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Royal Commission  
These claims are not yet resolved.  
into the Management of Police Informants

## STATEMENT OF JOHN CAIN

### Introduction

1. My name is John Cain. I am currently the Solicitor for Public Prosecutions Victoria, with the Office of Public Prosecutions (**OPP**). I can say as follows:
2. I make this statement in response to the request of the Solicitors Assisting the Royal Commission (**Commission**), by letter dated 12 August 2019, and pursuant to a Notice to Produce dated 18 September 2019. This statement concerns my knowledge of Nicola Gobbo's involvement with police when I was the Victorian Government Solicitor (**VGS**). Except for specific matters mentioned in paragraph 19, it does not address knowledge that I have subsequently acquired as Solicitor for Public Prosecutions. As Solicitor for Public Prosecutions, I have been heavily involved in matters concerning Ms Gobbo since 2015. This means it can be difficult at times for me to distinguish precisely what I knew as VGS, and what I have learned subsequently.
3. I make this statement from my own knowledge and from certain documents that the Victorian Government Solicitor's Office (**VGSO**) produced to the Commission, which have been provided to me. Due to the volume of documents produced by the VGSO to the Commission, I have reviewed a selection of those documents (but not all of them).

### Professional background

4. I was the VGS between May 2006 to March 2011.
5. Before this, I held the following positions:
  - 5.1. Articled Clerk, Solicitor, Partner (1982 to 1991) and Managing Partner (1991 to 2002) at Maurice Blackburn; and
  - 5.2. Chief Executive Officer at the Law Institute of Victoria (2002 to 2006).



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6. Since being VGS, I have held the following positions:  
These claims are not yet resolved.

- 6.1. Managing Partner at Herbert Geer lawyers, now Thomson Geer (2011 to 2015);  
and
- 6.2. Solicitor for Public Prosecutions Victoria (2015 to present).

### **The VGSO**

7. The VGSO is an Administrative Office established under section 11 of the *Public Administration Act 2004*, in relation to the Department of Justice (now the Department of Justice and Community Safety).
8. At the end of my term as VGS in 2011, there were approximately 120 lawyers working at the VGSO.
9. The structure of VGSO during the relevant period, between 2009 to 2011, was:
  - 9.1. the Deputy Victorian Government Solicitor was James Ruddle;
  - 9.2. the VGSO was organised into branches, each managed by an Assistant Victorian Government Solicitor. The branches were the:
    - 9.2.1. Administrative law branch;
    - 9.2.2. Commercial and Property branch;
    - 9.2.3. Litigation branch;
    - 9.2.4. Victoria Police Centre branch; and
    - 9.2.5. Workplace Relations and Human Rights branch (established 2010).
10. Within each branch, lawyers were employed at the levels of:
  - 10.1. Managing Principal Solicitor;
  - 10.2. Special Counsel;
  - 10.3. Principal Solicitor;

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- 10.4. Senior Solicitor;
  - 10.5. Solicitor; and
  - 10.6. Trainee Lawyer.
11. Lawyers in each branch were supported by legal assistants.
  12. The VGSO also had a Corporate Services team, responsible for accounting and records, business support, human resources, information technology, and document systems.
  13. I attach a structure diagram of the VGSO during the relevant period depicting this structure (**Annexure 1**).

#### VGS

14. The VGS is the Administrative Office Head of the VGSO, under section 12 of the *Public Administration Act 2004*. In this role, I was responsible for managing the VGSO overall.
15. In addition to management responsibilities, my work often involved interacting with the Attorney-General, Ministers, or other senior government officials about legal issues that affected the State. I was also actively involved in certain significant legal proceedings. For example, during 2009 to 2010 I was extensively involved with the Victorian Bushfires Royal Commission on behalf of the State.
16. Other legal matters would be handled by a Principal or Managing Principal Solicitor, with assistance from more junior lawyers, under the supervision of an Assistant Victorian Government Solicitor. These files would be opened by the relevant Managing Principal Solicitor or Assistant Victorian Government Solicitor. I would generally only become involved in these proceedings if issues were escalated to me by the supervising solicitor or Assistant Victorian Government Solicitor. My experience was that the Assistant Victorian Government Solicitors, and other lawyers at VGSO, did exercise appropriate judgment and inform me of issues that warranted my attention.



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17. Legal advice would be approved by the relevant Assistant Victorian Government Solicitor, and Managing Principal Solicitor or Principal Solicitor. I did not routinely sign off on legal advice that VGSO lawyers provided. I would only do so in rare circumstances, generally if an Assistant Victorian Government Solicitor had particular concern about the advice.
18. Similarly, court documents would contain a signature block in my name, but be settled and signed per me by the Principal Solicitor, Managing Principal Solicitor, or Assistant Victorian Government Solicitor handling the file.

**When and how it became apparent to me that Ms Gobbo was or might be a human source**

19. The letter from the Commission has asked me to address when and how it became apparent to me that Ms Gobbo was, or might be, a human source. I first became aware in 2015 that Ms Gobbo was a registered human source, when I was provided with a copy of the Kellam Report, prepared by the Honourable Murray Kellam for IBAC. This was provided to me in my role as Solicitor for Public Prosecutions. I was completely astounded. I did not have any knowledge of this during my time as VGS.
20. I address my knowledge of Ms Gobbo's involvement with Victoria Police when I was VGS below.

**My knowledge about Ms Gobbo providing assistance to Victoria Police**

21. The letter from the Commission has asked me (at item 2) to detail how I learned, or was 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.
22. In 2009, I became aware that Ms Gobbo was a potential witness for the prosecution with respect to murder charges brought against Paul Dale. The circumstances in which I became aware of this are detailed below.



This document has been redacted for Public Interest Immunity claims made by Victoria Police. Negotiations concerning [REDACTED] These claims are not yet resolved.

23. In about late January 2009, I was told that Victoria Police had engaged the VGSO to advise it about negotiating an agreement with Ms Gobbo to provide her with [REDACTED]. I was told this by Sue Nolan, then Assistant Victorian Government Solicitor of the Commercial and Property branch. My recollection is that Sue Nolan contacted me because it was unusual for VGSO to draft an agreement concerning [REDACTED] arrangements, so she wanted me to be aware of this.
24. I understood that this matter was being handled by Isabel Parsons, then Principal Solicitor of the Commercial and Property branch and David Ryan, then Managing Principal Solicitor in the Litigation branch.
25. I cannot recall whether anyone else was present when Sue Nolan initially spoke with me about this. Isabel Parsons possibly was. I believe that David Ryan was not present, but he may have been.
26. At this time, I knew of Ms Gobbo by reputation as a high-profile criminal barrister. I believe that I have not ever had any direct dealings with her.
27. I understood that Ms Gobbo was a proposed witness for the prosecution. I did not understand her to be a human source. I was not aware of the circumstances in which she was a witness.
28. My recollection is that when I was told that Ms Gobbo was a proposed witness for the prosecution in respect of murder charges against Paul Dale, that I already knew from publicly available information that Paul Dale was a police officer who had been charged with murder. In the course of preparing this statement, I have been told that Paul Dale was charged with murder on 13 February 2009. My recollection is that my initial conversation with Sue Nolan was very soon after the VGSO first received instructions in this matter, being late January 2009. It is therefore likely that I was only told of the connection with Paul Dale during a later conversation after mid-February 2009. I do not recall any such conversation specifically. At that time, I was heavily occupied with the establishment of the Victorian Bushfires Royal Commission, following the Black Saturday fires on 7 February 2009.



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29. I was not aware of any suggestion that Ms Gobbo had been Paul Dale's lawyer.
30. From time to time, I believe Sue Nolan, or Isabel Parsons would have given me updates on the progress of negotiations with Ms Gobbo, but I do not recall the specific contents of any such conversation.
31. I do not have notes of these conversations since I was not actively involved in the matter.

*Summonses to produce documents*

32. In the course of preparing this statement, I have been informed that the VGSO was engaged on behalf of the Chief Commissioner of Victoria Police in about August 2009 in relation to a summons to produce documents issued on behalf of Rodney Collins. I have no recollection of knowing anything at the time about this matter or other related summonses to produce or subpoena matters.
33. In the course of preparing this statement, I have been informed that these matters were handled by lawyers within VGSO's Victoria Police Centre branch, Shaun Le Grand and Greg Elms.
34. A large amount of work undertaken by the Victoria Police Centre branch involved responding to subpoenas and making privilege claims. Such matters would not usually be drawn to my attention.

*Gobbo v State of Victoria civil proceeding*

35. Ms Gobbo commenced proceedings in the Supreme Court of Victoria against the State of Victoria and Chief Commissioner of Police and the former Chief Commissioner of Police, seeking damages with respect to loss she claimed to have suffered as a consequence of agreeing to give evidence against Paul Dale. From a document provided to me in preparing this statement, I understand that this proceeding was commenced on 29 April 2010 (**Document VGS0.2000.0142.0498**).
36. From media reports provided to me in the course of preparing this statement, it is apparent that the proceeding was publicly known from 30 April 2010.
37. I would have been aware of this civil proceeding at that time, but I cannot recall precisely how I first became aware of this proceeding.

 -6

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38. This proceeding was being handled by David Ryan, whose Assistant Victorian Government Solicitor was Stephen Lee. Both David Ryan and Stephen Lee were experienced government lawyers and I had solid trust in their judgment. I had confidence that, if there was anything that should be brought to my attention, they would bring such matters to my attention. I therefore was not involved in the day-to-day conduct of this proceeding.
39. In the course of preparing this statement I have been provided with a VGSO file note dated 9 June 2010 (**Document VGSO.2000.0131.0405**). The file note does not state who wrote it. I did not. The file note appears to be a note of a meeting at which the Gobbo proceeding was discussed. The file note names me, Peter Lardner (Victoria Police), Steve Gleeson (Victoria Police) and David Ryan, presumably as meeting attendees. I do not remember attending a meeting at which the matters recorded in the file note were discussed.
40. As set out below, my assistance was sought in the Gobbo civil proceeding with respect to the mediation (which I am informed occurred on 11 August 2010). I was told that the amount to be offered to settle the proceeding exceeded the Chief Commissioner's financial delegation, so Ministerial approval was required. I cannot recall who told me this.
41. In the course of preparing this statement, I have been shown a copy of a VGSO file note dated 3 August 2010 for the Gobbo proceeding (**Document VGSO.2000.0138.0269**), that was produced to the Commission. This file note appears to be a record of a conference attended by Fin McRae (General Counsel of Victoria Police), Peter Lardner, David Ryan, and me regarding the mediation and Ministerial approval. The file note says 'John Cain, Fin McRae, Peter Lardner, David Ryan. Discussed mediation + Ministerial approval. Requirements for settlement.'
42. The file note does not state who wrote it. I did not prepare it. I do not specifically remember this meeting, but have no reason to doubt that it occurred. It is consistent with my memory of being involved in discussions about the need for Ministerial approval for the settlement amount.



