IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST

Not Restricted

S ECI 2019 01228

THE QUEEN (ON THE APPLICATION OF THE DIRECTOR OF PUBLIC PROSECUTIONS) — Applicant

v

THE HERALD AND WEEKLY TIMES PTY LTD & OTHERS (according to the attached Schedule) — Respondents

---

JUDGE:	John Dixon J
WHERE HELD:	Melbourne
DATE OF HEARING:	12–13, 16–17 November 2020
DATE OF RULING:	4 December 2020
CASE MAY BE CITED AS:	The Queen v The Herald & Weekly Times Pty Ltd & Ors (Ruling No 2)
MEDIUM NEUTRAL CITATION:	[2020] VSC 800

CONTEMPT OF COURT – Submission of no case to answer – Alleged breach of proceeding suppression order contempt and *sub judice* contempt – Appropriate test – Civil procedure applicable – *Protean (Holdings) Ltd (receivers and managers appointed) v American Home Assurance Co* [1985] VR 187 applied.

CONTEMPT OF COURT – Alleged *sub judice* contempt – Proceeding suppression order – Impugned publications disseminated outside of Victoria – Whether publications had a real tendency, as a matter of practical reality, to interfere with administration of justice – Whether any exposure of possible jury pool members to publications demonstrated.

CONTEMPT OF COURT – Alleged breach of proceeding suppression order contempt and *sub judice* contempt – Whether impugned publications breached and frustrated proceeding suppression order – Whether impugned publications had a real tendency, as a matter of practical reality, to interfere with due administration of justice – Publications inferred that reader could ascertain supressed information by conducting internet searches – Whether applicant required to prove consequences of such conduct – Objective assessment of the effect of the content of the publication in context required – Assessment of practical tendency of publication.

APPEARANCES:	Counsel	Solicitors
For the applicant	Ms L De Ferrari SC and Ms R Kaye of counsel	Ms Abbey Hogan, Solicitor for Public Prosecutions
For the first, and third to seventh, ninth, tenth, and twelfth respondents	Mr W T Houghton QC with Mr S Mukerjea and Mr M A McLay of counsel	Thomson Geer
For the fifteenth, sixteenth, eighteenth to twenty-third, twenty-sixth to thirty-first, and thirty-third to thirty-sixth respondents	Dr M Collins QC with Mr S Mukerjea and Mr M A McLay of counsel	Thomson Geer

TABLE OF CONTENTS

HIS HONOUR:

Introduction

1 The Director of Public Prosecutions, as applicant, brings contempt charges against various media organisations, editors, journalists and television/radio presenters arising out of reports published in the media in December 2018, in the immediate aftermath of a jury's verdict that Cardinal George Pell ('**Pell**') was guilty of child sex offences. This trial commenced on 9 November 2020.

2 At the close of the applicant's case, the respondents put submissions of no case to answer. The submissions were directed against the case put against all respondents but in differing groupings and based on different grounds, which I will explain. The submissions can conveniently be considered in three parts.

(a) '**ground one**': a submission of no case to answer by some respondents, later described as the '**journalist respondents**'. This submission was directed at both the charges of breach of proceeding suppression order contempt and the charges of *sub judice* contempt;

(b) '**ground two**': a submission of no case to answer made by the respondents that have been charged for their involvement with publications that are later described as the '**Outside of Victoria publications**'. This submission is in respect of the charges of *sub judice* contempt; and

(c) '**ground three**': a submission of no case to answer put on behalf of all respondents to the proceeding in respect of all charges, both breach of the suppression order contempt and *sub judice* contempt.

Circumstances leading to this proceeding

3 The circumstances of the prosecution of criminal charges against Pell relating to allegations of child sexual offending are well known and I need not repeat them.[1] For present purposes, it is sufficient to note the following.

---

1 *Pell v The Queen* [2019] VSCA 186; *Pell v The Queen* (2020) 94 ALJR 394.

Two trials

4 Pell was committed to stand trial on 1 May 2018. It was subsequently determined that the charges for which he was committed to stand trial were to be heard sequentially in two separate trials, with the second trial in time to commence very soon after the first had concluded. Each trial was to proceed before the Chief Judge of the County Court sitting with a jury.

5 Once the order of the proceedings was settled, the first trial in time was of the charges of child sexual abuse alleged to have taken place at St Patricks Cathedral, which was referred to as the '**cathedral trial**'. The second trial in which Pell faced further charges, which concerned allegations of child sexual abuse that had occurred at a swimming pool in Ballarat, was referred to as the '**swimmers trial**'.

Proceeding suppression order

6 On 25 June 2018, Chief Judge Kidd made a proceeding suppression order under the *Open Courts Act 2013* (Vic) on the application of the prosecutor.

7 The order stated the following:

> THE COURT ORDERS THAT:
>
> (1) Publication is prohibited of any report of the whole or any part of these trials, and any information derived from these trials and any court documents associated with these trials, save that publication is permitted that the accused is facing for historical child sexual offences in the County Court of Victoria.
>
> (2) The prohibition on publication applies within all States and Territories of Australia and on any website or other electronic or broadcast format accessible within Australia.
>
> (3) For the purpose of this order, 'publication' has the meaning attributed to it by s 3 of the Open Courts Act 2013, that is to say, it means the dissemination or provision of access to the public by any means including, publication in a book, newspaper, magazine or other written publication, or broadcast by radio or television; or public exhibition; or broadcast or written communication.
>
> (4) This order will expire upon commencement of the second trial in time, save that publication of any report of the whole or any part of the first trial in time and any information derived from and any court documents associated with it will be prohibited until verdict in the second trial in time.

(5) For the avoidance of doubt, publication is prohibited of the following information:

a) number of complainants in either or both trials;

b) the number of charges, save for the fact that there are "charges";

c) the nature of the charges, save for the fact that they are charges of "historical child sexual offences"; and

d) the fact of multiple trials.

8 The proceeding suppression order was made to pursuant to s 17 of the *Open Courts Act* for the purpose of preventing a real and substantial risk of prejudice to the proper administration of justice. Chief Judge Kidd recorded that the terms of the proceeding suppression order were necessary to prevent a real and substantial risk of prejudice to the proper administration of justice pursuant to s 18(1)(a). As required under s 11, the court gave notice to relevant news media organisations concerning the application and counsel appeared before the court for a number of them.

9 The media representatives did not oppose a proceeding suppression order in respect of publication of any report of the whole or any part of the trials or any information derived from the trials in any form. The contest raised was whether the order ought to apply throughout the whole of Australia. Several media organisations contended that the order should be limited to the geographical reach of Victoria. The prosecution and defence submitted that it was appropriate that an Australia-wide order be made.

10 Chief Judge Kidd ruled that it was necessary for the proceeding suppression order to apply beyond Victoria to Australia as a whole and ordered accordingly, publishing his reasons ('**Suppression Order Ruling**').[2] There was no appeal.

11 On 25 June 2018, the County Court notified by email various media organisations, lawyers acting for media organisations, and individual journalists (amongst others) of the proceeding suppression order, providing them with a copy.

The verdict and its aftermath

12 On 7 November 2018, the cathedral trial commenced in the County Court before Chief

2 *DPP (Vic) v Pell (Suppression Order)* [2018] VCC 905 ('**Suppression Order Ruling**').

Judge Kidd and a jury. The first jury was discharged after being unable to agree on a verdict and a second jury was empanelled. On 6 December 2018, the jury retired to consider its verdict.

13 On 11 December 2018 at 3:44pm, the jury delivered verdicts of guilty. At that time, the swimmers trial was listed to commence in the County Court on 11 March 2019.

14 By no later than 9:45am on 12 December 2018, online publications originating outside of Australia but accessible within Australia began reporting the conviction, including naming Pell and identifying information derived from the trial. Various local media companies instructed solicitors to apply to the court to have the proceeding suppression order varied or revoked. Those solicitors were notified late in the afternoon of 12 December 2018 that Chief Judge Kidd would hear any application on 14 December 2018 at 9:30am.

15 From the evening of 12 December 2018, Australian media outlets began publishing the reports that are the subject of this proceeding ('**impugned publications**').

16 On the morning of 13 December 2018, the nature of prominent media reporting, obvious to those involved as relating to the trial, caused Chief Judge Kidd to summon the prosecution and defence legal teams to a mention at 11:00am on 13 December 2018. Immediately prior to that mention, the solicitors for the local media companies confirmed that an application to vary or revoke the proceeding suppression order would be made the following morning.

17 The application proceeded before Chief Judge Kidd the next day. Relying on affidavits that identified the extent to which information concerning the conviction had been disseminated online, including via social media, the local media companies contended that the proceeding suppression order was now futile, as the 'genie was out of the bottle'. Chief Judge Kidd dismissed the application later that day.[3] Again, there was no appeal.

---

3 *DPP (Vic) v Pell (Review of Suppression Order)* [2018] VCC 2125.

18 On 26 February 2019, a notice of discontinuance of the prosecution of the charges in the swimmers trial was filed on behalf of the applicant. The proceeding suppression order was revoked later that day.

Protean Holdings election

19 A preliminary question arose as to whether I ought to require each respondent moving for dismissal of the charges to make an election to call no evidence. The applicable procedure in cases governed by civil procedure rules follows the long established practice explained by the Full Court in *Protean (Holdings) Ltd (receivers and managers appointed) v American Home Assurance Co ('**Protean Holdings**')*.[4] I directed that I would hear argument on the applications before determining whether to put the respondents to an election prior to ruling on the applications. Ultimately, the question of whether to impose an election will depend on the just and convenient disposition of the litigation and that question will be most efficaciously considered before I ruled on the applications.

20 Having heard and considered the arguments and formed a preliminary view as to how I would rule on the ground one submission, I determined that any ruling would necessarily require the assessment of the inferences to be drawn on the evidence. Accordingly, the just and convenient disposition of this litigation required the journalist respondents who advanced that ground to make an election not to call any evidence before I ruled on their submission.

21 The journalist respondents elected to withdraw their submission on ground one.

22 I will now rule on grounds two or three without requiring the respondents to make any election.

The respondents

23 The applicant makes allegations of two species of contempt: contempt by breaching the suppression order and *sub judice* contempt.

24 When the applicant closed her case, 87 charges of contempt were brought against

4 [1985] VR 187 ('***Protean Holdings***').

27 respondents in respect of 21 publications. Of the 27 respondents:

(a) 12 are corporations whose activities include the business of the news media outlets that published the impugned publications ('**corporate respondents**'), being six respondents within the News Corp group of companies, five respondents from the Nine Entertainment group of companies, and Mamamia.com.au Pty Ltd;

(b) 5 are natural persons who are editors of the news media outlets that published the impugned publications ('**editor respondents**');

(c) 6 are natural persons who are journalists alleged to have authored a number of the impugned publications ('**journalist respondents**') who were the moving respondents for ground one; and

(d) 4 are natural persons who are radio or television presenters that spoke the words that formed a number of the impugned publications ('**presenter respondents**').

25 The 21 impugned publications were:

News media organisation/group	**Publications**

News Corp	• News.com.au online article:[5]
	  o Herald Sun online article
	  o Geelong Advertiser online article
	  o Daily Telegraph online article
	  o Weekly Times online article
	  o Advertiser online article
	• Courier Mail article (OV)
	• Daily Telegraph article (OV)

Nine Entertainment	• Age article • Age online article • Sydney Morning Herald ('**SMH**') article

[5] Each of the impugned publications appearing as sub-bullet points were syndicated versions of the News.com.au online article and were in identical form.

	(OV) • The Age online editorial; • The Australian Financial Review ('**AFR**') online article 1 • AFR online article 2 • AFR article • Business Insider online article • 2GB Breakfast segment (OV) • 5:32am Today Show segment • 6:00am Today Show segment • 7:02am Today Show segment
Mamamia.com.au Pty Ltd	• Mamamia online article

26 Further, of the 27 respondents, eight are said by them to be charged for their involvement with publications that were substantially circulated outside Victoria and were alleged to have been consumed by few Victorians ('**Outside Victoria publications**'), and are the moving respondents for ground two. These publications are identified in the preceding table with '(OV)'.

27 The following table identifies the respondents (including by reference to the categories identified above) and the charges that have been brought against them in respect of the impugned publications:

Respondent	**Charges**
First Respondent The Herald & Weekly Times Pty Ltd ('**HWT**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of: • the Herald Sun online article • the Weekly Times online article
Third Respondent Charis Chang ('**Chang**') • Journalist respondent	Breach of proceeding suppression order contempt in respect of: • the Herald Sun online article • the News.com.au online article • the Daily Telegraph online article *Sub judice* contempt in respect of the News.com.au online article

Fourth Respondent News Life Media Pty Ltd ('**News Life Media**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of the News.com.au online article *Sub judice* contempt in respect of the News.com.au online article
Fifth Respondent Queensland Newspapers Pty Ltd ('**Queensland Newspapers**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of the Courier Mail article *Sub judice* contempt in respect of the Courier Mail article
Sixth Respondent Sam Weir ('**Weir**') • Editor respondent	Breach of proceeding suppression order contempt in respect of the Courier Mail article *Sub judice* contempt in respect of the Courier Mail article Outside Victoria publication
Seventh Respondent The Geelong Advertiser Pty Ltd ('**The Geelong Advertiser**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of the Geelong Advertiser online article
Ninth Respondent Nationwide News Pty Ltd ('**Nationwide News**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of: • the Daily Telegraph article • the Daily Telegraph online article *Sub judice* contempt in respect of the Daily Telegraph article Outside Victoria publication
Tenth Respondent Ben English ('**English**') • Editor respondent	Breach of proceeding suppression order contempt in respect of the Daily Telegraph article *Sub judice* contempt in respect of the Daily Telegraph article Outside Victoria publication
Twelfth Respondent Advertiser Newspapers Pty Ltd ('**Advertiser Newspapers**')	Breach of proceeding suppression order contempt in respect of the Advertiser online article

• Corporate respondent	
Fifteenth Respondent The Age Company Pty Ltd ('**The Age Company**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of: • the Age article • the Age online article • the Age editorial *Sub judice* contempt in respect of: • the Age article • the Age online article • the Age editorial
Sixteenth Respondent Alex Lavelle ('**Lavelle**') • Editor respondent	Breach of proceeding suppression order contempt in respect of the Age article *Sub judice* contempt in respect of the Age article
Eighteenth Respondent Patrick O'Neil ('**O'Neil**') • Journalist respondent	Breach of proceeding suppression order contempt in respect of: • the Age article • the Age online article *Sub judice* contempt in respect of: • the Age article • the Age online article
Nineteenth Respondent Michael Bachelard ('**Bachelard**') • Journalist respondent	Breach of proceeding suppression order contempt in respect of: • the Age article • the Age online article *Sub judice* contempt in respect of: • the Age article • the Age online article
Twentieth Respondent Fairfax Media Publications Pty Ltd ('**Fairfax Media Publications**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of: • the SMH article • the AFR online article 1 • the AFR online article 2 • the AFR article *Sub judice* contempt in respect of: • the SMH article • the AFR online article 1 • the AFR online article 2

	• the AFR article Outside Victoria publication[6]
Twenty-first Respondent Lisa Davies ('**Davies**') • Editor respondent	Breach of proceeding suppression order contempt in respect of the SMH article *Sub judice* contempt in respect of the SMH article Outside Victoria publication
Twenty-second Respondent Michael Stutchbury ('**Stutchbury**') • Editor respondent	Breach of proceeding suppression order contempt in respect of: • the AFR online article 1 • the AFR online article 2 • the AFR article *Sub judice* contempt in respect of: • the AFR online article 1 • the AFR online article 2 • the AFR article
Twenty-third Respondent Patrick Durkin ('**Durkin**') • Journalist respondent	Breach of proceeding suppression order contempt in respect of: • the AFR online article 1 • the AFR online article 2 • the AFR article *Sub judice* contempt in respect of: • the AFR online article 1 • the AFR online article 2 • the AFR article
Twenty-sixth Respondent Mamamia.com.au Pty Ltd ('**Mamamia**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of the Mamamia online article *Sub judice* contempt in respect of the Mamamia online article
Twenty-seventh Respondent Jessica Chambers ('**Chambers**') • Journalist respondent	Breach of proceeding suppression order contempt in respect of the Mamamia online article *Sub judice* contempt in respect of the Mamamia online article

[6] In respect of the SMH article only.

Twenty-eighth Respondent Allure Media Pty Ltd ('**Allure Media**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of the Business Insider online article *Sub judice* contempt in respect of the Business Insider online article
Twenty-ninth Respondent Simon Thomsen ('**Thomsen**') • Journalist respondent	Breach of proceeding suppression order contempt in respect of the Business Insider online article *Sub judice* contempt in respect of the Business Insider online article
Thirtieth Respondent Radio 2GB Sydney Pty Ltd ('**Radio 2GB Sydney**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of the 2GB Breakfast segment *Sub judice* contempt in respect of the 2GB Breakfast segment Outside Victoria publication
Thirty-first Respondent Chris Smith ('**Smith**') • Presenter respondent	Breach of proceeding suppression order contempt n respect of the 2GB Breakfast segment *Sub judice* contempt in respect of the 2GB Breakfast segment Outside Victoria publication
Thirty-third Respondent General Television Corporation Pty Ltd ('**GTC**') • Corporate respondent	Breach of proceeding suppression order contempt in respect of: • the 5:32am Today Show segment • the 6:00am Today Show segment • the 7:02am Today Show segment *Sub judice* contempt in respect of: • the 5:32am Today Show segment • the 6:00am Today Show segment • the 7:02am Today Show segment
Thirty-fourth Respondent Lara Vella ('**Vella**') • Presenter respondent	Breach of proceeding suppression order in respect of: • the 5:32am Today Show segment • the 6:00am Today Show segment *Sub judice* contempt in respect of: • the 5:32am Today Show segment • the 6:00am Today Show segment

Thirty-fifth Respondent Christine Ahern ('**Ahern**') • Presenter respondent	Breach of proceeding suppression order in respect of: • the 5:32am Today Show segment • the 6:00am Today Show segment • the 7:02am Today Show segment *Sub judice* contempt in respect of: • the 5:32am Today Show segment • the 6:00am Today Show segment • the 7:02am Today Show segment
Thirty-sixth Respondent Deborah Knight ('**Knight**') • Presenter respondent	Breach of proceeding suppression order in respect of the 7:02am Today Show segment *Sub judice* contempt in respect of the 7:02am Today Show segment

28 Copies of the impugned publications are annexed to these reasons (Annexure 2). I will now summarise the significant aspects of the content of the articles. Analysis of other material circumstances surrounding the publication of the articles the subject of ground two is undertaken later in these reasons.

The impugned publications

News.com.au online article

29 The article, entitled 'The story we can't report' under the byline of Chang, prominently displayed the headline of the Daily Telegraph published that day (the Daily Telegraph online article), 'NATION'S BIGGEST STORY', at the top of the page. The article reported information 'derived from the trials', namely that:

(a) a 'high profile Australian known across the world' had been 'convicted' of a 'serious crime';

(b) the person had been 'found guilty in the Victorian County Court';

(c) the person was 'due to face court again for a separate trial in March'; and

(d) there was a 'conviction' the publication of which might prejudice the separate case.

30 The article identified that the person was 'due to face court again for a separate trial in March' and thereby referred to the fact of multiple trials.

31 The effect or content of the proceeding suppression order was addressed, considered and discussed in the article, including when stating that:

(a) there was a story that 'we can't report';

(b) 'the details [of the story] cannot be published by any media in the country';

(c) a 'suppression order was put in place to prevent the publication of the details of the person's name or the charges. This is because the person is due to face court again for a separate trial in March and publication of the conviction might prejudice the case';

(d) the order was 'an archaic curb on freedom of the press in the currently digitally connected world';

(e) there was a 'media ban' that 'News Corp Australia … [was] challenging'; and

(f) 'We believe that you have the right to know this story now and without any further delay'.

32 The article stated that 'the person's high-profile status has meant that international publications are already reporting on the case and details have been released on social media'.

33 The article referred to the Daily Telegraph article, the Age online editorial, and to a 'Washington Post column on the story' by Margaret Sullivan. Ms Sullivan's column is referred to later in these reasons as 'The Washington Post article 2' and is one of the overseas publications relied on by the applicant.

34 This article was syndicated across other online mastheads within News Corp, and was identically published as:

(a) the Herald Sun online article;

(b) the Geelong Advertiser online article;

(c) the Daily Telegraph online article;

(d) the Weekly Times online article; and

(e) the Advertiser online article,

(together with the News.com.au online article, the '**News Corp online articles**').

Courier Mail article

35 The publication appeared on the front page of the print edition of the Courier Mail and consisted of the following:

COURT CENSORSHIP 2

SECRET SCANDAL ?

It's Australia's biggest story. A high-profile person found guilty of a terrible crime. The world is reading about it but we can't tell you a word.

Daily Telegraph article

36 The article appeared on the front page of the Daily Telegraph newspaper, commencing with a prominent front page headline expanding to fill approximately three quarters of the page:

AN AWFUL CRIME. THE PERSON IS GUILTY. YOU MAY HAVE READ THE NEWS ONLINE ALREADY. YET WE CAN'T PUBLISH IT. BUT TRUST US…

IT'S THE NATION'S BIGGEST STORY

The text of the story followed a sub-heading 'EDITORIAL'.

37 The article reported information 'derived from the trials', namely that 'a high-profile Australian with a worldwide reputation' had been 'convicted' of an 'awful crime' and was 'GUILTY'.

38 The article stated that 'The Daily Telegraph and other Australian media are prohibited from telling you about it' but that 'the world is talking about it and reputable overseas news sites have published lengthy stories …'.

39 The existence of the suppression order was acknowledged, 'The Daily Telegraph and other Australian media are prohibited from telling you about it', 'The courts demand that you ignore the story totally until they see fit', and the order was described as 'an archaic curb on freedom of the press in the current digitally connected world'.

40 The article claimed an awareness that 'YOU MAY HAVE READ THE NEWS ONLINE ALREADY' and that 'many of our readers have probably read the international stories written about this person that are published online outside the jurisdiction of the Australian courts'.

Age article

41 The article appeared on the front page under the heading 'Why media can't report on a high-profile case', under which the byline named O'Neil and Bachelard as the authors of the story. It reported information 'derived from the trials', namely that:

(a) a 'very high-profile figure was convicted on Tuesday of a serious crime';

(b) the person 'was convicted on the second attempt, after the jury in an earlier trial [had been] unable to reach a verdict';

(c) the person would 'return to court in February for sentencing' and 'would be remanded' when that occurred;

(d) a suppression order relating to 'the case' had been issued by the 'Victorian County Court' (and therefore the case had been in that court); and

(e) there was 'a further trial being held in March' which might be prejudiced by 'knowledge of the person's identity in the first trial'.

42 The article identified that there was to be 'a further trial being held in March' and thereby referred to the fact of multiple trials.

43 The article expressly referred to the existence and terms of the suppression order.

44 The article noted that the person's case had 'attracted significant media attention' and that 'in this case, the word has got out widely online and through social media'. It stated that that 'Google searches for the person's name surged [on Wednesday 12 December 2018] … Two of the top three search results on the suppressed name showed websites that were reporting the charges, the verdict and the identity of the person in full' and 'Yesterday afternoon, the person's name was the subject of thousands of tweets. The tweets both named the individual and the charges and posted links to online sites where the information was available'.

45 The story stated that readers were questioning why '[The Age] [was] not reporting this major issue in the public interest', which it answered by stating that failing to adhere to the suppression order could lead to charges of contempt.

46 The article concluded with discussion of a review of the *Open Courts Act* by 'retired judge Frank Vincent'.

Age online article

47 The content of this article is substantially identical to the Age article.

Age online editorial

48 The online editorial appeared with the heading 'Rampant use of suppression orders has become absurd'. The article reported information 'derived from the trials', namely that:

(a) an 'internationally prominent person' had been 'found guilty of appalling crimes';

(b) the person would be 'remanded in custody in February after a sentencing hearing'; and

(c) the person was to 'face a related trial next year'.

49 The article identified that the person would 'face a related trial next year' and a 'second hearing' and thereby referred to the fact of multiple trials.

