse) 2007*.

[11] For there to be a valid resolution of the Board that an intelligence operation be determined to be a special operation, the respondent argues that:

(a) At least nine of the 13 Board members of the ACC, including at least two eligible Commonwealth Board members, must have voted in favour of the resolution;

(b) Before voting on the resolution the Board must have considered whether ordinary methods of collecting criminal information and intelligence have been effective;

(c) The resolution passed by the Board and reduced to writing must authorise the ACC to undertake the intelligence operation; determine that the operation is a special operation; and create the written instrument which contains the determination of the Board and authorises the Australian Crime Commission to undertake the relevant special intelligence operation.

### **What the documents reveal**

[12] The parts of the documents which I ruled did not attract public interest immunity and which have been produced to the parties reveal the following.

- [13] On 15 January 2008 an email was sent from the Secretariat of the ACC to the liaison officers of each member of the Board of the Australian Crime Commission. The email informed the liaison officers that new items had been uploaded to ALEIN, namely: a covering letter from the Chief Executive Officer of the Australian Crime Commission dated 15 January 2008; and a document entitled, “OOS Determination and Support Documentation”. I take “OOS” to mean out of session which in turn I take to be a reference to the procedure established under s 7J of the Act.
- [14] The covering letter had attached to it a proposal for the establishment of a special intelligence operation into indigenous violence and child abuse. The purpose of the proposal was to support the work of the National Indigenous Violence and Child Abuse Intelligence Task Force. The covering letter also outlined the voting procedure for out of session determinations. The letter stated that voting will close on Wednesday 30 January 2008.
- [15] The out of session paper containing the proposal for the establishment of the special intelligence operation, which was dated 15 January 2008, contained the following draft resolution:
- The Board resolved, in the terms of the instrument *Australian Crime Commission Special Intelligence Operation Authorisation and Determination (Indigenous Violence or Child Abuse) 2007*, provided to the Board in the agenda papers for this item, to authorise the ACC to undertake an intelligence operation, determined to be special operation, until 31 December 2008 by which time it will be reviewed.
- [16] Among other things, the Statement in Support of the proposal stated:

1. This statement supports a request from the Australian Crime Commission (ACC) for the Board of the Australian Crime Commission (ACC Board) to –
  - (a) authorise the ACC under paragraph 7C(1)(c) of the Australian Crime Commission Act 2002 (Cth) (the Act), to undertake an intelligence operation into indigenous violence or child abuse; and
  - (b) determine under paragraph 7C(1)(d) of the ACC Act that the intelligence operation is a special operation.

....

**Whether methods of collecting intelligence not involving ACC coercive powers, have been effective**

(Subsection 7C(2) of the Act)

42. While the NIITF, utilising the ACC's multi-jurisdictional reach, coordination capability and specialist skills has already delivered valuable intelligence its efforts have been substantially hindered because:
  - (a) In investigating child abuse, it has traditionally been more difficult to use an intelligence led approach to identifying potential offending, due to a general reluctance on behalf of victims or those close to them to make reports.
  - (b) ACC intelligence holdings suggest that service providers in indigenous communities, such as health staff, are often in possession of information about child abuse, however are not always in a position to report. Issues of intimidation, confidentiality, a wall of silence from community members and corruption combine to conceal the true nature and extent of indigenous violence or child abuse. ....
  - (c) A lack of access to the information and data holdings of other government and non-government agencies, relating

to Violence and Child Abuse. The ACC has encountered resistance to sharing information on privacy grounds. ....

43. The use of coercive powers in a culturally sensitive manner, combined with the ACC's multi-jurisdictional reach and coordination role would significantly advance the NIITF's ability to meet its 4 primary objectives set by the ACC Board.

....

