

**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

SECOND STATEMENT OF ANDREW REAPER

Date of Document: 4 August 2015
Filed on behalf of: State of Victoria
Prepared by:
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Level 33
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I, ANDREW REAPER, Deputy Commissioner, Corrections Victoria, SAY AS FOLLOWS:

1. I am the Deputy Commissioner of Offender Management within Corrections Victoria (**Corrections**). I have held this position since June 2012. This is the second statement I have made in this Royal Commission. My professional background is set out in my first statement dated 17 July 2015.

SCOPE OF STATEMENT

2. I have received a notice from the Royal Commission into Family Violence pursuant to section 17(1)(d) of the *Inquiries Act 2014* (Vic) requiring me to attend to give evidence at the Royal Commission and to provide a written witness statement.
3. In this statement I respond to a request by the Royal Commission for information regarding Module 20: Information Sharing.
4. I understand that the Royal Commission may be particularly interested in:
 - 4.1 the circumstances which permit the disclosure by Corrections of information about a prisoner or an offender to others; and
 - 4.2 the involvement of Corrections in the Risk Assessment and Management Panel (**RAMP**) pilot program that is led by the Department of Health and Human Services (**DHHS**) and Victoria Police.
5. I refer the Royal Commission to the oral evidence I gave on 24 July 2015, and the witness statement of Commissioner Janice Shuard dated 27 July 2015, in relation to

the information Corrections receives about an offender when they enter a correctional setting.

DISCLOSURE OF OFFENDER INFORMATION

6. Provisions within the *Corrections Act 1986 (Vic)* are relevant to the issue of whether Corrections may disclose information about an offender, or a prisoner, to another person. I refer the Royal Commission to some of the key aspects of this legislative framework below under the heading 'Corrections Act: Use and Disclosure Provisions'.
7. At the outset I note that there is also a range of other legislation that is relevant to the disclosure of information by Corrections. This legislation includes the *Privacy and Data Protection Act 2014 (Vic)*, section 189 of the *Serious Sex Offender (Detention and Supervision) Act 2009 (Vic)* and section 48LB of the *Sentencing Act 1991 (Vic)*.
8. I note also that victims of crime who are included on the Victims Register may receive certain information about a prisoner. This includes receiving a minimum of 14 days' notice before a prisoner is released on parole. I am aware that Ms Clare Morton of the Victims Support Agency, the agency responsible for administering the Victims Register, has made a statement in relation to Module 19. I refer the Royal Commission to Ms Morton's evidence for further information about the Victims Register.

CORRECTIONS ACT: USE AND DISCLOSURE PROVISIONS

Disclosure of information under the Corrections Act

9. Part 9E of the *Corrections Act* imposes obligations relating to the disclosure of information by "relevant persons", as defined in section 104ZX of the *Corrections Act* to include:
 - 9.1 prison governors, prison officers and certain other people working within prisons;
 - 9.2 regional managers and community corrections officers;
 - 9.3 members of the Adult Parole Board; and
 - 9.4 employees of the Department of Justice and Regulation.

10. All Corrections staff are employees of the Department of Justice and Regulation and, as such, are subject to these obligations.
11. The obligations apply in relation to 'personal or confidential information' (as defined by section 104ZX of the *Corrections Act*). This includes, but is not limited to, certain offender information, namely:
 - 11.1 information relating to the personal affairs of a person who is or has been an offender or a prisoner (see section 104ZX(a)); and
 - 11.2 information -
 - (a) that identifies any person or discloses his or her address or location (see section 104ZX(c)(i)); or
 - (b) from which any person's identity, address or location can reasonably be determined (see section 104ZX(c)(ii)).

Criminal offence around use and disclosure

12. Section 104ZZ of the *Corrections Act* makes it an offence for a person who is currently, or has previously been, a relevant person (as defined in s 104ZX) to use or disclose personal or confidential unless they are authorised to do so under sections 104ZY or 104ZZ of the Act.
13. The maximum penalty for a contravention is 120 penalty units.

