

SUPREME COURT OF QUEENSLAND

CITATION: *ABC v A Magistrates Court of Queensland* [2026] QSC 203

PARTIES: **ABC**
(first applicant)
FAIRFAX MEDIA PUBLICATIONS PTY LTD
QUEENSLAND NEWSPAPERS PTY LTD
NATIONWIDE NEWS PTY LTD
AUSTRALIAN BROADCASTING CORPORATION
SEVEN NETWORK (OPERATIONS) LIMITED
(second applicants)
v
A MAGISTRATES COURT OF QUEENSLAND
(first respondent)
THE COMMISSIONER OF POLICE
(third respondent)

FILE NO: SC 62 of 2026

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED ON: 28 August 2026

DELIVERED AT: Cairns

HEARING DATE: 31 July 2026

JUDGE: Henry J

ORDERS:

1. It is declared that, subject to further order of the Magistrates Court, its order 4 of 8 June 2026, set out at paragraph 8 of my reasons, has the effect of prohibiting publication of the information referred to in it (other than as between the parties and the Court).
2. The application is otherwise dismissed.
3. I will hear the parties as to costs, if costs are not agreed, at 9am on 7 September 2026, out of town parties having leave to appear by video link.

CATCHWORDS: JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – REVIEW OF PARTICULAR DECISIONS – GROUNDS OF REVIEW – IRRELEVANT CONSIDERATIONS – PROCEDURAL FAIRNESS – POWERS OF COURTS UNDER JUDICIAL REVIEW LEGISLATION – DECISIONS TO WHICH JUDICIAL REVIEW LEGISLATION APPLIES – where the applicants

seek a judicial review of a magistrate’s decision – where the decision was the making of a non-publication order about the identification of a person not a party to the proceeding below – where the proceeding below involves an alleged threat of extortion by the first applicant against his former spouse to expose personal information involving the non-party – whether the law allows non-publication orders to extend to persons to whom an extortion threat relates other than the complainant – whether the Magistrate below engaged in jurisdictional error by making the order

Judicial Review Act 1991 (Qld), ss 30, 47

Hogan v Hinch (2011) 243 CLR 506, cited

J v L&A Services Pty Ltd (No 2) [1995] 2 Qd R 10, cited

John Fairfax & Sons Ltd v Police Tribunal (NSW) (1986) 5 NSWLR 465, cited

John Fairfax Group Pty Ltd v Local Court of NSW (1991) 26 NSWLR 131, cited

Lehrmann v Queensland Police Service (2023) 17 QR 154, cited

LPDT v Minister for Immigration (2024) 280 CLR 321, cited

R v Kwok (2005) 64 NSWLR 335, cited

R v Socialist Worker Printers & Publishers Ltd, Ex parte Attorney-General [1975] 1 QB 637, cited

R v Sridharan [2016] QDC 170, cited

Rockett v Smith, Ex parte Smith [1995] 1 Qd R 660, cited

COUNSEL: B Bilic for first applicant
AI O’Brien KC, with AM Campbell, for second applicants
JM Horton KC for third respondent

SOLICITORS: Fisher Dore for first applicant
Bartley Cohen for second applicants
No appearance for first respondent
QPS Legal Service for third respondent

[1] The first applicant, ‘ABC’,¹ was in a relationship which ended. A property dispute ensued. ABC allegedly tried to extort his former spouse, ‘the complainant’, to accept \$15,000 less than a previously agreed property settlement sum, by threatening to expose personal information.

[2] That information was that:

- a friend of the complainant had been unfaithful to her husband; and
- there had, years ago, been a relationship between the complainant and a married man, ‘MM’.²

¹ The first applicant’s name was anonymised as ABC – in hindsight a confusing coincidence with the acronym of one of the second applicants.

² The married man’s name was anonymised as MM.

- [3] In connection with the latter threat, ABC also allegedly said he would contact MM, his wife and place of employment, and that the \$15,000 shortfall should be paid by MM, who the materials describe as having a ‘public profile’.
- [4] The complainant went to the police. ABC was charged with the crime of extortion. A Magistrate made orders precluding the publication of information tending to identify ABC, the complainant and MM in connection with the proceeding.
- [5] Disappointed by that outcome, ABC and some media outlets seek this Court’s interference, arguing the non-publication order should not have extended to MM.

What are the issues to be determined?

