CITATION:	*Police V Fabian Marika* [2025] NTLC 17
PARTIES:	*Police* V *Fabian Marika*
TITLE OF COURT:	LOCAL COURT
JURISDICTION:	CRIMINAL
FILE NO(s):	22302315
DELIVERED ON:	3 April & 8 September 2025
DELIVERED AT:	Darwin
HEARING DATE(s):	11 March & 2 April 2025
DECISION OF:	Judge Macdonald

CATCHWORDS:

EVIDENCE - exclusion of evidence - whether evidence obtained in circumstance of impropriety or unlawfulness - whether police field interview inadmissible - reportable offender - police powers - insufficient caution - General Orders Q1 & Q2 - evidence excluded

Police Administration Act 1987 ss 134, 140, 143
Evidence (National Uniform Legislation) Act 2011 ss 90, 138, 139
Child Protection (Offender Reporting and Registration) Act 2004 ss 19A, 20
Child Protection (Offender Reporting and Registration) Regulations 2004 r 6A

Kadir v The Queen [2020] HCA 1
The Queen v Bonson [2019] NTSC 22

REPRESENTATION:

Counsel:

Prosecution:	Ms L. Burfitt
Defendant:	Ms. E. Henke

Solicitors:

Police:	ODPP
Defendant:	NAAJA

Decision category classification:	B
Decision ID number:	[2025] NTLC 17
Number of paragraphs:	27

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 22302315

BETWEEN:

Police

AND:

Fabian MARIKA

Defendant

REASONS FOR DECISION

(Delivered 8 September 2025)

JUDGE MACDONALD

Background

1. Mr Fabian Marika (the Defendant) has been a reportable offender under the *Child Protection (Offender Reporting and Registration) Act 2004* (CPORR Act) since at least September 2018. On 12 January 2023 Constable Paul Ranford attended an address in Yirrkala which he understood to be the Defendant's usual residence.[1] Information obtained at that time was that the Defendant was in Galiwinku, and that he had left Yirrkala prior to Christmas.

2. Const. Ranford's conversations were captured on body-worn video (BWF) and, for the purpose of consideration of issues on *voir dire*, fall into two categories. Const. Ranford first spoke to the Defendant's mother, who confirmed her understanding that the Defendant was in Galiwinku, and was then asked "*Do you have a contact number for him*", which she answered in the affirmative. That portion of the BWF was admitted by consent as evidence in both the *voir dire* and the hearing proper. Following that, the number advised by the Defendant's mother was dialled, and a conversation between Const. Ranford and the Defendant took place. That portion of the BWF is the subject of challenge under s 138 of *the Evidence (National Uniform Legislation) Act 2011* (ENULA), so was admitted only for the *voir dire*, and not the hearing proper. The Defendant advised, amongst other things, that the house at which he was staying in Galiwinku at that time was Lot 220.

3. On 13 January 2023 Sergeant Oliver Dodd and Constable Jessica Bayliss then attended Lot 220 Galiwinku and confronted the Defendant, with a further conversation taking place. Both the conversations at Yirrkala and Galiwinku were recorded on BWF worn and activated by the attending members at relevant times, and each were in the nature of a 'field interview'. Although the audio for each recording is poor in some respects on ordinary playing, it is assumed that accurate transcripts of what was said by each participant in the conversations could be made by augmentation on the audio function, if necessary.

[1] See Agreed Facts Exhibit P1.

4. On 22 January 2023 the Defendant was charged with failing, without reasonable excuse, to comply with their reporting obligation to report a change of address, in contravention of s 48 of the CPORR Act.[2] Section 48 is a 'general offence' provision, which is alleged in the context of potential or possible offences against ss 19 or 20, however the Complaint provides no particulars as to the specific contravention(s) alleged (although an amendment to the Information sought to also refer to a phone allegedly "used" by the Defendant). It is noted that only s 20 of the CPORR Act is expressly exempted by r6A of the CPORR Regulations.

5. A *voir dire* hearing was conducted in relation to the issues below, on various dates over 29 November 2024 through to 3 April 2025. The evidence provided to the court for the purpose of the *voir dire* was different in an important respect to the evidence tendered for the hearing proper. This was due to the Defence contending that one basis on which the interview at Galiwinku should be excluded was that it was essentially derived from improper or unlawful conduct during the interview at Yirrkala. The court's ruling on 3 April 2025 was that the Galiwinku interview was to be excluded and the Yirrkala interview was not, with reasons to be published, which now follow. The rulings given 3 April 2025 also gave rise to further issues, due to the Prosecution having originally decided that the Yirrkala interview need not be tendered for the hearing proper. That issue is not the subject of these reasons.