Authorisation to use and disclose personal and confidential information

14. Section 104ZY(1) authorises a relevant person to use or disclose personal or confidential information if the use or disclosure is reasonably necessary for the performance of the relevant person's 'official duties'.
15. 'Official duties' is defined in section 104ZX to include, amongst other things:
 - 15.1 the administration of Corrections legislation (which is defined to include a range of legislation);
 - 15.2 law enforcement, including—
 - (i) the detection, investigation or prosecution or prevention of contraventions of the law; and

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- (ii) the enforcement of laws relating to the confiscation of the proceeds of crime; and
- 15.3 the administration or enforcement of an order of a court or tribunal.
- 16. Section 104ZY(2) provides a list of additional bases upon which a relevant person may use or disclose personal or confidential information. These include, but are not limited to:
 - 16.1 if the use or disclosure is reasonably necessary to lessen or prevent a serious and imminent threat to a person's life, health, safety or welfare or to public health (see section 104ZY(2)(a));
 - 16.2 with the authorisation, or at the request, of the person to whom the information relates (see section 104ZY(2)(b));
 - 16.3 if the information is disclosed to a person included on the Victims Register for the purposes of making a victim's submission (see section 104ZY(2)(e));
 - 16.4 if the use or disclosure is in accordance with the *Health Records Act 2001* (Vic) (see section 104ZY(2)(g));
 - 16.5 if the disclosure is to DHHS and the information is reasonably necessary to ensure the proper care, or housing, of a person who is or is likely to be provided with services by or on behalf of DHHS (see section 104ZY(2)(h) and (i)); and
 - 16.6 if the use or disclosure is specifically authorised or required by or under the *Corrections Act* or any other Act (see section 104ZY(2)(o)).
- 17. Section 104ZZ also authorises a relevant person to use or disclose information given to the Adult Parole Board that is not disclosed in a decision of the Board, or in any reasons given by the Board for its decision, if the use or disclosure is, amongst other things, reasonably necessary for:
 - 17.1 the administration of Corrections legislation; or
 - 17.2 for the preparation for, conduct of or participation in any criminal proceedings, proceedings before a tribunal or a coronial inquest or investigation; or

- 17.3 to lessen or prevent a serious and imminent threat to a person's life or safety.

Information held by Corrections

18. Corrections may have a range of information about an offender, including:
- 18.1 where the offender resides;
 - 18.2 what behavioural management programs the offender has undertaken whilst in prison or whilst subject to a community corrections order; and
 - 18.3 information relating to criminogenic risk factors for the offender, such as whether there has been an increase in substance use, unstable mental health, unemployment, or homelessness, and the identity of persons with whom the offender is associating.
19. This information is likely to have been obtained primarily from interactions with the offender through case management, and also through other mechanisms, including, but not limited to, the monitoring of an offender's telephone conversations while in prison, information from other prisoners, and information received from Victoria Police through the mechanisms established under the Memorandum of Understanding between Victoria Police and Corrections (**the Corrections-Victoria Police MOU (Attachment AR-1)**), which include having staff from both Corrections and Victoria Police embedded in each other's internal intelligence unit. Attachment 13 to the Corrections-Victoria Police MOU is entitled 'Exchange of Information between the Parties' and focuses on exchange of intelligence information (**Attachment AR-2**).
20. In circumstances where Corrections has reliable intelligence that indicates that there is a serious and imminent threat to a person's life, health, safety or welfare from an offender who has been or is about to be released from prison or is subject to a community corrections order, we will promptly disclose that information to Victoria Police. Where the offender is subject to a parole order, we will also disclose that information to the Adult Parole Board.
21. Information is also shared by Corrections where the sharing of the information is reasonably necessary for the performance of a Correction officer's official duties, such as to administer parole orders and for law enforcement purposes (for example, to investigate, prevent and detect parole breaches and reoffending). Section 90(2)

of the *Corrections Act* also permits Corrections officers to provide the Adult Parole Board with reports about an offender, such as a prisoner on parole.