- [6] During ABC’s early appearances in the Magistrates Court, defence counsel properly suggested there was a need for an order prohibiting publication of information leading to the identification of the complainant in connection with the proceeding. A like need in respect of ABC and MM was eventually identified and the prosecution applied for a non-publication order related to the complainant, ABC and MM. By that time, MM’s identity had been revealed in Court, but the identity of the complainant’s friend and her husband had not been revealed. Presumably, that explains why there was not yet any application pertaining to the latter persons (although of course it would not have precluded such an application).
- [7] It was common ground there could be no publication leading to the identification of the complainant, or of ABC – for to identify him may lead to the identification of the complainant. However, argument ensued about whether a non-publication order should extend to MM. The presiding Magistrate concluded it should. Her Honour made non-publication orders intended to prohibit publication of information leading to the identification of the complainant, ABC and MM in connection with the proceeding.
- [8] The wording of the orders as endorsed on the file below is not in evidence before me. The Magistrate’s decision, given orally on 8 June 2026, did not recite the detail of what she was ordering. Rather her Honour stated her orders were in the terms sought in the prosecution’s application for a suppression order. Those terms, and therefore the orders made, were:
 - 1. The name of the married man identified in the threat to cause detriment be identified as a pseudonym “MM”;
 - 2. The complainant’s name and details of the threat to cause detriment including the name of a married man (MM) identified in the material be suppressed;
 - 3. The defendant’s name be suppressed;
 - 4. A non-publication order prohibiting the publication of information which could tend to identify the identity of the complainant and the details of the threat to cause detriment including the name of a married man (MM) identified in the material.

- [9] ABC and a group of media outlets apply, on judicial review, for orders under ss 30 and 47 *Judicial Review Act 1991* (Qld), quashing the Magistrate's decision of 8 June 2026 and declaring that the decision 'is invalid and of no effect'.³
- [10] The applicants' central complaint is against the inclusion of reference to MM in the Magistrate's order. They acknowledge the law in extortion cases permits non-publication orders to prevent publication of information identifying the person complaining of the extortionate threat, i.e. the complainant. However, they contend the law does not allow non-publication orders to extend to other persons to whom the threat relates.
- [11] In my conclusion the law is not so confined, and it was open to the presiding Magistrate to conclude her orders should extend to MM. While the applicants must fail in their central argument, as well as their specific grounds, it is prudent to make a declaration removing some potential uncertainty in the wording of one of her Honour's orders.
- [12] The review turns upon the following issues:
- (a) Can non-publication orders in extortion cases extend to not identifying persons to whom the threat relates other than the complainant?
 - (b) Was it open to the Magistrate here to make a non-publication order extending beyond not identifying the complainant to also not identifying MM?
 - (c) Did the Magistrate engage in jurisdictional error by taking an irrelevant consideration into account?
 - (d) Did the Magistrate engage in jurisdictional error because she could not have been rationally satisfied the order was necessary?
 - (e) Did the Magistrate pre-judge the case?
 - (f) Do the orders bind all jurisdictions for all time?
 - (g) What orders should be made by this Court?
- [13] In turning to determine the issues I emphasise that while my determination necessarily requires consideration of the nature of the allegations against ABC, nothing I say involves an adjudication of the truth of what is alleged.
- (a) Can non-publication orders in extortion cases extend to not identifying persons to whom the threat relates other than the complainant?**
- [14] The maxim that justice must not only be done but be seen to be done has long been reflected in the principle of open justice which guides the administration of justice in our democracy. Under the open justice principle, court proceedings are usually open to the public and members of the public are usually at liberty to publish the information emerging in those proceedings.

³ The decision to grant an application for a non-publication order appears to have been a decision of a judicial rather than an administrative character – see *Lehrmann v Queensland Police Service* (2023) 17 QR 154, 167 – with the consequence that it is s 47, rather than s 30, which would be the apt potential pathway to relief.