7

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43. I remember meeting with Michael Strong, then Director of the Office of Police Integrity, and Fin McRae to discuss the settlement of this proceeding. I cannot recall precisely what was discussed. I am aware that a VGSO file note provided to the Commission (**Document VGSO.5000.0004.7487**) indicates that this meeting occurred on 5 August 2010 . I cannot recall the precise date, but have no reason to doubt this information.
44. I met with the Minister for Police, Emergency Services and Corrections, Bob Cameron, around the time of the mediation to discuss obtaining Ministerial approval of the settlement amount.
45. A chronology prepared by someone at VGSO (**VGSO.5000.0004.7487**) states that this meeting occurred on 6 August 2010 and that Fin McRae also attended. Whilst I cannot recall who else attended, I do not think Fin was there. I expect that one of the Minister's advisers would also have been present at this meeting.
46. I remember discussing with the Minister there being evidence that Victoria Police had assured Ms Gobbo that if she gave evidence against Paul Dale that she would be no worse off, and this evidence was the basis on which she was likely to succeed in her civil claim.
47. I do not remember what documents I read or exactly what I was told before attending this meeting. The usual practice for such a meeting is that Victoria Police or the Department of Justice would have prepared a written brief for the Minister in advance of the meeting. I am not sure whether or not I read this written brief.
48. I expect that I would have received an oral briefing from someone at the VGSO or Victoria Police in advance of this meeting with the Minister. The timing of the meeting, being a few days after the Victorian Bushfires Royal Commission handed down its final report on 31 July 2010, makes me think that it would have been very unlikely for me to have read written advice in preparation for the meeting with the Minister, since I was very involved with the State's response to the Royal Commission report.



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49. While preparing this statement, I have been shown a letter of advice written by David Ryan to Peter Lardner dated 28 July 2010 (**Document VGSO.5000.0023.0434**). The stated purpose of the letter is to advise Victoria Police in relation to the mediation in the proceeding scheduled for 11 August 2010 and to seek instructions. To the best of my recollection, I never read this advice before it was provided to me in preparing this statement.
50. I think it is likely that the Minister and I discussed obtaining further advice from Peter Hanks QC about the appropriateness of the proposed settlement amount, as a probity check for the Minister.
51. I have been provided with an email dated 6 August 2010 from David Ryan to Peter Lardner and Fin McRae (**VGSO.2000.0138.0230**) which refers to a recent discussion between David, Monika Pekevka, Fin McRae and me. The email says that 'the Minister's position is likely to be confirmed on Tuesday morning. We are reasonably confident that the Minister will provide approval.' This email would have been sent after my meeting with the Minister and is consistent with my recollection of my discussion with him.
52. The email also refers to a second opinion being sought from Peter Hanks QC in relation to the advice that had been provided by Michael Wheelahan QC (as he then was) and Michael Rush. This is consistent with my recollection that my recommendation to the Minister regarding settlement would have been subject to further advice being obtained from Peter Hanks QC.
53. In the course of preparing this statement, I have been provided with a copy of the advice of Peter Hanks QC dated 9 August 2010 (**VGSO.5000.0023.0442**). My recollection is that once the VGSO received this advice, the Minister was likely informed of its recommendations and then approved the settlement amount. The matter settled at mediation. I did not attend the mediation myself. I was not involved with agreeing terms of settlement or any ongoing matters in the proceeding.



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Knowledge of Ms Gobbo's obligations of confidentiality and privilege  
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54. The Commission's letter also asks (item 1) that I provide details of how I learned, or was 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.
55. As addressed above, I understood Ms Gobbo to be a witness with respect to matters concerning Paul Dale. I did not know whether or not she had been his lawyer. I only became aware of suggestions that Ms Gobbo had provided information to Victoria Police in breach of obligations of confidence or legal professional privilege in 2015 when I read the Kellam Report, as explained at paragraph 19.

**Knowledge of cases that may have been affected by Ms Gobbo's conduct**

56. At item 4(a), the Commission's letter ask that I provide any details about the number of, and extent to which, cases may have been affected by the conduct of Ms Gobbo as a human source.
57. For the reasons explained above, I had no knowledge of such matters during my time as VGS.
58. The Commission's letter also asks (item 4(b)) that I provide details of any knowledge I had about the conduct of members of Victoria Police in their disclosures about and recruitment, handling and management of Ms Gobbo as a human source.
59. For the reasons explained above, I had no knowledge of such matters during my time as VGS.



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60. As stated above, I have made this statement from my own knowledge and from certain  
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documents that the VGSO produced to the Commission, which have been provided to me. If further relevant documents are identified which have not already been provided to me, I would seek the opportunity to prepare a supplementary statement addressing those documents.

Dated: 20 September 2019



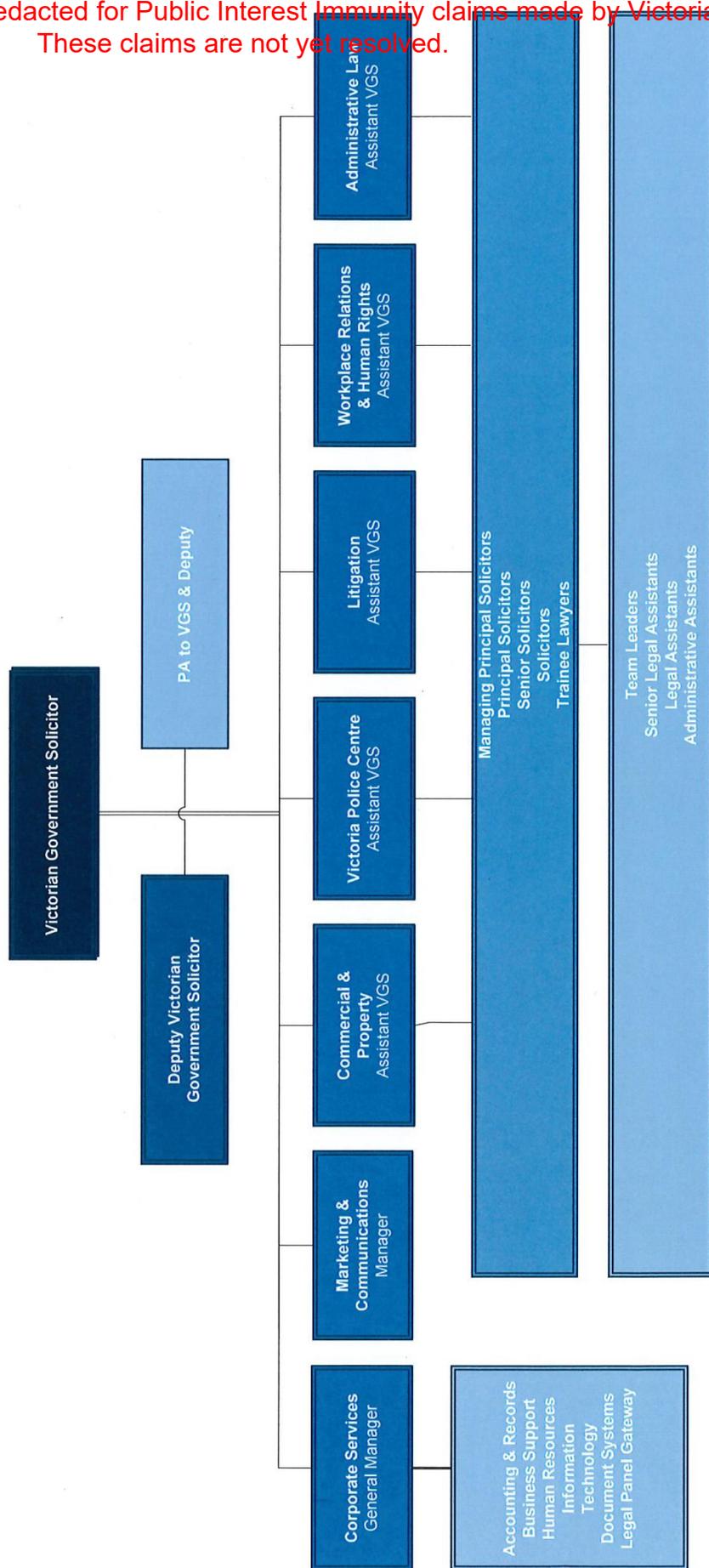
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John Cain

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Annexure 1

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Document ID : VGSO.2000.0142.0498

VGSO 2000.0142.0498

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3

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
MAJOR TORTS LIST

No of 2010

BETWEEN:  
NICOLA MAREE GOBBO

Plaintiff

AND

STATE OF VICTORIA  
(and others according to the Schedule attached)

Defendants

### STATEMENT OF CLAIM

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Date of Document: 29 April 2010

Filed on behalf of: The Plaintiff

Prepared by:

**PIPER ALDERMAN**

Solicitors

Level 24

385 Bourke Street

MELBOURNE, 3000

Solicitors' Code: 19741

Tel: (03) 8665 5555

Fax: (03) 8665 5500

Ref: Mark Waters: MXW: 368227

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#### A. Parties

##### 1. The Plaintiff:

- (a) has been at all relevant times up and until March 2009, practising as a barrister and solicitor of the Supreme Court of Victoria and as a member of the Victorian Bar;
- (b) has practised as a criminal defence barrister;
- (c) since on or around 4 March 2009, has been known as Witness 2 and/or Witness F;
- (d) suffers a significantly complex medical history with a need for ongoing specialist treatment;

#### PARTICULARS

*The Plaintiff suffered a stroke in July 2004. She had a trial device implanted in her heart in October 2004 to seal a hole. As a consequence of the stroke, she suffers from chronic thalamic pain syndrome and trigeminal neuralgia including chronic severe neuropathic facial pain and headache.*

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4

- (e) has a close relationship with her elderly mother and her sister, Catherine Gobbo.
2. The First Defendant, the State of Victoria, is sued pursuant to the *Crown Proceedings Act 1958* (Vic).
3. The Second Defendant, (Overland), was :
- (a) at all material times prior to 3 March 2009, the Deputy Commissioner of Police (Crime) for the State of Victoria;
- (b) at all material times prior to 3 March 2009, the Chair of the Steering Committee established by Victoria Police to investigate the murders of Terrence and Christine Hodson;
- (c) from around 3 March 2009, the Chief Commissioner of Police for the State of Victoria.
4. The Third Defendant, Christine Nixon was, at material times until around 2 March 2009, the Chief Commissioner of Police for the State of Victoria.
5. At all material times,
- (a) Detective Senior Constable Cameron Davey (Davey), Detective Sergeant Sol Solomon (Solomon), Detective Senior Sergeant Shane O'Connell (O'Connell), Inspector Steve Smith (Smith), <sup>Lloyd-DS</sup>  
Graham Evans-O Superintendent Geoff Allway  
(Allway), [REDACTED] and Superintendent Rod Wilson (Wilson) were members of Victoria Police (the police members) ;
- (b) each of the police members acted, in connection with the events, acts, facts, matters and circumstances alleged below which involve them or any of them:
- (i) as officers and agents of the Defendants; and
- (ii) in the course of their duty as members of Victoria Police.
- (c) each of the Defendants, and the police members Davey, Solomon and O'Connell, knew the matters alleged in paragraph 1.

**PARTICULARS**

*The Plaintiff repeatedly informed the police members of her medical needs and invited O'Connell, in particular, to speak with one of her treating specialists.*

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VGSO.2000.0142.0500

5

- (d) to exercise command, responsibility and supervision over matters relating to the murders of Terrence and Christine Hodson, which included the material facts alleged herein, the Defendants established and utilised a Steering Committee comprising senior members of Victoria Police and chaired by the Second Defendant until his appointment as Chief Commissioner of Police ("the Steering Committee").

**PARTICULARS**

*The Plaintiff is presently unable to give particulars of the reporting of each of the police members to the Defendants whether directly, through the Steering Committee, or through intermediate superiors. Such matters are within the knowledge of the Defendants and further particulars may be provided following discovery.*

- (e) each of the police members reported, or ought to have done acting in good faith in the discharge of their duties, the events, acts, facts, matters and circumstances alleged below which involve them or any of them to the Defendants, whether directly or through intermediate superiors including but not limited to the Steering Committee by the established processes and procedures of reporting, accountability, authority, command and responsibility within the Victoria Police.

