

STATEMENT TO THE ROYAL COMMISSION INTO THE MANAGEMENT OF POLICE INFORMANTS**ABBHEY HOGAN, SOLICITOR FOR PUBLIC PROSECUTIONS****11 September 2020**

1. I make this statement to provide the Commission with information to assist it in relation to its inquiry into term of reference 4.

Current Engagement on Disclosure between Victoria Police and the Office of Public Prosecutions

2. For offences proceeding in the committal stream, it is the practice within the Office of Public Prosecutions (**OPP**) to send, shortly after the conclusion of the filing hearing, an email and attached information document to the informant nominated on the charge-sheet.
3. The current form of the covering email that is sent to informants is set out at **Annexure A**. Point 1 in that covering email directs the informant to read the attachment and states that the attachment “contains important information to assist you comply with your continuing obligations of disclosure”.
4. The current version of the information document that is attached to this email is set out at **Annexure B**. The front page of that document contains a large text box stating that the document contains information to assist the informant to comply with his or her continued obligations of disclosure. A later section in the document¹ then sets out detailed information on disclosure. That section states that where police consider relevant material to be subject to PII, the existence and nature of the material must be disclosed. The section also includes a statement that: “If you are in doubt as to the relevance of particular material, or you are concerned about disclosing certain material, please contact the OPP solicitor with conduct of this matter.” The document at Annexure B has been the relevant information document for informants since late May 2020. The preceding version of the information document similarly highlighted the obligation of disclosure and encouraged the informant to contact the OPP solicitor allocated to the matter if the informant had any doubts or queries regarding disclosure.
5. At the time that a matter is allocated to a trial division solicitor within the OPP, a further email is sent to the informant. A de-identified copy of this standard email is set out at **Annexure C**. The email advises the informant of the allocated solicitor’s contact details. The email also refers the informant to the email and attachment sent after the filing hearing, and requests that the informant ensure that he or she comply with the obligations detailed in that previous correspondence.
6. OPP solicitors allocated to a matter regularly liaise with the informant for that matter. This is essential given the distinct and important roles played by the informant and the prosecution team in the criminal justice process. In practice, informants are encouraged to, and do, raise issues regarding prosecutions with OPP solicitors, including in relation to how the prosecution case is put and determining relevance in respect of investigatory material.

¹ See pages 7-8 of this Statement.

Annexure A

From: Notifications
Subject: Melbourne Non sex matters
Attachments: Information for informants post filing hearing.pdf; Victim and Witness Contact Details.docx

Dear [Informant]

I confirm that the above matter was listed for Filing Hearing on [date of filing hearing] at the Melbourne Magistrates' Court.

The following timetable was set:

Brief Service: [HUB date]
 [Committal Mention or Committal Case Conference]: [Date] at the Melbourne Magistrates' Court sitting at the County Court.

What you must do:

1. *Read the attached document.* It contains important information to assist you comply with your continuing obligations of disclosure.
2. *Forward, by return email:*
 - a. the police summary in word format
 - b. Completed witness contact details form (copy attached)
 - c. Names and ages of any child witness / complainant.
 - d. Names of any witness or complainant with a disability or cognitive impairment.
 - e. Provide details of any current intervention orders in relation to the accused and the complainant or related person.
3. *Comply with any orders made by the court.* Those orders are listed below. **Delete this paragraph point if no orders made.**
4. *Serve the HUB by the brief service date (**see important note below**).* The attached document outlines what you should do if you cannot comply with the brief service date.
5. *Attend court on the committal mention or committal case conference date.*

IMPORTANT NOTE: Given the current COVID-19 pandemic, the Office of Public Prosecutions is requesting that all HUBs are provided in electronic form. The attached Information for Informants guide details how you should prepare an e-brief. Importantly, please ensure that the device on which you have saved the e-brief (USB, portable hard drive or CD/DVD) is accurately labelled with the name of the accused, the next court date, the name of the police operation (if any),

and the Magistrates' Court Reference number. If you are unable to serve an e-brief, please ensure that any photographic exhibits are printed and included as part of the hardcopy brief (and **not** in the traditional blue photobook style) or are provided separately on an accurately labelled USB, portable hard drive or CD/DVD.