- [15] Those iterations of the open justice principle facilitate scrutiny of court proceedings and promote public confidence that judicial power is exercised independently and impartially.⁴ Such benefits are so strongly in the interests of the administration of justice that, at common law, orders closing courts to the public or preventing publication of information that emerges in court proceedings are confined to that exceptional category of case in which such orders are ‘necessary to secure the proper administration of justice’.⁵ It is that necessity which founds the exercise of a superior court’s inherent jurisdiction and a lower court’s implied power to make such orders.⁶
- [16] It is well-established that blackmail cases may fall into that exceptional category of case where non-publication orders are needed to secure the proper administration of justice.⁷ Cases analogous to blackmail cases, which would include extortion cases involving the threatened exposure of adverse information about people, may also fall into that category.⁸ Such offences rely for their success on the fear of publicity they invoke in their target.⁹ The courts have long used non-publication orders in dealing with such offences because there is a ‘keen public interest’ in getting the offender convicted and sentenced and ‘experience shows that grave difficulty may be suffered in getting complainants to come forward unless they are given this kind of protection’ from the feared publicity on which the success of the crime relies.¹⁰
- [17] The well-established rationale supporting the need for non-publicity orders in such cases, in order to secure the proper administration of justice, is:
- if the threatened exposure feared by a complainant were to occur because of publication of information emerging in the open court prosecution of the complaint;
 - future potential complainants would be deterred from making complaints; and
 - such a deterring effect would contradict the courts’ mission of securing the proper administration of justice.¹¹
- [18] The applicants argue that rationale only justifies orders protecting the identity of the complainant, and not that of others who would be identified if the criminal threat were carried out. The flaw in that argument is the assumption that a complainant’s fear of the publicity on which the success of the crime turns would solely be fear of publicity identifying the complainant. In some cases, and this is obviously one of them, the complainant’s fear may also be of publicity identifying other persons.

⁴ *Hogan v Hinch* (2011) 243 CLR 506, 530.

⁵ *Hogan v Hinch* (2011) 243 CLR 506, 531.

⁶ *John Fairfax & Sons Ltd v Police Tribunal (NSW)* (1986) 5 NSWLR 465, 477; *Hogan v Hinch* (2011) 243 CLR 506, 531.

⁷ *R v Socialist Worker Printers & Publishers Ltd, Ex parte Attorney-General* [1975] 1 QB 637, 644; *Rockett v Smith, Ex parte Smith* [1995] 1 Qd R 660, 671; *John Fairfax Group Pty Ltd v Local Court of NSW* (1991) 26 NSWLR 131, 161; *Hogan v Hinch* (2011) 243 CLR 506, 531.

⁸ *R v Kwok* (2005) 64 NSWLR 335, 342; *John Fairfax Group Pty Ltd v Local Court of NSW* (1991) 26 NSWLR 131, 161; *J v L&A Services Pty Ltd (No 2)* [1995] 2 Qd R 10, 44; *R v Sridharan* [2016] QDC 170 [14].

⁹ *R v Kwok* (2005) 64 NSWLR 335, 342.

¹⁰ *R v Socialist Worker Printers & Publishers Ltd, Ex parte Attorney-General* [1975] 1 QB 637, 644

¹¹ *R v Socialist Worker Printers & Publishers Ltd, Ex parte Attorney-General* [1975] 1 QB 637, 644; *R v Kwok* (2005) 64 NSWLR 335, 342; *Rockett v Smith, Ex parte Smith* [1995] 1 Qd R 660, 671; *John Fairfax Group Pty Ltd v Local Court of NSW* (1991) 26 NSWLR 131, 161.

- [19] It is important to appreciate the above rationale is not calculated in its own right at protecting those who are at risk of being publicly identified in the case under consideration. That non-publication orders will have that effect in the case at hand is merely a means to an end. That means is to signal, by example to future complainants, that the criminally threatened public exposure which is feared by them will not occur as a result of the court proceeding likely to flow from them coming forward with their complaint.
- [20] In attempting to confine the rationale's application, the applicants emphasise that non-publication orders in the past blackmail or extortion cases they have found only related to the person they describe as the 'victim' of the alleged crime. It is preferable to deploy the term 'complainant' in this context, both because offences may have an array of victims other than the complainant and because the rationale's focus is upon not deterring future complainants from coming forward to complain of crimes of this kind.
- [21] It is doubtful whether non-publication orders attract the frequency of reported attention in law reports which the final adjudication of cases attract. Difficulty in isolating particular types of past such orders does not mean there have not been any.
- [22] In any event, whether the parties can find an order in past cases protecting persons additional to the complainant is not to the point. The material consideration is whether a need for such an order arises in the case under consideration, pursuant to the above rationale.
- [23] Under that rationale the issue is whether it would appear to future prospective complainants that, by not making a non-publication order of the breadth sought, the court failed to prevent the public exposure likely feared by the complainant, thus deterring such prospective complainants from coming forward. If the feared exposure included exposure of persons additional to the complainant, then it would be open to the court to conclude it is necessary to make a non-publication order extending to those other persons.
- [24] Note that the Court's decision is logically informed, in its application of the above rationale, by what threatened exposure future prospective complainants would likely perceive the complainant was in fear of, in the absence of a non-publication order. Their likely perception is relevant because the whole point of non-publications orders in cases like this is to avoid deterring future complainants from coming forward to complain of a crime which relies for its success on their fear of the publicity threatened by the criminal.