**PARTICULARS**

*The Plaintiff is presently unable to give particulars of the reporting of each of the police members to the Defendants whether directly or through intermediate superiors. Such matters are within the knowledge of the Defendants and further particulars may be provided following discovery.*

- (f) further, or alternatively to the preceding sub-paragraph, the Defendants knew, or ought to have known had they properly discharged their duties in good faith, of the events, acts, facts, matters and circumstances alleged below through the established processes and procedures of reporting, accountability, authority, command and responsibility within the Victoria Police, including but not limited to the Steering Committee.

**PARTICULARS**

*The Plaintiff is presently unable to give particulars of the reporting of each of the police members to the Defendants whether directly or through intermediate superiors. Such matters are within the knowledge of the defendants and further particulars may be provided following discovery.*

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6

**B. Requests of and Representations to the Plaintiff**

6. On or around 5 March 2008, Davey and Solomon approached the Plaintiff to inquire whether the Plaintiff was prepared to assist in the investigation, in relation to the murders of Terrence Hodson and Christine Hodson, of the involvement of Paul Noel Dale (Dale).

**PARTICULARS**

*The request was oral and was made in a conversation between Davey and Solomon on the one part and the Plaintiff on the other, which conversation was held at an office controlled by the Defendants, the address of which is known to the Defendants, the effect of which was as alleged.*

7. On or around 17 November 2008 Davey and Solomon again approached the Plaintiff to inquire whether the Plaintiff was prepared to make a statement to them in respect of her knowledge of the conduct of Dale in relation to the murders of Terrence and Christine Hodson.

**PARTICULARS**

*The request was oral and was made in a conversation between Davey and Solomon on the one part and the Plaintiff on the other, which conversation was held at an office controlled by the Defendants, the address of which is known to the Defendants, the effect of which is as alleged.*

8. On or around 6 December 2008, Davey and O'Connell again approached the Plaintiff to inquire whether the Plaintiff was prepared to make a statement to the Defendants in respect of her knowledge of the conduct of Dale in relation to the murders of Terrence and Christine Hodson.

**PARTICULARS**

*The request was oral and was made in a conversation between Davey and O'Connell on the one part and the Plaintiff on the other, which conversation was held at a hotel in the central business district of Melbourne, the address of which is known to the Defendants.*

*The substance of the conversation was that:*

- (a) O'Connell and Davey requested that the Plaintiff covertly record Dale at a meeting proposed to occur on 7 December 2008.
- (b) O'Connell told the Plaintiff that the Defendants had determined not to apply for a Surveillance Devices Act warrant.
- (c) O'Connell told the Plaintiff that without a warrant, the Plaintiff would be required to make a statement.
- (d) The Plaintiff informed O'Connell and Davey that if she agreed to covertly record Dale, it did not mean that she would agree to become a witness against him.

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7

(e) O'Connell stated to the Plaintiff that the listening device product would not be able to be used if the Plaintiff was not a witness as the Defendants had chosen not to obtain a warrant.

9. The Plaintiff agreed to covertly record Dale, but no more.
10. On 7 December 2008, the Plaintiff met with Dale, at an address known to the Defendants, and recorded their conversation at the request of and for the Defendants' benefit (the Recording).

PARTICULARS

*The Defendants are in possession of the listening device product and a transcript of the Recording.*

11. On or around 7 December 2008, and after the Recording was obtained, Davey and O'Connell, again requested the Plaintiff make, in relation to the murders of Terrence and Christine Hodson, a statement to the Defendants in respect of the recording of Dale.

PARTICULARS

*The request was oral and was made in a conversation between Davey and O'Connell on the one part and the Plaintiff on the other, which conversation was held at a hotel in the central business district of Melbourne, the address of which is known to the Defendants.*

*The substance of the conversation was that:*

- (a) O'Connell requested that the Plaintiff make a statement against Dale irrespective of the content of the Recording.
- (b) The Plaintiff asked O'Connell if he was aware of the significance for the professional and personal circumstances of the Plaintiff of what he was requesting that she do.
- (c) O'Connell stated to the Plaintiff that he did appreciate the significance of the request for her and, referring to his experience, he assured her that all issues the Plaintiff had in terms of becoming a witness would be accommodated.
- (d) O'Connell advised the Plaintiff that Overland was fully apprised of the detail of the Plaintiff's personal circumstances and her involvement (both to date and proposed) in the investigation.
- (e) The Plaintiff told O'Connell and Davey that she required time to consider the Defendants' request.
- (f) O'Connell requested that the Plaintiff not reveal the nature or existence of the Defendants' request that she make a statement against Dale to anyone.
12. On or around 17 to 18 December 2008, O'Connell again made contact with the Plaintiff and again requested the Plaintiff make, in relation to the murders of Terrence and Christine Hodson, a statement to the Defendants in respect of the recording of Dale.

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8

PARTICULARS

*The request was oral and was made in a telephone conversation between O'Connell and the Plaintiff the substance of which was:*

- (a) *O'Connell told the Plaintiff that the material contained in the Recording was critical and unless the Plaintiff made a statement against Dale, the Recording would not be able to be used in evidence.*
- (b) *O'Connell told the Plaintiff that absent the Plaintiff making a statement against Dale, the Defendants would not be in a position, at that time, to charge Dale with the murder of Terrence Hodson let alone prosecute him.*
- (c) *The Plaintiff responded to O'Connell that she required further time to consider the Defendants' request and O'Connell again requested that the Plaintiff not reveal to anyone the nature or existence of the Defendants' request that she make a statement against Dale.*

13. By 23 December 2008, Davey, Solomon and O'Connell and the Defendants knew:

- (a) the Plaintiff's professional and relevant personal circumstances, including her health and medical condition;

PARTICULARS

*Davey, Solomon and O'Connell and the Defendants knew:*

- (a) *the matters alleged in paragraph 1;*
  - (b) *in relation to the Plaintiff's significantly complex medical history with a need for ongoing specialist treatment, that her health required that she receive continuing care from specialists who understood her medical history, with ready access to her medical records and that she received continuing care from specialists whose speciality was not readily accessible in all capital cities in Australia, let alone elsewhere .*
  - (c) *the Plaintiff acted for major underworld crime figures;*
  - (d) *the Plaintiff appeared to be successful in her practice;*
  - (e) *where the Plaintiff lived and that she lived in her own home;*
  - (f) *that the Plaintiff had familial, employment and financial relationships and friendships within the local community in Melbourne; and*
  - (g) *that the Plaintiff had, by reason of her practice, a public profile amongst persons within or coming into contact with the criminal justice system, including occasional references to her practice in the media.*
- (b) that if the Plaintiff agreed to assist by making a statement to them in respect of the Recording of Dale there would be inevitable, significant, perilous, consequences for the Plaintiff including, but not limited to:
    - (i) she could be killed;
    - (ii) her personal safety and well being would thereafter be substantially endangered and at grave risk;

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9

- (iii) whether Dale was convicted or not, she would be continually living in a state of fear;
  - (iv) whether Dale was convicted or not, she would be continually living in circumstances where her personal safety and well being was compromised;
  - (v) her personal and professional life would be compromised in the following specific ways:
    - (a) she would be unable to continue to reside in her home;
    - (b) her family life would be compromised;
    - (c) she would be exposed to substantial levels of anxiety and stress;
    - (d) her practice as a criminal defence barrister would be irretrievably lost;
    - (e) her privacy, safety and security would be compromised if her identity was not protected;
    - (f) she would be unable to work in her chosen field of expertise in the future;
- (the risk and loss consequences); and,
- (c) that if the Plaintiff agreed to assist by making a statement to them in respect of the recording of Dale the Plaintiff would;
    - (i) be vulnerable to the risk and loss consequences; and,
    - (ii) not be in control of the risk and loss consequences;
    - (iii) be dependent upon the Defendants for her protection from the risk and loss consequences;
  - (d) the Plaintiff's circumstances were uniquely different from those of potential crown witnesses who were usually considered for witness protection.
- (collectively the Plaintiff's concerns)

PARTICULARS

*The knowledge of the defendants arises:*

- (a) because of the matters alleged in paragraph 1;
- (b) because of the matters alleged in paragraph 5;
- (c) from the matters discussed in the conversations alleged in paragraphs 6 - 8, 11, 12 above;
- (d) from a telephone conversation between the Plaintiff and O'Connell, on around 23 December 2008 when she told O'Connell, and he acknowledged, that she was extremely reluctant to assist by making a statement to them in respect of the recording of Dale because there would be inevitable, significant, consequences for her, if she agreed to make a statement as requested, including but not limited to the matters alleged;

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10

- (e) *by reason of the knowledge and/or experience of the Defendants in relation to:*
- (i) *the Plaintiff;*
  - (ii) *Dale;*
  - (iii) *the nature and circumstances of the murders of Terrence and Christine Hodson;*
  - (iv) *the reaction or consequences which might be anticipated from persons who may have had occasion in the past or may have a need in the future to retain the Plaintiff as a criminal defence barrister to the circumstances of the assistance being sought from the Plaintiff to the prosecution of Dale;*
  - (v) *the possible attitude of persons convicted of serious crimes towards persons who may appear to them to be police informers;*
  - (vi) *the fact that the Plaintiff would potentially appear to be a police informer; and*
  - (vii) *witness protection programs.*
14. On or around 23 December 2008, in order to induce the Plaintiff to agree to make a statement against Dale, and if summonsed, to give evidence against him in any prosecution, the Defendants represented and warranted to the Plaintiff that
- (a) the Defendants acknowledged and accepted that the Plaintiff's concerns were valid and accurately stated;
  - (b) the Plaintiff would be afforded the highest level of attention by the Defendants;
  - (c) the Plaintiff could trust and rely upon the Defendants to address the Plaintiff's concerns;
  - (d) the Defendants were fully supportive of the investigation and prosecution of Dale, and were grateful and supportive of the Plaintiff's assistance in relation thereto;
  - (e) the Defendants would ensure that if the Plaintiff made a statement against Dale, and agreed to give evidence, the Plaintiff would be "no worse off financially or otherwise" as a consequence of doing so;
  - (f) the Defendants would grant access to the Plaintiff to the Victorian Witness Protection Program with an "unprecedented degree of flexibility" on the basis that in relation to the circumstances of a witness needing protection, the Plaintiff was unique and that the Victorian Witness Protection Program would be able to, and would, accommodate the Plaintiff and her individual needs;
  - (g) that any issues the Plaintiff had in terms of becoming a witness "would be accommodated";
  - (h) that the Defendants would ensure that the Plaintiff's safety, security and well being together with her identity was protected by obtaining appropriate

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These claims are not yet resolved.

11

suppression and non-publication orders for the duration of any prosecution proceedings against Dale;

- (i) the Defendants would consult with the Plaintiff prior to releasing information to Dale in the course of any prosecution if the release of that information would compromise the Plaintiff's safety, security or wellbeing;
- (j) the Defendants would pay for the Plaintiff to be independently represented by Counsel of her choice in any court proceedings if representation became necessary as a result of the Plaintiff becoming a witness;
- (k) there would be "no budgetary constraints" applicable to the Plaintiff in terms of providing the Plaintiff with compensation for the loss of her profession;
- (l) the Plaintiff could trust and rely upon the Defendants to protect and nurture her future ongoing safety, security and welfare;
- (m) the Plaintiff would be "looked after" by the Defendants, and by one or more of Davey, Solomon and O'Connell if the Plaintiff agreed to make a sworn statement against Dale thereby agreeing to become a witness in any prosecution of Dale;
- (n) there were reasonable grounds for making the representations.