Legal dispute

6. The Defendant sought orders that each field interview be excluded by exercise of discretion under s 138 of the ENULA. That was in the context of the first BWF field interview (Yirrkala interview) not being tendered as evidence in the hearing proper, but with the second field interview (Galiwinku interview) being tendered by the Prosecution as evidence of the contravention charged. The Defendant sought to exclude the Galiwinku interview from that purpose. The Defendant relied on flaws in or exclusion of the Yirrkala interview for the purpose of impugning the subsequent Galiwinku interview. The contended basis for this approach was that Galiwinku interview was derivative or the product of impropriety or unlawfulness affecting the Yirrkala interview.

7. The High Court's decision in *Kadir v The Queen* [2020] HCA 1 makes clear that the US doctrine of 'fruit of the poison tree' is not part of the law of Australia. Any challenge to the Galiwinku interview would, in my view, need to essentially rely on the terms of s 138 of the ENULA, and a sufficient causal connection between any impropriety or unlawfulness and the evidence said to be inadmissible.[3] It is noted that "*obtained*" by or "*in consequence of*" enables derivative impropriety or unlawfulness to be dealt with, subject to sufficient causal connection being established for the purpose of s 138(1)(a) or (b). That is potentially for the purposes of both s 138(1) and (3).[4]

8. The Yirrkala interview took place in the context of the Defendant not being under arrest or custody, and against the background of the checks Const. Ranford sought to carry out. Initial information received raised concerns that one or more requirements of the CPORR Act were

[2] Although not expressed in the charge itself, or particularised, it appears that the obligation which the Defendant is said to have breached is that created by s 20 of the CPORR Act. It is also noted that r 6A of the *Child Protection (Offender Reporting and Registration) Regulations 2004* (CPORR Regulations) exempts reportable offenders where the travel is to a destination which is less than 200 kilometres from their residence.

[3] See *Robinett v Police* (2000) 78 SASR 85, *DPP v Carr* (2002) A Crim R 151, *DPP v Coe* [2003] NSWSC 363 at [82] to [83], and *Director of Public Prosecutions v AM* (2006) 161 A Crim R 219.

[4] *Slater v The Queen* [2019] VSCA 213 at [43] to [50].

potentially being breached. It is the object or purpose of the CPORR Act which gives rise to the requirements.[5]

9. It should be noted that Const. Ranford had legitimately obtained information, including from the Defendant's mother, that the Defendant was in Galiwinku. Section 20 of the CPORR Act expressly applies to any travel within the Northern Territory, regardless of duration.[6] Section 134 of the *Police Administration Act 1978* (PAA) also empowered the officer to ask the Defendant's address. That legitimately obtained information enabled Const. Ranford to task Galiwinku members to attend on the Defendant in order to conduct the Galiwinku interview.

10. Although not borne out by the institution and prosecution of the proceedings, Const. Ranford's questions might also have been directed to obtaining exculpatory information. For example, if his view was that for any period less than 14 days, a reportable offender is permitted to be anywhere within Australia without any reporting obligation. Similarly, ascertaining the location of the Defendant could have been relevant to establishing that the Defendant had no obligation to notify the authorities, due to the 200 kilometre exception provided by r6A of the CPOOR Regulations.[7]

11. The Yirrkala interview was a 'compliance check' directed to the Defendant's obligations under the CPORR Act and Regulations. Some aspects of the Yirrkala interview are noteworthy. The interview was conducted by telephone and, although on one view properly characterised as a "*suspect*" by the time the interview took place, the Defendant was not in custody. Section 140 of the *Police Administration Act 1978* (PAA) had no application and, to the extent that any "*admission*" was made by the Defendant, section 143(1)(b) of the PAA was complied with.[8] It is also the case that s 139 of the ENULA had no application to the situation, despite the extended meaning of "*custody*" provided by that section.

12. It may be concluded that Const. Ranford simply went too far in seeking information. For example, he could readily have asked (and obtained) confirmation from the Defendant that he was in Galiwinku and at what address,[9] and perhaps the family name of the household he was staying with, without descending into duration of travel. True it is that, upon emergence of sufficient suspicion, a caution would be warranted. However, the option of resorting to the process provided by s 19A of the CPOOR Act of service of a Notice was also a possible avenue, noting that course does not encourage compliance through sanction for breach, but does further the object or purpose of the Act. In that event, an address for service of the Notice would be necessary, and could be requested without the spectre of criminal liability. Lastly, it can confidently be concluded that the Defendant and Const. Ranford were well familiar with each other, and that Const. Ranford communicated with the Defendant in an open and respectful

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[5] Which include "*to require certain offenders who commit sexual or certain other serious offences against children to keep police informed of their whereabouts and other personal details for a period of time in order to reduce the likelihood that they will re-offend and in order to facilitate the investigation and prosecution of any future offences that they may commit*".

