



## HIGH COURT OF AUSTRALIA

11 September 2024

CHIEF COMMISSIONER OF POLICE v CRUPI & ANOR  
[2024] HCA 34

Today, the High Court granted special leave to appeal from a decision of the Supreme Court of Victoria and allowed the appeal. The application concerned an objection made by the applicant to the disclosure of documents concerning a police informer on the grounds of public interest immunity under s 130(1) of the *Evidence Act 2008* (Vic), the Victorian legislative equivalent of the common law doctrine of public interest immunity. The issue before the Court, being the only ground of appeal for which special leave was granted, was whether the primary judge's reasons for rejecting such a claim were inadequate. Section 130(1) provides that "[i]f the public interest in admitting into evidence information or a document that relates to matters of state is outweighed by the public interest in preserving secrecy or confidentiality in relation to the information or document, the court may direct that the information or document not be adduced as evidence".

In November 2018, the first respondent was charged with murder. The applicant disclosed a substantial number of documents to the first respondent but sought to resist disclosure of additional material ("the PII material") on the grounds of public interest immunity on the basis that disclosure might reveal the identity of an informer or enable their identity to be ascertained. An application to resist disclosure of the PII material was heard and dismissed by the Supreme Court in November 2022. The primary judge held that information included in the submissions of the amici curiae (who had access to the PII material) that was derived from the PII material concerning the informer and the victim was "likely to be of substantial assistance" to the first respondent and "therefore" disclosure was required. The reasons of the primary judge were extremely brief, consisting of five paragraphs. The primary judge ordered production of all documents that were identified by the amici curiae as "possibly being of substantial assistance", with redactions limited to material that was *not* so identified by the amici curiae. As the applicant was not a party to the proceeding, he was unable to bring an appeal from the primary judge's decision and sought instead to have the primary judge reserve questions of law for the Court of Appeal of the Supreme Court of Victoria. On two occasions, the Court of Appeal held that the applicant's questions were not questions of law and thus, it had no jurisdiction to answer them.

The applicant sought special leave to appeal to this Court directly from the primary judge's decision. In granting special leave and allowing the appeal, the High Court upheld the applicant's complaint concerning the inadequacy of the primary judge's reasons. The Court held that the primary judge's reasons ought to have but did not disclose any reasoning in relation to whether the public interest in production or redaction of the PII material was outweighed by the public interest in preserving their secrecy or confidentiality as required by s 130(1). The reasons were also held to be inadequate as they left the parties and amici curiae to speculate as to how they justified the orders that were made. The matter was remitted for reconsideration by the primary judge or by another judge at first instance.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*