(collectively the Representations)

**PARTICULARS**

*The Representations in sub-paragraphs (a) to (m) were partly oral and partly implied. In so far as they were oral they were made in a telephone conversation between O'Connell and the Plaintiff, the substance of which was as alleged. Further, the Representations were made by the Defendants by O'Connell by reason of:*

- (i) *the matters alleged in paragraph 5;*
- (ii) *in the telephone conversation alleged, O'Connell in response to the Plaintiff's concerns, told the Plaintiff that he had spoken previously to Smith and Overland about the Plaintiff's concerns, and that he had Overland's express authority to address the Plaintiff's concerns.*
- (iii) *the matters alleged in paragraphs 8, 10 and 11;*

*The Representations in sub-paragraph (n) were implied in all the circumstances in which the express oral representations were made.*

15. On 1 January 2009, in order to induce the Plaintiff to agree to make a statement against Dale, and if summonsed, to give evidence against him in any prosecution, the Defendants acknowledged, accepted and repeated on behalf of the Defendants the accuracy and effect of the Representations (the Acknowledgement).

**PARTICULARS**

*The Acknowledgement was oral and was made in a conversation at a meeting between O'Connell Davey and Solomon, on behalf of the Defendants, and the Plaintiff, which conversation was held at a private residence outside of*

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These claims are not yet resolved.

12

*Melbourne, the address of which is known to the Defendants and the substance of which is as alleged.*

16. Further, in engaging in the conduct alleged in paragraphs 14 and 15, each of Davey, Solomon and O'Connell warranted, as was the fact, his, and each of their, authority to:
- (a) make the Representations and the Acknowledgement on behalf of the Defendants;
  - (b) undertake, on behalf of the Defendants, an obligation by the Defendants to protect her interests and, specifically, to protect her from the risk and loss consequences; and
  - (c) undertake, on behalf of the Defendants, an obligation by the Defendants to make good the Representations.
- (the warranty of authority of Davey, Solomon and O'Connell).

**C. The Contract Claim**

**The Agreement**

17. Acting:
- (a) on the faith and truth of the Representations and the Acknowledgement, and induced thereby;
  - (b) in consideration of the Defendants accepting an obligation to protect her interests and, specifically, to protect her from the risk and loss consequences;
  - (c) on the fact of the authority of Davey, Solomon and O'Connell on behalf of the Defendants ;
- on 1 January 2009 the Plaintiff agreed to make a statement against Dale, and if summonsed, to give evidence against him (the Agreement).

**PARTICULARS**

*The Agreement is partly oral and partly to be implied.*

- A. *In so far as it is oral, the Plaintiff refers to and repeats paragraphs 1 to 15 hereof.*
- B. *In so far as it is to be implied, it is implied by reason of the relationship and the circumstances of the dealings between the parties and in order to give business efficacy to the Agreement.*

18. There were terms of the Agreement that:

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These claims are not yet resolved.

13

- (a) The Plaintiff would make a statement against Dale and, if summonsed, give evidence at any proceeding brought against him by the Defendants;
- (b) The Plaintiff would continue to assist the Defendants with their inquiries into the murders of Terrence and Christine Hodson and any related matters or investigations;
- (c) The Defendants would provide the Plaintiff with appropriate ongoing witness management and support and do all other necessary, and reasonable things to ensure the safety of the Plaintiff or any of the Plaintiff's immediate family members;
- (d) The Defendants would protect the Plaintiff's ongoing security and welfare;
- (e) The Defendants would arrange and pay for the Plaintiff to be relocated to a mutually acceptable address (including any necessary transportation) other than her residential address once Dale was arrested and charged;
- (f) The Plaintiff would reside at an address other than her residential address for a period to be determined in consultation with the Defendants, subject to such address taking into account the Plaintiff's individual needs;
- (g) The Plaintiff would have access to the Victorian Witness Protection Program with such flexibility as was required to accommodate the Plaintiff's individual and particular needs;
- (h) The Defendants would in good faith negotiate the particular terms upon which the Plaintiff would be offered witness protection which accommodated her individual and particular needs;
- (i) The Defendants would provide such financial compensation as was necessary to ensure that the Plaintiff would be "no worse off financially or otherwise" as a result of providing the requested assistance, including, without limitation, financial compensation for the loss of her practice as a barrister and her ability to practise as a barrister at the Victorian Bar in the future;
- (j) The Defendants would provide the Plaintiff with financial support in the interim and during witness protection including, without limitation, payment of expenses such as mortgage, lease and other debt payment obligations;
- (k) The Defendants would take all possible steps to protect the Plaintiff's safety, security and wellbeing together with the Plaintiff's identity by seeking and maintaining a suppression and non-publication order for the duration of the Dale prosecution;

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VGSO.2000.0142.0509

14

- (l) The Defendants would consult with the Plaintiff prior to releasing information to Dale in the course of any prosecution if the release of that information would compromise the Plaintiff's safety, security or wellbeing;
- (m) The Defendants would pay for the Plaintiff to be independently represented by appropriate Counsel of her choice in any court proceedings if representation became necessary as a result of the Plaintiff becoming a witness against Dale;
- (n) The Defendants would in good faith negotiate the financial compensation for the Plaintiff to which the Defendants had agreed and the Plaintiff would supply such information and substantiation of her financial claim as the Defendants reasonably required;
- (o) The Defendants acknowledged that the Plaintiff was dependent upon their full performance of the Agreement in good faith and was vulnerable to loss and damage both to her person and her economic position should she not receive full and proper protection of her interests;
- (p) The Plaintiff and Defendants would cooperate with each other and do all things necessary to permit each other to discharge their obligations and perform their duties under the Agreement;
- (q) The Defendants would, at all times, act in good faith towards the Plaintiff in respect of their dealings with her in relation to the subject matter of the Agreement; and,
- (r) Notwithstanding that the terms of the Agreement would be confirmed in writing by the Defendants within a period of approximately two to three weeks, it was the intention of the Plaintiff and the Defendants that they be immediately bound by the Agreement.

#### PARTICULARS

*The Plaintiff refers to and repeats the particulars to paragraph 17 and says further that the terms alleged in sub-paragraphs (a) - (o), and (r) were partly oral and partly to be implied and the terms alleged in sub-paragraphs (p) and (q) were implied, with such implication arising from the nature and content of the express terms and the need to give commercial and practical efficacy to them. Further the term alleged in sub-paragraph (r) is implied by the requirement of the Defendants that the Plaintiff provide the statement which she agreed to give immediately upon agreeing to do so, and its use by the Defendants, and their agents, before any written confirmation of the Agreement was executed and by the fact that the Plaintiff made the statement in respect of her knowledge of the conduct of Dale in relation to the murders of Terrence and Christine Hodson and in respect of the Recording of Dale on 7 December 2008.*

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These claims are not yet resolved.

15

D. Conduct following the Agreement

19. Between 20 January 2009 and 16 February 2009, notwithstanding that the Agreement had not been confirmed in writing, the terms of the Representations, the Agreement and the Acknowledgement were confirmed (the Confirmation).

PARTICULARS

*The Confirmation was partly in writing and partly oral.*

- (a) *In so far as the Confirmation is in writing, it is contained in a document entitled "Witness Proposal" which document was prepared by O'Connell, on behalf of the Defendants and given to the Plaintiff at a meeting attended by O'Connell and the Plaintiff at a beach in Port Melbourne, the particular address of which is known to the Defendants at 7.00 am on 20 January 2009.*  
*A copy of the said document is in the possession of the solicitors for the Plaintiff and may be inspected by prior appointment.*
- (b) *In so far as the Confirmation was oral, it was comprised in the following conversations:*
- (i) *Conversation between the Plaintiff and O'Connell on behalf of the Defendants, which conversation was held at a beach in Port Melbourne, the particular address of which is known to the Defendants at 7.00 am on 20 January 2009, the substance of which is as alleged;*
  - (ii) *Conversation between the Plaintiff and O'Connell on behalf of the Defendants, which conversation was held at a park in the vicinity of the Westgate Bridge, the particular address of which is known to the Defendants at 9.30 am on 31 January 2009, the substance of which is as alleged;*
  - (iii) *Conversation between the Plaintiff and O'Connell on behalf of the Defendants, which conversation was held at a park in the vicinity of the Westgate Bridge, the particular address of which is known to the Defendants at 10.00 am on 1 February 2009, the substance of which is as alleged;*
  - (iv) *Conversation between the Plaintiff and O'Connell on behalf of the Defendants, which conversation was held at a park in the suburb of East Melbourne, the particular address of which is known to the Defendants after 11.30 am on 9 February 2009, the substance of which is as alleged;*
  - (v) *Conversation between the Plaintiff and Catherine Gobbo on the one part and O'Connell on behalf of the Defendants, on the other part which conversation was held at hotel in the central business district of Melbourne, the particular address of which is known to the Defendants at 7.00 pm on 11 February 2009, the substance of which is as alleged; and*
  - (vi) *Conversation between the Plaintiff and O'Connell on behalf of the Defendants, which conversation was held at a car park in the suburb of Port Melbourne, the particular address of which is known to the Defendants at 7.00 am on 16 February 2009, the substance of which is as alleged.*

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These claims are not yet resolved.

16

20. Following the Agreement:

(a) the Plaintiff:

- (i) as she had done on and from the date of obtaining the Recording, refrained from disclosing to anyone, other than those persons sanctioned by the Defendants, the assistance being provided by her in relation to the Defendants' investigation into Dale, as directed and requested by the Defendants;
- (ii) on 1 and 2 January 2009, made a statement to Victoria Police against Dale;

**PARTICULARS**

*The statement was taken at an address known to the Defendants and in the presence of officers or agents of the Defendants, whose identity is known to the Defendants. The Defendants are in possession of the original of the Plaintiff's statement.*

- (iii) on 7 January 2009, signed the statement against Dale;
- (iv) between around early February 2009 and 10 March 2009, at the request of the Defendants, returned all current or continuing briefs and ceased accepting any new briefs;
- (v) on or around 10 March 2009, and at the request of the Defendants, ceased practising as a member of the Victorian Bar and had her practising certificate and professional indemnity insurance suspended;
- (vi) on or around 14 March 2009, and at the direction of the Defendants, terminated the lease on her chambers at Crockett Chambers, level 7, 530 Lonsdale Street, Melbourne.
- (vii) from 4 March 2009 ceased living at her residential address in Melbourne, which address is known to the Defendants, and shortly thereafter on 14 March 2009 [REDACTED]
- (viii) between 4 March 2009 and 24 November 2009 resided, at the direction of the Defendants and upon arrangements being made by them for the Plaintiff to do so, at [REDACTED]

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These claims are not yet resolved.

17

- (ix) did not disclose [REDACTED] which she was primarily residing between March 2009 and October 2009 to any person other than with the express consent of and at the direction of the Defendants.
- (x) did not disclose [REDACTED] at which she was residing to any person other than with the express consent of and at the direction of the Defendants.
- (xi) between 14 March 2009 and 24 November 2009, [REDACTED]  
[REDACTED]
- (xii) between 4 March 2009 and 24 November 2009, [REDACTED]  
[REDACTED]
- (xiii) from 4 March 2009 only had contact with former clients or associates of former clients with the sanctioned prior consent and at the direction of the Defendants.
- (xiv) from 4 March 2009, ceased contact with any media organisation and, if contacted by any media organisation, reported such contact to the Defendants.
- (xv) on and from 14 March 2009, only <sup>PII</sup> [REDACTED] with the prior express consent of the Defendants and upon the Defendants making arrangements for the Plaintiff to do so.
- (xvi) on 22 May 2009 [REDACTED]  
[REDACTED] for the purpose of giving effect to the terms of the Agreement referred to in paragraph 18(b) hereof.
- (xvii) on 20 August 2009 [REDACTED]  
[REDACTED] for the purpose of giving effect to the Agreement referred to in paragraph 18(b) hereof.
- (xviii) between 4 March 2009 and 2 December 2009, maintained contact with the Defendants via mobile phone sms messaging to inform the Defendants of the Plaintiff's movements at regular intervals throughout each and every day.