(b) Was it open to the Magistrate here to make a non-publication order extending beyond not identifying the complainant to also not identifying MM?

- [25] Applying the above analysis to the present case, what would future prospective complainants perceive of the nature of the exposure likely feared by the complainant here?
- [26] If ABC did make the alleged threat, he doubtless thought it was likely to induce the complainant to settle the dispute for less, because of her inevitable fear that the exposure of the information would cause embarrassment and emotional pain to her

and the other persons named in the threat.¹² The embarrassment and emotional pain to the complainant would not only derive directly from the exposure of her as a person who had been in a relationship with MM, a married man. The complainant's embarrassment and emotional pain would also derive indirectly from the emotional pain and embarrassment caused to MM and the other persons named. That would occur in at least two ways. First, the complainant would carry the burden of knowing she had been ABC's source of the information and may be perceived by others to have been the source. Second, she would carry the additional burden of causal responsibility, knowing she could have avoided the occasioning of pain and embarrassment to those others by complying with ABC's demand.

- [27] The above inferences derive in an obvious way from the basic nature of the alleged threat and common knowledge of ordinary human feelings. Hence, future prospective complainants would likely perceive the nature of the exposure feared by the complainant here was not merely exposure of her identity, but also exposure of the other persons named in the threat.
- [28] MM was one of those other persons and his identity had been revealed in court. It follows that a failure to prohibit publication of information leading to his identification in connection with the case – thus allowing a feared part of the exposure to occur – would deter future prospective complainants from coming forward to complain of similar crimes in the future. It was thus well open to the presiding Magistrate to conclude it was necessary to make a non-publication order prohibiting publication of information in connection with the case leading to the identification, not just of the complainant, but of MM too.
- [29] I note two further points for completeness. First, the above conclusion is especially compelling in a case like the present, because it is obvious from events below that substantial, and probably sensational, publicity of MM's identity in connection with the case would occur in the absence of a non-publication order extending to MM. The prospect of such publicity, which would only heighten the deterring impact of the absence of such an order, is a logically relevant consideration.¹³ Second, the possibility that the identification of MM in connection with the case could lead to the identification of the complainant, at least by those who know one or the other of them closely, was not addressed in her Honour's reasons or in argument before me. It is thus unnecessary to consider whether that possibility could also have supported the need to make the order.
- [30] Having dispensed with the applicant's central argument, it nonetheless remains necessary to consider some residual arguments run in respect of the discrete grounds of review. However, because those grounds allege jurisdictional error, which requires that the error meet a materiality threshold,¹⁴ it will not be necessary to consider every minor critique advanced in submissions about aspects of what occurred below.

(c) Did the Magistrate engage in jurisdictional error by taking an irrelevant consideration into account?

¹² The pain and embarrassment might also extend to the families or loved ones of the complainant and the other persons named in the threat but it is unnecessary to ventilate that aspect in these reasons.

¹³ *John Fairfax Group Pty Ltd v Local Court of NSW* (1991) 26 NSWLR 131, 165.

¹⁴ *LPDT v Minister for Immigration* (2024) 280 CLR 321, 327-329.

- [31] The applicants allege, in ground 2 of their application:

A jurisdictional error arises because Acting Magistrate ... Meoli took into account an irrelevant criterion (further or alternatively, misapprehended the power being exercised) by considering that an order which only suppressed the identity of the complainant and the accused was not within the scope of the power.

- [32] To understand the argument pertaining to this ground it is first necessary to review her Honour's reasoning.

