

**ROYAL COMMISSION  
INTO THE MANAGEMENT OF POLICE INFORMANTS**

**STATEMENT OF GREGORY ELMS**

**GREGORY ELMS** of 200 Victoria Street, Carlton, Victoria STATES:

1. I am the General Counsel for Environment Protection Authority Victoria. I was previously employed as a solicitor at the Victorian Government Solicitor's Office (**VGSO**) from May 2009 to January 2017.
2. I make this statement in response to a request from the Royal Commission into the Management of Police Informants dated 12 August 2019 and produce this statement to the Royal Commission in response to a Notice to Produce dated 14 November 2019.
3. I make this statement from my own knowledge and by reference to certain documents produced to the Royal Commission by the VGSO, some of which have been provided to me. Due to the volume of documents produced by the VGSO to the Royal Commission, I have reviewed a selection of those documents (but not all of them).
4. In preparing this statement, I requested access to various hard copy files held by the VGSO in respect of matters on which I worked. I was advised by the VGSO that producing hard copy files would give rise to significant difficulties from a logistical standpoint (which would accordingly delay the provision of my statement) and was instead provided access to documents in electronic form.
5. Based on my review of various electronic documents produced by the VGSO to which I had access, various documents and notes (especially post-it notes) have been separated when they should instead be read together. I am now unable to recall which documents and notes should be paired. If I had access to the hard copy files I requested, which I presume continue to be maintained in the form they were initially compiled, I would be able to better establish the specific context in which I address various issues outlined below.
6. If further relevant documents are identified, which have not already been provided to me prior to making this statement, I may seek the opportunity to prepare a supplementary statement addressing those documents.
7. I was admitted to the Supreme Court of Victoria as an Australian legal practitioner in March 2009 and attach to this statement my curriculum vitae.



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## Employment with VGSO

8. As can be seen from my curriculum vitae and is expanded upon below, from May 2009 to February 2013 I was employed at the VGSO Police Branch in different roles.
9. The VGSO Police Branch is an out-posted legal team of approximately 13 lawyers and two support staff located at Victoria Police headquarters in Docklands which provides legal services exclusively to Victoria Police. During my time at the VGSO the Police Branch was one of the five branches of the VGSO. The four other branches (Litigation and Dispute Resolution, Government and Public Law, Commercial and Property and Workplace Relations and Occupational Safety) provided legal services to all other departments and agencies but were situated in the Victorian Government Solicitor (**VGS**) offices in Exhibition Street, Melbourne.
10. The Police Branch, like each of the other VGSO branches, is managed by an Assistant Victorian Government Solicitor (**AVGS**) who reports directly to the VGS.
11. The VGSO Police Branch manages and supervises a team of about 12 lawyers (divided into two teams) and two administrative assistants. Each team is managed by a Managing Principal Solicitor (**MPS**) who in turn manages and supervises a team of about five lawyers comprising a principal solicitor, senior solicitors and solicitors.
12. The VGSO Police Branch provides legal services to Victoria Police through the legal personality of the Chief Commissioner and by extension to police officers across the police force with respect to a wide range of policing and government legal subject areas such as police powers, privacy and statutory interpretation. The legal services provided include urgent oral advices, written legal advices and arranging representation by counsel in various court proceedings. The Police Branch also represents the Chief Commissioner in making Public Interest Immunity (**PII**) claims as a ground of objection to the production of documents or the adducing of evidence in court proceedings.
13. From May 2009 to April 2011, I was employed at the VGSO Police Branch in the position of Senior Solicitor. In that role I was allocated files under the supervision of a Managing Principal Solicitor and my duties included attending to a range of files as detailed in paragraph 12 above. Because of my previous advocacy experience as a police prosecutor I was attracted to, and frequently allocated, PII appearance work in a range of Victorian and Commonwealth jurisdictions.



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14. From April 2011 to January 2012, I was employed at the VGSO Police Branch in the position of Principal Solicitor. That role essentially involves the same file mix that I had as a Senior Solicitor but in more of a senior role that was expected to operate with limited supervision and deal with more senior clients within Victoria Police. However, almost immediately I was put into a position of acting Managing Principal Solicitor and in January 2012 I was promoted to that substantive position. This required me to have a role which involved management and coordination of files, reviewing team members' advice and casework and was less 'hands-on' with respect to direct client contact and working on allocated files.
15. Sometime around the middle of 2012 I was transferred from the Police Branch to the position of Managing Principal Solicitor, Regulatory Compliance Team, Government and Public Law Branch.

