

J 23-8-2023

CONSENT ORDER

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2022/00214157

TITLE OF PROCEEDINGS

Plaintiff	RAYA MEREDITH
Defendant	STATE OF NEW SOUTH WALES

PREPARATION DETAILS

Prepared for	Raya Meredith, plaintiff
Legal representative	Rory Walsh Slater and Gordon Lawyers
Legal representative reference	Ref: M616559
Contact name and telephone	Rory Walsh Tel. 03 9602 6840
Contact email	<u>Shenae.Kiley@slatergordon.com.au</u>

TERMS OF ORDER MADE BY THE COURT BY CONSENT

Discovery

1. Vary Order 1 made 5 May 2023 as follows:

An order that, on or before **4pm Friday 25 August 2023**, the Defendant is to serve on the Plaintiff, in accordance with rules 21.3 and 21.4 of the *Uniform Civil Procedure Rules*, a verified list of all documents in its possession, custody or control relating to categories set out in **Annexure A** to these orders.

2. An order that, by **4pm Wednesday 6 September 2023**, the Defendant:
 - (a) complete its review of all claims of Legal Professional Privilege or Public Interest Immunity in relation to the discovered documents; and
 - (b) provide the Plaintiff a list of those discovered documents that the Defendant claims are not to be disclosed to the Plaintiff by reason of a claim of Legal Professional Privilege or Public Interest Immunity; and
 - (c) full particulars as to why the Defendant alleges that those documents are subject to the said claim.

Confidential Documents

3. Noting that the Defendant has provided hard copies of those documents that it has classified as "Alleged Confidential Information", an order that, on provision of confirmation to the Defendant that signed Confidentiality Undertakings by the Plaintiff, her current legal representatives and external counsel, in the form of **Annexure B** to these orders, has been provided to the Court, the Defendant is to produce by way of electronic upload, all documents classified as Alleged Confidential Information to the Plaintiff's electronic document management server, Reveal, within one business day thereof.
4. An order that, in the event the Court dismisses the Defendant's Motion dated 27 January 2023, seeking to de-class the proceedings and that the matter continues as a representative proceeding, paragraph 4(b) of the Confidentiality Undertaking (Annexure B) will not apply insofar as the Plaintiff will not be prevented from accessing documents in Category 1 or 2 that relate to other Group Members.
5. An order that, in the event the Plaintiff disputes the Defendant's assessment of the need for special protection regarding particular documents (or classes thereof), direct that the Plaintiff notify the Defendant of that dispute promptly and that the Defendant respond to such notification within 7 days of receipt of the Plaintiff's notification.

Note that the failure of the Plaintiff to dispute the Defendant's assessment of the need for special protection regarding particular documents (or classes thereof) does not amount to any admission on the part of the Plaintiff that the documents (or classes of documents) are in fact confidential or in fact warrant special protection.

Potential Additional Documents under Categories 7 and 8

6. The Court notes that the parties agree that the Plaintiff has reserved the right to seek other versions or iterations of the NSWPF Handbook and the Code of Practice for CRIME and/or other sections of the versions of the NSWPF Handbook and the Code of Practice for CRIME that are discoverable pursuant to categories 7 and 8 of Annexure A to these orders.
7. An order that, in the event that the Defendant receives a request as per the agreement noted in paragraph 6 above, the Defendant will provide discovery of those documents within 4 weeks thereof, by electronic upload to Reveal.

Document Management Protocol

8. An order that, by **Wednesday 6 September 2023**, the Plaintiff provide the Defendant with a proposed document management protocol for the exchange of documents in this proceeding.
9. An order that, by **Wednesday 20 September 2023**, the Defendant shall notify the Plaintiff of its agreement or otherwise to the proposed document management protocol.
10. In the absence of agreement, the parties have liberty to apply to the Court in relation to the proposed document management protocol.

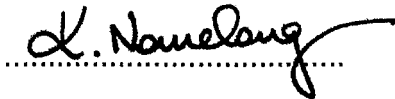
Timetable

11. Vary order 5 of the orders made 5 May 2023 as follows:

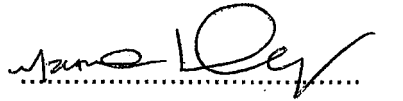
I direct, pursuant to rule 31.4 of the Uniform Civil Procedure Rules, that the plaintiff is to serve on the defendant a written statement of the oral evidence of each witness, including the plaintiff, that she intends to adduce in chief on any, and all, issues relating to the plaintiff's claim within 10 weeks of the completion of production of discovered documents by the Defendant.
12. Vary order 6 of the orders made 5 May 2023 as follows:

I direct, pursuant to rule 31.4 of the Uniform Civil Procedure Rules 2005, that the defendant is to serve on the plaintiff a written statement of the oral evidence of each witness that it intends to adduce on any, and all, questions of fact relating to the plaintiff's claim within 10 weeks of service of the plaintiff's witness statements.