- [33] In her oral reasons, the presiding Magistrate noted the media's freedom to report what transpires in court proceedings is an incident of the usual practice that such proceedings occur in open court. Her Honour noted there are some statutory exceptions to the right to publish information disclosed in open court, but that they did not apply to the proceeding before her. However, her Honour observed the court could, at common law, 'restrict public access, order suppression orders and non-publication orders' where 'the open court principle actively threatens to destroy the very justice the court is trying to serve'.

- [34] Her Honour referred to an authority suggesting a court should 'only depart from the basic principle that proceedings take place in public and without any limitations thereon' unless 'justice could not be done because of the grave difficulty in having the witnesses come forward' in some kinds of cases. Her Honour identified blackmail and extortion cases as such cases, explaining that 'if a threat in these types of cases is not suppressed and non-publication orders made, then victims of this type of offending will not come forward with their complaints'.

- [35] The presiding Magistrate digressed to emphasise the order she had in mind was based on the application of the law as it applies to any person, whether high profile or not. Her Honour proceeded to observe that, if the order was not made, the complainant would have 'no protection and the threat to cause the detriment by the respondent' would be 'chieved by the public exposure of the persons' identities 'during a judicial process under the principle of open justice'. Her Honour concluded:

The exception clearly applies to this application to ensure the proper administration of justice, by giving protection to the victim and other victims and ensuring that victims of this type of offending feel safe to report this type of offending. The threat of exposing the married man, it goes to the very heart of the threat, in my view. And by not suppressing the married man's name, then offers the complainant no protection, and as I have already stated, enables the respondent to achieve publicly the very nature of the charge of extortion. Therefore, the orders sought by the applicant are granted.

- [36] The first and second applicants' submissions in support of ground 2 characterised the above references to an order not suppressing MM's name as offering the complainant 'no protection' and to enabling ABC 'to achieve publicly the very nature of the charge of extortion', as references to irrelevant criteria. Those submissions seemed to assume, wrongly, that the complainant would only be in fear of her own exposure. The correct position, for reasons already explained, is that her fear would also have

been the exposure of the other persons ABC allegedly threatened to expose if the complainant did not comply with his extortionate demand.

- [37] The applicants' submissions relied upon isolated passages in her Honour's oral reasons, without regard to context. The context included that it was not in issue there should be a non-publication order in respect of the identification of the complainant. The issue argued, and thus attracting more direct attention in the reasons, was whether such an order should extend to identification of MM.
- [38] The reasoning underpinning the conclusion that the non-publication order should extend to MM, additional to the complainant, went to the need to avoid deterring future complainants from coming forward. That deterrent effect is what her Honour was referring to in using language such as 'ensuring that victims of this type of offending feel safe to report this type of offending'.
- [39] Considering her Honour's earlier reasoning, the point she was in effect making about the threatened exposure of MM 'going to the very heart of the threat' and enabling ABC 'to achieve publicly the very nature of the charge of extortion', was that the threat was calculated at having extortionate impact by inducing the complainant to fear not merely the exposure of her but also of MM. If the non-publication order failed to preclude publication identifying MM it would facilitate rather than prevent the occurrence of a core component of the exposure threatened to and feared by the complainant.
- [40] As to her Honour's reference to offering the complainant 'no protection', it was, in context, a reference to not protecting the complainant from the threatened and feared exposure of MM.
- [41] Viewing the oral reasons as a whole, her Honour's reasoning correctly followed the orthodox common law rationale for why a non-publication order is needed in some blackmail and extortion cases. That reasoning was that if the non-publication order did not extend to MM, then prospective future complainants would be deterred from making complaints of like criminal conduct because they would perceive that the court failed to protect the complainant from a component, likely feared by her, of the criminally threatened exposure.
- [42] It follows ground 2 has failed.

(d) Did the Magistrate engage in jurisdictional error because she could not have been rationally satisfied the order was necessary?

- [43] Ground 1 of the application alleges:
 - A jurisdictional error arises from Acting Magistrate ... Meoli's decision to grant a non-publication order that included the name of the person 'MM' because:
 - (a) The Court could not rationally be satisfied that such an order was a 'necessity' for the proper administration of justice in proceedings before it as a matter of logic ('the logic ground');
 - (b) The Court could not rationally be satisfied that such an order was a 'necessity' for the proper administration of justice in proceedings

before it in circumstances where there was no evidentiary basis on which to be so satisfied ('the evidence ground').