#### **PROPOSED BOARD RESOLUTION**

48. The Board:

- ....
- ....
- Resolved, in terms of the instrument *Australian Crime Commission Special Intelligence Operation Authorisation and Determination (Indigenous Violence or Child Abuse) 2007*, provided to the Board in relation to this application, to authorise the ACC to undertake an intelligence operation, determined to be a special intelligence operation, until 31 December 2008 by which time it will be reviewed.

[17] At 5.05 pm on 17 January 2008, Mr Tony D'Aloisio, the Chairman of ASIC, sent an email to the Australian Crime Commission Secretariat stating that he supported the proposal for the establishment of a special intelligence operation into indigenous violence and child abuse. This position was confirmed by a further email sent by a lawyer employed by ASIC to the Australian Crime Commission Secretariat at 12.08 pm on 21 January 2008.

- [18] At 9.26 am on 18 January 2008, the Strategic Policy Officer of the Australian Customs Service sent an email on behalf of Mr Carmody, the Chief Executive Officer of the Australian Customs Service, to the Australian Crime Commission Secretariat. The email stated that Mr Carmody supports the draft resolution on the National Indigenous Violence and Child Abuse determination application to: resolve, in the terms of the instrument *Australian Crime Commission Special Intelligence Operation Authorisation and Determination (Indigenous Violence or Child Abuse) 2007*, provided to the Board in the agenda papers for this item, to authorise the ACC to undertake an intelligence operation, determined to be a special operation, until 31 December 2008 by which time it will be reviewed.
- [19] At 10.51 am on 21 January 2008, the Conference Secretariat Officer of the Northern Territory Police, Fire and Emergency Services sent an email to the Australian Crime Commission Secretariat. Attached to the email was a document stating that Commissioner White, who was the Commissioner of the Northern Territory Police Force, supported the establishment of a Special Intelligence Operation into Indigenous Violence and Child Abuse.
- [20] At 2.04 pm on 29 January 2008, on behalf of Mr Paul O'Sullivan the Director General Australian Security and Intelligence Organisation, a person sent an email to Therese Quigg. The email advised that Mr O'Sullivan provided his endorsement of the Australian Crime Commission Out-of-Session item – Indigenous Violence or Child Abuse Special Intelligence Operation Authorisation and Determination.

- [21] At 3.29 pm on 29 January 2008, Ms Anita Nedwetzky sent an email to Therese Quigg attaching the Western Australia Commissioner of Police's response to the OOS paper of 15 January 2008. The attached response stated that Commissioner Karl O'Callaghan did not support the proposed resolution that the Board resolve in the terms of the instrument *Australian Crime Commission Special Intelligence Operation Authorisation and Determination (Indigenous Violence or Child Abuse) 2007* to authorise the ACC to undertake an intelligence operation, determined to be a special operation, until 31 December 2008 by which time it will be reviewed.
- [22] At 4.36 pm on 29 January 2008, the Senior Executive Support Officer to the Commissioner of Police in Tasmania sent an email to Therese Quigg stating that she would like to confirm her telephone call that morning advising that Commissioner McCreadie is happy with the proposal for the establishment of a special intelligence operation into indigenous violence and child abuse.
- [23] On 30 January 2008, a Superintendent of Police in the Executive Support Branch of the South Australia Police sent a facsimile to Maria Kellond at the Australian Crime Commission. The facsimile attached Commissioner Hyde's response to the proposal. In the attachment the Commissioner of Police for South Australia stated he endorsed the draft resolution contained in the Out-of-Session Paper dated 15 January 2008.
- [24] At 1.47 pm on 30 January 2008, the Executive Assistant to Commissioner of Police for New South Wales sent an email to Therese Quigg attaching

Commissioner Scipione's response to the proposal. In the attachment the Commissioner of Police for New South Wales stated that he supported the resolution in the terms of the instrument *Australian Crime Commission Special Intelligence Operation Authorisation and Determination (Indigenous Violence or Child Abuse) 2007* to authorise the ACC to undertake an intelligence operation, determined to be a special operation, until 31 December 2008 by which time it will be reviewed.