**PARTICULARS**

*The Plaintiff is in possession of a copy of all sms text messages, and copies can be provided to the Defendants upon request.*

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These claims are not yet resolved.

18

- (xix) between 14 March 2009 and 20 November 2009, provided to the Defendants copy invoices for all accounts the subject of the term of the Agreement alleged in paragraph 18(j) above.
- (xx) on 10 February 2009, provided to O'Connell on behalf of the Defendants, a copy of the Plaintiffs 2006/2007 tax return in response to a request by O'Connell; and
- (xxi) between 16 March 2009 and 4 December 2009 accepted regular monetary payments of \$1,000 per week from the Defendants which payments were instituted so that the Plaintiff [REDACTED] and other miscellaneous amounts as the Defendants so reimbursed.

(b) the Defendants have:

- (i) provided the Plaintiff with a form of witness support and management from 4 March 2009 until 20 November 2009 (as detailed in sub-paragraph (a) of this paragraph), when such support and management was terminated by the Defendants as alleged below in paragraph 29.
- (ii) arranged, booked and paid for accommodation for or on behalf of the Plaintiff on approximately 25 different occasions between 4 March 2009 and 23 November 2009.

**PARTICULARS**

*The details of the accommodation bookings are known to the Defendants.*

- (iii) arranged, booked and paid for approximately 35 flights on behalf of the Plaintiff between 14 March 2009 and 26 October 2009.

**PARTICULARS**

*The details of the flight bookings are known to the Defendants.*

- (iv) paid the amounts referred to in paragraph 20(a)(xxi) hereof to the Plaintiff.
- (v) arranged, booked and paid for numerous hire cars and taxis for the Plaintiff between 4 March 2009 and 24 November 2009.

**PARTICULARS**

*The Defendant is in possession of all tax invoices for all bookings. Further particulars can be provided upon request following discovery.*

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These claims are not yet resolved.

19

- (vi) between late February 2009 and 12 June 2009 provided to the Plaintiff various documents purporting to set out the agreement but which do not record nor correspond with the Agreement referred to in paragraph 17 and 18 above.

**PARTICULARS**

*The documents were prepared by the Defendants' solicitors who are in possession of a copy of each document. Further particulars will be provided following discovery.*

- (vii) on 4 March 2009, applied for and obtained, in respect of the Plaintiff, a suppression and non-publication order from this Court (Cummins J) pursuant to sections 18 and 19 of the Supreme Court Act 1986 and the inherent jurisdiction of the Court.
- (viii) in or around late March 2009, took steps to enforce the Order of Cummins J by having removed from the world wide web a copy of the reasons for decision of Warren CJ proceeding number 1415 of 2009.
- (ix) between around 28 March 2009 and 5 April 2009, O'Connell, Smith, Graham Eve and Lloyd-DS travelled to Bali Indonesia where the Plaintiff was holidaying with her sister, Catherine Gobbo, purportedly to provide witness support.
- (x) in or around late March early April 2009, [REDACTED]

**PARTICULARS**

- (xi) between around March 2009 and 16 December 2009 [REDACTED]
- (xii) on or around 8 May 2009 served upon Dale a hand up brief which made disclosures in relation to the Plaintiff.

**PARTICULARS**

*The disclosures include the identity of the Plaintiff, the release to Dale of information concerning the Plaintiff's medical condition as alleged in paragraph 1(d) and the location of her treating specialist.*

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VGSO.2000.0142.0515

20

*The Plaintiff is presently unable to give further particulars as the hand up brief is in the possession of the Defendants. Further particulars will be provided following discovery.*

- (xiii) on 31 May 2009, between 1 June 2009 and 13 June 2009 and between 15 June 2009 and 16 June 2009 provided the Plaintiff with [REDACTED]
- (xiv) on 6 August 2009, applied for and obtained in respect of the Plaintiff a suppression and non-publication order from this Court (Byrne J) pursuant to sections 18 and 19 of the Supreme Court Act 1986 and the inherent jurisdiction of the Court.
- (xv) in or around late August 2009 took steps to enforce the Order of Byrne J by having removed from the world wide web a copy of his Honour's reasons for decision in proceeding number 1415 of 2009.
- (xvi) in or around late September 2009 took steps to enforce the Order of Byrne J by having removed from the world wide web a copy of the reasons for decision of Maxwell P, Nettle JA and Lasry AJA in proceeding number 773 of 2009 .
- (xvii) in early October 2009 offered to the Plaintiff accommodation [REDACTED]
- (xviii) on 23 November 2009, reimbursed the Plaintiff's Victorian Racing Club membership fees for 2009/2010 in the sum of \$380.00, which membership the Plaintiff was precluded from utilising by the Defendants due to the operation of the Agreement.
- (xix) on 23 November 2009, reimbursed to the Plaintiff the cost of tickets purchased to attend the Pink concert in Melbourne in July 2009 in the sum of \$344.75, which event the Plaintiff was precluded from attending by the Defendants due to the operation of the Agreement.
- (xx) on 23 November 2009, [REDACTED]  
[REDACTED]  
the address of which is known to the Defendants.
- (xxi) on or around 6 December 2009 offered to the Plaintiff [REDACTED]  
[REDACTED]

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These claims are not yet resolved.

21

- (xxii) [REDACTED]
- Between around 1 February 2010 and mid April 2010 released to Dale documents and items relating to the Plaintiff in answer to a Witness Summons served by Dale on Overland.

**PARTICULARS**

*A copy of the Witness Summons is in the possession of the solicitors for the Plaintiff and may be inspected by appointment. The Plaintiff is presently unable to give further particulars as a copy of all documents produced to Dale in answer to the Witness Summons are in the possession of the Defendants. Further particulars will be provided following discovery.*

- (xxiii) on or around 20 February 2010 released to Dale in an open court a document purportedly recording the monies spent by the Defendants on the Plaintiff from 4 March 2009 (Chart of Monies).

**PARTICULARS**

*A copy of the Chart of Monies is in the possession of the solicitors for the Plaintiff and may be inspected by appointment.*

- (xxiv) on 11 March 2010 applied unsuccessfully to maintain the suppression and non-publication order in relation to the Plaintiff made by Cummins J and continued by Byrne J before Magistrate Reardon pursuant to section 126 of the Magistrates' Court Act.
- (xxv) between 9 March 2010 and mid April 2010 instructed solicitors and Counsel to make claims for public interest immunity in relation to documents and items sought by Dale from the Defendants which related directly to the Plaintiff and her ongoing security, safety and wellbeing.
- (xxvi) between 9 March 2010 and mid April 2010, in the course of making claims for public interest immunity, repeatedly referred to the Plaintiff as a police informer in open court.

21. The conduct alleged in the preceding paragraph was in performance, or pretended performance, of the Agreement.
22. Between January and June, 2009, alternatively by no later than 7 September, 2009, the Defendants knew, or ought to have known:

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These claims are not yet resolved.

VGSO.2000.0142.0517

22

- (a) that the dealings between them and the Plaintiff, alleged above and in the particulars to paragraph 34 below, were subjecting the Plaintiff to significant stress;
- (b) that the Plaintiff's medical condition was aggravated by that stress.

**PARTICULARS**

*The Defendants knew the matters alleged by reason that such matters were known to Allway and O'Connell (and the Plaintiff refers to and repeats paragraph 5) because:*

- (a) *they observed the demeanour of the Plaintiff when dealing with her and that she was under stress was obvious to any observer;*
- (b) *police officers are trained to make observations of demeanour; and,*
- (c) *during the discussions which occurred at this time, the Plaintiff complained to them, including in the presence of their solicitors, the Victorian Government Solicitors' Office, that the Defendants refusal to be flexible in these negotiations to find a common solution was stressing her and that as a result of that stress her health was suffering.*

*The Plaintiff informed Overland directly of these matters in correspondence to him of 7 September, 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.*

23. In early June, 2009, the Defendants confirmed again that the Plaintiff was then at high risk of harm, requiring ongoing security protection and assistance.

**PARTICULARS**

*Letter to the Plaintiff from Deputy Commissioner Walshe on behalf of the Defendants on 4 June, 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.  
The Plaintiff otherwise refers to and repeats paragraph 20(b) above.*

24. From 16 June, 2009, the Plaintiff was treated as an inpatient for approximately 17 days and the Defendants knew from the time of her discharge, alternatively by no later than 7 September, 2009, that her medical condition required:

- (a) continuing access to outpatient services, including physiotherapy and occupational therapy;
- (b) certainty in terms of accommodation and daily routine; and
- (c) that she be in an environment with ongoing daily emotional and physical support from close family members.

**PARTICULARS**

*The Defendants knew the matters alleged by reason that such matters were known to O'Connell because:*

- (a) *he was so informed by the Plaintiff; and*
- (b) *he was provided, at his request, with a copy of the Plaintiff's discharge summary from hospital.*

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These claims are not yet resolved.

23

*The Plaintiff informed Overland directly of these matters in correspondence to him of 7 September, 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.*

25. Notwithstanding the knowledge alleged in the preceding paragraph, the Plaintiff was, on her discharge from hospital on 2 July 2009, relocated by the Defendants [REDACTED] that day.
26. In late August, 2009, the Defendants further confirmed that the Plaintiff was then at extreme risk of harm, requiring ongoing security protection and assistance.

PARTICULARS

*Letter to the Plaintiff from Deputy Commissioner Walshe on behalf of the Defendants on 26 August, 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.*

27. Between:
- (a) late July and October, 2009; and
  - (b) late October 2009 and 22 April 2010,
- and following on, from and/or in consequence of:
- (i) the circumstances and manner in which the Defendants sought to protect the Plaintiff's security, safety and wellbeing;
  - (ii) the matters alleged in paragraphs 22 to 26 above;
  - (iii) the matters alleged in paragraphs 20(b)(xvii) and 20(b)(xxi) to (xxvi) above; and
  - (iv) the matters alleged in paragraph 34 below,
- the Plaintiff's health deteriorated markedly.

PARTICULARS

- (a) *Between July 2009 and October 2009, the Plaintiff's chronic severe neuropathic facial pain and headache became non-responsive to the Plaintiff's existing medication regime requiring repeated attendances on her specialist on 10 July 2009, 7 August 2009, 4 September 2009 and 13 October 2009.*
- (b) *The Plaintiff is on medication and suffers significant issues with mood disorder and sleep disturbance.*
- (c) *By 28 September 2009, the Plaintiff had developed the first of a number of stress related dermal and epidermal breakdowns to her lower limb with ulceration, requiring surgery.*
- (d) *Between 28 October 2009 and 22 April 2010, the Plaintiff was hospitalised and had 7 operations to treat a number of stress related dermal and epidermal breakdowns on her lower limbs and perineum which had ulcerated.*

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These claims are not yet resolved.

VGSO.2000.0142.0519

24

- (e) On 1 February 2010 the Plaintiff commenced treatment with a psychologist to assist with the management of the Plaintiff's chronic severe neuropathic facial pain and headache.
- (f) She has a major depressive disorder.
- (g) On 11 March 2010 the Plaintiff was admitted to hospital and had radical vulva surgery to remove cancerous and pre-cancerous vaginal cells.