[6] Albeit that obligation is exempted where the location travelled to is less than 200 kilometres where the subject generally resides.

[7] Galiwinku may well be less than 200 kilometres from Yirrkala, in which case no offence against s 20 of the CPOOR Act could have been committed.

[8] See *The Queen v Layt* [2018] NTSC 36 at [22]. Despite the context of s 140 being in relation to persons in custody, the decision in *Layt* appears to be authority that other provisions of Division 6A are readily applicable to interviews in the nature of the Yirrkala interview.

[9] Section 134 of the *Police Administration Act 1978* (PAA) provides an exception to the right to silence and, although its terms pose a potential query in this case, I consider the exception applies.

manner. Although the respective positions of police officer and reportable offender were clear, Const. Ranford was not overbearing or blatantly authoritarian in his communication.

13. The Yirrkala conversation included, with the Defendant's mother, that the Defendant was in Galiwinku and that she had "*a contact number for him*". Const. Ranford's exchange with the defendant relevantly included;

    CR: I've come to do compliance check with your reporting conditions and got told you're at Elcho. How long you been at Elcho for?

    FM: Couple of weeks now

    CR: So when did you arrive – roughly – just before Christmas, or …?

    FM: Youi – Christmas - I forgot to do report

    CR: where you staying now?

    etc

14. Despite that s 140 of the PAA did not apply, the terms of General Orders Q1 and Q2 are relevant to Const. Ranford's conduct. Although the General Orders do not obtain the status of law, their content is important to the efficient and appropriate conduct of duty by members of NT Police. Their significance in considering objections to the admission of evidence under s 138 is discussed further below. Once Const. Ranford formed the view, rightly or wrongly, that the Defendant may be in breach of what he understood the CPORR Act obligations to be, he was obliged to inform the Defendant of his right to silence.[10] I consider Const. Ranford was initially in the process of scoping the situation he encountered on conducting the compliance check, with a view to following the issues up with the Defendant by way of formal investigation at a later time. It is not appropriate to approach the question of gravity of departure by assessment of the value of the information obtained (which here was low),[11] however the overall approach and intent of Const. Ranford does, in my view, reduce the gravity of the impropriety. He certainly should have been more careful in the approach taken to seeking information from the Defendant (other than his name and address), but it is not my conclusion that Const. Ranford deliberately ignored the General Orders. As noted, Const. Ranford could perhaps have legitimately asked various questions without directly exposing the Defendant to criminal liability, and he was entitled to ask the Defendant his address.

15. In my conclusion Const. Ranford inadvertently went too far, however it is not my conclusion that his impropriety contravened community expectations or standards to the extent required.[12] Due to that conclusion on the extent of impropriety, I consider that the Defendant has not satisfied the necessary onus, such that Yirrkala interview should not be excluded under s 138 of the ENULA.

16. I consider the Galiwinku interview suffers from more serious defects. The question of whether evidence has been "*obtained*" by impropriety or "*in consequence of*" impropriety has been

[10] The Anunga Rules and GOs Q1 and Q2, due to their genesis, have broader application than simply to situations where a suspect is in custody with a formal investigation having commenced.

[11] Noting that criterion is material in the weighing process provided by s 138(3).

[12] *Parker v Comptroller-General of Customs* (2009) 83 ALJR 494 at [28] to [29] and *Robinson v Woolworths Ltd* (2005) 158 A Crim R 546 at [23], particularly in *The Queen v Layt* [2018] NTSC 36 at [73] to [75].

considered in a large number of superior court authorities.[13] Determination generally depends on the facts and circumstances of the subject matter. Any impropriety in relation to the Galiwinku interview can only stem from the manner in which the Defendant was dealt with, particularly in relation to the administration of the caution.

17. Although simply guidelines rather than law, members must keep General Orders, and in this case, General Orders Q1 and Q2, in mind.[14] I also note his Honour Hiley J's decision in *R v Bonson* [2019] NTSC 22 and the authorities applied therein.

18. The context of Officers Dodd' and Bayliss' attendance on the Defendant was that they believed he had offended against the CPORR Act, so he was a "*suspect*". Due to his conversation with Const. Ranford the day before, the Defendant believed he was in trouble. He was also likely to have responded to the officers in the context that he was aware of his legislated obligation to provide information to NT Police. That reality is relevant to whether the Defendant understood the caution delivered to him and spoke freely and of his own volition. I also consider that, although he was not under arrest, the Defendant was in custody, such that s 140 of the PAA and s 139 of the ENULA applied. It may be inferred from his presentation, demeanour and responses that the Defendant believed he was not free to go.