50 The article expressly referred to the existence and terms of the suppression order, stating 'the Victorian County Court has blocked the publication of details, including the perpetrator's name and the charges, in the belief it could prejudice the jury in the second hearing'. It argued that 'blind justice' was 'undermining freedom of speech and the public's right to know how well the system their taxes [funded] might be working'. It opined about the futility of suppression orders in the context of 'in the digital era news reports and other information instantly span the world, amplified by social media', which was 'demonstrate[d]' by 'the international coverage of a case we cannot tell you about in any detail'.

51 The article stated that online searches of the person's name 'rocketed only hours after the guilty verdicts' and '[w]ith but a few key strokes, people were immediately directed to foreign websites reporting the full details'.

SMH article

52 The content of this publication, which appeared on the front page of the SMH with the heading 'Why we can't report on a case of huge interest', is substantially identical to the Age article.

AFR online article 1

53 This article was titled 'How the case that can't be named is being reported around the world' under the byline of Durkin. It reported information 'derived from the trials', namely that:

(a) an Australian had been 'convicted' of a 'serious crime';

(b) that person had been 'found guilty' by a 'Victorian jury'; and

(c) a suppression order about the case had been issued by the Victorian County Court.

54 The article expressly referred to the existence and terms of the suppression order. It noted that the overseas publication The Daily Beast first reported the conviction,[7] and that the case that can't be named is being reported around the world. The article commented that 'high profile global media companies are flouting a suppression order in relation to an Australian who has been convicted of a serious crime after a Victorian jury found the person guilty of charges this week.'

55 The article observed that that 'Global websites available in Australia including the Jeff Bezos owned The Washington Post and National Public Radio were publishing the news on Wednesday and Thursday including in push notifications to Australians with the Washington Post app.[8]' It also referred to the stories in the Daily Telegraph and The Age.

AFR online article 2

56 Under the headline, 'Judge slams 'flagrant' media over world's worst kept secret', with the byline of Durkin, this article reported information derived from the media's application to discharge the suppression order made on 14 December 2018.

57 The article also repeated much of the material from the AFR online article 1, which reported information derived from the cathedral trial. The article expressly referred to the existence and terms of the suppression order.

58 The article concluded with a section 'Most Viewed In news' that consisted of hyperlinks to other articles. The first two hyperlinks, in order, were:

(a) 'How the case that can't be named is being reported around the world' (AFR online article 1); and

---

7 An overseas publication relied on by the applicant in this proceeding and referred to in Annexure 1 below as the 'Daily Beast article'.

8 Three articles from The Washington Post are relied on by the applicant as overseas publications and are referred to in Annexure 1 below as the 'Washington Post article 1', 'Washington Post article 2' and 'Washington Post article 3'.

(b) 'Cardinal George Pell removed from Pope's Vatican cabinet'.

AFR article

59 The content of this publication, 'Judge slams 'flagrant' media', also under the byline of Durkin, is substantially identical to the AFR online article 2, save that the online version uses a different headline and contains an additional six paragraphs at the end, none of which are relevant to the charges.

Mamamia online article

60 This article was headlined 'Why today, Australian media can't report on "the nation's biggest story"' and bore the byline of Chambers. It reported information 'derived from the trials', namely that:

(a) a 'very well-known Australian' had been 'found guilty' of a 'serious crime on Tuesday' and that the crime was 'awful';

(b) the person 'has been remanded in custody';

(c) the person would be 'sentenced in February';

(d) the person was 'GUILTY' and had been 'found guilty';

(e) the person's name had been suppressed by the 'Victorian County Court' (and therefore the case was in that court); and

(f) there was to be 'another trial involving the same person in March'.

61 The article expressly referred to existence of suppression order. It stated that 'overseas websites may report on the story' and noted that it was argued that Australians could easily read the full story on overseas sites given the nation's widespread access to the internet.

62 The article concluded with a note that if any of its readers knew the person's name, 'we please ask that you **do not** share it in the comments below'.[9]

[9] Emphasis in original.

Business Insider online article

63 The article, with the byline of Thomsen, was headed 'The Australian media wants to talk about a high-profile criminal conviction but can't -- here's why'. It reported information 'derived from the trials', namely that:

(a) there had been a 'high-profile criminal conviction';

(b) a 'prominent Australian' had been 'convicted' of a 'serious crime'; and

(c) 'a Victorian jury' had found 'the person guilty of the charges this week'.

64 The article expressly referred to the existence and some of the terms of the suppression order. It stated:

(a) 'However, in the global internet era, what has occurred is being widely reported globally. The name of the person has featured heavily on social media in the last 24 hours'; and

(b) 'The Sydney Morning Herald reports that Google searches for the person's name surged on Wednesday, particularly in Victoria, and reveal widely (sic) coverage by international media, although some websites have been geo-blocked to prevent Australian residents reading it'.

2GB Breakfast segment

65 The segment on breakfast radio compered by Smith broadcast information 'derived from the trials', namely that:

(a) a 'high profile Australian with a worldwide reputation' had been 'convicted' of an 'awful crime';

(b) such person was 'a very high profile figure who's been convicted of a serious crime';

(c) the identity of the person could not be revealed owing to 'a suppression order issued by the Victorian County Court';

(d) the person's case 'had received significant media attention' and he 'was convicted on the second attempt after the jury in an earlier trial was unable to reach a verdict'; and

(e) the person was 'due to return to court in February for sentencing'.

66 Smith stated that:

> [D]espite the suppression order, we're told that Google searches for the person's name surged yesterday particularly in Victoria, with two of the top three results on the suppressed name showed websites that were reporting the charges, the verdict and the identity of the person in full.

He continued:

> I can't tell you who it is. But I can also encourage you to get on Google and start asking these questions: high profile Australian, world-wide reputation, conviction of an awful crime. And you'll find out who it is.

5:32am Today Show segment

67 The first part of the segment of the Today Show was a news item read by the news reader, Vella, who reported information 'derived from the trials', namely that a 'high profile Australian with a worldwide reputation' had been 'convicted' of an 'awful crime'.

68 The program then moved to a 'live cross' with reporter, Ahern, who reported further information 'derived from the trials', specifically that:

(a) the identity of the person and details of the case could not be revealed because of 'a legal ban imposed by the Victorian County Court'; and

(b) the person was 'due back in court in February'.

69 After making reference to the contents of the Age article, which was shown on screen, Ahern commented further that:

(a) 'we here at Nine believe this is a story that needs to be told'; and

(b) 'Orders by the court here in Australia don't apply overseas so international media can report on this high profile case without the same restrictions'.

6:00am Today Show segment

70 This segment was in identical terms to 5:32am Today Show segment, save that instead of referring to the Age article during the live cross, Ahern quoted from the front page of the Herald Sun,[10] saying 'the world is reading a very important story that is relevant to Victorians' and 'But trust us, it is a story that you deserve to read'.

7:02am Today Show segment

71 The news item was again in identical terms to 5:32am Today Show segment, read this time by Knight, save that the phrase 'awful crime' was not used by Knight and was substituted with 'crime' instead. The live cross to Ahern was identical to 6.00am Today Show segment.

Applicable principles on the applications

72 The test that I must apply in evaluating the submissions, as described in *Protean Holdings,* is whether there is any evidence, taking the applicant's evidence at its highest, that ought to reasonably satisfy the tribunal of fact that the facts sought to be proved by the applicant are established. I am entitled to draw all proper inferences from the evidence, save that I cannot draw an inference against the moving party based upon the absence of evidence from that party.[11]

73 The *Protean Holdings* test was considered by the High Court in *Naxakis v Western General Hospital* ('***Naxakis***').[12] In this case, the High Court reversed the Court of Appeal's finding in favour of the trial judge's application of *Protean Holdings*, in a medical negligence proceeding before a jury, that there was no case to answer. Kirby J, with whom Gleeson CJ agreed, opined that a number of difficulties in the reasoning of the Court of Appeal stemmed from its application of *Protean Holdings*.[13] However, I need not concern myself with those difficulties, as they are founded in the principles relevant to depriving all parties of the jury's verdict when directing a verdict or entering judgment in favour of one party.

---

10 A publication that is not the subject of any charge in the proceeding.
11 *Protean Holdings*, 215, 240 (n 4).
12 (1999) 197 CLR 269.
13 Ibid 298–9 [82]–[84].

74 The applicant submitted that the proper test is identified in two criminal cases, *Doney v The Queen*,[14] and *Case Stated by DPP (No 2 of 1993)*.[15] As with *Naxakis*, those decisions involved (criminal) cases tried before a jury. In such cases, it is necessary for the judge to very carefully consider the proper role of the jury, as the tribunal of fact, when undertaking an evaluative exercise as to whether evidence is capable of supporting a verdict of guilty.

75 I do not think that the principles stated in *Naxakis* require me, in the present circumstances, to apply a different test to that stated in *Protean Holdings* and, as I have stated, I will apply that test.

Applicable principles governing the charges of contempt

76 In *Re Colina; Ex parte Torney*,[16] Hayne J described 'the cardinal feature of the power to punish for contempt' as being that it 'is an exercise of judicial power *by the courts*, to protect the due administration of justice.' It is the capacity of the impugned conduct to interfere with the due administration of justice that lies at the heart of any charge of contempt of court.[17]

77 The applicant's case is not one of breach 'simpliciter' of the suppression order. As Deane J observed in *Hinch v Attorney-General (Vic)*,[18] there are several distinct categories of contempt of court under the common law of Australia. The present case is concerned with contempt by publishing material that tends to imperil the due administration of justice by a tendency to prejudice the fair trial of particular legal proceedings. Within this category, the applicant charged the respondents with charges invoking two separate species of contempt.

78 The applicant framed the contempt charges by reference to the closely analogous case of *R v Hinch* ('***Hinch***').[19] In that proceeding, Derryn Hinch faced two charges of

---

14 (1990) 171 CLR 207, 214–15.
15 (1993) 70 A Crim R 323, 327.
16 (1999) 200 CLR 386, 429 [112] (emphasis in original).
17 *Attorney-General v Times Newspapers Ltd* [1974] AC 273, 315; *Witham v Holloway* (1995) 183 CLR 525, 538–9; *Australasian Meat Industry Employees' Union v Mudginberri Station Pty Ltd* (1986) 161 CLR 98, 106.
18 (1987) 164 CLR 15, 46 ('***Hinch v A-G (Vic)***').
19 [2013] VSC 520 ('***Hinch***').

contempt arising out of his conduct in publishing material online relating to pending criminal proceedings against one Adrian Ernest Bayley, who would subsequently be convicted of rape and murder. A suppression order that prohibited publication of certain matters about Bayley was breached by Hinch's publication. Hinch was convicted of contempt by breach of the suppression order. Hinch was also charged and found not guilty of *sub judice* contempt. The statement of the applicable legal principles by Kaye J (as his Honour then was) in *Hinch* was not questioned by any of the parties before me.

79 Pausing here, I note that s 23 of the *Open Courts Act* provides:

> **Offence to contravene proceeding suppression order or interim order**
>
> (1) A person must not engage in conduct that constitutes a contravention of a proceeding suppression order or an interim order that is in force if that person—
>
> (a) knows that the proceeding suppression order or interim order, as the case requires, is in force; or
>
> (b) is reckless as to whether a proceeding suppression order or an interim order, as the case requires, is in force.
>
> Penalty: in the case of an individual, level 6 imprisonment (5 years maximum) or 600 penalty units, or both;
>
> in the case of a body corporate, 3000 penalty units.

80 The applicant did not charge any respondent with the statutory offence under s 23 for breach of the proceeding suppression order. Instead, the charges are brought as breach of suppression order contempt under the common law. The *Open Courts Act* had not been enacted at the time when the suppression order in *Hinch* was made.

Breach of proceeding suppression order contempt

81 In order to establish the guilt of the relevant respondent for contempt of court in respect of an impugned publication, on the basis that a person who is not a party to a proceeding published a report that breached a suppression order, the applicant must prove beyond reasonable doubt each of the following elements:[20]

---

20 Ibid [52].

(a) the respondent published the article (or caused it to be published);[21]

(b) the publication of the article frustrated the effect of the suppression order because it contained material that was contrary to or that infringed the terms of the order; and

(c) when the article was published, the relevant respondent's knowledge of the terms and effect of the order was such that a reasonable person with that knowledge would have understood that the continued publication of the article would have the tendency to frustrate the efficacy of the order.

82 It will be necessary to say more about some aspects of the second element of breach of proceeding suppression order contempt in the context of the parties' submissions.

***Sub judice* contempt**

83 Stated shortly, in order to establish *sub judice* contempt of court, the applicant must prove beyond reasonable doubt that the impugned publication:

(a) was published (or caused to be published) by the relevant respondent; and

(b) as a matter of practical reality, had a real tendency to prejudice the due administration of justice.

84 Kaye J identified, as well-established, the principles that apply to determine whether the applicant has proved beyond reasonable doubt that a respondent was guilty of *sub judice* contempt:[22]

(a) the tendency to interfere with, or prejudice, the pending proceedings, is to be determined at the time of the publication;

(b) the proof of an intention by the respondent to prejudice the pending proceeding is not an essential element of the contempt;

---

21 The words in parenthesis were not used by Kaye J but are justified by reference to other authorities on the meaning of 'publish' that were cited to me in respect of ground one.

22 *Hinch*, [94] (n 19) (citations omitted).

(c) the tendency of the publication in question is to be established objectively, by reference to the nature of the publication and the circumstances in which it was made. It is not relevant to consider the actual effect of the publication upon the pending proceedings;

(d) in determining whether the publication, as a matter of practical reality, had a real tendency to prejudice the fair trial of a pending proceeding, the court should take into account all the relevant circumstances, including:

(i) the content of the publication;

(ii) the nature of the proceedings liable to be affected, and whether they are civil or criminal proceedings;

(iii) whether at the time of publication the proceedings are pending at the committal, trial or appellate stage; and

(iv) the persons to whom the publication was addressed and the likely durability of the influence of the publication on its audience;

(e) in considering those circumstances:

(i) the court must determine, as at the date of publication, the probable period of time that would pass between the publication and the trial of the pending proceeding; and

(ii) the court should take into account the effect of other prejudicial matter which had already been published, before the date of the criminal charges, concerning the accused person. In performing that assessment, it is not permissible to take into account any prejudicial material published after the date of the laying of the charge against the accused person. On the other hand, it is permissible to take into account other material published after the laying of the charge against the accused, which did not constitute contempt, in order to determine the practical

tendency of the particular publication to prejudice the fair trial of the charges against the accused.

85 The proceeding suppression order prohibited publication of 'any information derived from these trials'. The applicant contended that the impugned publications reported significant information derived from the cathedral trial including:

(a) the fact of a conviction of a serious crime;

(b) that a person had been found guilty in the Victorian County Court; and

(c) that such person was due to face court again for a separate trial in March.

Ground one

86 The journalist respondents submitted they had no case to answer to both the charges of breach of proceeding suppression order contempt and *sub judice* contempt. The submission was directed to the first element of each charge, namely whether the moving respondent published or caused a report to be published.

87 As earlier stated, those respondents withdrew this submission.

Ground two

Respondents' submissions

88 It will be recalled that this ground was advanced by those respondents charged with *sub judice* contempt for their publication of an Outside Victoria publication. As I have noted above, to establish this form of contempt, the applicant must establish to the requisite standard whether, as a matter of practical reality, the relevant impugned publication had a real and definite tendency to interfere with the due administration of justice. The respondents' submissions focussed on the notion of 'practical reality' and the requirement of 'a real and definite tendency'.

89 The respondents submitted that the test could not be satisfied if the circulation of the relevant impugned publication was only to a very small segment of the relevant population, identifiable by reference to the way in which the due administration of

justice is engaged in the circumstances. In this case, that population is adult persons within metropolitan Melbourne who might be selected into a jury pool for the swimmers trial.

90 The News Corp respondents that published Outside Victoria publications were Queensland Newspapers and Weir (Courier Mail article), and Nationwide News and English (Daily Telegraph article). The evidence disclosed print sales of the Courier Mail in Victoria on the relevant day to be 67, while the Daily Telegraph had print sales on that day of 196. Accordingly, those respondents submitted that the number of persons potentially exposed to the publication within the relevant category of the population was miniscule. Taken at its highest, such evidence could not demonstrate, as a matter of practical reality, the requisite tendency to interfere with the due administration of justice.

91 Four of the Nine Entertainment respondents put the same submission in respect of the publication of the SMH article (Fairfax Media Publications and Davies), and the 2GB Breakfast segment, a radio broadcast lasting about 45 seconds in the course of a live breakfast radio program on the Sydney radio station at approximately 5:41am on 13 December 2018 (Radio 2GB Sydney and Smith).

92 Those respondents submitted that, taken at its highest, the length of the relevant segment of the 2GB Breakfast segment, the time of broadcast, and that it was broadcast in Sydney, as a matter of practical reality, could not have had the necessary tendency. There was evidence that the 2GB Breakfast segment was available for download as a podcast of that morning's radio programme and that 68 downloads of the podcast were from Victoria.

93 However, the relevant respondents submitted that the inferences that might be drawn from that fact were limited. First, at an unknown time on 13 December 2018, the impugned segment was excised from the podcast and it could not be said how many of the downloads had occurred prior to the excision. Secondly, podcasts are a transient form of communication and there was no evidence that every download was listened

to by the person who downloaded it, either at all or in its entirety; and listeners are inherently unlikely to give the same degree of attention to a podcast as they might to the written word.[23] Thirdly, the broadcast did not name Pell or identify the charges of which he had been convicted. Although Smith, the presenter, encouraged online search where the answers to those questions would be revealed, there was no evidence that any person either conducted a search or found any of the overseas articles as a consequence of this (or any other impugned) publication.

94 Those respondents submitted that, as a matter of practical reality, the applicant had not established that any potential juror in the swimmers trial was exposed or potentially exposed to the 2GB Breakfast segment (in either the live broadcast or podcast forms) and then went on to conduct searches. The only inference that was open was that the number of persons in the relevant sector of the population (possible members of a future jury pool) who may have been exposed to the relevant publication was miniscule, and accordingly it was fanciful, not a practical reality, that the publication could have the requisite tendency.

95 The relevant respondents contended that the applicant had no evidence of the number of copies of the print edition of the Sydney Morning Herald sold in Victoria on the relevant day, as they are not recorded by the publisher on a state-by-state basis. There was evidence of the extent of publication of other interstate mastheads in Victoria, but that evidence could only support the inference that interstate mastheads do not have substantial readerships outside their home state.

96 Accordingly, for the like reasons as were advanced in respect of other Outside Victoria publications, the relevant respondents submitted that the applicant could not discharge her burden of establishing that the SMH article had the requisite tendency, as a matter of practical reality, to interfere with the due administration of justice.

Applicant's submissions

97 The applicant did not contest the proposition that she needed to establish the relevant

---

[23] Citing *Amalgamated Television Services Pty Ltd v Marsden* (1998) 43 NSWLR 158, 165–6.

tendency, as a matter of practical reality, to the requisite standard. She submitted that what was contestable was the view taken by the respondents of the totality of the relevant evidence. The respondents' contentions, she submitted, failed to take into account inferences that may reasonably be drawn.

98 Using the Courier Mail article as an example, the applicant noted that although the print sales in Victoria were 67, there were print sales in New South Wales of 1,891. The applicant contended for assumptions about where the New South Wales sales may have occurred (e.g. Albury), and about the behaviour of Melbournians when interstate that, she submitted, supported an inference of a greater level of exposure. Extending the same argument, the print sales in South Australia were 784, while the print sales in Queensland were 95,323. The applicant contended that Melbournians commonly travel to Queensland as a holiday destination in a variety of different ways and may have purchased or read the Courier Mail while they were there.

99 Further, hard copies of interstate mastheads are available at the State Library of Victoria, while subscribers are able to access a 'digital replica' of the newspaper online that includes fourteen back issues. The 2019 News Corp annual report claimed a total monthly audience (print and digital) of 2.5 million. Moreover, subscribers to the Herald Sun and the Daily Telegraph have unlimited access to the Courier Mail website.[24]

100 The applicant submitted that taking her case at its highest, with all inferences reasonably open to be drawn that are most favourable to her case, the court must infer that a significant number of subscribers to the Courier Mail, and each of the Herald Sun, the Daily Telegraph and the Advertiser had access to the Courier Mail in its digital form and would have read the Courier Mail article that was displayed prominently, and sensationally, on its front page.

101 The applicant observed that in *Hinch*, the offending online article was found to satisfy

[24] The point of this submission seemed somewhat obscure given that those subscribers would have had their attention drawn to the relevant impugned publication appearing on the platform to which they subscribed.

the test, despite not being published in a national masthead and having only been viewed 797 times.

102 The applicant applied a similar analysis in relation to the evidence in respect of the Daily Telegraph article and the Sydney Morning Herald article, but the submission is not better explained by a close review of those broadly similar statistics in these reasons.

103 Concerning the 2GB Breakfast segment, the applicant submitted that its tendency was strongly evident from what was said. The evidence is that the best estimate of the audience for that particular segment is 60,000 listeners, and the applicant submitted that some of them were likely to have been Melbournians in Sydney on that day. Further, Radio 2GB Sydney and Smith have admitted that the segment was streamed on the website 2GB.com.au, which provides a basis for an inference of direct reach of that broadcast into Victoria, together with the podcasts that had been downloaded.

104 As with the other publications, the applicant contended that the strong language used in the broadcast, in conjunction with a wider view of the extent of penetration into the relevant sector of the Victorian population, was sufficient for the court to be satisfied for the purposes of the no case submission that, as a matter of practical reality, the broadcast and publication of the Outside Victoria publications had a real and definite tendency to interfere with the due administration of justice.

Analysis

105 To rule on this ground, I need to analyse further aspects of the principles applying in respect of the tendency to prejudice the due administration of justice.

Tendency to interfere with the due administration of justice

106 Kaye J concluded in *Hinch* that the tendency of the publication in question is to be established objectively, by reference of the nature of the publication and the circumstances in which it was made.

107 Authority for that proposition is found in *Director of Public Prosecutions (Cth) v Wran*.[25]

[25] (1987) 7 NSWLR 616 (‘***Wran***’).

In that case, a five-member Court of Appeal noted that beyond analysis of the text and context of the impugned publication, other extrinsic factors were relevant. Such factors included the delay between the publication and the relevant trial, the existence of non-contemptuous public discussion, and the public interest in the ventilation of questions of public concern. The extent of circulation of the impugned publication was not in issue. The relevant words were directed to the issue to be determined by the jury at the new trial, namely the innocence or guilt of the accused, were made to persons (radio journalists) who might republish them to large numbers of people, and were made by the Premier of New South Wales, whose standing made it more likely that there would be a further republication. The court said it was clear that any publication by the radio stations might reach persons who, in due course, would become members of the jury at the retrial.

108 In *Hinch v Attorney-General (Vic)*,[26] Wilson J stated:

> It is a jurisdiction to be exercised with caution and only if it is made quite clear to the court that the matter published has, as a matter of practical reality, a tendency to interfere with the due course of justice. The impugned material must exhibit a real and definite tendency to prejudice or embarrass pending proceedings. It is obvious that the weight and importance of the various factors that will be material to a consideration of that question will vary from case to case. Broadly speaking, however, the more important factors will include the following: the content of the publication; the nature of the proceedings liable to be affected, whether they are civil or criminal proceedings and whether at the time of publication they are pending at the committal, trial or appellate stage; the persons to whom the publication is addressed; and finally, the likely durability of the influence of the publication on its audience.[27]

109 By reference to these authorities, I am satisfied that when assessing to the requisite standard whether, as a question of practical reality, and exercising the appropriate degree of caution, whether the impugned publications the subject of ground two have a tendency to interfere with the due course of justice, two factors must be balanced. Although significant weight needs to be given to the content of each publication, a countervailing factor—factually relevant in respect of these publications—is the limited extent of penetration into the relevant sector of the population eligible for

---

26 *Hinch v A-G (Vic)* (n 18).

27 Ibid 34 (citations omitted).

selection on the future jury for the swimmers trial, whose impartiality might be adversely affected by the content of each publication.