28. From late July 2009 and at all material times thereafter, the Defendants knew or ought to have known:
- (a) that the Plaintiff's health had deteriorated and was continuing to do so;
  - (b) that the dealings between them and the Plaintiff as alleged in paragraphs 20(b) above and 34 below, were subjecting the Plaintiff to significant stress;
  - (c) the Plaintiff's various medical conditions were aggravated by that stress.

PARTICULARS

*The Plaintiff refers to and repeats paragraphs 22 to 26 above. The Defendants knew the matters alleged by reason that such matters were known to:*

- (a) O'Connell and Smith because they were informed of the Plaintiff's medical state by Catherine Gobbo in a telephone call on 3 December 2009;
- (b) O'Connell and Smith because they observed the demeanour of the Plaintiff and that she was generally unwell and under stress when dealing with her at a meeting held on 7 December 2009 at the Plaintiff's hospital;
- (c) Solomon because he observed the demeanour of the Plaintiff and that she was generally unwell and under stress when dealing with her at meetings held on 21 December 2009, 29 December 2009 and 1 January 2010 at the Plaintiff's hospital;
- (d) O'Connell, <sup>Graham E</sup> and <sup>Lloyd DS</sup> because they observed the demeanour of the Plaintiff and that she was generally unwell and under stress when dealing with her at a meeting held on 4 February 2010;
- (e) O'Connell because he was advised in writing of the Plaintiff's health in an email from Catherine Gobbo to him dated 23 December 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment;
- (f) O'Connell, Smith, Solomon and <sup>Graham E</sup> because they were advised in writing of the Plaintiff's health in an email from Catherine Gobbo to them dated 15 January 2010, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment;
- (g) Solomon and Davey because they observed the demeanour of the Plaintiff and that she was generally unwell and under stress when dealing with her at a meeting held on 8 February 2010 at the offices of the Plaintiff's solicitors;

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These claims are not yet resolved.

25

(h) Solomon because he attended the Magistrates' Court of Victoria at Melbourne on 16 March 2010 at which time the Plaintiff's specialists gave evidence as to her medical conditions and the effect upon these of stress.

Further, the Defendant's solicitors were specifically informed of the Plaintiff's medical conditions in:

- (i) a meeting attended by Mr McRae and Ms Parsons on behalf of the Defendants and Mr Waters and Ms Catherine Gobbo on behalf of the Plaintiff on 4 January 2010; and
- (ii) letters sent by the Plaintiff's solicitors to the Defendants' solicitors dated 29 January 2010, 4 February 2010, 8 February 2010, 26 February 2010, 3 March 2010, 9 March 2010, 23 March 2010, 30 March 2010, 6 April 2010, 9 April 2010 and 22 April 2010.

The Plaintiff informed Overland directly of these matters in correspondence to him dated 21 January 2010, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.

29. On 20 November 2009, the Defendants terminated such support and management as was being provided by the Defendants.

PARTICULARS

The termination was in writing and was contained in three text messages sent by Smith, Lloyd-DS and Graham Evans-O each as agent for the Defendants to the Plaintiff on 21 November 2009, the substance of which is as alleged.

The Plaintiff is in possession of the text messages, a copy of which can be provided to the Defendants upon request.

30. Between 27 October 2009 and 19 April 2010, and in the knowledge of the matters referred to in paragraphs 27 to 28 hereof, the Defendants maintained that it was essential for management of the risk of harm to the Plaintiff that she:

- (a) enter into the Witness Protection Program on the terms stipulated by the Defendants; and
- (b) be located in accommodation at least 60 minutes from the central business district of Melbourne (CBD), alternatively "a sufficient distance" from the CBD.

PARTICULARS

The Plaintiff refers to:

- (a) An email from Wilson to Catherine Gobbo dated 5 November 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment;
- (b) A telephone call between Smith and O'Connell on behalf of the Defendants and Catherine Gobbo on behalf of the Plaintiff on 3 December 2009;

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26

*(c) Letters from the Defendants' solicitors dated 10 March 2010, 11 March 2010 and 1 April 2010.*

31. Further, between 19 April 2010 and 22 April 2010, and in the knowledge of the matters referred to in paragraphs 27 and 28 hereof, the Defendants maintained that they could only manage the risk of harm to the Plaintiff if she agreed to relocate to accommodation within a proximate location to the CBD with 24 hour a day protection by [REDACTED] officers.

**PARTICULARS**

*The Plaintiff refers to a letter from her solicitors to O'Connell dated 20 April 2010, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.*

**E. Termination of Agreement**

32. In or around late November 2009 and early December 2009, the Defendants evinced an intention no longer to be bound by the terms of and thereby repudiated the Agreement (the repudiation).

**PARTICULARS**

*The repudiation was in writing and was contained in a letter from the Defendants' solicitors to the Plaintiff's solicitors dated 14 December 2009. A copy of the letter is in the possession of the solicitors for the Plaintiff and may be inspected by prior appointment. Further, and alternatively, the Plaintiff refers to and relies on the matters alleged in paragraph 34 below as evincing an intention on the part of the Defendants, by no later than the date alleged, not to perform the agreement in accordance with its terms and to no longer to be bound by the Agreement.*

33. The Plaintiff, as she is entitled to do, accepted, alternatively hereby accepts the repudiation as rescinding the Agreement.

**F. Breach of Agreement**

34. In breach of the Agreement, the Defendants have:
- (a) not provided the Plaintiff with appropriate and/or ongoing witness management and support;

**PARTICULARS**

*During the period between March 2009 and October 2009 when the Plaintiff was located in [REDACTED]*

- (a) *she was without any form of police assistance other than a periodical visit by Lloyd DS and/or O'Connell which*

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These claims are not yet resolved.

27

attendances were conducted [REDACTED]

- (b) she was left without any point of contact [REDACTED]
- (c) she was instructed by O'Connell that in the event of a security incident the plan agreed by Victoria Police was for her to "run for your life";

The Plaintiff is currently without any form of witness management and support other than being directed to telephone "000" in the event of an emergency. The Plaintiff refers to a letter from the Defendants' solicitors to her solicitors dated 1 April 2010, a copy of which is in the possession of the Plaintiff's solicitors where it may be inspected by appointment.

The Plaintiff otherwise refers to and repeats paragraph 29 hereof.

- (b) terminated, from 20 November 2009 without justification, the provision of any ongoing witness management and support;
- (c) failed to appropriately protect the identity of the Plaintiff;

PARTICULARS

The failure or refusal of the Defendants to appropriately protect the identity of the Plaintiff is evidenced by the following circumstances:

- (a) On 8 May 2009 served on Dale a hand up brief which contained inappropriate and unnecessary disclosures in relation to the Plaintiff.
- (b) On 20 February 2010, released to Dale in an open court the Chart of Monies which document contained inappropriate and unnecessary disclosures in relation to the Plaintiff.
- (c) On 11 March 2010, and as a result of the use by the Defendants of limited evidence rather than all of the evidence that was available to them, the suppression and non-publication order previously ordered by Cummins J on 11 March 2009 and continued by Byrne J on 6 August 2009 was revoked.
- (d) At no time since 11 March 2010 have the Defendants renewed an application for a suppression and non-publication order in relation to the Plaintiff.
- (e) Between 9 March 2010 and mid April 2010, in the course of making claims for public interest immunity, repeatedly referred to the Plaintiff as a police informer in open court.
- (f) Between 1 February 2010 and mid April 2010 failed and refused to provide the Plaintiff with access to independent Counsel to protect her interests in the course of the Dale committal hearing.
- (d) failed and/or refused to negotiate in good faith with the Plaintiff for admission into the Witness Protection Program;

PARTICULARS

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These claims are not yet resolved.

28

The failure or refusal of the Defendants to negotiate in good faith with the Plaintiff for admission into the Witness Protection Program (Witsec) is evidenced by the following circumstances:

- (i) The Plaintiff was informed by O'Connell, at or about the time of Dale's arrest, that Victoria Police considered that the risk to her "was at the highest level" and in this context and absent any particular threat, discussions about entering Witsec were held with O'Connell on behalf of the Defendants.
- (ii) The Plaintiff stated that she was prepared to enter into Witsec, not just for the protections offered to a witness in terms of personal safety but also, and importantly, for the protection to her arising from the benefits to the prosecution in disclosure obligations in respect of witnesses under protection but was not prepared to subject herself to a strict regime, inappropriate having regard to her personal circumstances.
- (iii) O'Connell repeated (as alleged above) that there would be an unprecedented degree of flexibility as to how Witsec would operate to accommodate her circumstances.
- (iv) In early February, 2009, the Plaintiff met with O'Connell, [REDACTED] and [REDACTED] on two occasions, and each of these police members demonstrated a lack of understanding of the personal circumstances of the Plaintiff. Further in this and subsequent discussions no flexibility at all in the manner in which the Witsec program might operate in connection with the Plaintiff was evident and no proposals were forthcoming from Witsec to deal with important practical matters including, but not limited to:
- (a) the impracticality of PII [REDACTED]
  - (b) health concerns including access to ongoing medical treatment with current specialist doctors;
  - (c) relocation;
  - (d) property investments;
  - (e) business interests of the Plaintiff;
  - (f) academic qualifications;
  - (g) employment prospects;
  - (h) taxation matters.
- (the practical matters)
- (v) Thereafter, between February and July, 2009, the Plaintiff dealt with Allway, [REDACTED] Allway, notwithstanding that there is no statutory, or practical, essential requirement for [REDACTED] and was unable to offer any proposal as to how practical matters would operate if the Plaintiff were in Witsec.
- (vi) In particular, the Defendants failed or refused to negotiate, in good faith and with flexibility as to:
- (a) medical treatment;
  - (b) the relationship between management of her chronic medical condition and contact with close family and friends, particularly for physical, mental and emotional support;
  - (c) [REDACTED]
  - (d) [REDACTED]

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These claims are not yet resolved.

29

(e) the lack of practical utility in protection for the Plaintiff if another person determined to harm her from [REDACTED]

(f) the quantum of any compensation to be provided by the Defendants to the Plaintiff.

Each of these matters was discussed with Allway, Wilson, O'Connell and Smith.

(vii) Numerous suggestions of alternate proposals, including mediation, which were made by the Plaintiff and were rejected outright by the Defendants, who maintained [REDACTED]

(viii) [REDACTED] in a letter to the Plaintiff from Deputy Commissioner Walshe on 4 June, 2009, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment.

(ix) Negotiations were suspended by the Defendants following a meeting on 12 June, 2009 between Allway, and David Ryan and Isobelle Parsons (from VGSO) on behalf of the Defendants, of the one part and the Plaintiff and her sister, Catherine Gobbo of the other part over the issue of calculation of lost income for the Plaintiff and recording of the manner in which it was to be calculated and the issue of disclosure of VGSO and associated Victoria Police files to Dale. The meeting was suspended to enable the Defendants' representatives to discuss the issue further with Overland.

(x) The Plaintiff spoke on two occasions with Wilson (Overland's Chief of Staff), in the presence of O'Connell, in or about August, 2009 when, her concerns, requests and proposals were restated, the substance of which is set out above. Although Wilson appeared flexible in negotiations with the Plaintiff, thereafter Allway on behalf of the Defendants, reverted to the inflexible and inappropriate requirements of the defendants (as set out above).

(xi) On 7 September, 2009, the Plaintiff made direct representations to Overland by letter of that date, a copy of which is in the possession of the solicitors for the Plaintiff where it may be inspected by appointment. In response the Defendants maintained their position and negotiations continued to their unsuccessful conclusion by correspondence. The Plaintiff refers to a letter to the Plaintiff from Deputy Commissioner Walshe on 14 September, 2009, and letter from Plaintiff to Overland on 28 September, 2009, copies of which are in the possession of the solicitors for the Plaintiff where they may be inspected by appointment.