19. Although administered twice, the caution was perfunctory in its delivery, and had no regard whatsoever to the caution counselled by General Orders Q1 and Q2. The Defendant clearly spoke English as a second language, and the comprehension and extent of accuracy in response evident in the Yirrkala interview strongly indicated that he should have been asked to state in his own words what the caution meant. No interpreter was used and nor was the possibility of the caution being conveyed by telephone or ALO considered.

20. Having regard to the background and circumstances of the Galiwinku interview, I consider that the Defendant has demonstrated sufficient impropriety exists,[15] and that the evidence was "*obtained*" directly through that impropriety. The onus therefore shifts to the Prosecution to demonstrate through the balancing exercise intended through s 138(3), that the desirability of admitting the evidence outweighs the undesirability of admitting the evidence given the way in which it was obtained. That is, having regard to the criteria provided by s 138(3) of the ENULA.

21. Both the probative value and importance of the relevant evidence are significant, such that paragraphs (a) and (b) carry definite weight.[16] Other than the Yirrkala interview (which is of low value, and was not tendered by the Prosecution in any event) little other evidence currently exists.[17] A definite public interest exists in compliance with the CPORR Act, such that prosecutions are supported to that extent.

22. The nature of the offence and the underpinning subject-matter of the prosecution depend on a number of factors, not least of which are the operation and effect of r6A of the CPORR Regulations (which may provide a defence to some aspect) and, perhaps, the meaning of "*use*" in respect of the mobile number which Const. Ranford was unaware of until 12 January 2023. The

[13] Including *DPP v AM* (2006) 161 A Crim R 219, *DPP v Carr* [2002] NSWSC 194, *R v Dalley* (2002) 132 A Crim R 169, *Robinett v Police* (2000) 78 SASR 85 and *DPP v Coe* [2003] NSWSC 363, together with various Territory authorities.

[14] *Heiss v The Queen* [1992] 2 NTLR 150 at 160

[15] *Parker v Comptroller-General of Customs* (2009) 83 ALJR 494 at [28] to [29] and *Robinson v Woolworths Ltd* (2005) 158 A Crim R 546 at [23], particularly in *The Queen v Layt* [2018] NTSC 36 at [73] to [75].

[16] Assuming that CPOORR Regulation 6A does not apply and "*use*" of the unknown mobile could be established beyond reasonable doubt.

[17] There is the mother's hearsay evidence on the Yirrkala BWF, but other evidence would be required.

nature of the relevant offence and subject-matter would certainly be assisted and clarified by investigation and chains of inquiry directed to ascertaining the true situation which existed on 12 and 13 January 2023.

23. In relation to (d) and (e), I consider the impropriety is at the lower end of seriousness, although if the method and approach employed is routinely applied in remote communities to suspects who have English as a second language, that would be a definite concern. That is particularly so given the extent to which many of those residents do not attain an education equivalent to residents of urban centres. I also consider the perfunctory delivery of the caution was both deliberate and reckless.

24. To the extent that the rights recognised by the International Covenant on Civil and Political Rights include that a person has a right to a fair trial, and investigation of offences are the beginning of proceeding in the criminal justice sphere, it might be concluded that the impropriety was inconsistent with rights recognised by the Covenant.

25. The possibility of some other proceeding in the circumstances of the offending alleged is real. This criterion is also related to paragraph (h), in that there is no limitation period applicable to the charge and relevant evidence could readily be obtained by further investigation. That could particularly be through independent corporate records.[18]

26. The strong public interest in the successful prosecution of reportable offenders who do not comply with their obligations is clear. Exclusion of the relevant evidence would, at least for a period, frustrate that important objective in this case. There is also the importance which must be attached to ensuring that law enforcement officers entrusted with powers which abrogate fundamental liberties pay close attention to the conditions and limitations on the exercise of those powers.[19] Here the contravention was at least reckless. Having regard to the considerations referred to and the balance required through s 138, I find that the Prosecution has not discharged the onus of satisfying the court that the Galiwinku interview should be admitted.

27. I therefore order that evidence is excluded from the proceeding.

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[18] Including from any airline and/or mobile carrier.

[19] *The Queen v Gehan* [2019] NTSC 91 at [67]. See also *The Queen v Bonson* [2019] NTSC 22 at [42] to [49] and [60] to [65].