



Victoria Government Gazette

No. S 563 Thursday 13 December 2018
By Authority of Victorian Government Printer

**ELIZABETH THE SECOND, BY THE GRACE OF GOD
QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH:**

I, the Honourable Linda Dessau AC, the Governor of the State of Victoria, with the advice of the Premier, under section 5 of the **Inquiries Act 2014** and all other enabling powers, appoint you the Honourable Margaret Anne McMurdo AC as Commissioner and Chairperson, and Malcolm Arthur Hyde AO APM as Commissioner

to constitute a Royal Commission to inquire into and report on the matters specified in the terms of reference.

BACKGROUND

- The reasons for decision of the High Court of Australia, the Victorian Court of Appeal and the Supreme Court of Victoria in *AB v CD*, *EF v CD* have detailed the conduct of Victoria Police in relation to the informant known as '3838', who was a criminal defence barrister recruited by Victoria Police to provide information about various members of the criminal fraternity, including those involved in the Melbourne 'gangland wars', some of whom were 3838's clients, between 2005 and 2009.
- There are appeal proceedings currently underway brought by three persons whose convictions are alleged to have been affected by the conduct of 3838, and it is anticipated that more cases may be affected, and further proceedings may be commenced.
- A case review was prepared by the former Chief Commissioner Neil Comrie into Victoria Police's handling of 3838, in particular the application of policies, control measures and supervisory practices relevant to their handling, and recommended that Victoria Police review all matters associated with 3838 to ensure all issues of significance were identified and appropriate actions taken.
- An independent inquiry by the Independent Broad-based Anti-corruption Commission, conducted by the Hon Murray Kellam AO QC in 2015, into human source management at Victoria Police found that Victoria Police had failed to act in accordance with appropriate policies and guidelines in their recruitment, handling and management of 3838, and found negligence of a high order and made recommendations for the future recruitment, handling and management of human sources.
- The former Director of Public Prosecutions, the Hon John Champion, conducted an internal investigation into the DPP's handling of the affected matters and found no evidence of inappropriate conduct on the part of the DPP or OPP, and found that those offices had no knowledge of the identity of 3838 or the use of 3838 as a human source by Victoria Police.

AND WHEREAS it is anticipated that you will, in the conduct of your inquiry:

- A. seek not to prejudice any ongoing investigations or judicial proceedings or exercise any of its coercive or investigative powers in a manner which would be in contempt of court;
- B. not unnecessarily duplicate the investigations or recommendations of inquiries or investigations previously conducted in these or related matters:
 - i. that are described in the background above or that otherwise come to your attention during the course of your inquiry; and
 - ii. insofar as they are relevant to the terms of reference for your inquiry;

SPECIAL

- C. work co-operatively, as appropriate, with other inquiries or investigations into Victoria Police's handling of 3838 to avoid unnecessary duplication;
- D. have regard to:
 - i. the existence of related judicial proceedings;
 - ii. the possibility of further proceedings being commenced by other affected persons;
 - iii. the safety of 3838 and other persons affected by the matters raised in this inquiry; and
- E. promptly bring to the attention of the Director of Public Prosecutions and the Commonwealth Director of Public Prosecutions any information or documents that you consider relevant to their functions, including their continuing duty of disclosure.

TERMS OF REFERENCE

You are appointed to inquire into and report on:

- 1. The number of, and extent to which, cases may have been affected by the conduct of 3838 as a human source.
- 2. The conduct of current and former members of Victoria Police in their recruitment, handling and management of 3838 as a human source.
- 3. The current adequacy and effectiveness of Victoria Police's processes for the recruitment, handling and management of human sources who are subject to legal obligations of confidentiality or privilege, including:
 - a. whether Victoria Police's practices continue to comply with the recommendations of the Kellam report; and
 - b. whether the current practices of Victoria Police in relation to such sources are otherwise appropriate.
- 4. The current use of human source information in the criminal justice system from human sources who are subject to legal obligations of confidentiality or privilege, subject to section 123 of the **Inquiries Act 2014**, including:
 - a. the appropriateness of Victoria Police's practices around the disclosure or non-disclosure of the use of such human sources to prosecuting authorities; and
 - b. whether there are adequate safeguards in the way in which Victoria Police prosecutes summary cases, and the Office of Public Prosecutions prosecutes indictable matters on behalf of the Director of Public Prosecutions, when the investigation has involved human source material.
- 5. Recommended measures that may be taken to address any systemic or other failures in Victoria Police's processes for the recruitment, handling and management of human sources who are subject to legal obligations of confidentiality or privilege, and in the use of such human source information in the broader criminal justice system, including how those failures may be avoided in future.
- 6. Any other matters necessary to satisfactorily resolve the matters set out in paragraphs 1–5.

You are required to report your findings and any recommendations to the Governor in relation to the specified matter [1] at first instance, and by 1 July 2019 or such other date as agreed between the Commission and the Government.

You are required to report your findings and any recommendations to the Governor in relation to the remaining matters as soon as possible thereafter, and no later than 1 December 2019 or such other date to be agreed between the Commission and the Government.

CONDUCT OF THE INQUIRY

You are directed to conduct your inquiry in accordance with section 12 of the **Inquiries Act 2014**.

You may also consult with experts and engage persons to provide relevant advice and assistance.

You are authorised to incur expenses and financial obligations to be met from the Consolidated Fund up to \$7,500,000.00 in conducting this inquiry.

These letters patent are issued under the Public Seal of the State.

WITNESS Her Excellency the Honourable Linda Dessau,
Companion of the Order of Australia, Governor
of the State of Victoria in the Commonwealth
of Australia at Melbourne this 13th day of
December two thousand and eighteen.

(L.S.)

LINDA DESSAU
By Her Excellency's Command
THE HONOURABLE DANIEL ANDREWS MP
Premier of Victoria

Entered on the record by me in the Register of Patents Book No. 47 Page No. 25 on the 13th day
of December 2018

CHRIS ECCLES
Secretary, Department of Premier and Cabinet

bluestar*PRINT

The *Victoria Government Gazette* is published by Blue Star Print with the authority of the Government Printer for the State of Victoria

© State of Victoria 2018

This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act.

Address all enquiries to the Government Printer for the State of Victoria

Level 2, 1 Macarthur Street
Melbourne 3002
Victoria Australia

How To Order**Retail &
Mail Sales****Victoria Government Gazette**

Ground Floor, Building 8,
658 Church Street,
Richmond 3121

DX 106 Melbourne

**Telephone**

(03) 8523 4601

**Fax**

(03) 9600 0478

email

gazette@bluestargroup.com.au

Price Code A