- [44] The applicants' submissions in support of their logic ground relied to a large extent upon the flawed premise, already dispensed with, that deterrence of future like complaints could be avoided by merely prohibiting the identification of the complainant. That narrow construct ignores that a substantial component of the threatened exposure, inevitably feared by an ordinary person in the position of the complainant, included identification of others additional to the complainant.
- [45] In arguing their logic ground the applicants also relied upon the alleged lack of logic in the order not prohibiting the threatened identification, also inevitably feared by the complainant, of the complainant's friend and her husband.
- [46] That reliance is misplaced for two reasons. Firstly, her Honour may merely have overlooked a need to make an order against the identification of the complainant's friend and her husband. Such an order was not sought and the need for it was not substantively pursued in argument. Secondly, it is not apparent that at the time of argument there was such a need. The filed materials do not suggest the complainant's friend and her husband had been named in court, as MM had been. That being so, the immediacy of the need for an order regarding the identification of the complainant's friend and her husband was not present in the same way as it was regarding the identification of MM.
- [47] To remove doubt, it is not apparent on the materials before this Court how the complainant's friend and her husband will be referred to in the proceeding as it progresses. Further, these reasons should not be taken as indicating that a risk of publication, if foreseeable, must be at the brink of manifesting before a non-publication order becomes necessary. There may be cases where the foreseeability of the risk allows a court to conclude a non-publication order is needed before the brink is reached.
- [48] Turning to the evidence ground, the applicants submit there was no evidentiary foundation for the conclusion that the order, as it related to MM, was necessary. It is uncontroversial that there must be some material before the court upon which it can reasonably reach the conclusion a non-publication order is necessary to enable it to act effectively within its jurisdiction.¹⁵
- [49] However, that material will not always take the form of affidavit evidence or oral testimony. For example, there may be common ground as between the parties about the information upon which the presiding Magistrate should act. Further, decisions about non-publication orders may arise early or urgently in the life of a proceeding, so that, even if such orders are then made, it may not be the end of relevant decision-making on the topic. As new information emerges before a court it may conclude a previously granted order should be vacated or amended.
- [50] In the present case the order was made relatively early in the life of the proceeding. The apparent need for the non-publication order necessarily fell to be assessed by reference to the factual allegations on which the prosecution was based. Those allegations are summarised at the outset of these reasons. The parties below appear

¹⁵ *John Fairfax & Sons Ltd v Police Tribunal (NSW)* (1986) 5 NSWLR 465, 477.

to have been in agreement as to what those allegations were. The presiding Magistrate was therefore entitled to proceed on the basis that the factual allegations described the conduct which, if later proved, constituted the charged offence of extortion.

- [51] These reasons have already explained how the inferences supporting her Honour's reasoning were readily drawn from knowledge of ordinary human feelings and the basic factual allegations. The common ground as to the nature of the basic factual allegations provided a satisfactory evidentiary basis for her Honour's decision. In this context it should be appreciated the deterrent consequences of not making a non-publication order will not usually be the subject of evidence, the assessment usually being a matter of inference by the court.¹⁶
- [52] It follows there is no substance to the complaint that her Honour lacked an evidentiary basis to conclude her order was necessary, as it pertained to not identifying MM.
- [53] I record for completeness that an argument advanced in support of ground 1, about her Honour's treatment of some objected-to hearsay evidence in an affidavit before her, is irrelevant to the ground's allegation of jurisdictional error based on a lack of 'evidentiary basis'. Even if there had been some error in the treatment of the objected-to evidence, it would need to have been material to the decision in order to make good a complaint of jurisdictional error.¹⁷ In this context that complaint is that there was allegedly an absence of an evidentiary basis to decide a non-publication order pertaining to MM was a necessity. These reasons have just explained there existed such a basis and the treatment of the objected-to evidence was not material to whether that basis existed.
- [54] Ground 1 has failed.

(e) Did the Magistrate pre-judge the case?

- [55] Ground 4 of the application alleges:
- A jurisdictional error arises in that Acting Magistrate ... Meoli's decision was a breach of the rules of natural justice ('the procedural unfairness ground').
- [56] This ground is based on the seeming discovery of a document containing what appears to be typed notes, including prospective reasons and orders, which the presiding Magistrate likely prepared in advance of the determinative hearing. It was presumably left with the Court file inadvertently. That discovery, particularly taken with the fact her Honour had repeatedly suggested the prosecution ought to bring its application, was submitted to support the inference her Honour pre-determined the matter. That submission must be rejected.
- [57] That her Honour earlier prompted the prosecution to consider its position regarding the seeking of a non-publication order is unremarkable. From the jump, ABC's lawyers had highlighted the likely need for a non-publication order in respect of the complainant. The moment that issue was properly identified it was inevitable that the court would comprehend a need to consider whether the breadth of that order needed

¹⁶ *J v L&A Services Pty Ltd (No 2)* [1995] 2 Qd R 10, 40.