110 I am fortified in this conclusion by reference to *Attorney-General v Independent Television News Ltd*.[28] In that case, two Irishmen had been arrested in West Yorkshire in connection with a murder and an attempted murder. The following day, a news program broadcast by the first respondent, when reporting the arrest, added that one of the men, M, was a convicted IRA terrorist who had escaped from jail, where he had been serving a life sentence for the murder of an SAS officer. The two men were charged in London and four newspapers owned by the second to fifth respondents gave an account of the incident, and published prejudicial details about M. The articles appeared only in the first edition of each newspaper and the distribution of print copies in the London area was 2,485, 1,000, 1,850 and 146 copies respectively. The trial of the two accused took place in London nine months later.

111 The respondents were charged with offences under the *Contempt of Court Act 1981* (UK). Under that Act, the Attorney-General needed to establish a substantial or more than minimal risk that the course of justice would be seriously prejudiced by reason of that publication being remembered by one or more of the jurors when the case came to trial.

112 The Court (Leggatt LJ and Buxton J) while accepting that the information communicated was very noteworthy and could have seriously prejudiced the trial, was not satisfied that the Attorney-General had demonstrated that there was a substantial risk to the course of justice in the trial of the two accused would be effected. The court took account of the brevity of the broadcast and its ephemeral nature, the relatively small circulation of the offending newspaper articles in the London area and the lapse of time between the publications and the likely trial date.

113 Before me, counsel observed that the arguments advanced on behalf of the Attorney-General as to the effect that a newspaper story may have upon persons not living in

---

28 [1995] 2 All ER 370.

the area in which it is distributed, referred to as the 'leakage' argument, were substantially the same arguments as were advanced by the applicant. Leggatt LJ stated:

> Though the possibility must exist of what has been called 'leakage', I regard it in the circumstances as minimal.
>
> The reason why I am unimpressed by the 'leakage' argument is that, although there may be an outside chance of a person adventitiously reading an article in a newspaper bought by somebody else, the possibility is, in my judgment, so remote in the circumstances of this case, as to be negligible. The risk that one of the newspapers distributed outside the jurors' catchment area might none the less come into the hands of, or be read by, one of them, is so slight as to be insubstantial.[29]

The court also noted that given the result, the respondent may be thought to have been extremely fortunate if regard was had simply to the content of the publications.

114 Leggatt LJ's observations about 'leakage' must be placed in their temporal context. The manner in which news is consumed has evolved to some extent since 1992. So much was recognised by Chief Judge Kidd when making the proceeding suppression order.[30] He rightly rejected media opposition to an Australia-wide order to guard against domestic 'social media chatter' and internet access in Melbourne to anywhere arising from publication out of Victoria. However, the applicant neither alleged leakage of that sort nor alleged that the impugned publications had the requisite tendency because of the risk of secondary dissemination to potential jurors as a result of online leakage. That said, his Lordship's observations remain pertinent to the way in which the applicant advanced the leakage submission. It should not be inferred from this observation about the way the applicant ran her case that I disagree with the observations that Chief Judge Kidd made about the ramifications of contemporary communications architecture.

Extent of publication

115 Also relevant in assessing whether the applicant's evidence will satisfy the test is the evidence of market penetration for the relevant impugned publications. For the

---

29 Ibid 383.

30 Suppression Order Ruling, [59].

moving respondents to this ground, that evidence came from affidavits deposed to by Ms Marlia Saunders (Senior Litigation Counsel at News Corp) and Ms Rachel Launders (General Counsel and Company Secretary of Nine Entertainment).

Courier Mail article

116 Ms Saunders deposed that the Courier Mail had 98,199 print sales on 13 December 2018, of which:

(a) 95,323 were sold in Queensland;

(b) 1,891 were sold in New South Wales;

(c) 784 were sold in South Australia;

(d) 116 were sold in Western Australia;

(e) 67 were sold in Victoria; and

(f) 18 were sold in the Australian Capital Territory.

Daily Telegraph article

117 Ms Saunders deposed that the Daily Telegraph had 161,703 print sales on 13 December 2018, of which:

(a) 151,086 were sold in New South Wales;

(b) 6,124 were sold in the Australian Capital Territory;

(c) 4,268 were sold in Queensland;

(d) 196 were sold in Victoria; and

(e) 29 were sold in South Australia.

SMH article

118 Ms Launders deposed that the Sydney Morning Herald had 69,962 print sales on 13 December 2018. Although circulation figures for the Sydney Morning Herald were not calculated on a state by state basis, Ms Launders' evidence was that the majority

of sales occur within New South Wales.

2GB Breakfast segment

119 Ms Launders deposed that:

(a) the 2GB Breakfast segment was broadcast to approximately 60,000 people;

(b) it was not possible to identify precisely how many people listened to the segment on the website; and

(c) the 2GB Breakfast segment was part of that day's Alan Jones Breakfast Show, of which a podcast that included the segment was available from 9:32am on 13 December 2018 until 6:18am on 12 February 2019. It had a total of 422 downloads, of which 68 were from Victoria.

Conclusions

Queensland Newspapers and Weir

120 The no case submission was limited to one charge of *sub judice* contempt against each respondent in respect of the Courier Mail article.

121 Taking the applicant's evidence at its highest and drawing all proper inferences from this evidence, I have not been persuaded that there is sufficient evidence for me to conclude beyond reasonable doubt that, as a matter of practical reality, the publication charged had the requisite tendency to interfere with the due administration of justice. The nature of the content of the publication is an important consideration and, as noted above, the article reveals the conviction of a high profile person of a terrible crime and states that the world is reading about it. Context and other extrinsic factors are relevant, particularly the short delay between publication and the anticipated start date for the swimmers trial and the general climate of substantial public interest in matters of institutional abuse arising from the Royal Commission and particularly focussed upon the Catholic Church. These are matters that lend support to the applicant's contention that the impugned publication was contemptuous.

122 Weighing against these factors, however, is the want of evidence of any significant

penetration of the Courier Mail article into the relevant sector of the population. The evidence of print sales is set out above, to be considered in the context of the applicant's submissions about the ways in which the content of the Courier Mail article may have come to attention of residents of metropolitan Melbourne who might have been summoned to form a jury pool for the second Pell trial. In the context of these charges, it must be assumed that the ordinary reasonable reader of the Courier Mail is a member of that subcategory of the population.

123 On the evidence, I am satisfied that it is fanciful, not real, to identify the requisite tendency in the publication of this article, bearing in mind that the question is to be approached as a matter of practical reality and not in any technical or highly constrained way. I am not persuaded by the applicant's submissions about the possible ways in which the Courier Mail article can be presumed to have had a more extended distribution than the 67 sales of the print edition in Victoria. I am not persuaded that the applicant has laid a factual basis for such inferences and I decline to find such factual basis by taking judicial notice, as was submitted.

124 The *sub judice* charges against Queensland Newspapers and Weir in respect of the Courier Mail article will be dismissed.

Nationwide News and English

125 Consistent with the above analysis, as a matter of practical reality, the applicant has not shown that the Daily Telegraph article had a real and definite tendency to interfere with the due administration of justice. It could not be determined on the applicant's evidence, drawing all appropriate inferences, that the article had achieved any practical penetration into greater metropolitan Melbourne. The evidence of print sales in Victoria on the day the article was published was that 196 copies had been sold. Again, in an attempt to show that there was in a practical sense penetration of the Daily Telegraph article into greater metropolitan Melbourne, the applicant relied on the 'leakage' arguments.

126 For the reasons I have already given, I assessed the applicant's evidence to be insufficient to permit me to conclude beyond reasonable doubt that, as a matter of

practical reality, the Courier Mail article had the necessary tendency to interfere with the due administration of justice.' The submission of no case to answer in respect of the *sub judice* contempt charges are brought against Nationwide News and English succeeds and those charges will be dismissed.

Fairfax Media Publications and Davies

127 These respondents submitted that there was no case for them to answer on the charges of *sub judice* contempt brought against them in respect of the publication of the SMH article. The evidence before me of the circulation of this article was extremely limited. There were no print sales figures available calculated on a state-by-state basis. For the reasons I have already expressed, the contention that there was, as a matter of practical reality, any exposure of persons in greater metropolitan Melbourne who might become part of a jury pool is fanciful.

128 The no case submission in respect of Fairfax Media Publications and Davies succeeds and the charges of *sub judice* contempt against each of these respondents in respect of the SMH article will be dismissed.

Radio 2GB Sydney and Smith

129 I accept the submission on behalf of each of Radio 2GB Sydney and Smith that they have no case to answer on charges of *sub judice* contempt in respect of the 2GB Breakfast segment. My reasoning for this conclusion will be clear from the preceding paragraphs of these reasons. I accept the submissions advanced on their behalf that the applicant's evidence of market penetration, taken at its highest, cannot demonstrate that the broadcast had a real and definite tendency to interfere with the due administration of justice. I have not been persuaded that this tendency becomes a practical reality by reference to the applicant's 'leakage' arguments.

130 I would add that if the tendency to interfere with the due administration of justice was determined solely by reference to the content of the publication, the conduct of these respondents might be thought to be the most egregious of all of those charged in this proceeding. However, that is not the law.

131 The charges of *sub judice* contempt against Radio 2GB and Smith in respect of the 2GB Breakfast segment will be dismissed.

Ground three

132 All respondents submitted that, in respect of all charges of contempt that they face, there was one narrow ground that demonstrated there was no case to answer.

Respondents' submissions

133 The respondents contended that it is necessary to examine carefully the nature of the applicant's pleaded case, formulated in a process of case management, that identified the precise allegation made against each of many respondents, and not some other case that might have been put against them. The applicant's allegations were identified in the pleadings. Summaries of prosecution opening identified the charges of contempt to be answered by each respondent, with detailed particulars and appropriate identification of the evidence to be led in support of those particulars.

134 All of the impugned publications were published on the evening of 12 December or on 13 December 2018 (save for the AFR article, which was published on 14 December 2018). The respondents developed their submission from the proposition that each charge of contempt by breach of the proceeding suppression order was pleaded in accordance with the principles in *Hinch*, drawing attention to the requirement that frustrating conduct needed to be of a character that tended to prejudice the administration of justice. Each charge of *sub judice* contempt alleged that the publication of the relevant report had a serious tendency to prejudice the fair trial of the charges pending against Pell that were to be determined at the swimmers trial and thus the administration of justice.

135 The respondents submitted that the foundational proposition of each of the charges of contempt by breach of the proceeding suppression order and *sub judice* contempt brought against them (collectively) is that simple internet searches by persons who read, heard, or saw the impugned publications could reveal that Pell had been convicted and/or the fact that his conviction was for child sexual offences. The respondents contended that the narrow case put against them was that each of the

impugned publications had a tendency to encourage readers, listeners or viewers to conduct searches online, where they would find one or more of the 35 '**overseas articles**' that are listed in Annexure B to the summaries of prosecution opening ('**foundational allegation**').

136 The respondents submitted that the applicant was confined to this narrow case and could not now, at trial, put the case against them in any of a number of other ways that might have been alleged. For example the applicant did not charge either the statutory offence of contravening a proceeding suppression order or interim order under s 23 of the *Open Courts Act* or the common law offence of wilful disobedience of a court order. Neither did the applicant charge the respondents by reference to any publication, particularly 'social media chatter'.[31] The applicant's case was squarely constrained to the overseas articles.

137 The respondents contended that it followed that each and every one of the charges must fail, unless the applicant can prove the foundational allegation beyond reasonable doubt. The respondents' contention was that in order to have the requisite tendency to frustrate the proceeding suppression order, there had to be a connection between the impugned publications and the overseas articles naming Pell and identifying the charges of which he had been convicted. Likewise, to establish that the articles had the relevant tendency to prejudice the administration of justice in order to prove a charge of *sub judice* contempt, the applicant had pleaded, and needed to prove to the requisite standard, the same material allegations.

138 The respondents contended that:

(a) all but one of the impugned publications occurred on 13 December 2018;

(b) the vast majority do not directly identify overseas media outlets where one could go to ascertain Pell's identity; and

(c) there was no evidence of what results would have been generated from

[31] A risk identified by Chief Judge Kidd on the making of the proceeding suppression order: Suppression Order Ruling, [58(c)] (n 2).

searches conducted at the time of publication or shortly thereafter (i.e. between 13 and 16 December 2018).

139 The respondents asserted that the online searches relied on by the applicant were deficient, as:

(a) the person who had conducted and given evidence of searches and their results (a senior solicitor in the Office of Public Prosecutions), did one search on 17 December 2018 and a further 11 searches on 27 and 28 December 2018 using the Google search engine;

(b) the earliest of the searches was conducted three to four days after the impugned publications were published, which is 'an eternity in the modern era with short news cycles';

(c) likewise, the results of searches on 27 and 28 December 2018 are of no probative value in relation to what might have been found had the corresponding search been performed two weeks earlier;

(d) many—but not all—of the impugned publications were removed or disabled on 13 December 2018 or shortly thereafter, meaning that the applicant's evidence of search results post-dated the accessibility of those publications;

(e) although using the search terms 'high profile conviction of crime', 'Australian convicted of awful crime' and 'well known Australian found guilty' produced references to overseas articles, those articles each contained references to some of the impugned publications themselves. Such articles could therefore not predate the existence of the impugned publications, and the ordinary reasonable reader could not be encouraged to go online to search for articles that did not exist;

(f) the applicant has confined the pool of internet material that might be searched to the overseas articles only, in the form appended to the summaries of prosecution opening. If earlier versions of these articles existed, the applicant

neither alleged nor proved that fact, and the charges cannot be established on that basis;

(g) the second search conducted on 27 December 2018 used the search term 'gag order Australia'. Although its results identified six of the overseas articles, it was inconceivable that the ordinary reasonable reader would use the American expression 'gag order' as a search term. A number of the overseas articles used the expression 'gag'. The choice of that term infected the search with confirmatory bias;[32] and

(h) the results of the fifth to twelfth searches were not disclosed to them until immediately prior to trial. The search terms used were 'high profile Australian', 'high profile Australian convicted', 'high profile Australian who is it', 'high profile Australian case censored', 'Australian media can't report', 'world reading very important story', 'Australian found guilty' and 'high profile Australian found guilty'. None of those searches contained any references to the overseas articles. Relying on the proposition that with the passage of time more—not less—material is referenced on the internet, the only available inference is that searches carried out on those terms as at 13 to 16 December 2018 would also have not revealed any of the overseas articles.

140 The consequence, the respondents contended, is that there was no satisfactory evidentiary foundation to support conclusions, first, that any person who read, heard or saw any of the impugned publications subsequently conducted online searches attempting to identify who was being referred to, and, second, what any such person would have found. They submitted:

(a) the fact that the searches in evidence related to a period well after the impugned publication required the conclusion that such evidence had no probative value;

(b) in any event, and putting the search results for 'gag order Australia' to one side,

---

32 The term 'media gag' can also be found in the News Corp online articles after they were updated on the afternoon of 13 December 2018.

the remaining searches found four out of 35 overseas articles. Although the 'gag order Australia' search returned an additional four references, none of the searches identified 27 out of the 35 online articles. Further, two thirds of the searches found none of the overseas articles, while of the remaining searches, three out of four found only articles that, on the applicant's evidence, came into existence after the impugned publications. The 'gag' search found six articles in total, five of which either referenced the impugned publications or were not published until 15 December 2018 (Australian time).

141 The respondents contended that an analysis on a publication-by-publication basis demonstrated that:

(a) the applicant had failed to satisfy the court that each impugned publication, considered alone, had a tendency to encourage readers, listeners or viewers to conduct online searches, in circumstances where the overseas articles could easily be found;

(b) it could not be established that the conduct of each of the respondents thereby had the effect of interfering with or frustrating the suppression order (breach of proceeding suppression order contempt) or had a serious tendency to prejudice the administration of justice, namely the fair trial of the swimmers trial (*sub judice* contempt); and

(c) the court therefore could not be satisfied beyond reasonable doubt that, as a matter of practical reality, there was a real and definite risk that by reason of persons having been encouraged to conduct online searches, potential jurors in the Melbourne metropolitan area may have become aware that Pell had been convicted in the cathedral trial.

142 Accordingly, none of the contempt charges could be established.

Applicant's submissions

143 The applicant submitted that it is clear from both the further amended statement of claim and the summaries of prosecution opening that the charges of breach of the

proceeding suppression order put a case that:

(a) each respondent published or caused to be published an impugned publication;

(b) the impugned publications contained information derived from the cathedral trial, and in some cases revealed that there were multiple trials;

(c) such information were matters expressly suppressed by the terms of the proceeding suppression order that remained extant because the swimmers trial was yet to commence;

(d) publication of such matters frustrated the effect of the proceeding suppression order by alerting Australian readers to information derived from the cathedral trial and encouraging them to search for other materials, in circumstances where other materials accessible on the internet in Australia named Pell.

144 The applicant rejected the respondents' construction of her case and contended that it was explicitly particularised that each impugned publication had the tendency to frustrate the efficacy of the suppression order and thus the due administration of justice.

145 Pausing here, the further amended statement of claim, supported by the summaries of prosecution opening, pleaded charges of breach of proceeding suppression order contempt in an orthodox way. I note that the term breach 'simpliciter', when used by counsel during the course of argument to describe the construction of the applicant's case, did not appear to have a consistent or agreed meaning. Ultimately, I am satisfied that the respondents were contending that the breach of proceeding suppression order contempt charges could only be established by proof of the elements identified in *Hinch*, and that, consistent with those principles, the applicant has pleaded and opened charges directed at each of those elements.

146 The applicant submitted the respondents cannot contend that the generality of the pleaded allegations is to be read down by the evidence of the searches that have been

placed before the court. That is so because the tendency to prejudice or interfere with the administration of justice in a particular legal proceeding is not determined by evidence of the actual effect of the publication.[33] The allegation of 'overseas publications' in the further amended statement of claim, which defines the scope of the applicant's case, is not confined to the 35 overseas articles. The overseas articles are opened as evidence demonstrating that international media reports naming Pell and identifying the conviction were accessible within Australia proximate to the publication of the impugned publications. Reliance on the overseas articles did not limit the scope of the pleaded allegation.

147 The applicant contended that the breach of proceeding suppression order charges were not concerned with the potential effect of the impugned publications on the pending swimmers trial, but rather that they contravened the terms of the order. The tendency to encourage readers to consult online sources to explain the cryptic nature of the observations made in the impugned publications was particularised by reference to statements made in the publications themselves, including specific references to articles published by the Washington Post. It was that encouragement to search that was the evidence of the frustration of the effect of the proceeding suppression order. The applicant submitted that the respondents wrongly conflated two separate concepts, being frustration of the intended purpose of the suppression order and frustration of the administration of justice.

148 The contention continued that the respondents' submissions are misconceived in their emphasis on the relationship between the impugned publications and the overseas articles. The applicant submitted that the evidence, considered in its totality, plainly permits a conclusion that the impugned publications contained material that breached the proceeding suppression order, thereby frustrating or interfering with the purpose of that order. That contravention may properly be characterised by a reasonable person with the respondents' knowledge of the proceeding suppression order as having a tendency to frustrate its efficacy, because the breach may have tended to

---

33 Citing *A-G (NSW) v John Fairfax & Sons Ltd* [1980] 1 NSWLR 362; *R v Saxon* [1984] WAR 283, 292.

prejudice Pell's right to a fair trial in the then-forthcoming swimmers trial.

149 The applicant's case in respect of *sub judice* charges—that the impugned publications had a tendency to prejudice the due administration of justice—was explicitly based on the tendency of the articles to prejudice the fair conduct of the swimmers trial. The applicant's case was not that readers could conduct specific searches and find one or more of the overseas articles. Rather, and appropriately, the allegation was expressed generally: that the impugned publication advised its readers of the fact that online sources, including international publications and social media, identified the person, the fact of his conviction, and other prejudicial details.

150 The applicant submitted that the inference is plainly open, by analysis of the documentary material, that all but one of the overseas articles was first made available online between 11 and 13 December 2018, and the respondents' forensic analysis of the timing of publication of various articles did not withstand scrutiny.

Analysis

151 For present purpose, I am not prepared to accept as sound the respondents' submissions that a tendency to interfere with or prejudice the due administration of justice required the impugned publications to identify Pell as the offender or the charges of which he had been found guilty. The necessary tendency is identified from the character of the publications, not their actual effect. The respondents' submissions do not sufficiently engage with the terms of the proceeding suppression order and the information conveyed by the impugned publications. I am persuaded that the applicant's evidence is capable of establishing the connection between the impugned publications and the relevant tendency, because that tendency is found in the impugned publications themselves, not by searching for what they suggest can be found.

152 The respondents' submissions focussed attention on the proper construction of the second element of each offence. Critically, the applicant must establish:

(a) in respect of the charge of proceeding suppression order contempt, that the

impugned publications, using information derived from the trials, frustrated the effect of that order, whether or not a successful search was encouraged; and

(b) in respect of the charge of *sub judice* contempt, that the impugned publications had a real and practical tendency to interfere with the due administration of justice.

153 *Hinch* affirms the established proposition that a person not directly bound by an order is guilty of contempt of court if that person, with knowledge of the order, does an act that infringes, or frustrates, the efficacy of the order, with the consequence of interference with the due administration of justice.[34] Such conduct will be a contempt if there is, objectively assessed, a tendency to interference with the due administration of justice, but the focus is presently on the tendency of the publication to frustrate the order, rather than the third element of the offence. So much is clear from Kaye J's discussion of the decision of the House of Lords in *Attorney-General v Leveller Magazine Ltd* ('***Leveller Magazine***').[35]

154 *Leveller Magazine* is authority for the proposition that the gravamen of the contempt constituted by frustration of a court order by a person not directly bound by that order, but who nevertheless knows the purpose of the ruling, is interference with the due administration of justice. Although the publication must infringe or frustrate the efficacy of the suppression order, what is critical is that the publication must be an act of a kind that interferes with the due administration of justice. As McHugh JA (as he then was) explained in *John Fairfax & Sons Ltd v Police Tribunal of New South Wales*,[36] such conduct will be contempt because the person involved has intentionally interfered with the proper administration of justice, and not because he was bound by the order itself.[37]

---

34 *Hinch*, [55] (n 19).
35 [1979] AC 440.
36 (1986) 5 NSWLR 465, 477.
37 See also *A-G (NSW) v Mayas Pty Ltd* (1988) 14 NSWLR 342, 355; *News Digital Media Pty Ltd v Mokbel* (2010) 30 VR 248, 279 [123]; *R v Savvas* (1989) 43 A Crim R 331, 334–5; *Fairfax Digital Australia & New Zealand Pty Ltd v Ibrahim* (2012) 83 NSWLR 52, 69 [59]–[60].

155 However, the assessment of whether a publication has the requisite effect is determined by analysis of its terms. So much is clear from Kaye J's analysis of the impugned article in *Hinch* and the identification of four reasons to conclude that it did have the effect of both frustrating the order and interfering with the due administration of justice, by reference to the ordinary reasonable reader test.[38]

156 Kaye J expressed his conclusion in the following terms:

> Thus, I am satisfied that the article was contrary to the terms of the order of Nettle JA in four respects. Each of those contraventions of the order were matters of substance, and not of mere technicality. Individually, and collectively, the allegations contained in the article frustrated the intended purpose of the order of Nettle JA, namely, to protect the legal rights of Bayley, by preventing the publication of prejudicial material about him. Each of the four aspects of the article, to which I have referred, were directly contrary to the manifest purpose of the order made by his Honour. Taken together, they constituted a substantial infraction of the function and purpose of the orders pronounced by Nettle JA, and in that way, they interfered with the due administration of justice in this State.[39]

157 Mr Hinch had contended that notwithstanding this construction of his conduct, there was in fact no frustration of the relevant orders, because only 221 persons accessed the article after he learned that a suppression order had been made.

158 Rejecting this contention, Kaye J noted an important distinction between breach of suppression order contempt and *sub judice* contempt. The former is not concerned with the effect of the publication on the future trial or potential jurors who might be impanelled to adjudicate on that trial, but rather was concerned with the effect of the publication in contravening and frustrating the terms of the court's order. The critical features of Mr Hinch's article were directly contrary to the manifest purpose of the order, constituting a substantial infraction of it and thereby frustrating that intended purpose. A breach that prejudiced the legal rights of the accused in the future trial had the character of an act that interfered with the due administration of justice.