- [25] At 3.16 pm on 30 January 2008, an internal email was sent from Maria Kellond to Therese Quigg stating that Richard Grant had just called to say that VicPol supports the SIO Determination and a follow up letter was to be sent shortly.
- [26] At 4.35 pm on 30 January 2008, Robert Cornall sent an email to the Australian Crime Commission stating that he supported the proposed Special Intelligence Operation Authorisation and Determination.
- [27] At 10.08 am on 1 February 2008, a Principal Policy Officer with the Australian Federal Police sent an email to Bernice Cropper stating that the Chairman of the Board, the Commissioner of the Australian Federal Police, voted in the affirmative.
- [28] At 1.26 pm on 4 February 2008, David Jones, on behalf of the Australian Federal Police acting in the Australian Capital Territory, sent an email to Therese Quigg stating that the CPO has endorsed the proposed Board



resolution for the establishment of an SIO into indigenous violence and child abuse.

- [29] At 11.59 am on 5 February 2008 Bernice Cropper, the Acting Manager of the Board Secretariat, sent an email to the Chair of the Australian Crime Commission. Attached to the email was an unsigned draft instrument, a Statement in Support of the determination of the Board; a draft letter dated 5 February 2008 from the Chair of the Australian Crime Commission to the Minister of Home Affairs, and draft letters to the members of the Inter-Governmental Committee on the Australian Crime Commission.
- [30] At 1.29 pm on 5 February 2008, an Inspector in the State Crime Operations Command of the Queensland Police sent a facsimile to Therese Quigg. The facsimile annexed a letter from the Commissioner of Police in Queensland. The letter stated that the Commissioner of Police supports the approval and establishment of the SIO – IVCA.
- [31] At 2.32 pm on 5 February 2005 Bernice Cropper sent an email to the Chair of the Australian Crime Commission. Attached to the email was a voting sheet recording the Out of Session votes of the members of the Board in relation to the proposal for a special intelligence operation and a memorandum about the outcome of votes.
- [32] At some time prior to 2.45 pm on 5 February 2008, a tally sheet which recorded the votes of the members of the Board of the Australian Crime Commission and their comments was prepared by staff within the Australian

Crime Commission, as was the instrument of determination and authorisation. On 5 February 2008, a document headed, “Outcome of votes for SIO – IVCA” was signed by Commissioner Keelty as Chairman of the Australian Crime Commission Board. The document records that the last vote was received on 5 February 2008 and that the determination had 12 votes in support and one vote not supporting.

[33] At 2.45 pm on 5 February 2008 Commissioner Keelty as Chairman of the Board of the Australian Crime Commission signed the instrument headed, “Australian Crime Commission Special Intelligence Operation Authorisation and Determination (Indigenous Violence or Child Abuse) 2007”.

### **The relevant principles**

[34] I accept the submission of the Australian Crime Commission that the Court will not compel or permit the disclosure of information that would be injurious<sup>1</sup> to an identified<sup>2</sup> public interest.<sup>3</sup> The categories of public interest are not closed.<sup>4</sup>

[35] The determination of a claim for public interest immunity requires the balancing of two competing aspects of the public interest: the effect upon the administration of justice if the claim is withheld, and the effect on the wider public interest if the documents are produced and made available for

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<sup>1</sup> *Sankey v Whitlam* (1978) 142 CLR 1 at 38, 48 - 49

<sup>2</sup> *Alister v R* (1984) 154 CLR 404 at 407

<sup>3</sup> *Conway v Rimmer* [1968] AC 910

<sup>4</sup> *Aboriginal Sacred Sites Protection Authority v Maurice; Re Warumungu Land Claim* (1986) 10 FCR 104

inspection.<sup>5</sup> The Court must embark on a three stage process. It must: determine whether there is a public interest in the non-disclosure of the information in question; determine whether there is a public interest in the disclosure of the information in question; and balance the public interest in disclosure against the public interest in non-disclosure in order to decide whether or not the information should be disclosed.<sup>6</sup>

### **Rulings as to the contents of specific documents**

[36] It seems to me that there is a public interest in: all relevant law enforcement agencies collecting and analysing criminal information and intelligence about indigenous violence and child abuse; identifying the persons who are involved in such conduct; and in developing appropriate investigative responses. It also seems to me that there is a public interest in ensuring that the defence are provided with all information that may legitimately result in the acquittal of an accused person.