#### **Addressing specific matters in the Royal Commission's Request**

**1. Provide details of how you learned, or were given reason to suspect or believe, that a person who had ongoing legal obligations of confidentiality and privilege was providing information or assistance to Victoria Police, including when that occurred and in what circumstances that occurred.**

16. Any knowledge I have of the activities of Ms Gobbo was obtained in the course of my acting as a lawyer in the Police Branch of the VGSO for the purpose of providing advice to Victoria Police or appearing in court as an advocate for Victoria Police. I have no personal knowledge of Ms Gobbo and to the best of my recollection I have never met her personally or professionally.
17. To the best of my recollection, my first involvement with Ms Gobbo was sometime in late 2009 or early 2010. I received instructions to represent the Chief Commissioner of Police (**CCP**) in the committal proceedings against former Detective, Paul Dale for the murders of Terence and Christine Hodson in 2004 (**Dale Committal**). Instructions to act in such matters came through the Victoria Police Director of Legal Services, Mr Findlay McRae. Practically, as a Senior Solicitor, the file was allocated to me by my Managing Principal Solicitor, who was Shaun Le Grand at the time.





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18. Ms Gobbo was a police witness in the Dale Committal. The significance of her evidence centred on a recorded conversation between her and Dale which corroborated (at least inferentially) evidence to be given by Carl Williams against Dale, implicating him in the Hodsons murders. Dale was represented by defence solicitor Tony Hargreaves. Hargreaves filed a summons addressed to the CCP which, essentially, sought any document concerning the provision of information by Ms Gobbo to the police. My instructions were to seek to set aside that summons and to resist disclosure of information under the summons on the grounds of PII which was a fairly regular aspect of my work at the VGSO. The general approach taken is that the CCP will neither deny nor confirm the status of a person as an informer; therefore, giving any indication as to whether Ms Gobbo had ever provided information to police, beyond what was disclosed in her witness statement, was considered to be in the public interest to resist.
19. That said, I do not believe at that time that I knew that Ms Gobbo had provided the police with any other information in the case or any other case or that she was a registered informer. I did become aware of this sometime later but I cannot recall how or when. I also became aware later that a decision had been made at the time when it was decided Ms Gobbo would be a witness in the Dale matter that she would be deregistered as an informer. Consequently, I did not know anything about Ms Gobbo's status as an informer or the fact that she was providing information to the police at any time while that occurred.
20. Apart from the PII argument, I recall that we were also arguing relevance. When challenged on relevance, Hargreaves said the provision of information by Ms Gobbo to the police went directly to the question of credit. However, because it was a committal proceeding and the evidence of the prosecution is taken at its highest, we managed to successfully argue any material going to the credit of the witness could not be relevant at a committal hearing but might become relevant at any subsequent trial. The Magistrate accepted that argument and set aside the summons but we fully expected it to be re-agitated at trial. However, following the death of Carl Williams in prison, the matter collapsed before getting to trial and the summons never got so far as to be at a stage where it was necessary for me to know the full extent of the documents which would fall within its scope or for me to examine any documents.



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21. Paul Dale was subsequently charged with giving false evidence to the Australian Crime Commission (**ACC**) when he was examined in respect to the Hodsons murders. This resulted in a further summons addressed to the CCP seeking similar material to the summons in the committal proceeding. Gerard Maguire of Counsel was engaged to represent the CCP on this latter summons. On 21 September 2011, I attended a meeting at Gerard Maguire's chambers. On and from the date of this meeting, Louise Jarrett, who was a Senior Solicitor in the team for which I was the acting manager, had day to day carriage of the file as it related to subpoena issues in the ACC proceeding. In my capacity as acting Managing Principal Solicitor at the VGSO Police branch, I had sporadic discussions and access to various draft documents over the period that Louise Jarrett had carriage of the matter, but I had no direct involvement.
22. My only other involvement where Ms Gobbo was concerned, was when in approximately 2016-17 I was a Managing Principal Solicitor at the Government and Public Law Branch of the VGSO. In that capacity, I received instructions from Victoria Police to assist in a matter which was code named "Operation Bendigo". My instructions from Mr Findlay McRae were that concerns had been raised within the police that information supplied by Ms Gobbo was potentially subject to an obligation to disclose that information to persons who had been criminally prosecuted. I was informed that the Director of Public Prosecutions (**DPP**) had been approached for advice but had declined to consider the matter. Operation Bendigo was therefore an internal Victoria Police process which put together "case studies" for consideration of disclosure obligations. My main Victoria Police contact for the matter was Monique Swain. The case studies were considered so sensitive that the VGSO was not provided with copies of documents but was instructed to provide a solicitor to work at the Victoria Police centre in a secure environment to examine the documents and to advise on disclosure obligations. Laura Vickers of the VGSO was the solicitor provided for that task.
23. Subsequently, Laura produced a written advice on disclosure obligations concerning several of the case studies. As the MPS on that file, I reviewed and signed off on Laura's advice. However, in doing so, I did not have access to any of the source documents she had reviewed for the advice and I did not attend the secure site to inspect those documents. I believe that I accepted Laura's advice and conclusions without changing or editing anything of substance. I do not recall any of the details of what the case studies were about and only have a vague recollection of the conclusions regarding disclosure obligations. Generally, those recollections are that some of the