159 By way of example, in this proceeding, the proceeding suppression order prohibited publication of any information derived from these trials. If an article published no

---

38 *Hinch*, [65]–[70] (n 19).
39 Ibid [70].

more than an exchange of light-hearted banter that occurred between the judge and counsel while otherwise anonymising the trial, the publication would be of information derived from the trial, in breach of the order. However, the contravention would not frustrate the purpose or effect of the proceeding suppression order and it would therefore not have a tendency to interfere with the due administration of justice. The information derived from the trial that was published was clearly contrary to the manifest purpose of the proceeding suppression order.

Purpose of the order

160 It is appropriate, before evaluating the sufficiency of the applicant's evidence, to look more closely at, firstly, the purposes of the proceeding suppression order that might have been frustrated and, secondly, the implications for the due administration of justice had that occurred.

161 Because the Suppression Order Ruling was made pursuant to s 18(1)(a) of the *Open Courts Act*, it is plain that one reason Chief Judge Kidd made the proceeding suppression order was to prevent publications that might have a tendency to prejudice Pell's right to a fair trial of the charges against him in the second trial. The section provides:

> **18 Grounds for proceeding suppression order**
>
> (1) A court or tribunal other than the Coroners Court may make a proceeding suppression order if satisfied as to one or more of the following grounds—
>
> (a) the order is necessary to prevent a real and substantial risk of prejudice to the proper administration of justice that cannot be prevented by other reasonably available means;

162 It was not disputed that, at all relevant times, there was intense media interest in the Pell prosecutions. It followed that, absent a proceeding suppression order, it was likely that every step or development in the proceeding, and every word of evidence and submissions, would be reported by both mainstream media (print, television, radio and online) and non-mainstream media online. This consequence was plainly

evident in prospect.[40]

163 Further, when the application for the proceeding suppression order was argued, it was common ground between the parties and the news media organisations that responded to the notice given under the *Open Courts Act* that a proceeding suppression order necessarily needed to apply in Victoria. That was so to preserve the integrity of the jury pools and to otherwise ensure that Pell received fair and impartial trials. Widespread and extensive media coverage of the whole or any part of the trials, and any information derived from the trials and any court document associated with the trials, would be inevitable. The potential jury pool for the first trial would then necessarily be exposed to unavoidably prominent media coverage about the allegations to come in the later trial, while the pool for the second trial would be overwhelmed by publicity about what occurred and was said in the first trial.

164 There was no appeal of the Suppression Order Ruling. The news media organisations who appeared might have contended to an appeal court that a proceeding suppression order was unnecessary, that there was not a real and substantial risk of prejudice to the proper administration of justice that could not be prevented by other reasonably available means, and/or that freedom of the press and the opportunity to avoid deferral of the publication of the information to the community was the paramount public interest. However, they did not.

165 Because the purpose of the order was to ensure, to the extent possible, fair trials for the accused man, Pell, I should say a little more about the purpose of the proceeding suppression order.

Prejudice to justice

166 As expressed earlier, the respondents collectively contended that the applicant could not prove on the evidence before the court, beyond reasonable doubt, that persons who had read, heard or seen one or more of the impugned publications then attempted to find on the internet what they were alluding to, and were able to access

---

40 Suppression Order Ruling, [35] (n 2).

the overseas articles (or at least some of them) by using simple searches. It logically followed that those persons could not know that the person referred to was Pell or what the charges were, and the applicant accordingly could not establish the second element of each charge to the requisite standard.

167 It is by reference to the hypothetical ordinary reasonable reader/listener/viewer that the effect of the impugned publications is to be assessed.[41] It may be that the ordinary reasonable reader test is unduly generous to experienced journalists and editors. What they publish ought perhaps to be assessed by reference to the fair minded lay observer test which bears a closer relationship to the due administration of justice.[42] Some of the comments exchanged between journalists and editors, revealed in the applicant's documentary case, might support that view. However, that issue does not presently arise. In any event, the tendency for widespread media reporting to cause substantial, even irremediable, prejudice to the prospect of fair trials for an accused person is obvious, and not just to lawyers and experienced journalists and editors. The ordinary reasonable reader of such publicity would also identify those adverse prospects.

168 To ensure that the swimmers trial was fair, the trial judge would have ensured that the jurors in that trial not learn that Pell was found guilty on other charges of child sexual offending, or that he faced multiple trials. With the second of the two trials to follow only a few months after the verdict in the first trial, there was a very great risk that unavoidably prominent media coverage of the cathedral trial would poison the impartiality of the jury pool for the swimmers trial.

169 The intense and detailed media analysis of the cathedral trial that followed the lifting of the proceeding suppression order in February 2019 was utterly predictable in the climate of media interest in institutional responses to child sexual abuse then prevailing. Although I speak in hindsight, it was, in prospect in June 2018, a virtual certainty. So much is evident from the worldwide media coverage when charges were first filed against Pell in 2017, Chief Judge Kidd's Suppression Order Ruling, the

41 *A-G (NSW) v John Fairfax & Sons Ltd* (1985) 6 NSWLR 695, 698, 702–3; *The Queen v Truth Newspaper* (Supreme Court of Victoria, J D Phillips J, 16 December 1993) 13; *Wran*, 626 (n 25).

42 *Johnson v Johnson* (2000) 201 CLR 488.

content of the impugned publications in issue in this proceeding, and the applicant's evidence of the internal communications within the media organisations surrounding publication.

170 Anticipating the possibility that the jury in the first trial returned verdicts of guilty, it would be a foregone conclusion that members of the jury pool for the second trial would have learned of Pell's conviction prior to the empanelment. Knowing that there were two different sets of allegations of child sex offences or that one set of allegations had been found proven could, to the prejudice of a fair trial, cause a jury to engage in impermissible reasoning. The common law recognised long ago the dangers of tendency, coincidence and context reasoning. The risk that many members of a jury pool would know these things was very high because of the prevailing level of community interest in the forthcoming prosecution of Pell.

171 While courts employ strategies to attempt to ameliorate the adverse consequences of publicity such as particular care in jury selection, change of venue, delaying trials and charging a jury with strong directions in respect of its deliberations,[43] there were many factors that had ignited an unprecedented interest in these trials, such that these strategies could not be assumed likely to reasonably guarantee a fair and impartial trial. Self-evidently, Chief Judge Kidd thought so. It was futile not to recognise that there had already been widespread publicity of the fact that Pell faced prosecution for historical sex offences, and the order permitted that disclosure.

172 Further, it appears that a misconception was evident in some of the impugned publications, in that their authors interpreted the scope of the proceeding suppression order to be more limited that it was on its plain terms. The order did not simply prohibit identification of Pell as the person found guilty and the particulars of the charges considered at the first trial. In protecting the impartiality of a jury pool to ensure that an accused person receives a fair trial, the due administration of justice seeks to guard against the prejudice of impermissible reasoning by a jury. The obvious

---

43 *R v Glennon* (1992) 173 CLR 592. That the law assumes are followed by jurors: see *Dupas v The Queen* (2010) 241 CLR 237, 247–8 [26]–[28]; *R v Mokbel* (2009) 26 VR 618, 638 [90]; *DPP (Vic) v Mwamba* [2015] VSCA 338, [44].

example I have noted is the improper use of tendency, coincidence, and context evidence.

173 Another concern is the issue of a recovered memory or a subconscious bias, which is why the order extended to prohibit more than identification of Pell as the accused and of the charges that he faced. Members of a jury pool for the swimmers trial who did not relate Pell's circumstances to the impugned publications about the 'high profile Australian' that had been 'convicted' of 'awful crimes' when they first saw it might do so after being empanelled and when serving on the swimmers trial jury and learning what that trial was about. The average jury members' capacity for inference in this context would more closely resemble that of the ordinary reasonable reader, rather than the fair minded lay observer. Vetting of jury pools and strong directions against jury research are not foolproof. As Bingham J (as his Lordship then was) observed, albeit in a more striking context of contempt, in *Attorney-General v Sport Newspapers Ltd*.

> [The information] was simple, easy to grasp and likely to be remembered, or recalled, by anyone who read the paper (or was informed of its contents) and later came to try the case.[44]

174 A like observation may be made in the present circumstances. Although now is not the time to express concluded findings on the nature of many of the impugned publications, it is uncontroversial to say they constituted, generally speaking, extraordinary journalism; designed to first attract the reader's attention and then make a point, including by encouraging inquiry to understand why the news media organisations were taking that stand. What was conveyed was simple, easy to grasp, and likely to be remembered or recalled. I consider that the applicant's case, drawing all reasonable inferences, readily permits a conclusion that a person selected for the swimmers trial jury and learning of the substance of the allegations in that trial could 'join the dots'.

175 Although some of the impugned publications recognised and discussed the public interest being protected by the proceeding suppression order, most took a limited and

---

44 [1992] 1 All ER 503, 516.

simplistic interpretation: not disclosing the name of the person or identifying the offences of which they were found guilty was sufficient compliance and represented the appropriate balancing of that interest against the public's right to know what and when the media want to tell them. That limited construction failed to appreciate and accommodate the myriad ways in which the law, from very long experience, seeks to preserve its processes to ensure that, as society demands, every person accused of a crime receives a fair and impartial trial. These matters are why an effective proceeding suppression order prohibits publication of more than the name and the charges, but does so only for so long as the due administration of justice requires.

176 For these reasons, I am satisfied that the applicant's case is capable of establishing that a real risk of prejudice to the due administration of justice from disclosure of any information derived from the trials would be evident to the hypothetical ordinary reasonable reader from the content of the impugned publications. That reader would readily appreciate that what was in the balance was not whether disclosure of the facts of the Pell prosecutions was required by the public interest in freedom of speech, but rather whether a short deferral of disclosure to satiate that public interest was justified, having regard to the public interest in the due administration of justice in a civilised society. The finding that the risk of prejudice to a fair trial could outweigh the consequences of interference, by deferring for some months, the freedom of the press and the important role played by the media in promoting the free flow of information to the public is open on the applicant's case.

Features of the publications

177 For the following reasons, I can reasonably be satisfied that the evidence discloses a case to answer in respect of the second element of each form of contempt charge and the third ground of the submission of no case fails.

178 Individually, and collectively,[45] the statements made in each impugned publication are capable of being found to have frustrated the intended purpose of the proceeding

[45] By this language, I am referring to the collective assessment of multiple characteristics of each article, and am not considering the collective impact of all publications.

suppression order by communicating information that has a tendency to be prejudicial to the accused's entitlement to an impartial jury pool, being one that was not infected by possible exposure to information that might encourage impermissible reasoning in the jury room.

179 Looking first at the breach of proceeding suppression order contempt charges, it is not necessary to be satisfied that the disclosures in the impugned publications did have that effect on the trial or potential jurors. It is sufficient that the contraventions of the order are of that character, since I am satisfied that the applicant's case can permit the conclusion, to the requisite standard, that each publication effectively contravened and frustrated the terms of the proceeding suppression order.

180 The analysis that follows sets out, under seven separate headings, the characteristics of the content of the impugned publications, which show that the applicant's case is capable of demonstrating that each was a 'report of … any part of [the Pell trials], and any information derived from [those trials]' in breach of the proceeding suppression order.

Characteristics of the person alluded to

Term used	**Impugned publication(s)**
'High-profile Australian known across the world' 'High-profile status'	News Corp online articles
'High-profile person'	Courier Mail article
'Internationally prominent person'	Age online editorial
'High-profile person with a worldwide reputation'	Daily Telegraph article AFR online article 1 AFR online article 2 AFR article 2GB Breakfast segment

	5:32am Today Show segment 6:00am Today Show segment 7:02am Today Show segment
'Very high-profile figure'	Age article Age online article SMH article AFR online article 1 AFR online article 2 AFR article 2GB Breakfast segment
'Australian' in a 'high-profile' case	AFR online article 2
'Very well-known Australian'	Mamamia online article
'Prominent Australian'	Business Insider online article

Characteristics of the offences

Term used	**Impugned publication(s)**
'Serious crime'	News Corp online articles Age online article Age article SMH article AFR online article 1 AFR online article 2 AFR article Mamamia online article Business Insider online article 2GB Breakfast segment
'Awful crime'	Daily Telegraph article AFR online article 1 AFR online article 2 Mamamia online article

	2GB Breakfast segment 5:32am Today Show segment 6:00am Today Show segment
'Terrible crime'	Courier Mail article
'Appalling crimes'	Age online editorial

The finding of guilt

Term used	**Impugned publication(s)**
'Convicted' and/or 'Convicted person' and/or 'Conviction'	News Corp online articles Daily Telegraph article Age online article Age article SMH article AFR online article 1 AFR online article 2 AFR article Business Insider online article 2GB Breakfast segment 5:32am Today Show segment 6:00am Today Show segment 7:02am Today Show segment
'Guilty' and/or 'Guilty verdicts' and/or 'Guilty [of] charges'	News Corp online articles Courier Mail article Daily Telegraph article Age online editorial AFR online article 1 AFR online article 2 AFR article Mamamia online article Business Insider online article

A second trial

Term used	Impugned publication(s)
'Separate trial'	News Corp online articles
'Face court again' or 'Return to court'	News Corp online articles Age online article Age article SMH article
'First trial' 'Further trial' 'Separate allegations in sequential trials'	Age online article Age article SMH article
'Related trial' 'Second hearing'	Age online editorial
'Another trial involving the same person'	Mamamia.com.au

Knowledge of suppression order

Term used	Impugned publication(s)
'The story we can't report' 'Suppression order … to prevent the publication of details of the person's name or the charges' 'Details cannot be published by any media in the country' 'Media ban'	News Corp online articles
'Court censorship' 'Secret scandal' 'We can't tell you a word'	Courier Mail article
'Yet we can't publish' 'Prohibited from telling you about it' 'The courts demand that you ignore the story totally until they see fit'	Daily Telegraph article

'Ban'	
'Why the media can't report on a high-profile case' 'A suppression order issued by the Victorian County Court, which applies in all Australian states and territories, has prevented any publication of the details of the case, including the person's name or the charges'	Age online article Age article SMH article
'Rampant use of suppression orders' 'We are legally blocked from telling you any details' 'The Victorian County Court has blocked the publication of details, including the perpetrator's name and the charges'	Age online editorial
'A suppression order issued by the Victorian County Court which applies "in all Australian states and territories and "on any website or other electronic or broadcast format accessible within Australia' 'Why the media can't report on a high-profile case'	AFR online article 1 AFR online article 2 AFR article
'The person's name has been suppressed by the Victorian County Court' 'The suppression order applies to all Australian states and territories'	Mamamia online article
'A suppression order that prevents Australian media reporting the identity of the person and the charges they have been convicted of' 'If and when the suppression order is lifted'	Business Insider online article
'The person's identity cannot be revealed because of a suppression order issued by the Victorian County Court' 'Despite the suppression order'	2GB Breakfast segment

'The media here are prevented from naming him' 'Because of a legal ban imposed by the Victorian County Court, I'm unable to reveal the identity of this person, details of this case, or their crime' 'Orders by the court here in Australia don't apply overseas'	5:32am Today Show segment 6:00am Today Show segment 7:02am Today Show segment

International publications reporting

Term used	**Impugned publication(s)**
'International publications are already reporting on the case' 'Details have been released on social media' 'A Washington Post column on the story'	News Corp online articles
'With but a few key strokes, people were immediately directed to foreign websites reporting the full details'	Age online editorial
'The world is reading about it'	Courier Mail article
'You may have read the news online already'	Daily Telegraph article
'Word has got out widely online and through social media' 'Google searches for the person's name surged yesterday' 'Two of the top three search results on the suppressed name showed websites that were reporting the charges, the verdict and the identity of the person in full. One of the websites was blocked from viewing … but its content was republished on a number of other sites' 'The person's name was subject to thousands of tweets [that] both named the individual and	Age article Age online article SMH article

the charges and posted links to online sites where information was available' 'The wide dissemination of the suppressed information online'	
'Global media companies', 'flouting', 'suppression order' 'Global websites available in Australia including … The Washington Post and National Public Radio were publishing the news' 'Other global websites including the Daily Beast, which first reported the conviction' 'The widespread reporting of the case globally and on social media'	AFR online article 1 AFR online article 2 AFR article
'Overseas websites may report on the story' 'Australians could easily read the full story on overseas sites'	Mamamia online article
'In the global era, what has occurred has been widely reported globally' 'The name of the person has featured heavily on social media in the last 24 hours' 'Google searches for the person's name surged … and reveal widely (sic) coverage by international media'	Business Insider online article
'Despite the suppression order, we're told that Google searches for the person's name surged yesterday particularly in Victoria, with two of the top three results on the suppressed name showed websites that were reporting the charges, the verdict and the identity of the person in full.' and 'I can't tell you who it is. But I can also encourage you to get on Google and start asking these questions: high profile Australian, world-wide reputation, conviction of an awful crime. And you'll find out who it is'	2GB Breakfast segment

'International media [can/are able to] report on this high profile case without the same restrictions'	5:32am Today Show segment 6:00am Today Show segment 7:02am Today Show segment

181 A case to answer in respect of the second element of *sub judice* contempt is found when I am satisfied that there is evidence, taking the applicant's evidence at its highest, that can reasonably satisfy me of a practical and real tendency to prejudice the fair conduct of the swimmers trial. This tendency is to be determined at the time of publication and established objectively, by reference to the nature of the publication and the circumstances in which it was made. Actual consequences are not relevant. For the reasons I have already given, I am satisfied that there is a sufficient basis in the evidence to be so satisfied by reference to the nature of the publications.

Accessing overseas articles

182 The applicant's case was not simply that outlined thus far. The applicant went further, contending that the publications also frustrated the proceeding suppression order and/or interfered with the due administration of justice because they had a tendency to encourage readers to search for the answers to the questions that they pose—namely, who was the offender and what were the offences—suggesting that the answers were readily discoverable via internet searches and social media.

183 It was in this context that the respondents argued that the applicant's evidence did not demonstrate that the overseas articles were capable of being accessed at the time of publication of the impugned publications, and that this was fatal to the charges.

184 This submission rests on two discrete matters: the nature of the internet searches relied on by the applicant as evidence of the accessibility of the overseas articles, and the sequence of publication of the overseas articles and impugned articles.

Applicant's search result evidence

185 In assessing the real and practical tendency of each publication, I can take account of all the relevant circumstances. In doing so, the proper use to be made of the searches conducted by the applicant's solicitors is not the stark analytical assessment of which

search terms returned what overseas articles. For the purpose of this submission, I consider that the searches are evidence that is indicative of the kind of searches that the ordinary reasonable reader might use in seeking further information after having come across an impugned publication.

186 Those indicative searches would fall within a range from revealing nothing to locating any one of the 17 overseas articles that I am satisfied were published before 6:00am on 13 December 2018, or to 26 overseas articles that were published before the first of the impugned publications was removed from the internet.

187 Further, as I have already noted, the impugned publications themselves identified that the information that they did not disclose and which was of interest to readers, listeners and viewers was already available via internet searches. Taking the applicant's evidence at its highest, I can draw an inference that this was in fact the case as at the time of those publication.

188 It is not to the point to submit, as the respondents did, that most of the impugned publications do not directly identify an overseas article. That information existed and was available online is sufficient to establish the requisite tendency of the publication as a matter of practical reality. The fact that references to search engines locating overseas articles were made in some of the impugned publications pacifies the sting that the respondents contend for, as it is contrary to their submission that there was no evidence of searches conducted at the time of publication, or shortly thereafter, that would affirmatively demonstrate an overlap between the publication of overseas articles and impugned publications.

Sequence of publication

189 As I have stated, I am also satisfied that the applicant's case that the overseas articles were in existence at the time the impugned publications were first published is supported by sufficient evidence for me to conclude beyond reasonable doubt that this was the case.

190 There was significant argument was directed to the chronology of publications, both

impugned and overseas. What follows are my findings as to the sequence of publication. For present purposes, taking the applicant's evidence at its highest and drawing all proper inferences from this evidence, I am persuaded that there is sufficient evidence for me to conclude beyond reasonable doubt that, as a matter of practical reality, the publications charged had the requisite tendency to interfere with the due administration of justice.

191 The overseas publications relied on by the applicant appeared with publication timestamps from various timezones. Additionally, it is clear from the face of a number of articles that they were revised versions and had been first published at an earlier time. Having assessed each article on its face and considered the contentions of the parties, the following chronology identifies the sequence of publication of the impugned and the overseas publications, and, in the case of the impugned publications, their removal.[46] For publications that I have concluded were published within a specific time period, the order they appear reflects the earliest possible time they could have been published, so as to draw the most favourable inference reasonably open on the applicant's case.

192 The entries in the chronology relating to the impugned publications are shaded for emphasis, appearing in green for the time of publication and red for the time removed.

Time (AEDT)	**Publication**
11 December 2018	
Between 4:00pm and 12 December 2018 3:59pm.	Black Christian News article published
12 December 2018	
9:43am	The Daily Beast article published
Between 9:43am and 3:59pm	Gov't Slaves article published
9:55am	News Republic article published
1:06pm	Radar Online article published
Approximately 3:00pm.	Church Militant article 1 published

46 The reasons for my findings in respect of the timing of publication of the overseas publications is set out in annexure 1 to these reasons.

Between 4:00pm and 13 December 2018 at 3:59pm	Fox News article published
	National Catholic Reporter article 1 published
	Now The End Begins article published
	America Magazine article published
7:11pm	Age online article published
13 December 2018	
Between 12:00am and 15 December 2018 at 6:15am	The Washington Post article 1 published
Between 12:00am and 2:57pm	New York Post article published
1:10am	VOA News article published
2:48am	Catholic News Agency article published
	Catholic World Report article published
	EurAsia Review article published
4:16am	National Review article published
5:32am	5:32am Today Show segment published
5:41am	2GB Breakfast segment published
6:00am[47]	Courier Mail article published Daily Telegraph article published Age article published Sydney Morning Herald article published
6:00am	6:00am Today Show segment published
6:16am	Life Site article published
7:01am	Slate article published
7:02am	7:02am Today Show segment published
7:45am	Mamamia.com.au online article published
8:41am	The Washington Post article 2 published
9:00am	Business Insider online article published
9:25am	2GB Breakfast segment (podcast version) published
9:54am	Age online editorial published
10:24am	Herald Sun online article published

[47] These publications were in hard copy and printed on the night of 12–13 November 2018.

	News.com.au online article published Daily Telegraph online article published Geelong Advertiser online article published Advertiser online article published Weekly Times online article published
Between 11:00am and 14 December 2018 at 10:59am	The Catholic Universe article published
11:29am	The Washington Post article 3 published
11:38am	The Hill article published
1:17pm	AFR online article 1 published
Between 4:00pm and 14 December 2018 at 3:59pm	The Tablet article published
	Church Militant article 2 published
	Church Militant article 3 published
6:00pm (approx.)	2GB Breakfast segment (podcast version) removed
6:01pm	Herald Sun online article removed News.com.au online article removed Daily Telegraph online article removed Geelong Advertiser online article removed Advertiser online article removed Weekly Times online article removed
11:41pm	UPI article published
11:45pm	AFR online article 2 published
14 December 2018	
6:00am[48]	AFR article published
8:00am	The Straits Times article published
3:39pm	Asia Times article published
Between 4:00pm and 15 December 2018 at 3:59pm	First Amendment Watch article published
	Richard Dawkins Foundation article published
15 December 2018	
15 December 2018 at 6:15am	The Day article published
18 December 2018	
1:01pm	Age online article removed
19 February 2019	

[48] This publication was in hard copy and printed on the night of 13–14 November 2018.

11:10am	Mamamia.com.au online article removed
22 February 2019	
1:46pm	AFR online article 1 removed AFR online article 2 removed
6:04pm	Business Insider online article removed

193 As a matter of practical reality, the real tendency can be demonstrated to the requisite standard on the applicant's evidence, because the impugned publications informed their readers, listeners or viewers that relevant international media sources online identified the person, the fact of his conviction, and other prejudicial details and such international media sources existed.