[37] In all of the above circumstances, I ruled as follows in relation to each specific document that was produced to the Court.

[38] There was no claim for public interest immunity in relation to documents one and two referred to in par [5] above.

[39] As to document three, the parts of the original document which were blacked out in the copies of the document which I ruled should be provided to the

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<sup>5</sup> *Alister v R* (1984) 154 CLR 404 at 412

<sup>6</sup> *Commonwealth v Northern Land Council* (1993) 176 CLR 604, 616 – 617; *Alister v R* (1983) 154 CLR 404 at 412

parties contained: summarised and general information about the intelligence holdings of the Australian Crime Commission about indigenous violence and child abuse; and some information about the breadth and scope of existing operations and the proposed special intelligence operation. Requiring the production and disclosure of the information may adversely impact upon the effectiveness of the special intelligence operation and hinder the ongoing operations of the National Indigenous Intelligence Task Force. There was therefore a public interest in maintaining the confidentiality of most of the contents of the document. As there was no information in the blacked out parts of the copy document which was likely to assist the defence in investigating the validity of the determination process adopted by the Board I determined the balance of the competing aspects of the public interest lay in favour of the withholding of the information which was blacked out.

[40] As to documents four and 6.2, the parts of the original document which were blacked out in the copies of the documents which I ruled should be provided to the parties contained: statements about the aim, objectives, strategy and operation of the proposed special intelligence operation; summarised and general information about the intelligence holdings of the Australian Crime Commission about indigenous violence and child abuse; and some information about the breadth and scope of existing operations and the proposed special intelligence operation. Requiring the production and disclosure of the information may adversely impact upon the effectiveness

of the special intelligence operation and hinder the ongoing operations of the National Indigenous Intelligence Task Force. There was therefore a public interest in maintaining the confidentiality of most of the contents of the documents. As there was no information in the blacked out parts of the copy document which was likely to assist the defence in investigating the validity of the determination process adopted by the Board I determined the balance of the competing aspects of the public interest lay in favour of the withholding of the information which was blacked out.

[41] I ruled against the Australian Crime Commission's claim for public interest immunity in relation to paragraphs 42 and 43 of documents 4 and 6.2. As those paragraphs contained information relevant to the requirement that the Board consider whether ordinary methods of collecting criminal information and intelligence have been effective, I determined the balance of the competing aspects of the public interest lay in favour of the disclosure of the information contained in those paragraphs save for the last sentence of paragraph 42(b) and the last sentence of paragraph 42(c). Those sentences contained comments about strategic or operational matters.

[42] The defence did not object to the non-disclosure of document five. It was accepted that the financial information that was likely to be contained in the document was irrelevant to the inquiry being made by the defence.

[43] The whole of the contents of document 6 were produced to the defence. No claim for public interest immunity was made in relation to this document.

- [44] The whole of the contents of document 6.1 were produced to the defence. No claim for public interest immunity was made in relation to this document.
- [45] When I delivered my rulings on 12 October 2009, the originals of the documents described in paragraph 12.6.3 of the affidavit of Mr Duffy had not been produced to the Court. I now rule that those documents are irrelevant to any issue in the proceeding.
- [46] The whole of the contents of document seven and document 7.2 were produced to the defence. No claim for public interest immunity was made in relation to those documents.
- [47] As to document 7.1, there were only three parts of the document which I ruled should be kept confidential. Those parts of the document contained: the reasons why the Commissioner of Police for Western Australia voted against the proposed resolution; some additional comments made by the Commissioner of Police for New South Wales about certain concerns he had about the operation of the proposed special intelligence operation; and some irrelevant matters noted by Mr Carmody, the CEO of the Australian Customs Service. Each of the communications of the Commissioners of Police for Western Australia and New South Wales was a confidential communication between high ranking public servants about a matter of national importance. In my opinion there is a public interest in maintaining the confidentiality of such communications because if such communications are not kept