13. Direct the Plaintiff to respond to the Defendant's letter of 19 May 2023 with respect to the distribution of opt out notices on or before 6 September 2023.
14. List the matter for directions on 13 December 2023.
15. The Defendant pay the Plaintiff's cost of and incidental to the Notice of Motion filed 17 July 2023.
16. Liberty to apply on three days' notice.



For the Plaintiff



For the Defendant

23 August 2023

ANNEXURE A

DISCOVERY CATEGORIES

(as amended at 23 AUGUST 2023)

1. All NSW Police records recording the stop and search of the Plaintiff and Splendour 2018 Group Members at Splendour 2018, including but not limited to COPS Events and notebook entries.
2. All Fact Sheets, Arrest Forms, Field Court Attendance Notices and Exhibits Forensic Information Management System (EFIMS) records in respect of drugs identified in the possession of Splendour 2018 Group Members at Splendour 2018.
3. All directives, operational orders, joining instructions or similar documents, and any records of trainings or briefings created for or provided to searching, drug detection dog, and "user-pays" police at Splendour 2018
4. The application for a warrant for the drug dog operation at Splendour 2018, including the supporting documents.
5. Documents relating to the specifications for and/or erection of structures to accommodate searches of people attending Splendour 2018 including directions given to third parties.
6. Documents relating to the training, re-qualifications, auditing and/or testing undertaken by police dog "Seeby" as well as all other drug detections dogs used for drug detection at Splendour 2018.
7. All training and education materials provided, prior to Splendour 2018, to those police officers who interacted with the Plaintiff at Splendour 2018 relating to:
 - (a) personal/general searches;
 - (b) strip searches; and
 - (c) use of drug detection dogs.
8. The NSW Police Force Handbook on person searches and strip searches in operation as at 20 July 2018.

NOTE

- A: Insofar as Categories 7 and 8 relate to the NSW Police Force Handbook and the Code of Practice for CRIME, the Defendant shall discover as at 23 August 2023:

- a. The following parts of the inaugural NSWPF Handbook and the Code of Practice for CRIME:
 - i. cover page and index
 - ii. all sections dealing with:
 - 1. personal/ general searches;
 - 2. strip searches; and
 - 3. use of drug detection dogs.
 - b. The following parts of the NSWPF Handbook and the Code of Practice for CRIME in force as at the date of Splendour 2018:
 - i. cover page and index
 - ii. all sections dealing with:
 - 1. personal/ general searches;
 - 2. strip searches; and
 - 3. use of drug detection dogs.
 - c. The parts of the NSWPF Handbook and the Code of Practice for CRIME provided to the LECC for the purposes of Operation Brugge, which included the chapters of the NSWPF Handbook *in effect as at Splendour 2018*.
- B: Note A does not seek to restrict the production of education material generally falling under category 7 it only intends to address the NSWPF Handbook and the Code of Practice for CRIME.
- C: The Defendant acknowledges that the Plaintiff has reserved the right to seek other versions or iterations of the NSWPF Handbook and the Code of Practice for CRIME and/or other sections of the versions of the NSWPF Handbook and the Code of Practice for CRIME that are discovered pursuant to categories 7 and 8.
9. Reports, policy or research documents, and aggregated statistical data created or commissioned by and in the possession of NSW Police and dating from between the period of 21 January 2016 and 22 July 2022 that record:

- (a) the efficacy of drug detection dogs in drug detection, excluding any audits of individual drug dogs;
 - (b) the general use of drugs and/or associated health risks of using drugs at music festivals;
 - (c) the efficacy of strip searches in managing drug use and drug related health risks; and
 - (d) the general impact of strip searches on persons searched.
10. All versions, or parts thereof, of the NSWPF Handbook and Code of Practice for CRIME in existence as at the date of the Splendour 2018 music festival in relation to person searching (including strip searches) and/or the use of drug detection dogs which were provided to:
- (a) Law Enforcement Conduct Commission (**LECC**) in relation to any music festival investigation (including Operation Gennaker, SF Blackford the December 2020 report *Inquiry into NSW Police Force strip search practices*); and/or
 - (b) the NSW State Coroner's Inquest into the death of six patrons at NSW Music Festivals (**Inquest**).