194 The no case submission in respect of ground three must be dismissed.

ANNEXURE 1 - FINDINGS OF PUBLICATION TIME OF OVERSEAS ARTICLES

Publication[49]	**Time of publication (AEDT)**[50]	**Reasons for finding**
(e) Black Christian News article Vatican's third most powerful official cardinal George Pell convicted on all charges he sexually abused choir boys in the 1990s	Between 4:00pm on 11 December and 3:59pm on 12 December 2018.	The article appears with a publication timestamp of 11 December 2018 (including a reference to the Daily Beast article, it was either published or updated after the time of publication of that article(next entry). The article makes reference to procedures of courts in the United States, and I infer that the article was published in the United States and bears a date of publication in that timezone.
(ee) The Daily Beast article Vatican No 3 Cardinal George Pell Convicted on Charges He Sexually Abused Choir Boys	12 December 2018 at 9:43am	The article appears with a publication timestamp of Dec 11 2018 5:43pm ET.
(k) Gov't Slaves article Vatican No. 3 Cardinal George Pell convicted on charges he sexually abused choir boy...the highest-ranking Catholic Church official to face such criminal charges	12 December 2018 between 9:43am and 3:59pm.	The article appears with a publication timestamp of 11 December 2018. The article adopts the title of the Daily Beast article as its headline, contains an abridged version of the content from that article and contains prominent link at the bottom of the article stating 'Continue @ Daily Beast', suggesting it was drafted after that article was published. The reference to 'US' and then 'World' in the navigation banner appearing in the applicant's version of the article allows an inference to be drawn that the publication is based in the United

49 The bracketed letters contained next to the name of each publication refer to the corresponding entries in 'Aide memoire 3 – Annexure B publications' relied on by the applicant.

50 The respondents have assumed for the purpose of their aide memoir that any article published in the United States was presumed to have been published according to Eastern Standard Time (GMT -5), unless a specific timezone was identified. I have adopted the same approach with this table.

		States and so bears a date of publication in that timezone.
(j) News Republic article Vatican No. 3 Cardinal George Pell convicted on charges he sexually abused choir boys	12 December 2018 at 9:55am	The article appears with a publication timestamp of 11 December 2018 at 9:55am. The article appears to be a syndicated version of the Daily Beast article, and, in light of the similar timestamps between the two publications (differing by less than 15 minutes), I infer that the publication is also based in the United States and so bears a date of publication in that timezone.
(f) Radar Online article Vatican No. 3 official found guilty of sexually abusing two choir boys: report – Cardinal George Pell convicted in Australia of child assault	12 December 2018 at 1:06pm	The article appears with a publication timestamp of 11 December 2018 at '21:06pm'. The article refers to a United States area code, allowing an inference to be drawn that the article was published in the United States and bears a date of publication in that timezone. In the email sent by O'Neil to Lavelle and Bachelard on 12 December 2018 at 4:15pm with the subject 'Screenshots', the article appears in the first screenshot and is described as having been published '3 hours ago'.
(g) Church Militant article 1 Cardinal Pell found guilty of all counts of sex abuse	12 December 2018 at approximately 3:00pm.	The article appears with a publication timestamp of 11 December 2018. The content of the related articles that appear in the sidebar of the article allows an inference to be drawn that the article was published in the United States and bears a date of publication in that timezone. In the email sent by O'Neil to Lavelle and Bachelard on 12 December 2018 at 4:15pm with the subject 'Screenshots', the article appears in the first screenshot and is described as having been published '1 hour ago'. The article includes a link to the Age

		online article, I infer that it was updated after being first published.
(x) Fox News article Once-powerful Cardinal convicted on sex-abuse-related charges in Australia	Between 4:00pm on 12 December and 3:59pm on 13 December 2018.	The article appears with a publication timestamp of 12 December 2018, but notes that the 'last update' was on 13 December 2018. I infer that the article was first published in the United States and bears a date of publication in that timezone.
(z) National Catholic Reporter article 1 Cardinal Pell found guilty of sex abuse, expected to appeal, reports say	Between 4:00pm on 12 December and 3:59pm on 13 December 2018.	The article appears with a publication timestamp of 12 December 2018. The footer provides an address for the publisher in Kansas City, Missouri, and I infer that the publication is a news outlet in the United States, and so bears a date of publication in that timezone.
(dd) Now The End Begins article Cardinal George Pell, the Vatican's Third Most Powerful Official, Convicted in Australia of Sexually Molesting Young Choir Boys	Between 4:00pm on 12 December and 3:59pm on 13 December 2018.	The article appears with a publication timestamp of 12 December 2018. Having regard to the nature of the title of the stories that appear in the sidebar of the article and the image depicted of Capitol Hill, an eagle and the flag of the United States, I infer that the publication is based in the United States and bears a date of publication in that timezone.
(m) America Magazine article Cardinal Pell, top adviser to Pope Francis, found guilty of 'historical sexual offences'	Between 4:00pm on 12 December and 3:59pm on 13 December 2018.	The article appears with a publication timestamp of 12 December 2018. The title of the publication allows an inference to be drawn that the article was published in the United States and bears a date of publication in that timezone.
(c) The Washington Post article 1 A top cardinal's sex-abuse conviction is huge news in Australia. But the media can't report it there	Between 13 December at 12:00am and 15 December 2018 at 6:15am	The article does not appear with a date or time of publication. The article refers to the front page of the Herald Sun and the Daily Telegraph article and, in light of its title, can be presumed to have not been published before the morning of 13 December 2018.

		The Day article appears to be a syndicated version of this article and I infer that this article would have been published no later than The Day article.
(a) New York Post article Australian media barred from covering cardinal's conviction	13 December 2018 between 12:00am and 2:57pm	The article appears with a publication timestamp of 12 December 2018 at 10:57pm. The article refers to having been 'Updated', although it is unclear whether the publication date and time reflect the first version or any amended version. Given the focus of the article is on the Australian media's response to the conviction and refers to the front page of the Herald Sun, the Age article and the Daily Telegraph article, I infer that the article was published no earlier than the morning of 13 December 2018.
(o) VOA News article Reports: Australian Cardinal found guilty of sex abuse	13 December 2018 at 1:10am	The earliest version of the article relied on by the applicant appears with a publication timestamp of 12 December 2018 at 9:10am. Having regard to the name of the publication (Voice of America), I infer that the article was published in the United States and bears a date of publication from that country.
(ff) Catholic News Agency article Reports of Pell guilty verdict emerge, despite gag order	13 December 2018 at 2:48am	The Catholic News Agency article appears with a publication timestamp of 12 December 2018 at 10:48am. Having regard to the location where the story was filed from (described in the first line of the article as Washington DC), I infer that the publication is based in the United States and bears a publication time in that timezone. The article is largely identical to the Catholic World Report and EurAsia Review articles bearing the same title. On the face of all three article, I infer that the Catholic News Agency article
(gg) Catholic World Report article Reports of Pell guilty verdict emerge, despite gag order	13 December 2018 at 2:48am	
(l) EurAsia Review article Reports of Pell guilty verdict emerge despite	13 December 2018 at 2:48am	

gag order		is the original version of the story, as the letters CNA appear in the first paragraph of each article, suggesting that the EurAsia Review and the Catholic World Report articles are syndicated versions of the same story. I infer that all three articles were or were likely published at or around the same time.
(y) National Review article Third-Ranking Vatican Official Convicted of Sexually Abusing Choir Boys	13 December 2018 at 4:16am	The article appears with a publication timestamp of 12 December 2018 at 12:16pm. Having regard to the article's reference to an unrelated investigation in Pennsylvania, I infer that the publication is a news outlet of the United States, and so bears a date of publication in that timezone.
(v) Life Site article Cdl. Pell to appeal jury's 'outrageous' verdict finding him guilty of sexual abuse	13 December 2018 at 6:16am	The article appears with a timestamp of 12 December 2018 at 2:16pm EST.
(cc) Slate article Third-Highest Ranking Vatican Official Convicted	13 December 2018 at 7:01am	The article appears with a publication timestamp of 12 December 2018 at 3:01pm. Having regard to the publication's status as a major online news outlet in the United States, I infer that the article was published in the United States and bears a date of publication in that timezone.
(d) The Washington Post article 2 An Australian court's gag order is not match for the Internet, as word gets out about prominent cardinal's conviction	13 December 2018 at 8:41am	The article appears with a publication timestamp of 'Dec 13 2018 at 8:41am GMT+11'.
(n) The Catholic Universe article Cardinal Pell found guilty	Between 11:00am on 13 December 2018 and 10:59am	The article appears with a publication timestamp of 13 December 2018. Having regard to the slogan of the

of sex abuse, expected to appeal, reports say	on 14 December 2018	publication ('Britain's most trusted Catholic newspaper'), I infer that the article was published in the United Kingdom and bears a date of publication in that timezone.
(b) The Washington Post article 3 Australian court convicts once powerful Vatican official on sex abuse-related charges	13 December 2018 at 11:29am	The article appears with a publication timestamp of 'Dec 13 2018 at 11:29am GMT+11'.
(t) The Hill article Australian newspaper complains of censorship after gag order prevents coverage of Catholic sex scandal	13 December 2018 at 11:38am	The article appears with a timestamp of 12 December 2018 at 7:38pm EST.
(q) The Tablet article Cardinal Pell found guilty of sex abuse	Between 4:00pm on 13 December and 3:59pm on 14 December 2018.	The article appears with a publication timestamp of 13 December 2018. Having regard to the footer of the article, which states that 'The Tablet is the newspaper of the Diocese of Brooklyn, serving Brooklyn and Queens since 1908', I infer that the article was published in the United States and bears a date of publication in that timezone.
(h) Church Militant article 2 Australian Prosecutor, Judge Threaten Church Militant Over Pell Story	Between 4:00pm on 13 December and 3:59pm on 14 December 2018.	The article appears with a publication timestamp of 13 December 2018. The content of the related articles that appear in the sidebar of the Church Militant article titled 'Cardinal Pell found guilty of all counts of sex abuse' allows an inference to be drawn that publication is based in the United States and bears a date of publication in that timezone.
(i) Church Militant article 3 Cardinal Pell's Conviction	Between 4:00pm on 13 December and 3:59pm on 14 December 2018.	
(w) UPI article Vatican adviser George Pell convicted on abuse-related charges	13 December 2018 at 11:41pm.	The article appears with a publication timestamp of 13 December 2018 at 7:41am. The nature of the stories in the 'Trending Stories' and 'Latest News'

		sections that appear in the sidebar of the article, together with the formatting of the corporate entity that appears in the footer of the webpage ('United Press International, Inc.') allow an inference to be drawn that the publication is based in the United States and bears a date of publication in that timezone.
(u) The Straits Times article Vatican official found guilty of sex abuse	14 December 2018 at 8:00am.	The article appears with a publication timestamp of '14 December 2018 5:00am SGT [Singapore Time]'.
(r) Asia Times article Australian cardinal falls silently on child sex charge	14 December 2018 at 3:39pm.	The article appears with a publication timestamp of '14 December 2018 12:39pm (UTC+8)'.
(hh) First Amendment Watch article Some US news outlets are complying with an Australian gag order	Between 4:00pm on 14 December and 3:59pm on 15 December 2018.	The article appears with a publication timestamp of 14 December 2018. Having regard to the title of the publication, I infer that the article was published in the United States and bears a date of publication from that country.
(ii) Richard Dawkins Foundation article Cardinal George Pell Reportedly Convicted of Child Sex Abuse Amid Gag Order in Australia	Between 4:00pm on 14 December and 3:59pm on 15 December 2018.	The article appears with a publication timestamp of 14 December 2018. The respondents have assumed in their aide memoir that the publication bears a date of publication in the United States, which I adopt for the purpose of this ruling.
(s) The Day article Cardinal's sin, and why the media can't report it	15 December 2018 at 6:15am	The article appears with a publication timestamp of 14 December 2018 at 2:15pm. The article makes reference to procedures of courts in the United States. I infer that the article was published in the United States and bears a date of publication in that timezone.
(aa) National Catholic	Between 4:00pm on	The article appears with a publication

Reporter article 2 Column: With his treatment of Cardinal Pell, Pope Francis shows his clericalism	15 December and 3:59pm on 16 December 2018.	timestamp of 15 December 2018. Having regard to the finding that I made regarding the other National Catholic Reporter article ('Cardinal Pell found guilty of sex abuse, expected to appeal, reports say'), I infer that the publication is based in the United States and bears a date of publication in that timezone.
(p) The Mice Times of Asia article[51] The Pope fired a cardinal accused of pedophilia (sic)	I am unable to determine a precise time of publication for this article, except to say that it appears to have been published between 12 and 14 December 2018.	The article appears with a publication timestamp of 13 December 2018. This publication makes no reference to the conviction at all. At its highest, it particularises the charges as being 'pedophilia' rather than 'historical sexual abuse'.
(bb) Patheos article[52] Top Vatican official Cardinal George Pell convicted of sexually abusing choir boys	I am unable to decipher the publication timestamp that appears on the copy of the article relied on by the applicant and so am unable to determine the time of publication.	

[51] Not included in the table in my Reasons.
[52] Not included in the table in my Reasons.

ANNEXURE 2 – COPIES OF THE IMPUGNED PUBLICATIONS

Herald Sun online article

Herald Sun

Search

NEWS BREAKING NEWS LOCAL VICTORIA EDUCATION LAW & ORDER TRUE CRIME

NATION'S BIGGEST STORY

NATIONAL

The story we can't report

A high-profile Australian known across the world has been convicted of a serious crime but the details cannot be published by any media in the country.

The person was found guilty in the Victorian County Court but a suppression order was put in place to prevent the publication of details of the person's name or the charges. This is because the person is due to face court again for a separate trial in March and publication of the conviction might prejudice the case.

While it's common for courts to take this action, the person's high-profile status has meant international publications are already reporting on the case and details have been released on social media.

News Corp Australia, the publisher of news.com.au, is challenging the ban.

The Daily Telegraph described it as "the Nation's Biggest Story" and said the media ban was an "archaic curb on freedom of the press in the currently digitally connected world".

"Our political representatives need to fix those laws which run contrary to the universal principles of the open administration of justice," *The Daily Telegraph* editorial stated. "We believe you have the right to know this story now and without any further delay."

Victoria uses more suppression orders than any other state in Australia but their effectiveness is being questioned in the internet era.

An editorial in *The Age* said the rampant use of suppression orders by Victorian courts had become "almost absurd" in the digital era and seeking to censor information had become futile.

It also pointed to a review by retired judge Frank Vincent of Victoria's 2013 Open Courts Act that suggested it was probably "wishful thinking" to believe a media gag could stop information being put on social media, blogs or other sources.

The review also found 22 per cent of the 1564 orders made between 2014 and 2016 failed to say what was being suppressed.

"We believe this overuse is insidious and against the public interest," *The Age* editorial said.

It also noted that none of the 18 recommendations in the Vincent report had been implemented and called on the Andrews government to act on them immediately.

A *Washington Post* column on the story noted Australia's laws and said that suppression orders were "almost unheard of in the United States".

"They are true anachronisms in the digital age, where information, thankfully, can't be shut up in a padlocked barn," the columnist Margaret Sullivan said.

Tomorrow's front page of The Daily Telegraph pic.twitter.com/jv6jPseBKM

– ben english (@bennyglish) December 12, 2018

Originally published as The story we can't report

MORE STORIES FROM AROUND THE WEB

Herald Sun

GET OUR DAILY WRAP AND BREAKING NEWS ALERTS

MOST VIEWED

Rain hammers Melbourne, flood rescues in Wangaratta

George Pell removed from Victoria role

CENSORED

Censored: A story we can't report

Lost records blocks Zaiwalk's damages bid

ADVERTISEMENT

1

News.com.au online article

It's the biggest story in Australia but news.com.au is not allowed to report the details, this is the reason why.

Charla Chang @CharlaChang2

DECEMBER 13, 2018 12:12PM

Daily Telegraph front page Source:Supplied

A high-profile Australian known across the world has been convicted of a serious crime but the details cannot be published by any media in the country.

The person was found guilty in the Victorian County Court but a suppression order was put in place to prevent the publication of details of the person's name or the charges. This is because the person is due to face court again for a separate trial in March and publication of the conviction might prejudice the case.

While it's common for courts to take this action, the person's high-profile status has meant international publications are already reporting on the case and details have been released on social media.

News Corp Australia, the publisher of news.com.au, is challenging the ban.

The Daily Telegraph described it as "the Nation's Biggest Story" and said the media ban was an "archaic curb on freedom of the press in the currently digitally connected world".

"Our political representatives need to fix those laws which run contrary to the universal principles of the open administration of justice," *The Daily Telegraph* editorial stated. "We believe you have the right to know this story now and without any further delay."

Victoria uses more suppression orders than any other state in Australia but their effectiveness is being questioned in the internet era.

An editorial in *The Age* said the rampant use of suppression orders by Victorian courts had become "almost absurd" in the digital era and seeking to censor information had become futile.

It also pointed to a review by retired judge Frank Vincent of Victoria's 2013 Open Courts Act that suggested it was probably "wishful thinking" to believe a media gag could stop information being put on social media, blogs or other sources.

MORE IN VICTORIA

2

National | World | Lifestyle | Travel | Entertainment | Technology | Finance | Sport

A *Washington Post* column on the story noted Australia's laws and said that suppression orders were "almost unheard of in the United States".

"They are true anachronisms in the digital age, where information, thankfully, can't be shut up in a padlocked barn," the columnist Margaret Sullivan said.

Tomorrow's front page of The Daily Telegraph
pic.twitter.com/jv6jPswBKM
— ben english (@bennyglish) December 12, 2018

JUMP BACK TO TOP

MOST READ FROM

1. Rain hammers Melbourne, flood rescues in Wangaratta
2. Censored: A story we can't report
3. George Pell removed from Vatican role
4. Lost records hinder Zantuck's damages bid
5. How Western Melbourne won A-League expansion race

Follow us Advertise About us Newsletters Connect

Be rewarded for your opinions

Privacy Policy | Relevant Ad Opt-Out | Cookie Policy | Terms & Conditions

Powered by WordPress.com VIP

MORE IN VICTORIA

Courier Mail article

The Courier Mail

THURSDAY, DECEMBER 13, 2018 $1.70 INCL GST // COURIERMAIL.COM.AU

COURT CENSORSHIP 1

Magistrate uses obscure 1886 public morality law to keep you in dark on Kmart kidnap case

YOUR RIGHT TO ~~KNOW~~ NO

THE shocking case of a man charged with luring a girl from her mother while they were Christmas shopping at Kmart before molesting her is being shrouded in secrecy. A controversial magistrate has used century-old legislation to block the public being told full details about Sterling Free (pictured). Child justice advocates want the decision reviewed and the archaic law changed.

FULL REPORTS P6-7, EDITORIAL P30

COURT CENSORSHIP 2

SECRET SCANDAL

It's Australia's biggest story. A high-profile person found guilty of a terrible crime. The world is reading about it but we can't tell you a word.

4

Geelong Advertiser online article

Daily Telegraph article

$1.70 // THURSDAY, DECEMBER 13, 2018

The Daily Telegraph

We're for you

AN AWFUL CRIME. THE PERSON IS GUILTY. YOU MAY HAVE READ THE NEWS ONLINE ALREADY. YET WE CAN'T PUBLISH IT. BUT TRUST US...

IT'S THE NATION'S BIGGEST STORY

EDITORIAL

A HIGH-profile Australian with a worldwide reputation has been convicted of an awful crime. The world is talking about it and reputable overseas news sites have published lengthy stories on the case — but The Daily Telegraph and other Australian media are prohibited from telling you about it.

The courts demand that you ignore the story totally until they see fit. But we think that would be a disservice to the readers of The Telegraph who would expect the same fair and fearless reporting of this case that we've delivered on other similar stories.

We are also well aware that many of our readers have probably read the international stories written about this person that are accessible online, outside the jurisdiction of the Australian courts. It would therefore be bizarre to publish today's newspaper without raising what we think is an archaic curb on freedom of the press in the current digitally connected world.

Our political representatives need to fix those laws which run contrary to the universal principles of the open administration of justice. We believe you have the right to know this story now and without any further delay.

And we believe there are strong grounds to fight the ban. We've taken immediate steps to challenge the ban. If we're successful then you'll be the first to know.

ScoMo's Face-off

SCOOP

ANNA CALDWELL

PRIME Minister Scott Morrison is putting web giants Google and Facebook on notice — saying that if they want to make money off Australians then they must abide by our rules. The Prime Minister exclusively told The Daily Telegraph he believed the government could do more to police the

CONTINUED PAGE 2

LIFE'S TOO CRUEL

Tragic end for mum of murdered kids » P4-5

School phone ban

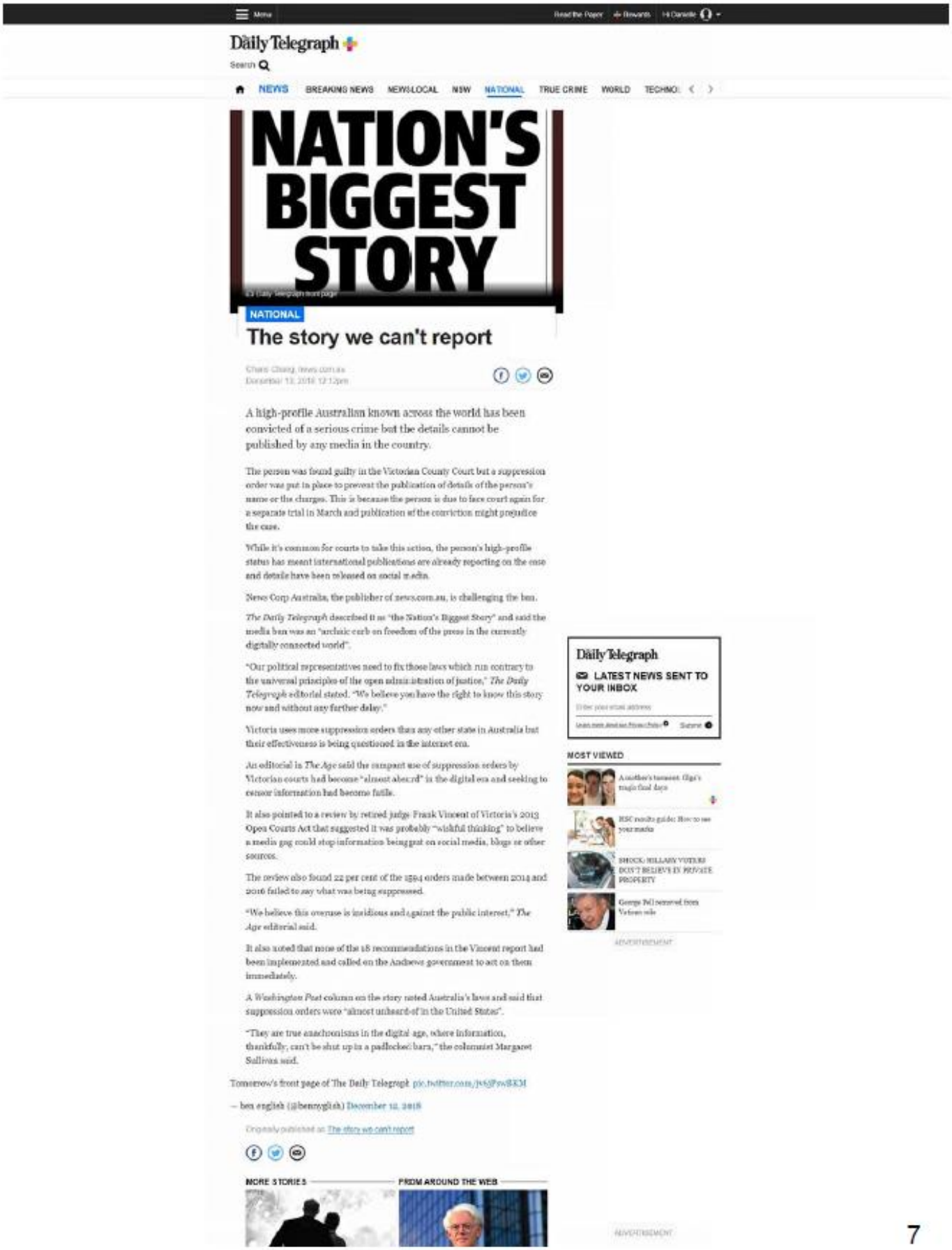
SCOOP

ANNA CALDWELL & ROSE BRENNAN

MOBILE phones will be banned in every NSW public primary school under a plan that would make kids hand over the devices or lock them away at the start of each day until it was home time. High schools will also be given the choice to adopt the ban.