Notwithstanding that the Plaintiff remained of the view that there were real benefits for her in participating in Witsec [REDACTED] no suitable proposal was put to her or accepted by Witsec prior to the matters alleged in paragraph 32 and the benefits to the Plaintiff of participation in Witsec have now substantially been lost, particularly since the service of subpoenas for the production of documents in the Dale committal.

(e) not provided the Plaintiff with access, on flexible terms, to the Witness Protection Program;

PARTICULARS

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These claims are not yet resolved.

30

*The Defendants have refused to provide any reasonable flexibility in terms of access to Witness Protection and, in particular, insist unreasonably and unjustifiably, that:*

(a) *the Plaintiff must [REDACTED] as a condition of witness protection;*

(b) *the Plaintiff must [REDACTED]*

(c) *the Plaintiff must release and discharge the Defendants from the claims being made in this proceeding.*

- (f) not provided any or any adequate protection for the Plaintiff's ongoing security and welfare;

**PARTICULARS**

*The Plaintiff refers to and repeats paragraphs 20(b) to 31 above and subparagraphs (a) to (e) of this paragraph.*

- (g) not provided financial compensation to ensure that the Plaintiff would be "no worse off financially or otherwise" as a result of providing the requested assistance;
- (h) not taken all reasonable steps to give effect to the Agreement;
- (i) not, at all times, acted in good faith towards the Plaintiff in respect of their dealings with her in relation to the subject matter of the Agreement.

**PARTICULARS**

*Apart from the matters of payment alleged in paragraph 20(b), the Defendants refuse to negotiate, or to pay, proper financial compensation to the Plaintiff and the Plaintiff refers to paragraphs 53 to 56 below.*

**G. Estoppel**

35. Further and alternatively, by the conduct of the Defendants alleged above in paragraphs 6 - 16 above, the Defendants fostered and engendered in the Plaintiff the assumption and/or expectation that an immediately enforceable Agreement existed between them, alternatively, a particular legal relationship would exist between them from which the Defendants would not be free to withdraw.

**PARTICULARS**

*The Agreement which the Plaintiff assumed and expected would exist between the Plaintiff and the State of Victoria and/or the Chief Commissioner of Police is the Agreement alleged in paragraph 17 above. The particular legal relationship which the Plaintiff assumed and expected would exist between the Plaintiff and the State of Victoria and/or the Chief Commissioner of Police was one which was characterised by the obligations described in paragraph 18 above.*

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These claims are not yet resolved.

31

36. The Defendants induced the Plaintiff to adopt the assumption and/or expectation alleged in the preceding paragraph and she did so.

**PARTICULARS**

*The inducement of the Defendants was constituted by the conduct alleged in paragraphs 14 to 16 above.*

37. The Plaintiff acted or abstained from acting as alleged in paragraphs 20(a) above in reliance on the assumption and/or expectation alleged in paragraph 35 above.

38. The Defendants knew and intended that the Plaintiff would act or abstain from acting as alleged in the preceding paragraph.

**PARTICULARS**

*The knowledge and intention of the Defendants is to be inferred from the matters alleged constituted by the conduct alleged in paragraphs 13 to 16, and 19 above.*

39. If the assumption and/or expectation alleged in paragraph 35 above is not fulfilled, the Plaintiff acted to her detriment as follows:

- (a) the Plaintiff is now in, and remains in, a position of imminent, and grave, personal danger;
- (b) the Plaintiff's identity as a prosecution witness against Dale has become widely known;
- (c) the Plaintiff has been stigmatised as a police informer;
- (d) the Plaintiff has been and remains reliant upon the Defendants for the supervision and management of her interests, in particular her physical protection and safety, and her financial well being;
- (e) the opportunity for conduct by the Plaintiff of her profession, in the manner intended by her, has been irretrievably compromised;
- (f) the Plaintiff has suffered financial loss;
- (g) the Plaintiff's personal circumstances have been irretrievably compromised;
- (h) the Plaintiff has been placed in a position of extreme personal stress and pressure;
- (i) the health of the Plaintiff has been damaged and she has suffered personal injury.

**PARTICULARS**

*The Plaintiff refers to and repeats the matters alleged in paragraphs 20(a), 21 - 28, and 53 to 56 hereof. Further particulars will be provided.*

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These claims are not yet resolved.

32

40. The Defendants did not at any relevant time act to avoid the detriment suffered by the Plaintiff by:
- (a) withdrawing or correcting the Representations and the Acknowledgement;
  - (b) taking any step which was adequate in the circumstances to warn the Plaintiff that the assumption or expectation alleged in paragraph 35 above was false.
41. In the premises, it is unconscionable for the Defendants not to honour the assumption and/or expectation alleged in paragraph 35 above and thereby to occasion detriment to the Plaintiff and the Defendants are, in equity, estopped and precluded from asserting that that an immediately enforceable Agreement exists between them as alleged in paragraph 17 above, alternatively, a particular legal relationship exists between them from which the Defendants would not be free to withdraw which is characterised by the obligations described in paragraph 18 above.
42. By reason of their conduct, the Defendants are liable:
- (a) to act to fulfil the assumption and/or expectation alleged in paragraph 35 above; and/or
  - (b) pay equitable compensation or damages to the Plaintiff.

**PARTICULARS**

*The Plaintiff refers to and repeats the matters alleged in paragraphs 53 to 55 (inclusive) below and the particulars sub-joined thereto.*

**H. The Fiduciary Duty Claim**

43. Further and or alternatively, since at least 17 November 2008, alternatively 7 December 2008, alternatively 1 and 2 January 2009, alternatively 7 January 2009, a relationship existed between the Plaintiff and Defendants by which the Defendants assumed fiduciary obligations to the Plaintiff in connection with the making by the Plaintiff of the statement to Victoria Police against Dale and giving evidence in court and all necessary consequences, alternatively the economic consequences, of that conduct (the fiduciary relationship).

**PARTICULARS**

*In the premises alleged above in paragraphs 13 to 17 above;*  
(i) *the Plaintiff entered into a relationship of trust and confidence with the Defendants by which the Plaintiff placed trust in the Defendants to protect her interests in terms of personal well being, security and financial position; and,*

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These claims are not yet resolved.

33

- (ii) *the Defendants accepted that confidence and assumed a position which obliged them to act on behalf of the Plaintiff in the protection of those interests; and,*
  - (iii) *the manner in which the powers and duties of the Defendants were to be exercised and discharged for the protection of the Plaintiff's interests was not a matter which the Plaintiff had agreed or defined and the Defendants were to be independent of and not controlled by the Plaintiff in exercising and discharging such powers and duties in the protection of her interests.*
- In taking the benefit of the conduct of the Plaintiff in making the statement to Victoria Police against Dale and agreeing to give evidence in court as the Defendants have done, the Defendants have ascended to a special relationship of influence, power, and dominance, in connection with the affairs of the Plaintiff due to:*
- (a) *the Plaintiff being dependant on the Defendants for the provision of witness protection, management and support;*
  - (b) *the Plaintiff being dependant on the Defendants doing all things necessary to ensure her ongoing and future safety and that of her immediate family members;*
  - (c) *the Plaintiff being reliant on the Defendants for the provision of financial support due to the loss of the Plaintiff's professional career.*

44. By the fiduciary relationship between the Plaintiff and the Defendants, the Defendants owed to the Plaintiff in equity and at law a fiduciary duty:
- (a) to act at all times towards the Plaintiff in good faith and with fidelity in respect of their dealings with her including:
    - (i) the performance of the Agreement; and
    - (ii) the circumstances surrounding the Agreement; or
    - (iii) the matters alleged in paragraph 14.
  - (b) to act in the best interests of the Plaintiff;
  - (c) to take or exercise the degree of care and skill in the execution and discharge of the fiduciary relationship which would be exercised by a prudent person, alternatively a prudent police officer, who had accepted the obligation to protect the physical, personal and economic safety, security, welfare and interests of another who had reposed trust and confidence in that prudent person for that purpose;
  - (d) disclose to the Plaintiff, all matters facts and circumstances which in good faith and fidelity were required to be disclosed to the Plaintiff concerning:
    - (i) the performance of the Agreement;
    - (ii) the circumstances surrounding the Agreement; or
    - (iii) the matters alleged in paragraph 14.
- (the fiduciary duties)

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These claims are not yet resolved.

34

PARTICULARS

*The said fiduciary duties are imposed upon the Defendants as a matter of equity and common law and arise from the fiduciary relationship pleaded.*

45. Wrongfully and in breach of the fiduciary duties alleged in the preceding paragraph, the Defendants have:
- (a) not acted at all times towards the Plaintiff in good faith and with fidelity in respect of their dealings with her including:
- (i) the performance of the Agreement; and
  - (ii) the circumstances surrounding the Agreement; or
  - (iii) the matters alleged in paragraph 14;

PARTICULARS

*The failure or refusal of the Defendants to act in good faith and with fidelity in respect of their dealings with the Plaintiff in relation to the Agreement is evidenced by the following:*

- (a) *the manner in which the Defendants have managed the Plaintiff's security and safety, including her accommodation. The Plaintiff refers to and repeats paragraph 20(b)(ix), 20(b)(xiii), 20(b)(xvii), 20(b)(xxi), 29, 30, 31 and 34 hereof.*
- (b) *the fact that the Defendants have, since 20 November 2009, left the Plaintiff without any form of witness management or support including any form of protection. The Plaintiff refers to and repeats paragraphs 29 to 31 and 34(a) hereof.*
- (c) *the failure by the Defendants to protect the Plaintiff's identity by:*
  - (i) *obtaining a suppression and non publication order. The Plaintiff refers to and repeats paragraph 20(b)(xxiv) hereof;*
  - (ii) *ensuring that previous suppression and non publication orders were complied with. The Plaintiff refers to and repeats paragraph 20(b)(viii), 20(b)(xv) and 20(b)(xvi) hereof.*
  - (iii) *making unnecessary disclosure to Dale of information concerning the Plaintiff. The Plaintiff refers to and repeats paragraphs 20(b)(xii) and 20(b)(xxv).*
- (d) *the reliance by the Defendants on terms which did not correspond with those which formed the Agreement as pleaded in paragraph 18 hereof. The Plaintiff refers to and repeats paragraphs 34(e) and 34(f) hereof,*
- (e) *the imposition by the Defendants of budgetary constraints in terms of providing the Plaintiff with compensation under the Agreement. The Plaintiff refers to and repeats paragraph 34(e) hereof.*
- (f) *the Defendants' failure to accommodate the Plaintiff's medical needs by:*
  - (i) *insisting that the Plaintiff be located interstate from July 2009 to October 2009 and thereafter at least a 60 minute drive from her medical practitioners. The Plaintiff refers to and repeats paragraphs 22 to 28 and paragraphs 30 to 31 hereof;*
  - (ii) *serving the Plaintiff with a Witness Summons on 8 February 2010 to attend court and give evidence in March 2010 at Dale's committal hearing in the knowledge that the Plaintiff was not medically fit to do so. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof;*

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These claims are not yet resolved.