¹⁷ *LPDT v Minister for Immigration* (2024) 280 CLR 321, 327-329.

to extend to others referred to in the alleged threat. That her Honour identified, and in open court communicated, the obvious need for consideration of that issue does not mean her Honour had formed any view as to how the issue should eventually be ruled on by the Court.

[58] As to the fact her Honour had made notes of prospective reasons and orders before entering Court, that too is unremarkable. Various documentary materials, including some documentary evidence and parties' outlines of argument had been filed. As any conscientious judicial officer would aspire to do, her Honour evidently invested preparation time reading those materials and assembling notes to aid her in judging the case, including in the eventual delivery of her reasons and decision. Once it is accepted, as it must be, that the making of such notes is merely prudent preparation work, it is a small step to understanding that an obvious and efficient way to assemble those notes is in the structure and language of prospective reasons and orders. Doing so merely promotes efficiency and comprehensibility. It does not mean the judicial officer has pre-judged the case. Nor does it mean the content of such notes will constitute the eventual content of the final reasons.

[59] Judicial officers will invariably evolve the substance and certainty of their thinking about the case as it progresses from consideration of the filed written materials through the active judging of the case at the oral hearing. As they do so, they may well modify existing notes and make new notes. In the case at hand the document complained of bears an array of handwritten notes as well as some reference notations, obviously intended to remind her Honour of content in other documents. Some of the document's content matches some of what her Honour eventually said in her reasons. Some of it does not feature in the eventual reasons. Further, some of the content of the eventual reasons, including one of the more important passages, does not feature in the document. This is all at odds with the complaint of pre-judgment advanced by ground 4.

[60] There is no substance to ground 4.

(f) Do the orders bind all jurisdictions for all time?

[61] Ground 3 of the application alleges:

A jurisdictional error arises from Acting Magistrate ... Meoli's decision to grant a non-publication order that lacks of certainty of time, such that it purports to bind all jurisdictions for all time and the Acting Magistrate did not have the power to make such an order.

[62] Curiously, the wording of the suppression order as endorsed on the file below is not in evidence before me. The parties were content to proceed in the reasonable expectation it would reflect the Magistrate's oral articulation of the order in court. That involved her Honour saying at the end of her reasons, 'Therefore the orders sought by the applicant are granted'. In an ensuing exchange her Honour confirmed this was an adoption of the literal terms of the orders sought in the Police Prosecutor's application for a suppression order. Those terms, and thus the orders of her Honour, were:

1. The name of the married man identified in the threat to cause detriment be identified as a pseudonym "MM";

2. The complainant's name and details of the threat to cause detriment including the name of a married man (MM) identified in the material be suppressed; and
3. The defendant's name be suppressed;
4. A non-publication order prohibiting the publication of information which could tend to identify the identity of the complainant and the details of the threat to cause detriment including the name of a married man (MM) identified in the material.

[63] There are four potential uncertainties about the reach of that order, but ground 3 is not concerned with them.

[64] The uncertainty alleged under ground 3 is that the orders lack qualification of their duration and reach. Without some qualification, the applicants submit the orders effectively purport to bind all persons indefinitely, which exceeds the requirement of necessity. They submit the orders should be worded 'subject to further order' or otherwise made in language confining their operation to the proceeding in the Magistrates Court. In that way, it was submitted, if the case is committed to the District Court, it will be a matter for the District Court what order it should make as to the potential non-publication of information in the proceeding.

[65] It is true that courts sometimes qualify their orders with preliminary words like, 'subject to further order'. However, the mere absence of such a qualification will not preclude the making of a varying, vacating or further order where, as here, the jurisdiction founding the order derives from the Court's implied power to secure the proper administration of justice in the conduct of the proceeding before it.¹⁸

[66] The Court continues to have such a power for the duration of the proceeding before it. The case below is ongoing; it is not as if the Magistrate's order involved a determination of that case and is thus final unless disturbed on appeal. If a court seized of the proceeding is satisfied the existing order is either no longer necessary to secure the proper administration of justice and should be vacated or that an order varying or replacing the terms of the existing order is necessary to secure the proper administration of justice, then it may order accordingly. Such an order would involve an exercise of the same implied power by which the initial order was made, namely, the implied power to secure the proper administration of justice in the conduct of the proceeding before it.