STORY & HSC RESULTS P3-9

Daily Telegraph online article



Daily Telegraph

Search

NEWS BREAKING NEWS NEWS LOCAL NSW NATIONAL TRUE CRIME WORLD TECHNOL

NATION'S BIGGEST STORY

NATIONAL

The story we can't report

A high-profile Australian known across the world has been convicted of a serious crime but the details cannot be published by any media in the country.

The person was found guilty in the Victorian County Court but a suppression order was put in place to prevent the publication of details of the person's name or the charges. This is because the person is due to face court again for a separate trial in March and publication of the conviction might prejudice the case.

While it's common for courts to take this action, the person's high-profile status has meant international publications are already reporting on the case and details have been released on social media.

News Corp Australia, the publisher of news.com.au, is challenging the ban.

The Daily Telegraph described it as "the Nation's Biggest Story" and said the media ban was an "archaic curb on freedom of the press in the currently digitally connected world".

"Our political representatives need to fix those laws which run contrary to the universal principles of the open administration of justice," *The Daily Telegraph* editorial stated. "We believe you have the right to know this story now and without any further delay."

Victoria uses more suppression orders than any other state in Australia but their effectiveness is being questioned in the internet era.

An editorial in *The Age* said the rampant use of suppression orders by Victorian courts had become "almost absurd" in the digital era and seeking to censor information had become futile.

It also pointed to a review by retired judge Frank Vincent of Victoria's 2013 Open Courts Act that suggested it was probably "wishful thinking" to believe a media gag could stop information being put on social media, blogs or other sources.

The review also found 22 per cent of the 1594 orders made between 2014 and 2016 failed to say what was being suppressed.

"We believe this overuse is insidious and against the public interest," *The Age* editorial said.

It also noted that none of the 18 recommendations in the Vincent report had been implemented and called on the Andrews government to act on them immediately.

A *Washington Post* column on the story noted Australia's laws and said that suppression orders were "almost unheard-of in the United States".

"They are true anachronisms in the digital age, where information, thankfully, can't be shut up in a padlocked barn," the columnist Margaret Sullivan said.

Tomorrow's front page of The Daily Telegraph pic.twitter.com/jv6Pw8KM

— ben english (@benrylish) December 12, 2018

Originally published as The story we can't report

MORE STORIES

FROM AROUND THE WEB

Daily Telegraph

LATEST NEWS SENT TO YOUR INBOX

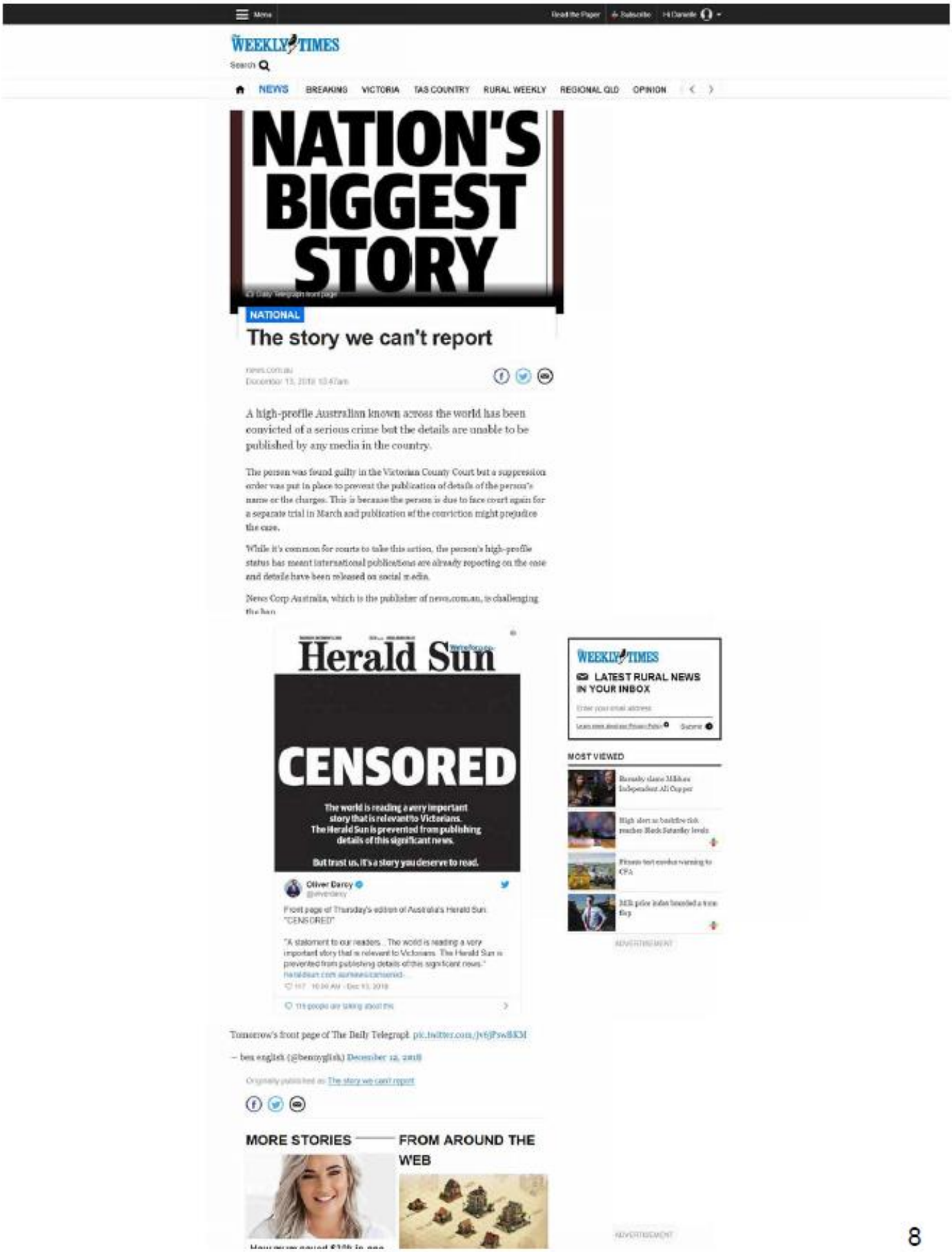
MOST VIEWED

ADVERTISEMENT

ADVERTISEMENT

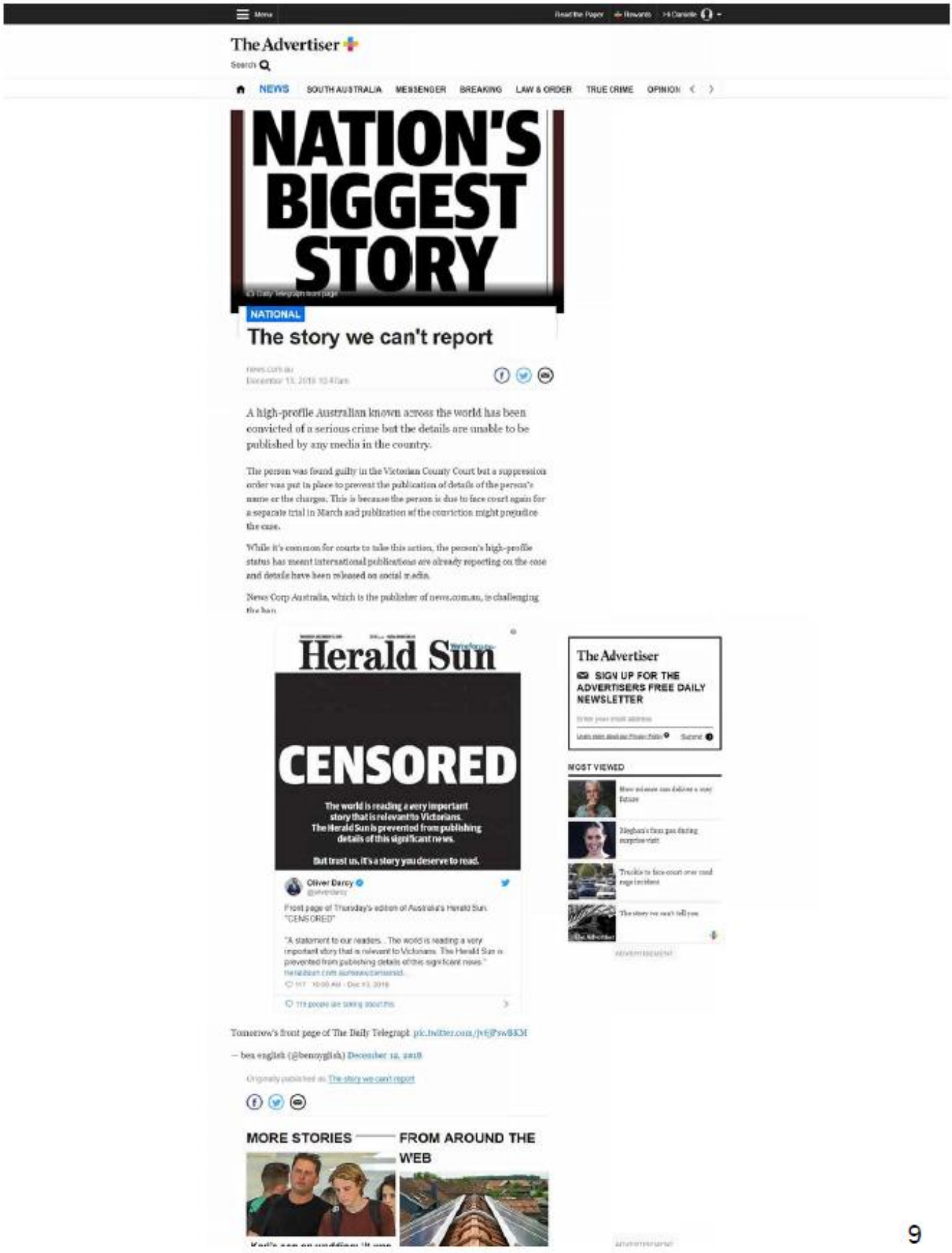
7

Weekly Times online article



8

Advertiser online article



9

Age article

$3.20 THURSDAY, DECEMBER 13, 2018 Published in Melbourne since 1854 theage.com.au

THE AGE

INDEPENDENT. ALWAYS.

TV'S HIGHS AND LOWS
The year of unscripted drama
GREEN&GUIDE

ATAR SECRETS REVEALED
Team behind the key digits
PAGE 2

WESTERN CRICKET PUSH
Perth wants Boxing Day Test
PAGE 44

POWER PLAY Coal projects not ruled out

PM's cash splash on energy

David Crowe
Chief political correspondent

The Morrison government will clear the ground for a mammoth financial boost to new energy projects in an untapped scheme that will offer loans and grants, giving the industry six weeks to put up proposals.

The government is not ruling out support for coal-fired power stations in the official document that calls for proposals, putting a priority on projects that could reduce prices and offer reliable electricity.

But the plan does not canvass any indemnity for projects that might one day have to incur a price on carbon – a factor for investors in new generators that use fossil fuels.

The government document also favours bidders with projects that can deliver reliable electricity with the lowest emissions intensity, linking the scheme to concerns about climate change and the

Continued Page 4

NEWS
Power bills hit wallets harder than ever
PAGE 4

NEWS
Industry alarm at poor policy
PAGE 5

Outrage at AFP's part in Thai detention

James Massola
South-east Asia correspondent

JAKARTA: Hakeem al-Araibi was detained in Bangkok after the Australian government informed Thai counterparts the refugee footballer was travelling to Thailand and subject to an Interpol red notice – a form of international arrest warrant.

Yesterday the Department of Home Affairs attempted to distance itself from Araibi's detention, arguing that "any action taken in response to the Interpol red notice is a matter for Thai authorities".

But human rights groups were sharply critical of Australian authorities' decision to notify Thailand of Araibi's travel plans, arguing it was effectively responsible for his detention.

Araibi was granted refugee status by Australia after fleeing his home country of Bahrain.

He was arrested in Thailand

Continued Page 8

Thai police detained refugee Hakeem al-Araibi in Bangkok.

Why media can't report on a high-profile case

Patrick O'Neil
Michael Bachelard

A very high-profile figure was convicted on Tuesday of a serious crime, but The Age is unable to report their identity due to a suppression order.

The person, whose case has attracted significant media attention, was convicted on the second attempt, after the jury in an earlier trial was unable to reach a verdict. They will be remanded when they return to court in February for sentencing.

A suppression order issued by the Victorian County Court, which applies in all Australian states and territories, has prevented any publication of the details of the case, including the person's name or the charges.

It was imposed after the court accepted that knowledge of the person's identity in the first trial might prejudice a further trial being held in March.

It is relatively common in cases where a person faces separate allegations in sequential trials for the first trial to be suppressed. The process is designed not to prejudice later juries.

However, in this case, the word has got out widely online and through social media.

Google searches for the person's name surged yesterday, particularly in Victoria. Two of the top three search results on the suppressed name showed websites that were reporting the charges, the verdict and the identity of the person in full. One of the websites

Continued Page 2

WEATHER

Today Thunderstorms, heavy rain	19–23
Tomorrow Very high chance of showers	16–22
Saturday Chance of showers and storms	15–25
Details	Page 14

ODDSPOT

A British handyman is planning to serve a Christmas dinner made from roadkill. Jim Alexander, 43, who has collected nearly 50 fresh corpses from the roads near his home in Devon, including deer, pheasant, rabbits and badgers, says badger tastes like pork but fox has its own unique taste, "which isn't particularly nice".

BUSINESS
Westpac faces revolt over its bonuses
CLANCY YEATES
Page 24

SAMANTHA HUTCHINSON & KYLAR LOUSSIKIAN
CONTACT CBD samantha.hutchinson@theage.com.au kylar.loussikian@theage.com.au

Great Liberal lights way for Labor

You wouldn't think Labor pollster **John Utting** has had much time for downtime between a successful Victorian election and upcoming NSW and federal contests.

Needless to say it came with some surprise to hear the guy still has time to read.

We were more staggered to learn the book sitting on his night stand is 'Afternoon Light' – a compilation of essays written by Liberal Prime Minister and Australia's longest serving prime minister **Robert Menzies**.

Forget **Ben Chifley's** 'Light on the Hill', Utting has become enamoured with the work of the Liberal Great Man himself, particularly a selection of essays written in the decade from 1941 onwards.

For the uninitiated, that's right about the time that internal divisions in the Coalition saw two Prime Ministers, including Menzies and **Arthur Fadden**, dumped within two months.

The spill culminated with Labor's own great man **John Curtin** being gifted the leadership and a Labor government without a general election in October 1941.

Sound familiar?

Predictably, the palaver triggered a near decade long existential crisis for the Coalition.

It turned a corner in 1944 when Menzies successfully united 28 non-Labor micro-parties as the Liberal Party, and then formed government five years later.

How did the Libs do it? In *Afternoon Light*, Menzies said he united the rabble around a central vision, giving the community every opportunity to advance, all with the protection of a solid safety net – or in his words, national insurance.

In other words, spend "much, more on education" and reinforce access to public healthcare, as well as unemployment protection. Which, sounds a lot like Labor's Victorian election campaign, which we are told was a blueprint that we can expect to see more of in the federal campaign.

Could Labor be co-opting the works of the Liberal's Great Man himself to cement a Bill Shorten-led Labor victory at the next federal election?

We asked the Menzies Research Centre's **Nick Cater**, who said CBD's call was the second time in two weeks someone had mentioned the parallels in Labor's rhetoric to the words of Menzies.

"Superficially there might be a similarity, but I don't think they're adopting it with any sense of purity," Cater said.

He was more surprised that Utting had been able to find the book in the first place, given Menzies' books and *Afternoon Light*, in particular, aren't in huge supply.

Lucky he's just organised second print run then.

> *'Superficially there might be a similarity, but I don't think they're adopting it with any sense of purity.'*
> Nick Cater, Menzies Research Centre

POWERBROKERS' POWER WANING

With all the excitement of the impending brawl likely to take place at the ALP National Conference this weekend, we almost forgot about the other brawl likely to break out behind closed doors when the party votes on its National Executive on Tuesday.

Will this year be the year the ALP's centralisers instruct finally get a spring clean?

We're told it could be, even if usual suspects including **Stephen Conroy** and **Kim Carr** are among those toeing up to the start line.

Former Victorian senator turned gambling industry frontman **Stephen Conroy's** decision to run again for the executive has left more than a few Labor veterans scratching their heads.

Both **Kevin Rudd** and Victorian frontbencher **Adem Somyurek** last year said there could a "conflict of interest" about Conroy sitting the executive at the same time he leads gambling lobby group Responsible Wagering Australia.

Conroy has repeatedly dismissed there's any such issue.

Whether his decision to remain scarce on the executive and miss multiple meetings this year is connected, we're not sure.

But it could be a moot point, with party sources indicating the Victorian powerbroker's support base has shrunk, and the powerbroker status may be no more.

Meanwhile Kim Carr, who by some estimations is down to just eight delegate votes in the National Left caucus, leaving him more than a little bit shy of the required quota of 13.

Saturday's meeting of the National Left caucus will be interesting.

THE MONEY HASN'T CHANGED THEM

Pathology operator Sonic Healthcare yesterday splashed out $710 million to purchase Florida-based Aurora Diagnostics, transforming the company into a major global business.

But you'd think a business worth $9 billion might be able to sort out a corporate email address for its chief executive **Colin Goldschmidt** and chief financial officer **Chris Wilks**.

Not in this case.

Goldschmidt can be reached at his personal MSN address, a service which stopped offering new inboxes more than a decade ago.

While Wilks appended his personal Bigpond email to the purchase announcement uploaded yesterday morning to the Australian Securities Exchange.


ATAR crunchers Sue Willis, Stephen Farish and Krunal Shah. Photo: Josh Smith

Secrets of ATAR:

Henrietta Cook

Every year without fail, the same baffling question is put to the team who calculate Victorian students' ATARs.

After ATAR results are released, a parent always phones the Victorian Tertiary Admissions Centre to ask if their child has achieved a high 99.95 or a low 99.95.

"My advice to the parent is to go and give your child a hug," said the centre's communications director, Suzanne Connelly.

Ms Connelly is part of the team who work tirelessly around the clock to ensure everything goes smoothly on results day.

The work begins long before results are released to more than 40,000 students tomorrow.

A week before students' phones light up with their ATARs, a team of professors, statisticians and IT programmers bunker down in an unremarkable-looking meeting room to rank thousands of students.

Over a weekend, they run algorithms and scrutinise and scale the results. The end product is a four-digit number known as the Australian Tertiary Admission Rank.

Dr Stephen Farish is in charge of the scaling, a process he says many people don't understand.

"We don't sit around and decide that we are going to scale a study

INDEX

TODAY

Green Guide

A year of highs, lows, comedy and unscripted drama.

TOMORROW

EG

Cold War is a love story set in the aftermath of WWII.

Why media can't

From Page 1

was blocked from viewing by Australian residents, but its content was republished on a number of other sites.

Yesterday afternoon, the person's name was the subject of thousands of tweets. The tweets both named the individual and the charges and posted links to online sites where the information was available.

A number of readers contacted *The Age* asking why we were not reporting this major issue in the public interest. *The Age*, like all media organisations, is required by law to adhere to suppression orders and breaching such a suppression order is taken very seriously by the court, and could lead to charges of contempt of court. Victoria has more suppression orders than any

> *Yesterday, the person's name was the subject of thousands of tweets.*

IBAC to open up Silk-Miller investigation

Simone Fox Koob

The state's corruption watchdog is set to hold public hearings into the police handling of the investigation surrounding the 1998 murders of policemen Gary Silk and Rodney Miller.

The Independent Broad-Based Anti-Corruption Commission announced yesterday it would hold public hearings into "alleged serious misconduct" by Victoria Police officers relating to certain aspects of the investigation into the high-profile murders.

Jason Roberts was convicted alongside Bandali Debs of murdering Sergeant Silk and Senior Constable Miller, who were gunned down in a Moorabbin street on August 16, 1998.

Roberts claims he was not there when the officers were shot.

Last year, it emerged a statement made by a Senior Constable Glenn Pullin that placed Roberts at the scene was reportedly falsified, with the original version making no mention of more than one shooter.


Jason Roberts denies being at the crime scene.

IBAC launched an inquiry in November last year, dubbed Operation Gloucester, into police conduct during the investigation after they became aware of new information.

It comes as Victoria Police face a royal commission into the recruitment and handling of lawyer and police informer Nicola Gobbo.

The public hearings in the Silk-Miller murder investigation – to be held in February – will examine, among other things, whether the way police took witness statements is still part of police practice.

It will also look at the preparation of the brief of evidence before the original trial and whether police complied with their obligation to disclose evidence.

"If these concerning practices are still used by Victoria Police they have the potential to impact the integrity of criminal investigations and the delivery of justice," IBAC Commissioner Robert Redlich QC said yesterday.

"The IBAC Operation Gloucester public hearings are necessary to examine a range of concerning practices allegedly used by Victoria Police officers, including during the investigation of the Silk-Miller murders, and to determine if those police practices are still continuing.

"These public hearings are not a 'reopening' of Victoria Police's Operation Lorimer, which investigated the Silk-Miller murders. IBAC will not be reviewing the convictions that resulted from that investigation. There are other established processes to examine such matters."

Counsel assisting will be Jack Rush, QC with barrister Catherine Boston.

In August, Attorney-General Martin Pakula announced that Justice Bernard Teague had examined the contents of Roberts' second petition for mercy and recommended that the case go back before the courts.

Justice Teague said the basis for his recommendation rested on new revelations. They included: the alleged concealment of evidence, a fresh alibi for Roberts and an affidavit stating Debs had confessed to being the sole killer. He also assessed the discovery of intercepted phone conversations not presented at trial that contained statements supporting Roberts' version of events that Debs acted alone.

"Sufficient new evidence is presented in the petition to raise the possibility that a miscarriage of justice has occurred," Justice Teague wrote.

"Essentially evidence of Roberts as to his whereabouts on the night in question.

team behind the four digits

up or down," he explains. "We scale subjects so that we can add two 30s together and know they are equivalent."

Scaling adjusts the study scores in each subject to take account of the strength of the competition between students.

It does this by looking at how well students in that subject performed in their other subjects.

Security is tight in the lead-up to results day.

The venue where students' results are printed is kept top secret, and IT whizzes at the administration centre try to hack the data to ensure it's secure.

Staff notify social media to ensure students have been able to register for their results and there haven't been any leaks. Two years ago, 2075 VCE students prematurely received their VCE study scores and ATARs via SMS five days before the official release.

The bungle was blamed on an external company, which has since lost its contract with VTAC.

When results day finally arrives, chair of the scaling committee Dr Sue Willis always wakes up with the same sensation.

"I feel like it was when the clock turned over at the year 2000," she said. "It's that kind of moment when everyone thought, 'Is the world going to fall in?'"

Bleary-eyed staff arrive at the admissions centre at 5am.

Just before 7am, the countdown begins on a large screen, before the moment everyone has been waiting for.

The directors of VTAC and the Victorian Curriculum and Assessment Authority hit an "activate" button on their computers and the results are released.

Immediately afterwards, the calls start flooding in.

Students might discover a subject is missing from their transcript because a school has forgotten to submit their results.

Staff at the centre then have to painstakingly amend.

If everything goes smoothly, breakfast is served at 8am.

"There is a lot of energy," Ms Connelly said. "That morning is an adrenaline rush."

report this case

other jurisdictions in Australia, with the state accounting for more than half of such orders nationally.

The widedissemination of the suppressed information online, however, highlights the challenges of the suppression regime in some high-profile cases of public interest.