22. If Corrections has information about the circumstances or behaviour of an offender who is on parole that does not necessarily demonstrate a breach of a condition of their parole order or indicate that another person is at serious and imminent risk of harm, but which nevertheless indicates an increase in an offender's criminogenic risk profile, Corrections will disclose that information to the Adult Parole Board. Victoria Police may also have access to some or all of this information through the information sharing mechanisms under the Corrections-Victoria Police MOU.
23. At times, an authorised officer on behalf of the Secretary to DHHS directs the provision of information, documents or assistance from Corrections concerning the protection or development of a child pursuant to section 196(2) of the *Children, Youth and Families Act 2005* (Vic). Pursuant to section 197(2) of that Act, it is an offence to refuse or fail to comply with such a requirement without reasonable excuse.
24. If a victim or victim's support service seeks information from Corrections about where an offender resides, what programs they have undertaken whilst in prison or whilst subject to a community correction order, or risk related information of the kind referred to above, Corrections is unable to disclose this information unless specifically authorised to disclose the information under the provisions of the *Corrections Act* which I have referred to above.
25. In my experience, it is not for a victim or victim's support service to seek such information. I am not aware of any recent occasions where information of this nature has been provided to a victim. This may be due to the difficulty of the requesting party providing Corrections with information sufficient to establish of a serious and imminent threat to a person's life, health, safety or welfare. Corrections must also take into account its own intelligence information relevant to the question of risk, which will include the geographical distance between where the offender is residing and where the victim is residing and any issues with the offender's compliance with parole conditions.

RISK ASSESSMENT MANAGEMENT PANELS

26. Corrections is a member agency of the RAMPs and has been part of the pilot programs operating in the Geelong and Broadmeadows areas. During RAMP

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meetings, Corrections staff will disclose information relating to an individual's response to their community corrections order or parole order, including any increase in criminogenic risk (for example, whether there is an increase in substance use or unstable mental health).

27. By virtue of their cases being discussed at the RAMP, these women and children are at serious and imminent risk of harm due to family violence. As such, Corrections may disclose information about a victim or a perpetrator if they are under Corrections' supervision pursuant to section 104ZY(2)(a) of the *Corrections Act*.

INTERAGENCY INFORMATION SHARING

28. Corrections has entered into a range of memoranda of understanding and protocols with other agencies to assist in the facilitation of information sharing in accordance with various legal requirements. These include:
- 28.1 the overarching Corrections-Victoria Police MOU, which I have referred to above (see Attachment AR-1, above);
 - 28.2 Attachment 13 to the Corrections-Victoria Police MOU, which I have referred to above (see Attachment AR-2, above);
 - 28.3 a memorandum of understanding with Victoria Police covering the Sex Offender Registry (**Attachment AR-3**);
 - 28.4 a protocol with DHHS Child Protection relating to offenders subject to a community corrections order (**Attachment AR-4**);
 - 28.5 a protocol with DHHS Child Protection relating to Restricted Access Prisoners (**Attachment AR-5**);
 - 28.6 a protocol with DHHS Child Protection relating to the Mothers and Children program in prisons (**Attachment AR-6**);
 - 28.7 a protocol with the Department of Human Services and the Department of Justice and Disability Services in 2008 (**Attachment AR-7**);
 - 28.8 a protocol with DHHS relating to Youth Justice and a nominated representatives list (**Attachments AR-8 and AR-9**); and

28.9 a memorandum of understanding with DHHS Disability Forensic Assessment and Treatment Service (**Attachment AR-10**).

29. A guideline has also been issued under the *Serious Sex Offender (Detention and Supervision) Act* (**Attachment 11**) to guide the circumstances in which Corrections may share information with other agencies in the context of the administration of that Act.

Signed by

Andrew Reaper

at Melbourne

this 4th day of August 2015

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Before me



An Australian legal practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)