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case studies did not involve information provided by Ms Gobbo which was obtained in her capacity as a lawyer and therefore there was no disclosure obligation to advise a client of her potential breach of professional obligations. There was, however, at least one case in which I believe there was the potential prospect that she had obtained information in the course of acting as a lawyer and had therefore potentially disclosed information to police in breach of professional obligations. I believe that our instructions were that disclosure of this information to the subject of the information would be likely to create a situation of extreme physical danger to Ms Gobbo. On that basis, I believe that our advice was that the conflicting duties of police to disclose relevant information to a criminal accused and to protect the life of an informer left it open to police to conclude that the latter outweighed the former and to determine that the information should not be disclosed.

24. Later on I became aware that the DPP had reconsidered the earlier decision not to look at disclosure obligations regarding information provided to police by Ms Gobbo. Specifically, the DPP had concluded that there was an obligation to disclose and Victoria Police were taking legal action against the DPP to enjoin him from disclosure because of their obligation to protect Ms Gobbo as a registered informer. I do not recall the time or exact circumstances in which I became aware of this but in all likelihood it would have come to my attention from conversations with Shaun Le Grand and / or Findlay McRae when discussing the conduct of the proceedings between the CCP and DPP. I was not involved in any of those proceedings.

**2. Detail how you have learned or were given reason to suspect or believe that Ms Gobbo was providing information or assistance to Victoria Police, including when that occurred and in what circumstances that occurred.**

25. See above.

**3. Detail of when or how it became apparent to you that Ms Gobbo was or might be a human source.**

26. See above.



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4. **Given the Commission's first two terms of reference, namely:**
- (a) **the number of and extent to which cases may have been affected by the conduct of Nicola Gobbo as a human source.**
27. My only knowledge of cases that Ms Gobbo may have affected by her conduct is limited to the information I have described above.
- (b) **the conduct of current and former members of Victoria Police in their disclosures about and recruitment, handling and management of Nicola Gobbo as a human source.**
28. The issue of the disclosure of Ms Gobbo's role as a human source has not been a matter that I have had or I believe that the VGSO Police Branch had any material involvement in, apart from the matters I have disclosed above.

**The Commission would be assisted by you providing any further details of any other matters within your knowledge potentially relevant to those terms of reference**

29. I have no further details of any other matters within my knowledge.

Dated: 18 November 2019



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**Gregory Elms**

## GREG ELMS

**PROFESSIONAL STATEMENT** I am a manager and legal professional with a strong background in investigations and court and tribunal hearings dealing with criminal, disciplinary, statutory compliance and integrity body proceedings. I am admitted to practice in the Victorian Supreme Court and the High Court of Australia. I hold a current principal practising certificate as an Australian Legal Practitioner.

Over a period of 25 years I have developed relevant experience through military and civilian policing and as a Victorian government solicitor.

In my current role I am the General Counsel to the Governing Board and the Executive of the Environment Protection Authority, Victoria. I am also the executive manager of the Major Investigations & Legal Services Directorate of that Authority. Formerly I have worked as a sworn police member and as a lawyer in Victoria Police and as a government and public law specialist at the Victorian Government Solicitor's Office. I have extensive appearance experience in a broad range of court and tribunal jurisdictions.

In addition to my full-time employment I am an active Army Reservist. I am a qualified military police investigator and instructor. I am currently posted as an instructor to an officer training unit. I also continue to maintain a practice as an Army prosecuting or defending officer in administrative and disciplinary matters.

I am a resilient and resourceful professional capable of conducting activities in challenging and austere environments, as demonstrated by my deployment to East Timor in 2007 where I provided peace keeping and criminal investigative capacity-building assistance to the East Timorese authorities.