A year-long review of Victoria's 2013 Open Courts Act by retired judge Frank Vincent called into question the function and efficacy of suppression orders in an internet age. Even if major media organisations were gagged, nothing could prevent a case from being canvassed on social media, blogs and myriad other channels, he said. A view to the contrary is "most likely to represent wishful thinking than reality", Justice Vincent found, and a "real world" approach is required.

Despite this, and the principals of transparent justice enshrined in the Open Courts Act, Victorian judges were "troublingly" issuing as many suppression orders as they ever were.

The Vincent report made 18 recommendations, none of which has been implemented by the state government.

'Unworkable': Facebook hits back

Social media behemoth Facebook has hit back at the Australian competition regulator's proposal for a new government body to scrutinise its business and algorithms, describing the plan as "unnecessary", "unprecedented" and "unworkable".

Andy O'Connell, a senior policy executive from Facebook's global headquarters in Menlo Park, California, who works closely with its chief executive Mark Zuckerberg, signalled the company was concerned the new measures proposed in Australia could gain global support.

"This idea that we would create a generalised algorithm regulator without a specific set of problems they are trying to fix, to make choices for consumers rather than putting users in control, it is pretty unprecedented," Mr O'Connell said in Facebook's first public comments on the issue.

"This is unprecedented as far as I am aware. I am not aware of any other country seriously looking at the idea of an algorithm regulator."

The Australian Competition and Consumer Commission earlier this week released landmark findings from a year-long inquiry into digital platforms, declaring that Google and Facebook's substantial market power in digital advertising is hurting traditional publishers.

The regulator proposed a number of measures to curb their dominance, including a new agency to monitor their conduct in the advertising market, and to scrutinise how their secretive algorithms distribute traffic. It also wants to create an ombudsman to monitor consumer complaints on the platforms, toughen privacy regulations and make it harder for the tech giants to collect user data without consent. John McDuling

Age online article

https://www.theage.com.au/national/victoria/why-the-media-is-us Go NOV DEC JAN 12 2017 2018 2019

15 captures
12 Dec 2018 – 17 Dec 2018

About this capture

NATIONAL VICTORIA COURTS

Why the media is unable to report on a case that has generated huge interest online

By Patrick O'Neil & Michael Bachelard
12 December 2018 — 7:11pm

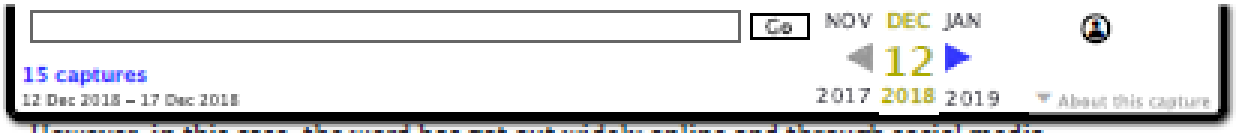
A very high-profile figure was convicted on Tuesday of a serious crime, but we are unable to report their identity due to a suppression order.

The person, whose case has attracted significant media attention, was convicted on the second attempt, after the jury in an earlier trial was unable to reach a verdict. They will be remanded when they return to court in February for sentencing.

Suppression orders are widely used in Victoria.

A suppression order issued by the Victorian County Court, which applies in all Australian states and territories, has prevented any publication of the details of the case including the person's name or the charges. It was imposed after the court accepted that knowledge of the person's identity in the first trial might prejudice a further trial being held in March.

13



However, in this case, the word has got out widely online and through social media.

Google searches for the person's name surged on Wednesday, particularly in Victoria. Two of the top three search results on the suppressed name showed websites that were reporting the charges, the verdict and the identity of the person in full.

One of the websites was blocked from viewing by Australian residents, but its content was republished on a number of other sites.

On Wednesday afternoon, the person's name was the subject of thousands of tweets. The tweets both named the individual and the charges and posted links to online sites where the information was available.

A number of readers contacted us asking why we were not reporting this major issue in the public interest. We, like all media organisations, are required by law to adhere to suppression orders and breaching such a suppression order is taken very seriously by the court, and could lead to charges of contempt of court.

Victoria uses more suppression orders than any other jurisdiction in Australia, with the state accounting for more than half of such orders nationally.

The wide dissemination of the suppressed information online, however, highlights the challenges of the suppression regime in some high-profile cases of public interest.

A year-long review of Victoria's 2013 Open Courts Act by retired judge Frank Vincent called into question the function and efficacy of suppression orders in an internet age.

Even if major media organisations were gagged, nothing could prevent a case from being canvassed on social media, blogs and myriad other channels, he said.

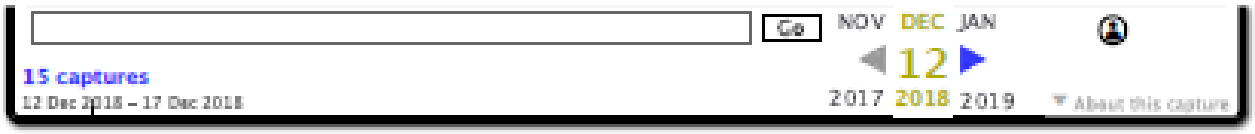
A view to the contrary is "most likely to represent wishful thinking than reality", Justice Vincent found, and a "real world" approach is required.

Despite this, and the principles of transparent justice enshrined in the Open Courts Act, Victorian judges were "troublingly" issuing as many suppression orders as they ever were.

The Vincent report made 18 recommendations, none of which has been implemented by the state government.

Patrick O'Neil
Patrick O'Neil is The Age's PM news editor

14



Michael Bachelard is Fairfax's foreign editor and the investigations editor at The Age. He has worked in Canberra, Melbourne and Jakarta as Indonesia correspondent. He has written two books and won multiple awards for journalism, including the Gold Walkley in 2017.

15

Age online editorial

NATIONAL VICTORIA EDITORIAL

Rampant use of suppression orders has become absurd

13 December 2018 — 9:54am

The rampant use of suppression orders by Victorian courts has become almost absurd; in the digital era news reports and other information instantly span the world, amplified by social media. Seeking to censor information has become futile, as the international coverage of a case we can not tell you about in any detail demonstrates beyond reasonable doubt.

We are legally blocked from telling you any details because the internationally prominent person found guilty of appalling crimes will face a related trial next year. The Victorian County Court has blocked the publication of details, including the perpetrator's name and the charges, in the belief it could prejudice the jury in the second hearing.

Victorian courts issue more suppression orders than the rest of Australia's states and territories combined. THE AGE

This is standard practice.

Suppression orders have a noble genesis; they are intended to help ensure a fair trial by preventing jurors from being influenced by media coverage.

16

In a review last year, former Court of Appeal Judge Frank Vincent found that of the 1594 orders made between 2014 and 2016, 22 per cent were blanket bans that failed to say what was being suppressed.

We believe this overuse is insidious and against the public interest, an argument we comprehensively set out only months ago in a series of articles examining the unfettered use of censorship and secrecy by government and their agencies, and by the judiciary.

None of the 18 recommendations in the Vincent report has been implemented. *The Age* calls on the Andrews government to implement them all without any further delay.

Blind justice is an unimpeachable principle.

But Justices blind to reality are undermining freedom of speech and the public's right to know how well the system their taxes fund might be working.

The courts should no longer quixotically resort to the overuse of suppression orders. They ought to take greater responsibility for managing and instructing jurors about their duty to disregard media reports.

The jury system has proved so valuable because juries are carefully vetted, and are usually made up of a combination of intelligent, decent people with much combined life experience, not because they are not supposedly unable to read, hear or watch any associated coverage.

The case in point demonstrates beyond reasonable doubt the need for change. It involves one of the most important issues that exist, and *The Age* believe that the suppression order, which could lead to a contempt of court conviction were it breached, has harmed the public interest by curbing community debate for many months.

People are not only being deprived of crucial information, they are not being informed why they are not being informed.

The convicted person will be remanded in custody in February after a sentencing hearing. Online searches of the person's name rocketed only hours after the guilty verdicts. With but a few key strokes, people were immediately directed to foreign websites reporting the full details.

The courts should lift the suppression order; the public interest in covering this case exceeds the purpose the order is clearly not serving. Enough is enough.

- **A note from the editor** – Subscribers can get *Age* editor Alex Lavelle's exclusive weekly newsletter delivered to their inbox by signing up here: www.theage.com.au/editornote

---

SMH article

The Sydney Morning Herald

Thursday, December 13, 2018 $3.20
First published 1831 No. 56,527

INDEPENDENT. ALWAYS.

BREXIT BATTLE WOLVES CIRCLE MAY
WORLD PAGE 17

The magic number in your interest rate
JESSICA IRVINE
COMMENT PAGE 22

Sharks coach engulfed in salary cap questions
ANDREW WEBSTER SPORT

ENERGY POLICY

Coalition in power splurge

David Crowe
Chief political correspondent

The Morrison government will clear the ground for a mammoth financial boost to new energy projects in an untapped scheme that will offer loans and grants, giving the industry six weeks to step forward with proposals.

The government does not rule out support for coal-fired power stations in the official document that calls for proposals, putting a priority on projects that could reduce prices and offer reliable electricity around the clock.

But the plan does not canvass any indemnity for projects that might one day have to incur a price on carbon – a key factor for long-term investors in new generators that use fossil fuels.

The government document also favours bidders with projects that can deliver reliable electricity with the lowest emissions intensity, linking the scheme to concerns about climate change and the government's pledge to reduce greenhouse gas emissions.

Household spending on power at record high
NEWS PAGE 6

"Projects delivering an electricity product at a lower emissions intensity will be deemed higher merit," says the call for registrations of interest not to be issued today.

The call for proposals acts on a recommendation from the Australian Competition and Consumer Commission for a federal scheme that could underwrite new

Continued Page 6

Top class: the unlikely HSC stars

Emmerson Pearce admits she can't cook and once almost burnt down her home, but she still topped the HSC in food technology, while singer Kiran Gupta was first in music 1 despite a recent emergency throat biopsy. NEWS PAGE 4

Main photo: Zoe Harrison (equal first in dance), left, and Emmerson Pearce. From top: Kiran Gupta, Emma Bui (first in Aboriginal studies) and John Bivol (economics). Photos: Jessica Hromas

Fatal Green Square crash sparks calls for peak-time truck ban

Tim Barlass
Natassia Chrysanthos

Large trucks should be banned from Botany Road during peak pedestrian times in the densely populated area of Green Square, the local MP says.

Ron Hoenig's call for the ban, which would be a first in Australia, comes after yesterday's "horrific" truck crash just south of Green Square station in which a 44-year-old woman was killed and five injured. Emergency services were called at 7.45am after the B-double truck carrying bricks ran off the road and veered into northbound lanes before hitting a power pole, a bus stop, a building and then pedestrians. The incident has reignited debate on how high-density development is intensifying demands on Sydney's road and transport infrastructure.

The crash scene yesterday.

A well-placed source said the truck driver was believed to have suffered a pulmonary embolism before collapsing at the wheel.

Three of the five injured

Continued Page 2

Why we can't report on a case of huge interest

A very high-profile figure was convicted on Tuesday of a serious crime, but the *Herald* is unable to report their identity due to a suppression order.

The person whose case has attracted significant media attention, was convicted on the second attempt, after the jury in an earlier trial was unable to reach a verdict. They will be remanded when they return to court in February for sentencing.

A suppression order issued by the Victorian County Court – which applies in all Australian states and territories – has prevented any publication of the details of the case including the person's name or the charges. It was imposed after the court accepted that knowledge of the person's identity in the first trial might prejudice a further trial being held in March.

It is relatively common in cases where a person faces separate

Continued Page 4

Officials warn off embassy relocation

David Wroe
National security correspondent

The Morrison government has been advised by key bureaucrats and retired "wise elders" against moving its Israel embassy to Jerusalem or making other significant changes to Australia's stance on the status of the city central to the Middle East peace process.

In a development that puts the government in the awkward position of potentially having to ignore its own key advisers, the clear majority view the government has received from its most senior and seasoned foreign policy thinkers is to keep things as they are, the *Herald* understands.

The Morrison cabinet is wrestling with whether to make the historic shift in its foreign policy, having discussed the matter this week and with the clock ticking on making a promised announcement before Christmas.

It follows Prime Minister Scott Morrison's declaration in the heat

Moving the embassy to Jerusalem has little support among officials.

of the Wentworth byelection campaign that the government would consider recognising Jerusalem as Israel's capital and moving Australia's embassy there.

That would follow US President Donald Trump and make Australia only the second major country to shift its position on the contentious issue at the heart of the decades-long Israel-Palestine conflict.

While the advice the government has received has not been unanimous, the clear weight of opinion has stated that the status quo on Jerusalem should be maintained, the *Herald* understands.

The government departments and agencies consulted are understood to be aligned in support of Australia's existing position in having its embassy in Tel Aviv. Those include the Department of Foreign Affairs and Trade, the Defence Department and ASIO.

That was also the majority view of a small, handpicked group of former top officials or "wise elders" whom the government has consulted. These included former Department of Prime Minister and Cabinet head Michael Thawley, former Defence Department head Dennis Richardson and former Chief of the Defence Force Sir Angus Houston.

A spokeswoman for Mr Morrison declined to comment on the latest advice. Cabinet discussed the issue on Tuesday, but it is understood no announcement will be made at least until Saturday.

2018 RESULTS

Unlikely stars in a class

Jordan Baker
Nigel Gladstone
Pallavi Singhal

As Emmerson Pearce herself admits, she can't cook; her signature dish is instant brown rice with tinned salmon. Not long ago, she almost burned the house down by putting a Tim Tam in the microwave for a minute and a half.

Yet yesterday, the woman dubbed "Masterchef" by her family came first in the state in food technology. Luckily for her, the HSC course is based in theory, not practice.

The Pymble Ladies College graduate will not pursue a culinary career; she is hoping to be a public prosecutor.

"I want to beat the bad guys," she says. "I hate people getting away with unjust crimes."

Ms Pearce joined the students who topped their subject in the 2018 HSC for a ceremony to celebrate their achievement. Tomorrow, these 127 young men and women will join another 77,000-odd HSC students in receiving the rest of their results.

Sydney Grammar billiard the first-in-course awards this year, topping 11 subjects and dominating languages. Two awards went to one Grammar student, Alexander Yao, who topped both French and German exeminors.

Another of Grammar's high achievers was Kiran Gupta, a pop singer who came first in Music 1. The fact he was able to sing for his examiner at all was a blessing, given he had an emergency biopsy on this throat three weeks before his trial exams.

"My stamina still wasn't quite right, I actually had to change one of my pieces five days before the HSC, because I just didn't have the stamina to go through my program like I used to," he said.

"I changed it from *One More Try* by George Michael to *Anthem* from *Chess*." Mr Gupta would like to make a record, sing on *The Voice* or star as Marius in *Les Miserables*, but he also plans to study arts/law as a back-up to a music career.

Zoe Mitchell

Zachary Joel Saric

Phoebe Coles

Doniya Eskandar from St. Narsai Assyrian Christian College overcame more hurdles than most to finish first in two advanced Arabic courses. Three years ago, Ms Eskandar and her family left their home in north-Eastern Syria, fleeing on foot in the freezing cold.

She left school behind, too, so spent her year in Lebanon reading novels to teach herself English. When they arrived in Australia in mid-2016, she devoted herself to making up that lost time. Her mother was in tears when she was placed first in the state.

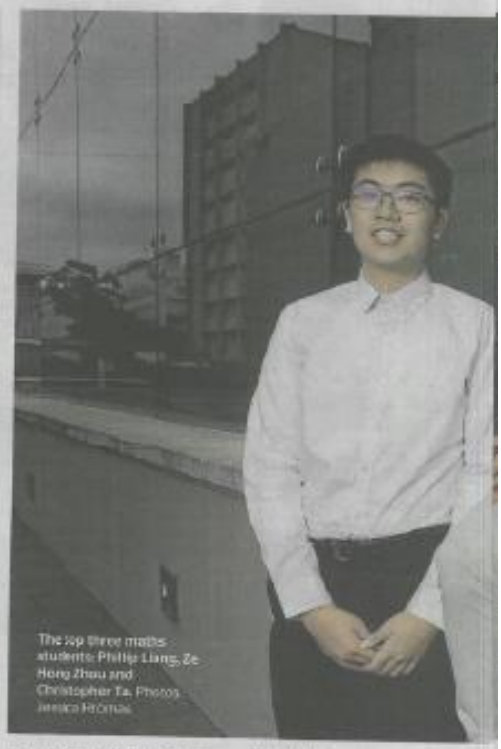
"Mum was very excited that my hard work paid off," she said.

Four students from Pymble Ladies College received first-in-course awards – in dance, agriculture English as a second language and Ms Pearce's food technology gong – while James Ruse Agricultural High School and Abbotsleigh picked up three first-in-course awards each.

James Ruse student Raymond Li led the state in maths extension 1 and chemistry, while Abbotsleigh student Sarah Chang got top marks in music 2 and music extension.

This year, six students topped two of their subjects.

One of them was Elisa Fox from Ascham, who led the state in both biology and German extension. "I think the incentive to beat my brothers has probably been the biggest motivator this year,



The top three maths students: Phillip Liang, Ze Hong Zhou and Christopher Ta. Photos: Jessica Hromas

The full HSC honour roll
SPECIAL LIFTOUT
In tomorrow's Herald

Why we can't report on a case of huge interest

From Page 1

allegations in sequential trials for the first trial to be suppressed. The process is designed not to prejudice later juries.

However, in this case, the word has got out widely online and through social media.

Google searches for the person's name surged yesterday. Two of the top three search results on the suppressed name showed websites that were reporting the charges, the verdict and the identity of the person in full.

One of the websites was blocked from viewing by Australian residents, but its content was republished on several other sites.

By yesterday afternoon, the person's name was the subject of thousands of tweets. The tweets named both the individual and the charges, and posted links to online sites where the information was available.

A number of readers contacted the *Herald* asking why we were not reporting this major issue in the public interest.

The *Herald*, like all media organisations, is required by law to adhere to suppression orders and breaching such a suppression order is taken very seriously by the court, and could lead to charges of contempt of court.

Victoria uses more suppression orders than any other jurisdiction in Australia, with the state accounting for more than half of such orders nationally.

Breaching such a suppression order is taken very seriously by the court.

The wide dissemination of the suppressed information online, however, highlights the challenges of the suppression regime in some high-profile cases of public interest.

A year-long review of Victoria's 1958 Open Courts Act by retired judge Frank Vincent called into question the function and efficacy of suppression orders in an internet age. Even if major media organisations were gagged, nothing could prevent a case from being canvassed on social media, blogs and myriad other channels, he said.

A view to the contrary is "most likely to represent wishful thinking than reality", Justice Vincent found, and a "real world" approach is required.

Despite this, and the principles of transparent justice enshrined in the Open Courts Act, Victorian judges were "invariably" issuing as many suppression orders as they ever were.

AFR online article 1

FINANCIAL REVIEW

Menu Home News Business Markets Street Talk Real Estate Opinion Technology Personal Finance Leadership Lifestyle All

How the case that can't be named is being reported around the world

By Patrick Durkin

Email
Facebook
Twitter
LinkedIn

Print article Licence article

High profile global media companies are flouting a suppression order in relation to an Australian who has been convicted of a serious crime after a Victorian jury found the person guilty of charges this week.

Global websites available in Australia including the Jeff Bezos owned *The Washington Post* and National Public Radio were publishing the news on Wednesday and Thursday including in push notifications to Australians with the Washington Post app.

The publication is in breach of a suppression order issued by the Victorian County Court which applies in "all Australian states and territories" and "on any website or other electronic or broadcast format accessible within Australia".

Other global websites including the Daily Beast, which first reported the conviction, have geoblocked the reports to Australian readers.

"We understood there could be legal, and even criminal, consequences if we ran this story," Daily Beast editor Noah Shachtman told the *Post*. "[This is] major, major news. The public deserves to know about it."

The New York Times, a fierce rival of the *Post*, is yet to publish a story. Its Australian bureau chief, Damien Cave, indicated that was because it had "reporters on the ground in Australia" through its local bureau. *The Guardian*, which also has local reporters, was also yet to publish a story.

Nine, publisher of *The Australian Financial Review*, has joined a local application to the court to seek to have the suppression order lifted.

Major Australian news outlets on Wednesday were forced to carry cryptic front pages about the case explaining that significant news had unfolded but could not be reported.

"It's the nation's biggest story," *The Daily Telegraph*'s headline screamed in a full front page story. "A high profile Australian with a worldwide reputation has been convicted of an awful crime.

The Age ran a front page story headlined "why media can't report on a high-profile case".

"A very high-profile figure was convicted on Tuesday of a serious crime, but *The Age* is unable to report their identity due to a suppression order."

The widespread reporting of the case globally and on social media has sparked a debate about the application of suppression orders - almost unheard of in the

LATEST NEWS

How the case that can't be named is being reported around the world

ROKT win against IP Australia a victory for tech start-ups

ANZ, Citi added to NSW's huge banking contract

Council of Financial Regulators sees credit squeeze risks

20

United States – despite being quite common in Australia.

Reports that Victoria accounts for 52 per cent of Australian suppression orders has led to it being labelled the "Suppression State" on social media.

However others including Julian Assange's barrister and adviser Greg Barns are defending the court's actions.

"The lack of regard for fair trials is sickening," he tweeted.

AFR online article 2

Judge slams 'flagrant' media over world's worst kept secret

By Patrick Durkin 13 Dec 2018 — 11:45 PM

A judge in Victoria's County Court has accused media companies of flagrantly breaching of a confidential suppression order in a high-profile confidential case, warning that "important people in the media" are facing the prospect of jail.

The high-profile case returned to court on Thursday to discuss global media companies flouting the

22

suppression order in relation to an Australian who has been convicted of a serious crime after a Victorian jury found the person guilty of charges this week.

The judge indicated on Thursday he was "angry" at the way the case had been reported across social media, global media sites available in Australia and local media, which have reported the suppression order without revealing the identity of the individual involved.

Local coverage of the story angered Peter Kidd, the chief judge of Victoria's County Court.

"It is just breathtaking," the judge said, claiming the media were "bringing inappropriate and improper pressure upon me to vary or revoke my suppression order".

"Given how potentially egregious and flagrant these breaches are, a number of very important people in the media are facing, if found guilty, the prospect of imprisonment and indeed substantial imprisonment," he said.

"You are supposed to leave the bench when you are angry, but I'll stay for a bit longer to finish this hearing off," the judge said.

Local publications including *The Age*, the *Herald Sun*, Ten and SBS are applying to have the suppression order lifted in a hearing on Friday

Global websites available in Australia including the Jeff Bezos-owned *The Washington Post* and National Public Radio were publishing the news on Wednesday and Thursday including in push notifications to Australians with the *Washington Post* app.

The suppression order issued by the Victorian County Court applies in "all Australian states and territories" and "on any website or other electronic or broadcast format accessible within Australia".

Other global websites including the *Daily Beast*, which first reported the conviction, have geoblocked the reports to Australian readers.

"We understood there could be legal, and even criminal, consequences if we ran this story," *Daily Beast* editor Noah Shachtman told the *Post*. "[This is] major, major news. The public deserves to know about it."

The New York Times, a fierce rival of the *Post*, is yet to publish a story. Its Australian bureau chief, Damien Cave, indicated that was because it had "reporters on the ground in Australia" through its local bureau. *The Guardian*, which also has local reporters, was also yet to publish a story.

Major Australian news outlets on Thursday were forced to carry cryptic front pages about the case explaining that significant news had unfolded but could not be reported.

"It's the nation's biggest story," *The Daily Telegraph's* headline screamed in a full front-page story. "A high-profile Australian with a worldwide reputation has been convicted of an awful crime."

The Age ran a front-page story headlined "why media can't report on a high-profile case".

"A very high-profile figure was convicted on Tuesday of a serious crime, but *The Age* is unable to report their identity due to a suppression order."

The widespread reporting of the case globally and on social media has sparked a debate about the application of suppression orders - almost unheard of in the United States - despite being quite common in Australia.