Orders made by the Magistrate

At the filing hearing, the Magistrate made the following orders in relation to the brief service and evidentiary aspects of this case: **Delete orders that were not made; or delete whole section if no orders made:**

- The informant arrange for CCTV footage to be formatted in accordance with [Practice Direction No 3 of 2011 \(Audio and Visual Standards for Material Presented in Court\)](#) and served with the hand-up brief
- The informant make an appointment within 7 days to lodge items for transcription (e.g. Telephone intercepts, listening devices etc)
- The informant make an appointment within 7 days to lodge items for analysis with the E-Crime Unit (e.g. computers, mobile phones etc.)

And, if matter is a sex offence and the complainant is a child or cognitively impaired, the informant:

- advise E Crime / Digital Forensics that the complainant is a child or cognitively impaired.
- further advise E Crime/Digital Forensics if the child complainant is under 12 years of age.

- The informant make an appointment within 7 days for the lodgement of exhibits for forensic analysis with Victorian Forensic Services Department or AFP Forensics

And, if matter is a sex offence and the complainant is a child or cognitively impaired, the informant:

- advise FSD / Forensics that the complainant is a child or cognitively impaired.
- further advise FSD / Forensics if the child complainant is under 12 years of age.

- The informant, within 7 days, request a DNA 'forensic report' from VFSD
- The informant, within 7 days, request from VFSD a botanist's yield report
- VFSD conduct analysis of drugs seized to determine whether a commercial quantity exists
- The informant analyse the pornographic material seized in accordance with the COPINE scale
- The informant prepare the hand-up brief in accordance with complex fraud/crime protocol.
- The informant file with the Court, and serve on the prosecution and the accused (if legally represented), a hand-up brief prepared in accordance with [Practice Direction No 1 of 2019 \(Electronic Briefs in Indictable Matters\)](#).

Regards,

Information for Informants



OFFICE of
PUBLIC PROSECUTIONS
VICTORIA

You are being provided with this information because a filing hearing has been conducted in a matter for which you are the informant.

Click on the links below for more information about:

1. [Orders made by the court at Filing Hearing](#)
2. [What to include in the brief](#)
3. [How to serve the brief](#)
4. [How to compile an e-brief](#)
5. [What to do if you cannot comply with the brief service date](#)
6. [Prosecution obligation of disclosure](#)
7. [Sexual offences with child or cognitively impaired complainants](#)
8. [Confiscation Issues](#)
9. [Family violence protection orders or personal safety intervention orders](#)
10. [File Allocation](#)

This document contains important information to assist you comply with your continued obligations of disclosure.

Failure to comply with your disclosure obligations is extremely serious and may result in a discontinuance or withdrawal of charges, re-trial, acquittal or permanent stay as a result of a miscarriage of justice as well as civil liabilities and costs orders.

[Click here for more details.](#)

Orders made by the court at Filing Hearing

At the filing hearing the Magistrate will have:

- fixed a date for the service of the hand-up brief (HUB)
- fixed a date for a committal mention or committal case conference
- made any orders or given any directions that the Court considers appropriate.

The orders or directions made by the court may relate to the service of the HUB and/or any outstanding evidentiary aspects of the case. The OPP will notify you of any orders and directions that have been made.

No later than the date for when the HUB is to be filed and served, you are required to confirm that you have complied with any orders and/or directions. Confirmation of compliance with any orders and/or directions must be emailed to the Court:

For sex offences: sexoffences@courts.vic.gov.au

For non-sex offences: committalcoordinator@courts.vic.gov.au

What to include in the brief

1. The contents of the HUB must comply with section 110 and Part 4.4 of the *Criminal Procedure Act 2009*. The material on which the prosecution relies as part of its case should be in a separate part of the brief from additional material which must also be served (for example, under s.110(e) of the Act).
2. You must not disclose the address or telephone number of any person in any information, document or thing provided to the accused unless:
 - a. you believe that the information, document or thing does not identify the address or telephone number of a particular person or
 - b. the disclosure is relevant to the offence charged and the disclosure is not likely to present a reasonably ascertainable risk to the welfare or safety of any person.

You may delete or render illegible an address or telephone number contained in any information, document or thing before service on the accused.

3. Any audio material that is relied upon must be transcribed and included within the HUB. Except for a VARE, the recording must also be included in the HUB. The recording of a VARE must NOT be included in the HUB.
4. If the prosecution case relies on CCTV footage then a copy of this footage must be included with the HUB. The CCTV footage must be in a format that can be viewed by the Court and the parties.
5. The Magistrates' Court copy must not include any reference to prior convictions.