confidential there is a risk that the frank and free flow of information would be reduced and this may prejudice the development of appropriate investigative responses. The information is only of marginal relevance to the issues in the proceeding. In the circumstances I determined the balance of the competing aspects of the public interest lay in favour of the withholding of the information.

[48] The whole of the contents of document eight were produced to the defence. No claim for public interest immunity was made in relation to those documents.

[49] As to document nine, the parts of the document which were blacked out were irrelevant to any issue in this proceeding. The blacked out parts of the document contained information totally unrelated to the special intelligence operation.

[50] As to documents 10 and 11, the parts of the document which were blacked out contained: contact numbers and email addresses; and statements that certain matters had been noted by the author of the email. All of the information was confidential and irrelevant to any issue in the proceeding.

[51] As to documents 12, the parts of the documents which were blacked out contained: contact numbers and email addresses; and information totally unrelated to the special intelligence operation. All of the information blacked out is information of a confidential nature and is not relevant to any issue in the proceeding.

- [52] As to document 13, the parts of the document which were blacked out contained: names and email addresses. All of the information blacked out is information of a confidential nature and is not relevant to any issue in the proceeding.
- [53] As to documents 14, the parts of the documents which were blacked out contained: telephone and facsimile numbers and email addresses. All of the information blacked out is information of a confidential nature and is not relevant to any issue in the proceeding.
- [54] As to document 15, the parts of the document which were blacked out contained: telephone and facsimile numbers and email addresses. All of the information blacked out is information of a confidential nature and is not relevant to any issue in the proceeding.
- [55] As to documents 16, the parts of the documents which were blacked out contained: contact numbers and email addresses; and information totally unrelated to the special intelligence operation. All of the information blacked out is information of a confidential nature and is not relevant to any issue in the proceeding.
- [56] As to documents 17, the parts of the facsimile which were blacked out contained contact numbers and email addresses. The information is irrelevant to any issue in the proceeding. The parts of the letter from the Commissioner of Police for New South Wales which were blacked out contained some additional comments made by the Commissioner about



certain concerns he had about the operation of the proposed special intelligence operation. The communication about those matters was a confidential communication between high ranking public servants about a matter of national importance. In my opinion there is a public interest in maintaining the confidentiality of such communications because if such communications are not kept confidential there is a risk that the frank and free flow of information would be reduced and this may prejudice the development of appropriate investigative responses. The comments are of only marginal relevance to the issues in the proceeding. In the circumstances, I determined the balance of the competing aspects of the public interest lay in favour of the withholding of the information.

[57] As to document 18, the parts of the document which were blacked out contained: telephone and facsimile numbers and email addresses. All of the information blacked out is information of a confidential nature and is not relevant to any issue in the proceeding.

[58] As to document 19, the parts of the document which were blacked out contained: a telephone number and an email address. All of the information blacked out is information of a confidential nature and is not relevant to any issue in the proceeding.

[59] As to document 20, which is the email dated 1 February 2008, the parts of the document which were blacked out contained email addresses. All of the

information blacked out is information of a confidential nature and is not relevant to any issue in the proceeding.

[60] As to document 21, the parts of the document which were blacked out contained email addresses. All of the information blacked out is information of a confidential nature and is not relevant to any issue in the proceeding.

[61] As to document 22, the part of the document which was blacked out contained a facsimile number. All of the information blacked out is information of a confidential nature and is not relevant to any issue in the proceeding.

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