[67] This exposes the flawed premise of the applicants' argument that the order had the effect of binding all jurisdictions for all time. It does not have that effect because, as just explained, a court seized of the proceeding in the future may make a further order, vacating, varying or replacing her Honour's order in the exercise of the same implied power exercised by her Honour.

[68] It follows ground 3 must fail.

(g) What orders should be made by this Court?

¹⁸ *John Fairfax & Sons Ltd v Police Tribunal (NSW)* (1986) 5 NSWLR 465, 477; *Hogan v Hinch* (2011) 243 CLR 506, 531.

- [69] All grounds having failed, I would in the normal course order that the application is dismissed and hear the parties as to costs.
- [70] However, as mentioned above, there are four potential uncertainties about the reach of the presiding Magistrate's order.
- [71] First, orders 2 and 3 use the phrase 'be suppressed' in respect of the names of ABC, the complainant and MM. Suppressed how? By whom? In what context? Does the phrase mean they are not to be identified by their real name during the actual court proceeding or in publication of information about the proceeding or both? It is not uncommon for orders prohibiting publication of identifying information to be described in summary as suppression orders. But, because such orders represent an exceptional departure from the usual openness of court proceedings, and a breach of them can have such serious consequences, the parties and the public should not be left to infer what is prohibited. Such orders should clearly articulate what conduct they are prohibiting. The consequence intended by deployment of the phrase 'be suppressed' in the orders appears to be uncertain.
- [72] Second, while at first blush the language of order 4 appears to articulate what is being prohibited, closer examination reveals it is an incomplete sentence. It lacks a predicate. The applicant was undoubtedly seeking the making of an order prohibiting publication but order 4, while descriptive, does not explicitly order anything. Her Honour doubtless intended it to prohibit the publication of the information it describes, but in the absence of a predicate it appears to be uncertain whether it does so.
- [73] Third, orders 2 and 4 include the phrase, 'details of the threat to cause detriment'. The meaning that phrase conveys in the context of the other language of the order appears to be uncertain. Is it intended to mean that there can be no publication of information from the proceeding likely to lead to the identification of the complainant or MM, or is it intended to prohibit the publication of all detail about the threat? The Magistrate probably intended it was the former and I have acted on that basis. The latter would likely have the presumably unintended consequence of prohibiting publication of anything about the facts of the alleged offence, which appears to exceed the criterion of necessity.
- [74] Fourth, there is uncertainty as to how the suppression and non-publication contemplated by the orders is intended to apply as between the parties and the Court. It is unlikely the orders were intended to stop publication of information in the case as between the parties and the Court. Indeed, it is difficult to see how the case could proceed if the parties and the Court were precluded from publishing such information to each other. However, the orders contain no qualification excluding such publication.
- [75] What, if anything, should this Court do in light of these four potential uncertainties? None of them were the subject of the grounds as argued before me in this review. I am therefore reluctant to bring the parties back before me for argument about them. In any event the parties can just as easily return before the Magistrates Court to seek new or amended orders if they are concerned by the potential uncertainties I have identified.

- [76] My only concern is that, in the meantime, the seeming absence of a predicate from order 4 may embolden potential publishers of information about the proceeding to conclude that order 4 does not have the effect of precluding publication of the information referred to in order 4, despite that being the obvious intention of the presiding Magistrate.
- [77] It is therefore desirable that my orders include a declaration that order 4 has the effect of prohibiting publication of the information to which it refers (other than as between the parties and the court).
- [78] It will be necessary to hear the parties as to costs.
- [79] My orders are:
1. It is declared that, subject to further order of the Magistrates Court, its order 4 of 8 June 2026, set out at paragraph 8 of my reasons, has the effect of prohibiting publication of the information referred to in it (other than as between the parties and the Court).
 2. The application is otherwise dismissed.
 3. I will hear the parties as to costs, if costs are not agreed, at 9am on 7 September 2026, out of town parties having leave to appear by video link.