Reports that Victoria accounts for 52 per cent of Australian suppression orders has led to it being labelled the "Suppression State" on social media.

Victorian Premier Daniel Andrews said he was "not able to speak about [the case] as much as I'd like to" but has vowed to fully implement the recommendations of an independent review into the state's suppression orders in this term of government.

"No one should underestimate our absolute resolve to deliver on the findings of the recommendations that were made by former Justice Vincent, accepted by our government, work began in the last term, and it will be completed in this term," he said.

In the September 2017 report by retired judge Frank Vincent, he called for a "real-world" approach after finding there was nothing to prevent cases being discussed on social media, blogs and myriad other channels.

However others including Julian Assange's barrister and adviser Greg Barns are defending the court's actions.

"The lack of regard for fair trials is sickening," he tweeted.

24

AFR article

ROKT wins case against IP Australia

Yolanda Redrup

Fast-growing marketing technology start-up ROKT has scored a big victory over IP Australia, which is set to change the way the patent office treats software innovation.

The ruling sets a precedent for how IP Australia assesses innovation in software, almost four years after the authority started knocking back more software patents after a 2015 case in which the full Federal Court ruled only patents for technical innovations (like hardware developments) were acceptable, not business model innovations or methods.

While Federal Court judge Justice Alan Robertson maintained that patents could not be filed for a business method, he ruled this software innovations such as ROKT's could equate to technical innovations.

Speaking to *The Australian Financial Review* after the Federal Court ruled in his favour, ROKT chief executive Bruce Buchanan said the win would force IP Australia to "do their job and look after Australian businesses building software". "It emotionally feels like a big win after a six-year journey and it's a big win for Australian start-ups trying to go global," he said. "It shouldn't have gotten this far and the commissioner and IP Australia should have done their job in the first place.

"This is in the realm of patentable subject matter and something IP Australia should be supporting."

In June 2012 ROKT, which helps businesses connect with customers making a transaction in a more meaningful way, filed for a patent to protect a method it had developed to sequence messaging between retailers and shoppers in e-commerce transactions, tapping into the psychology behind how a consumer would respond to messages displayed in a particular order.

In 2013 it was granted, but retrospectively it was rejected in 2015.

Mr Buchanan said the patent was not critical for ROKT, but on principle he decided to fight IP Australia knowing that smaller, less well-resourced start-ups would not be able to afford it.

"For a business like us with $100 million in turnover, the patents are more defensive than anything else ... It doesn't make a big difference to the way we're operating, but it makes a huge difference to Aussie start-ups that don't have the funding or support that we have," he said. "Thinking about the future of this country and what industries are going to support that, software will be critical. For IP Australia to walk away from that is not only foolish, but it lets down future businesses."

Justice Robertson ordered that IP Australia pay ROKT's costs and said its invention solved not only a "business problem, but also a technical problem" and applications like this needed to be viewed in their entirety and not broken down into individual components.

"The respondent's focus tended to be on issues of separate or indeed discrete differences or distinctions rather than on the claim or claims as a whole and as a matter of substance," he said. "A focus on elements ... in isolation tends to lose sight of the combination of techniques or components in an innovative and previously unknown way.

"It followed that the patent introduced a method which was foreign to the use of computers as at December 2012. Not only did it draw together different streams of information and put them together and worked with them in a way that was new, making the combination of these techniques new, but certain elements of the invention were also new in their own right."

IP Australia has until January 25 to file an appeal and said it was not commenting at this stage.

Bruce Buchanan says the result feels like a big win. PHOTO: JOSH ROBENSTONE

Judge slams 'flagrant' media

Patrick Durkin

A judge in Victoria's County Court has accused media companies of flagrantly breaching of a confidential suppression order in a high-profile confidential case, warning that "important people in the media" are facing the prospect of jail.

The high-profile case returned to court on Thursday to discuss global media companies flouting the suppression order in relation to an Australian who has been convicted of a serious crime after a Victorian jury found the person guilty of charges this week.

The judge indicated on Thursday he was "angry" at the way the case had been reported across social media, global media sites available in Australia and local media, which have reported the suppression order without revealing the identity of the individual involved. "It is just breathtaking," the judge said, claiming the media were "bringing inappropriate and improper pressure upon me to vary or revoke my suppression order".

"Given how potentially egregious and flagrant these breaches are, a number of very important people in the media are facing, if found guilty, the prospect of imprisonment and indeed substantial imprisonment," he said. "You are supposed to leave the bench when you are angry, but I'll stay for a bit longer to finish this hearing off."

Local publications including *The Age*, the *Herald Sun*, Ten and Sky are applying to have the suppression order lifted in a hearing on Friday.

Global websites available in Australia including the Jeff Bezos-owned *The Washington Post* and National Public Radio were publishing the news on Wednesday and Thursday including in push notifications to Australians with the Washington Post app.

The suppression order issued by the Victorian County Court applies in "all Australian states and territories" and "on any website or other electronic or broadcast format accessible within Australia". Other global websites including the *Daily Beast*, which first reported the conviction, have geoblocked the reports to Australian readers.

"We understood there could be legal, and even criminal, consequences if we ran this story," *Daily Beast* editor Noah Shachtman told the *Post*. "[This is] major, major news. The public deserves to know about it."

The *New York Times*, a fierce rival of the *Post*, is yet to publish a story. Its Australian bureau chief, Damien Cave, indicated that was because it had "reporters on the ground in Australia" through its local bureau. The Guardian was also yet to publish a story.

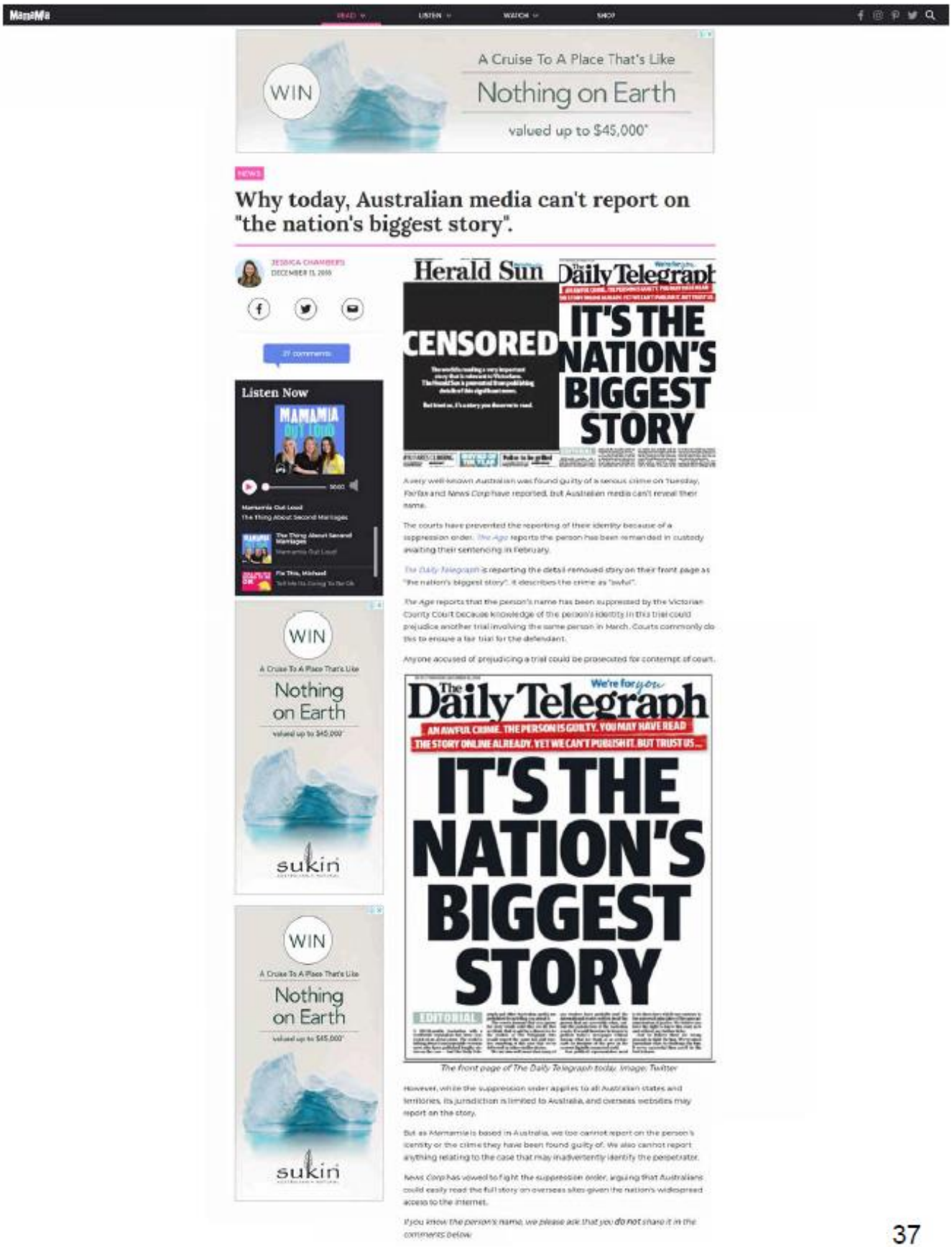
Major Australian news outlets on Thursday were forced to carry cryptic front pages about the case explaining that significant news had unfolded but could not be reported. "It's the nation's biggest story," *The Daily Telegraph*'s headline screamed in a full front-page story. "A high-profile Australian with a worldwide reputation has been convicted of an awful crime."

The Age ran a front-page story headlined "why media can't report on a high-profile case".

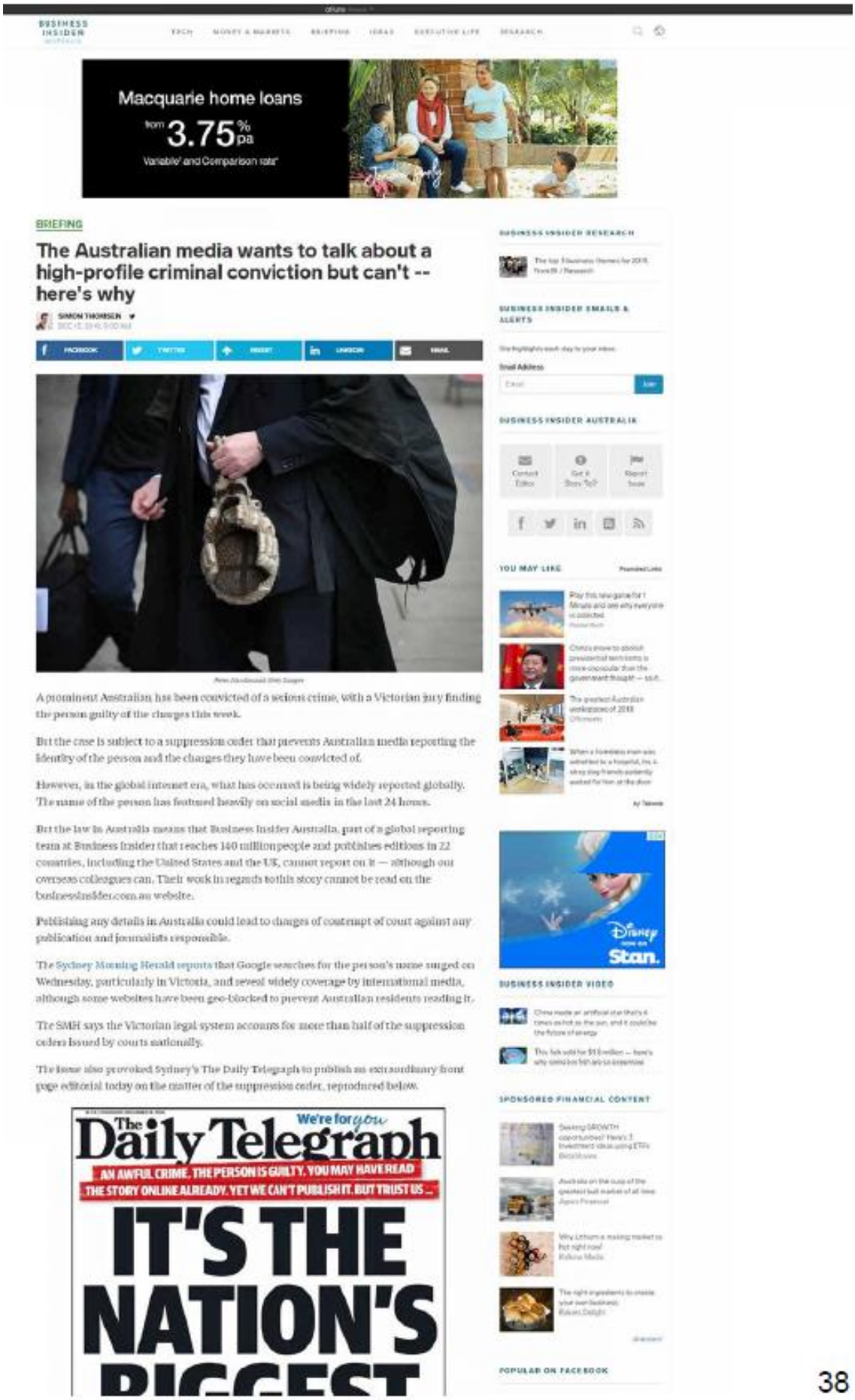
"A very high-profile figure was convicted on Tuesday of a serious crime, but *The Age* is unable to report their identity due to a suppression order."

The widespread reporting of the case globally and on social media has sparked a debate about the application of suppression orders – almost unheard of in the United States – despite being quite common in Australia.

Mamamia online article



Business Insider online article



38

The Daily Telegraph front page, December 13, 2018

If and when the suppression order is lifted, Business Insider Australia will bring you the details of what happened in the Victoria Justice system after the lengthy case against the high-profile person.

NOW WATCH: Briefing videos

Business Insider Emails & Alerts

Site highlights each day to your inbox.

Email Address

Join

Follow Business Insider Australia on Facebook, Twitter, LinkedIn, and Instagram.

TAGGED IN

They Pay for the Watch, You Pay For Shipping: Get Your Free Watch Now!

Victoria Residents: Win an E-Bike by Taking a Short Energy Survey

The Macpac Christmas Sale is on, with great deals across our entire range of outdoor gear

This $99 Dyson Breaks All Selling Records Right Now

The Essential Motorcycle Gear Guide

New Study Shows Extras Cover is A Massive Rip Off For Older Aussies

Taking the human element out of investing boosts portfolio performance

Sponsored Content

2GB Breakfast segment

Transcript

Station:	2GB	Date:	13/12/2018
Program:	BREAKFAST	Time:	05:41
Compere:	CHRIS SMITH	Summary ID:	X00077157333
Item:	SMITH MENTIONS THE DAILY TELEGRAPH REPORTS A HIGH PROFILE AUSTRALIAN WITH A WORLDWIDE REPUTATION HAS BEEN CONVICTED OF AN AWFUL CRIME.		

Audience:	Male 16+	Female 16+	All people
	N/A	N/A	N/A

CHRIS SMITH: Back home and there's an unusual story on the front pages, but we can't tell you what it is. True. The *Daily Telegraph* reports the case is that of a high profile Australian with a worldwide reputation who's been convicted of an awful crime. Now, the *Sydney Morning Herald* says it's a very high profile figure who's been convicted of a serious crime but the person's identity cannot be revealed because of a suppression order issued by the Victorian County Court. Now, it's reported the person whose case has attracted significant media attention was convicted on the second attempt after the jury in an earlier trial was unable to reach a verdict. Now, I'm saying this very carefully because I've got to be. The person is due to return to court in February for sentencing.

Now despite the suppression order, we're told Google searches for the person's name surged yesterday particularly in Victoria, with two of the top three results on the suppressed name showed websites that were reporting the charges, the verdict and the identity of the person in full. So as I said I can't tell you who it is. But I can also encourage you to get on Google and start asking these questions: high profile Australian, worldwide reputation, conviction of an awful crime. And you'll find out who it is.

* * End * *

TRANSCRIPT PRODUCED BY ISENTIA

www.isentia.com

5:32am Today Show segment

Transcript

Station:	CHANNEL 9	Date:	13/12/2018
Program:	TODAY	Time:	05:32
Compere:	NEWSREADER	Summary ID:	X00077157423
Item:	THE VIC COUNTY COURT HAS IMPOSED BANS TO MEDIA REPORTS ABOUT A HIGH-PROFILE AUSTRALIAN'S CONVICTION WHILE INTERNATIONAL MEDIA OUTLETS CAN. MULTIPLE MEDIA OUTLETS HAVE EXPRESSED THEIR ANGER OVER THE BAN, INCLUDING THE AGE.		

Audience:	Male 16+	Female 16+	All people
	N/A	N/A	N/A

NEWSREADER: A high profile Australian with a worldwide reputation has been convicted of an awful crime. But the media here are prevented from naming him.

Let's go live to *Today* Melbourne reporter Christine Ahern. Chris, what more can you tell us?

[Live cross]

REPORTER: Lara, very little, unfortunately. Because of a legal ban imposed by the Victorian County Court, I'm unable to reveal the identity of this person, details of this case, or their crime. All I can tell you is that we here at *Nine* believe this is a story that needs to be told. And we, and other members of the Australian media, are working very hard to be able to bring you at home the full story. The major newspapers around the country are obviously also very restricted in what they can report on, and they have taken to their pages to vent their frustration today. For instance, *The Age* newspaper here in Melbourne on their front page says: why media can't report on a high profile case. Orders by the court here in Australia don't apply overseas, so international media can report on this high profile case without the same restrictions. But other than saying that this person is due back in court in February, Lara, that is all I can say for now.

NEWSREADER: Alright, Christine. Thank you.

* * End * *

TRANSCRIPT PRODUCED BY ISENTIA
www.isentia.com

6:00am Today Show segment

Transcript

Station:	CHANNEL 9	Date:	13/12/2018
Program:	TODAY	Time:	06:00
Compere:	NEWSREADER	Summary ID:	X00077157380
Item:	A HIGH PROFILE AUSTRALIAN HAS BEEN CONVICTED OF AN AWFUL CRIME, BUT MEDIA CANNOT REPORT DUE TO A SUPPRESSION ORDER.		

Audience:	Male 16+	Female 16+	All people
	N/A	N/A	N/A

NEWSREADER: A high profile Australian with a worldwide reputation has been convicted of an awful crime. But the media here are prevented from naming them.

Live to *Today* Melbourne reporter Christine Ahern. Chris, what more can you tell us?

[Live cross]

REPORTER: Lara, unfortunately, not very much, apart from saying that because of a legal ban imposed by the Victorian County Court, I am unable to report on the identity of this person, details of the case, or their crime. All I can tell you is that we here at *Nine* believe that this is a very important story that needs to be told. And we, and other members of the Australian media, are working hard to be able to bring it to you in full at home. Obviously, our major newspapers are also very restricted in what they can report on and have taken to their pages to vent their frustration.

Here in Melbourne, *The Herald Sun* front page screams: Censored. The world is reading a very important story that is relevant to Victorians. *The Herald Sun* is prevented from publishing details of significant news. But trust us, it is a story that you deserve to read.

Orders by the court issued here in Australia don't apply overseas, which means that international media can report on this high profile case without the same restrictions. But other than saying that this person is due back in court in February, for now, that's all I'm legally able to tell you.

Lara.

NEWSREADER: Alright, Christine. Thank you.

* * End * *

TRANSCRIPT PRODUCED BY ISENTIA
www.isentia.com

7:02am Today Show segment

Transcript

Station:	CHANNEL 9	Date:	13/12/2018
Program:	TODAY	Time:	07:02
Compere:	LARA VELLA, BRENTON RAGLESS, DEB KNIGHT AND ERIN MOLAN	Summary ID:	X00077157999
Item:	LIVE CROSS TO CHRISTINE AHERN, CHANNEL 9 REPORTER ABOUT THE VIC COUNTY COURT RESTRICTING THE MEDIA FROM REPORTING ON A HIGH-PROFILE AUSTRALIAN'S CONVICTION.		

Audience:	Male 16+	Female 16+	All people
	n/a	n/a	n/a

DEB KNIGHT: Alright, let's go to our top story for you this morning now. And a high profile Australian with a worldwide reputation has been convicted of a crime but the media here are being prevented from naming them. Let's go live to our Today Melbourne reporter Christine Ahern.

Chris, what can you tell us?

[Live cross]

CHRISTINE AHERN: Deb, very little unfortunately. Because of a legal ban imposed by the Victorian County Court, I am unable to reveal the identity of this person, details of the case or their crime. All I can tell you is that we here at Nine believe that it is very important that we are able to tell this story and that we and other members of the Australian media are working very hard to be able to do so.

Of course, our major newspapers around the country are also very restricted in what they can report on and they've taken to their front pages to vent their anger and frustration. Here in Melbourne, the *Herald* [audio skip] front page reads censored: the world is reading a very important story that is relevant to Victorians, the *Herald Sun* is prevented from publishing details of this significant news, but trust us it's a story you deserve to read.

Court orders imposed here in Australia don't apply overseas, so international media are able to report on this story without the same restrictions. Rest assured, as soon as we are allowed to we will bring you more details on this case. This person is due again in court in February. For now that's all I'm able to say. Deb.

[End of live cross]

DEB KNIGHT: Alright, Christine Ahern there.

* * End * *

TRANSCRIPT PRODUCED BY ISENTIA
www.isentia.com

CERTIFICATE

I certify that this and the 112 preceding pages are a true copy of the reasons for ruling of the Honourable Justice John Dixon of the Supreme Court of Victoria delivered on 4 December 2020.

DATED this fourth day of December 2020.

.....
Associate

SCHEDULE OF PARTIES

THE QUEEN (ON THE APPLICATION OF THE DIRECTOR OF PUBLIC PROSECUTIONS	Applicant
THE HERALD AND WEEKLY TIMES PTY LTD	First Respondent
~~DAMON JOHNSTON~~	~~Second Respondent~~
CHARIS CHANG	Third Respondent
NEWS LIFE MEDIA PTY LTD	Fourth Respondent
QUEENSLAND NEWSPAPERS PTY LTD	Fifth Respondent
SAM WEIR	Six Respondent
THE GEELONG ADVERTISER PTY LTD	Seventh Respondent
~~ANDREW PIVA~~	~~Eighth Respondent~~
NATIONWIDE NEWS PTY LTD	Ninth Respondent
BEN ENGLISH	Tenth Respondent
~~LACHLAN HASTINGS~~	~~Eleventh Respondent~~
ADVERTISER NEWSPAPERS PTY LTD	Twelfth Respondent
~~MICHAEL OWEN-BROWN~~	~~Thirteenth Respondent~~
~~FAIRFAX MEDIA LIMITED~~	~~Fourteenth Respondent~~
THE AGE COMPANY PTY LTD	Fifteenth Respondent
ALEX LAVELLE	Sixteenth Respondent
~~BEN WOODHEAD~~	~~Seventeenth Respondent~~
PATRICK O'NEIL	Eighteenth Respondent
MICHAEL BACHELARD	Nineteenth Respondent
FAIRFAX MEDIA PUBLICATIONS PTY LTD	Twentieth Respondent
LISA DAVIES	Twenty-first Respondent
MICHAEL STUTCHBURY	Twenty-second Respondent
PATRICK DURKIN	Twenty-third Respondent

~~DANIELLE CRONIN~~	~~Twenty-fourth Respondent~~
~~FRANZISKA RIMROD~~	~~Twenty-fifth Respondent~~
MAMAMIA.COM.AU PTY LTD	Twenty-sixth Respondent
JESSICA CHAMBERS	Twenty-seventh Respondent
ALLURE MEDIA PTY LTD	Twenty-eighth Respondent
SIMON THOMSEN	Twenty-ninth Respondent
RADIO 2GB SYDNEY PTY LTD	Thirtieth Respondent
CHRIS SMITH	Thirty-first Respondent
~~RAY HADLEY~~	~~Thirty-second Respondent~~
GENERAL TELEVISION CORPORATION PTY LTD	Thirty-third Respondent
LARA VELLA	Thirty-fourth Respondent
CHRISTINE AHERN	Thirty-fifth Respondent
DEBORAH KNIGHT	Thirty-sixth Respondent