How to serve the brief

1. You are required to provide three copies of the HUB.

- a. The accused's copy of the HUB should be served on the accused's solicitor. If the accused does not have a solicitor acting on their behalf, the HUB should be served on the accused personally.
- b. The Magistrates' Court copy of the HUB should be filed with the Court. It must not include the accused's prior convictions or any reference to them. The HUB should be filed:
 - for Melbourne Sex Offence matters: with the Sexual Offences List Coordinator on Level 2 of the Melbourne Magistrates Court.
 - for all other Melbourne matters: with the committal coordinator on Level 2 of the Melbourne Magistrates' Court.
 - for all regional matters: with the coordinator of the Magistrates' Court where the committal mention is listed.
- c. The Prosecution HUB must be delivered to the Office of Public Prosecutions. It should be marked to "Office of Public Prosecutions – Records" (even if the matter has already been allocated to a solicitor). It is preferable that HUBs are personally delivered and not sent by mail.

As the OPP is moving towards a paperless practice we ask that you also provide an electronic copy of the HUB.

2. **Please ensure that all materials (including digital media and portable hard drives) are appropriately labelled with the name of the Accused, the next court date, the name of the police operation (if any), and the Magistrates' Court Reference number.**
3. **You should retain the original HUB.**

How to compile an e-brief

The court may have ordered that you file and serve an e-brief in lieu of a hard copy HUB.

If the court hasn't made such an order, and you wish to serve and file an electronic HUB, please contact the OPP solicitor two weeks prior to the HUB service date. The OPP can apply to the court for leave to serve the HUB electronically.

It is important that any electronic HUB is prepared and served in accordance with the Magistrates' Court Practice Direction No 1 of 2019 – Electronic Briefs in Indictable Matters.

[Click here to view the Practice Direction](#)

An e-brief must:

- Be in a searchable form; and
- Be accessible without the requirement of any specialist software. If specialist software is required to access any video or audio file contained in the HUB, you must provide that software with the HUB.

The e-brief must include:

- An index (including prescribed notices, charge sheets, statement of material facts, witness list and exhibit list) which is bookmarked and hyperlinked;
- A witness list which includes hyperlinks to the witness's statement; and
- An exhibit list which includes hyperlinks to the exhibit (when annexed to the HUB).

Any material redacted from an electronic HUB (e.g. pursuant to s 114(2) of the *Criminal Procedure Act 2009*) must be done using a tool that permanently removes or hides the information and its metadata.

If any further material is to be added to the HUB, you must:

- Re-serve and file the entire electronic HUB (incorporating the additional material); and
- Separately serve and file the additional material or clearly identify the additional material.

What to do if you cannot comply with the HUB service date

The court sets the date for the service of the HUB. It should be served on, or before, that day.

If you anticipate any difficulties with meeting the HUB service date or any difficulties with including all required material in the HUB (including CCTV footage), please contact the OPP solicitor with conduct of the file.

All material requiring analysis or testing by VFSC must be lodged immediately and in accordance with any orders or directions made at the filing hearing. Prior to the committal mention or committal case conference date, you must obtain, from your VFSC representative, a lodgment receipt and an approximate date by which the analysis/testing will be completed.

Prosecution obligation of disclosure

Prosecution and investigatory agencies carry a significant and ongoing obligation of full disclosure both under the *Criminal Procedure Act 2009* and at common law.

Subject to any claim of public interest immunity or legal professional privilege or any statutory provisions to the contrary, prosecutors must disclose to the accused any material which is known to them which, on their sensible appraisal:

- is relevant or possibly relevant to an issue in the case; or
- raises or possibly raises a new issue that is not apparent from the evidence the prosecution proposes to use; or

- iii. holds out a real as opposed to fanciful prospect of providing a line of inquiry which goes to (i) or (ii) above.

The following are examples of such information or material that must be disclosed:

- a witnesses' prior convictions (Victorian, interstate or Commonwealth);
- pending charges and/or investigations that may result in charges being filed against a witness (Victoria, interstate or Commonwealth);
- any incentives or benefits obtained by the witness as a result of giving a statement and/or evidence in court proceedings (this may include details of any reduced sentence in previous proceedings, financial payments, or benefits provided to family members); and
- any other material which could be used as a basis for challenging a witness's credit or reliability. Examples are the withdrawal of an allegation by a complainant, evidence that a witness has made false statements to police on other occasions or adverse findings by a court or a disciplinary body which may undermine the credit of the witness).