Definitions

'**documents**' includes but is not limited to records, databases, the Computerised Operational Policing System (**COPS**), emails, notebooks, duty books, file notes, fact sheets, audio, video, drafts and working papers.

'**search**' means search as that term is used in LEPRA and includes both a general and strip search.

'**Splendour 2018**' means the Splendour in the Grass Music Festival held in July 2018 at North Byron Parklands.

'**strip search**' has the meaning given under LEPRA and includes any of the acts pleaded at 7.3 of the Amended Statement of Claim.

'**Splendour 2018 group members**' means people who were strip searched at Splendour 2018.

ANNEXURE B

Confidentiality Undertaking

I _____ of _____ undertake to the Court as follows:

Interpretation

1. In this undertaking, **Alleged Confidential Information** means:
 - (a) documents produced in relation to category 1 of the orders for discovery of 5 May 2023 (the **Discovery Orders**);
 - (b) certain documents, identified by the Defendant as being subject to this protocol, produced in relation to category 2 of the Discovery Orders; and
 - (c) any other document that the Plaintiff and the Defendant agree in writing to be an Alleged Confidential Document, and which the Defendant marks as being confidential.
2. In this undertaking, the **Proceeding** means the case titled *Meredith v State of New South Wales* in the Supreme Court of New South Wales, Matter No. 2022/214157.

Terms of this undertaking

3. I will not use any Alleged Confidential Information other than for the purpose of the conduct of the Proceeding or carrying out my duties in relation to the conduct of the Proceeding.
4. Unless expressly agreed to by the solicitors acting for the Defendant (State of New South Wales), Makinson d'Apice Lawyers, I will not disclose any Alleged Confidential Information to any person other than the following:
 - (a) the Court;
 - (b) the Plaintiff, but not in relation to documents that relate to other group members and provided that the Plaintiff has signed an undertaking in the same terms as this undertaking and such undertaking has been filed confidentially with the Court;
 - (c) a Partner or employee of Slater and Gordon Lawyers who performs any work in connection with this proceeding, provided that each such person has signed an undertaking in the same terms as this undertaking and such undertaking has been and such undertaking has been filed confidentially with the Court;

- (d) external counsel retained by the Plaintiff in this proceeding, provided that each such person has signed an undertaking in the same terms as this undertaking and such undertaking has been and such undertaking has been filed confidentially with the Court;
 - (e) any other person (including expert witnesses, consultants and providers of litigation support services) retained by or on behalf of the Plaintiff or any witness proposed to be called by the Plaintiff, provided that each such person has signed an undertaking in the same terms as this undertaking and such undertaking has been filed confidentially with the Court;
 - (f) any group member, save that the group member shall not access the documents that relate to group members other than that group member, and provided that each such person has signed an undertaking in the same terms as this undertaking, and such undertaking has been confidentially filed with the Court; and
 - (g) Makinson d'Apice Lawyers or any of their employees.
5. If I store or handle the Alleged Confidential Documents, or cause them to be stored or handled (including by printing them), I will make only such copies as are reasonably necessary for the purpose set out in [3] above and ensure that any such copies are stored in a safe place.
 6. I will immediately notify Makinson d'Apice Lawyers of any suspected or actual unauthorised use, copying or disclosure of the Alleged Confidential Documents of which I become aware, and take all steps which Makinson d'Apice Lawyers may reasonably require in relation to such actual or likely unauthorised disclosure or use.
 7. If I am uncertain as to whether any information is Alleged Confidential Information I will treat the information as if it were Alleged Confidential Information unless and until Makinson d'Apice Lawyers agrees in writing that the information is not Alleged Confidential Information.
 8. At the conclusion of the Proceeding, or my ceasing to have any involvement in the Proceeding, I will immediately return to Makinson d'Apice or immediately destroy or delete (as appropriate) all records and materials (and copies of those records and materials) containing or embodying the Alleged Confidential Information, or in the case of electronic copies of the Alleged Confidential Information that cannot be deleted (for example, copies permanently stored on a back-up server), continue to keep the copies confidential in accordance with this undertaking.

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9. This undertaking does not extend to any Alleged Confidential Information where the information is already in the public domain or comes into the public domain otherwise than by a breach of this undertaking.

[EXECUTION CLAUSE.]