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**SKILLS** Team management and development  
Criminal law and proceedings  
Disciplinary hearings  
Investigations  
Statutory interpretation  
Judicial review  
Advocacy



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WORK **ENVIRONMENT PROTECTIONS AUTHORITY** **JAN 2019 - PRESENT**  
HISTORY **Legal Practice**  
**General Counsel**  
Major Investigations & Legal Services Directorate

**VICTORIA POLICE** **JAN 2017 – JAN 2019**  
**Legal Practice**  
**Managing Principal Lawyer**  
Principal Lawyer and team manager within Legal Services Department at:

- Police Lawyers Group
- Children's Court Fast Track Remand Project
- Office of Chief Examiner

**VICTORIAN GOVERNMENT SOLICITOR'S OFFICE** **MAY 2009 – JAN 2017**  
**Legal Practice**  
**(Senior Solicitor, Principal Solicitor, Managing Principal Solicitor)**  
Legal advice; court, tribunal and integrity body appearances; legal practice manager at:

- Police Branch
- Government and Public Law Branch

**VICTORIA POLICE** **JUN 2008 – MAY 2009**  
**Specialist legal advice and advocacy – disciplinary proceedings**  
**(Sergeant, Acting Senior Sergeant)**  
Discipline Advisor / Advocate duties at:

- Discipline Advisory Unit

**VICTORIAN GOVERNMENT SOLICITOR'S OFFICE** **JAN 2008 – JUN 2008**  
**Work experience component of Graduate Diploma of Legal Practice**  
**(Graduate)**  
Supervised legal practice at:

- Police Branch

**VICTORIA POLICE** **JAN 2008 – JUN 2008**  
**Specialist legal advice and advocacy – disciplinary proceedings**  
**(Sergeant)**  
Discipline Advisor / Advocate duties at:

- Discipline Advisory Unit

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## **AUSTRALIAN ARMY**

**JAN 2007 – DEC 2007**

### **Military Police**

Instructor, pre-deployment training:

- 2<sup>nd</sup> Battalion, Royal Australia Regiment, Townsville

Peacekeeping and criminal investigations capacity building:

- Camp Phoenix, Dili, Timor Leste

## **VICTORIA POLICE**

**NOV 2000 – JAN 2007**

### **Specialist legal advice and advocacy – criminal and disciplinary proceedings**

**(Senior Constable, Acting Sergeant, Sergeant)**

Prosecution duties at:

- Melbourne Prosecutions
- Ringwood Prosecutions
- Dandenong Prosecutions
- Drug Court Coordinating Prosecutor, Dandenong

Discipline Advisor / Advocate duties at:

- Discipline Advisory Unit

## **VICTORIA POLICE**

**FEB 1993 – NOV 2000**

### **General duties and criminal investigation**

**(Constable and Senior Constable)**

General duties policing at:

- City Patrol Group
- Knox Police Station
- Portland Police Station

Specialist investigation duties at:

- Portland Special Unit
- Region 4 Regional Response Unit
- Boronia Criminal Investigation Unit

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**EDUCATION    ADVANCED QUALIFICATIONS**

**Graduate Diploma of Legal Practice** 2008  
College of Law

**Bachelor of laws** 2006  
University of New England

**VOCATIONAL QUALIFICATIONS**

**Certificate IV Government Investigations** 2005  
Australian Army

**Certificate IV Training & Education** 2016  
Australian Army

**OTHER VOCATIONAL COURSES**

**Constables' Course** 1993  
Victoria Police

**Senior Constables' Examination** 1996  
Victoria Police

**Field Investigator's Course** 1999  
Victoria Police

**Prosecutor's Course** 2000  
Victoria Police

**Sub Officers' Course** 2008  
Victoria Police



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## HONOURS & NATIONAL

### AWARDS

<b>Australian Defence Medal</b>	2006
<b>Australian Service Medal</b> (with Timor Leste clasp)	2007
<b>National Medal</b>	2008
<b>Military Instructor's Badge</b>	2016
<b>National Police Long Service Medal</b>	2017
<b>Defence Long Service Medal</b>	2018

### STATE

<b>Victoria Police Service Medal</b> (with 15 year clasp)	2005 2009
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### INTERNATIONAL

<b>Medalha Solidariedade de Timor-Leste</b>	2011
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### VOCATIONAL

<b>Dux, Prosecutors' Training Course No. 57</b> Victoria Police	2000
<b>Student of Merit, Service Police General Duties Course</b> (First module of Certificate IV Government Investigations) Australian Army	2002
<b>Student of Merit, Service Police Investigation Course</b> (Third module of Certificate IV Government Investigations) Australian Army	2005