This is not an exhaustive list: all materials that are relevant or possibly relevant to the prosecution or defence of the accused should be disclosed.

Disclosure obligations apply to relevant information even if it was obtained in the course of a separate or unrelated investigation or was obtained as intelligence rather than as part of an investigation.

The obligation of disclosure is a continuing duty up to, and including, the running of a trial and indefinitely thereafter. Therefore if, during the course of this matter, any additional information (whether inculpatory or exculpatory) comes to your knowledge or attention, you must advise the OPP solicitor with conduct of this matter.

Exceptions: Relevant information or material is not disclosable if a statute or a common law requirement prohibits its disclosure.

If police consider that disclosure of particular relevant material or information would be contrary to PII (or some other restriction on disclosure), the existence and nature of the material or information must be disclosed, together with the basis on which it is to be withheld, to the extent that that can be done without disclosing the confidential matter.

Paragraphs 17, 18 and 19 of the [Policy of the Director of Public Prosecutions](#) must be complied with.

Handling sensitive material: Any sensitive information or material which is required to be disclosed must be handled appropriately. Please consult the OPP solicitor handling the file before forwarding information about informers, prior convictions, pending charges or investigations to the defence.

If you are in doubt as to the relevance of particular material, or you are concerned about disclosing certain material, please contact the OPP solicitor with conduct of this matter.

Failure to comply with the obligation of disclosure is extremely serious and may result in a discontinuance or withdrawal of charges, re-trial, acquittal or permanent stay as a result of a miscarriage of justice as well as civil liabilities and costs orders.

Sexual offences with child or cognitively impaired complainants

On 3 March 2019, section 123 of the *Criminal Procedure Act 2009* was amended to prohibit cross-examination at a contested committal hearing of any witness in sexual offence proceedings where the complainant is a child or is cognitively impaired. The reason for the amendment was to reduce the time between the complainant making their VARE statement and giving their evidence at the special hearing in the County Court.

The Magistrates' Court has issued a [Practice Direction](#) concerning such matters, which is designed to ensure that the parties are ready to proceed by way of hand-up brief procedure at the first committal mention. At the time of serving the HUB, you must also serve standard disclosure material.

The standard disclosure material are documents that tend to be standard for each case. The material is listed here: [Standard Disclosure Material](#)

You should liaise with the OPP solicitor with conduct of your matter to ensure that any disclosure issues, including any objections, are identified as soon as possible.

Confiscation Issues

If in your opinion, the accused has assets which should or could be restrained as being tainted property or alternatively property that could be used for the purposes of a compensation claim you should contact the Victoria Police Criminal Proceeds Squad on 9611 8621.

Family violence protection orders or personal safety intervention orders

If the accused has any family violence protection orders or personal safety intervention orders against them, you must advise the OPP solicitor with conduct of the matter of the following:

- whether it is an interim or final order and the date the order expires; and
- if it is an interim order, the next court date and the nature of the proceedings (contest, adjournment, consent).

File Allocation

If you have provided a bail / remand summary, it is anticipated that within 10 days of the filing hearing the file will be allocated to an OPP solicitor. You will be notified of who that is and their contact details.

Annexure C

From: [REDACTED]
Sent: Friday, September 4, 2020 11:02 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: CM: Allocation of File - RE: [REDACTED] - Committal Mention listed 18/12/2020 - Our Reference: 2004044
Attachments: Witness Details List - VAP Referral Option Added.docx

Dear [REDACTED]

RE: [REDACTED] - Committal Mention listed 18/12/2020 - Our Reference: 2004044

Brief Service Date: 16 November 2020

I advise that the above matter has been allocated to [REDACTED], Solicitor.

Please direct all queries to [REDACTED] on [REDACTED] or email [REDACTED]

A filing hearing result letter was forwarded to you on 28/08/2020. Please ensure you comply with your obligations as detailed in that letter, unless you have already done so.

Additionally, please complete the attached Witness Contact Details Form and return via email (to the above solicitor) within 7 days of this email, if you have not already done so.

Kind regards,
[REDACTED]