35

- (iii) *refusing to seek and/or obtain an adjournment to Dale's committal hearing. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof;*
- (iv) *opposing the Plaintiff's application to be excused from answering the summons on the grounds that she was medically unfit;*
- (v) *refusing or neglecting to provide the Plaintiff with certainty as to her future safety, living arrangements, well being and/or security. The Plaintiff refers to and repeats paragraph 34(e) and 34(f) hereof.*

(b) not acted in the best interests of the Plaintiff;

**PARTICULARS**

*The Plaintiff refers to and repeats the particulars joined to sub-paragraph (a) above.*

(c) not exercised the degree of care and skill in the execution and discharge of the fiduciary relationship which would be exercised by a prudent person, alternatively a prudent police officer, who had accepted the obligation to protect the physical, personal and economic safety, security, welfare and interests of another who had reposed trust and confidence in that prudent person for that purpose;

**PARTICULARS**

*The failure or refusal of the Defendants to exercise the degree of care and skill in the execution and discharge of the fiduciary relationship in respect of their dealings with the Plaintiff in relation to the Agreement is evidenced by the following:*

- (a) *the fact that the Defendants have, since 20 November 2009, left the Plaintiff without any form of witness management or support including any form of protection. The Plaintiff refers to and repeats paragraphs 20(b)(ix), 20(b)(xiii), 20(b)(xvii), 20(b)(xxi), 29, 30, 31 and 34 hereof.*
- (b) *failing to take reasonable steps to provide adequate and proper witness management or support including protection.*
- (c) *the failure by the Defendants to take reasonable steps protect the Plaintiff's identity by:*
  - (i) *obtaining a suppression and non publication order. The Plaintiff refers to and repeats paragraph 20(b)(xxiv) hereof;*
  - (ii) *ensuring that previous suppression and non publication orders were complied with. The Plaintiff refers to and repeats paragraphs 20(b)(viii), 20(b)(xv) and 20(b)(xvi) hereof;*
  - (iii) *making unnecessary disclosure to Dale of information concerning the Plaintiff. The Plaintiff refers to and repeats paragraphs 20(b)(xii) and 20(b)(xxv) hereof.*
  - (iv) *repeatedly referring to the Plaintiff in court proceedings concerning Dale as a police informer. The Plaintiff refers to and repeats paragraphs 20(b)(xxvi) and 34(d) hereof.*

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 These claims are not yet resolved.

36

(d) failing to take reasonable steps to develop and offer to the Plaintiff witness protection suitable for her personal circumstances, particularly, the

[REDACTED]

[REDACTED] The Plaintiff refers to and repeats paragraph 34(e) hereof.

(e) failing to take reasonable steps to accommodate the Plaintiff's medical needs by:

(i) insisting that the Plaintiff be

[REDACTED]

[REDACTED] The Plaintiff refers to and repeats paragraphs 22 to 28 and 30 to 31 hereof;

(ii) serving the Plaintiff with a Witness Summons on 8 February 2010 to attend court and give evidence in March 2010 at Dale's committal hearing in the knowledge that the Plaintiff was not medically fit to do so. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof.

(iv) refusing to seek and/or obtain an adjournment of Dale's committal hearing. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof.

(v) refusing or neglecting to provide the Plaintiff with certainty as to her future safety, living arrangements, well being and/or security. The Plaintiff refers to and repeats paragraphs 34(e) and 34(f) hereof.

(f) the Plaintiff refers to and repeats paragraph 52 below.

(d) not disclose to the Plaintiff, all matters facts and circumstances which in good faith and fidelity were required to be disclosed to the Plaintiff concerning:

- (i) the performance of the Agreement;
- (ii) the circumstances surrounding the Agreement; or
- (iii) the matters alleged in paragraph 14.

**PARTICULARS**

The Plaintiff refers to and repeats the particulars joined to sub-paragraph (c) above.

**I. The Negligence Claim**

46. Further, and alternatively, it was at all material times reasonably foreseeable that the Plaintiff would suffer loss and damage, including economic loss, if the Defendants:

- (a) failed to exercise reasonable care, skill and diligence in making to the Plaintiff the representations alleged in paragraphs 14 and 15 above;
- (b) having taken from the Plaintiff a statement against Dale and having her agreement to give evidence at any proceeding against him, failed to exercise due

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These claims are not yet resolved.

37

care skill and diligence in, and in connection with, the performance of the matters alleged in paragraphs 18 (c) to (g), (i), and (j) to (m) above.

47. At all times material, it was reasonable for the Plaintiff to rely upon the exercise of reasonable care, skill and diligence by the Defendants:
- (a) in making the representations alleged in paragraphs 14 and 15 above;
  - (b) in, and in connection with, the performance of the matters alleged in paragraphs 18 (c) to (g), (i), and (j) to (m) above;
- and the Plaintiff did so.

PARTICULARS

*The Plaintiff refers to and repeats the matters alleged in paragraph 17.*

48. Further, at all times material, the Defendants knew, or ought to have known that the Plaintiff was relying upon the exercise of reasonable care, skill and diligence by them and their employees and agents, including the police members:
- (a) in making the representations alleged in paragraphs 14 and 15 above;
  - (b) in, and in connection with, the performance of the matters alleged in paragraphs 18 (c) to (m) above.

PARTICULARS

*The Plaintiff refers to and repeats the matters alleged in paragraph 13.*

49. Further, at all times material, the Plaintiff was vulnerable to a want of care skill and diligence by the Defendants:
- (a) in making the representations alleged in paragraphs 14 and 15 above;
  - (b) in, and in connection with, the performance of the matters alleged in paragraphs 18 (c) to (m) above;
- in that the Plaintiff became, and remains, having given a statement against Dale and having her agreement to give evidence at any proceeding against him unable to protect herself against such consequences and losses, both personal and economic.

PARTICULARS

*The Plaintiff does not possess the resources to evaluate and protect her personal safety, nor is she able to determine whether the Defendants were exercising reasonable care, skill and diligence in undertaking the tasks of and incidental to the matters the subject of the representations and the matters alleged in paragraphs 18 (c) to (m) above.*

50. Further, at all times material, the Defendants had:
- (a) control over and or the power of control over;

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These claims are not yet resolved.

38

- (b) assumed responsibility for;  
all of the tasks of and incidental to;
- (c) making the representations alleged in paragraphs 14 and 15 above;
- (d) the performance of the matters alleged in paragraphs 18 (c) to (m) above.

PARTICULARS

*The control over and the assumption of responsibility by the Defendants is to be inferred from the matters alleged in paragraphs 13, 14, 19, 20, 22 - 28 above.*

- 51. By reason of the matters alleged in paragraphs 46(b) above, the Defendants owed to the Plaintiff a duty:
  - (a) to exercise reasonable care skill and diligence in making the Representations and Acknowledgement alleged in paragraphs 14 and 15 above;
  - (b) to perform all of the matters alleged in paragraphs 18 (c) to (m) above with reasonable care skill and diligence,  
so as to avoid loss and damage to the Plaintiff.
- 52. The Defendants breached the duty of care to the Plaintiff alleged in the preceding paragraph in that:
  - (a) the Representations were false;

PARTICULARS

- (i) *the Plaintiff was not afforded the highest level of attention by the Defendants;*
- (ii) *the Plaintiff could not trust and rely upon the Defendants to address the Plaintiff's concerns and the Defendants did not do so;*
- (iii) *the Defendants did not ensure that if the Plaintiff made a statement against Dale, and agreed to give evidence, the Plaintiff would be "no worse off financially or otherwise" as a consequence of doing so and the Plaintiff is substantially worse off than she would have been;*
- (iv) *the Defendants did not grant access to the Plaintiff to the Victorian Witness Protection Program with an "unprecedented degree of flexibility" on the basis that in relation to the circumstances of a witness needing protection, the Plaintiff was unique and that the Victorian Witness Protection Program would be able to, and would, accommodate the Plaintiff and her individual needs;*
- (v) *the Defendants did not accommodate proper and reasonable issues which the Plaintiff had in terms of becoming a witness, or a protected witness;*
- (vi) *the Defendants have imposed budgetary, or other, constraints in terms of providing the Plaintiff with compensation for the loss of her profession and the Plaintiff has not been compensated at all;*
- (vii) *the Plaintiff has not been able to, and has not trusted or relied upon the Defendants to protect and nurture her future ongoing safety, security and welfare;*

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These claims are not yet resolved.

39

- (viii) *the Plaintiff has not been looked after by the Defendants, and by one or more of Davey, Solomon and O'Connell despite the Plaintiff agreeing to make a sworn statement against Dale and agreeing to become a witness in any prosecution of Dale;*
- (ix) *there were no reasonable grounds for making the representations or any of them.*

(b) the Defendants:

- (i) failed to protect the Plaintiff's ongoing safety, security and welfare and do all other reasonable things that the Defendants considered necessary to ensure the safety of the Plaintiff or any of the Plaintiff's immediate family members;

**PARTICULARS**

*The Plaintiff refers to and repeats the matters alleged in paragraph 34 above.*

- (ii) failed at all times, to act in good faith towards the Plaintiff in respect of their dealings with her in relation to the subject matter of the Agreement;

**PARTICULARS**

*The Plaintiff refers to and repeats paragraph 45(a) hereof.*

- (iii) failed or refused or neglected to take all reasonable steps to give effect to the Agreement;

**PARTICULARS**

*The failure of the Defendants to take all reasonable steps to give effect to the Agreement is evidenced by the Defendants:*

- (a) *refusal or failure to provide to the Plaintiff a document which accords with the matters alleged in paragraph 18 hereof. The Plaintiff refers to and repeats paragraph 20(b)(vi) hereof;*
- (b) *reliance, alternatively insistence on terms which did not correspond with those which formed the Agreement as alleged in paragraph 18. The Plaintiff refers to and repeats paragraphs 34(e) and 34(f) hereof;*
- (c) *imposition of budgetary constraints in terms of providing the Plaintiff with compensation under the Agreement. The Plaintiff refers to and repeats paragraph 34(e) hereof;*
- (d) *failure to protect the Plaintiff's identity. The Plaintiff refers to and repeats paragraphs 20(b)(xxiv), 20(b)(xv), 20(b)(xvi), 20(b)(xii) and 20(b)(xxv) hereof;*
- (e) *failure to provide to the Plaintiff appropriate witness management and support. The Plaintiff refers to and repeats paragraphs 29, 34(a) and 34(d) hereof; and*
- (f) *manner in which they have managed the Plaintiff's security and safety. The Plaintiff refers to and repeats paragraphs*

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These claims are not yet resolved.

40

20(b)(ix), 20(b)(xiii), 20(b)(xvii), 20(b)(xxi), 29 to 31 and 34 hereof.

- (iv) failed to ensure that the Representations were accurate, reasonably based, and could be complied with at the time they were made and failed to correct the Representations;

**PARTICULARS**

*The failure of the Defendants to ensure the Representations were accurate and could be complied with is evidenced by the following:*

- (i) *that the Plaintiff was not afforded the highest level of attention by the Defendants;*
  - (ii) *that Plaintiff could not trust and rely upon the Defendants to address the Plaintiff's concerns and the Defendants did not do so;*
  - (iii) *the Defendants did not ensure that if the Plaintiff made a statement against Dale, and agreed to give evidence, the Plaintiff would be "no worse off financially or otherwise" as a consequence of doing so and the Plaintiff is substantially worse off than she would have been;*
  - (iv) *the Defendants did not grant access to the Plaintiff to the Victorian Witness Protection Program with an "unprecedented degree of flexibility" on the basis that in relation to the circumstances of a witness needing protection, the Plaintiff was unique and that the Victorian Witness Protection Program would be able to, and would, accommodate the Plaintiff and her individual needs;*
  - (v) *the Defendants did not accommodate proper and reasonable issues which the Plaintiff had in terms of becoming a witness, or a protected witness;*
  - (vi) *the Defendants have imposed budgetary, or other, constraints in terms of providing the Plaintiff with compensation for the loss of her profession and the Plaintiff has not been compensated at all;*
  - (vii) *the Plaintiff has not been able to, and has not trusted or relied upon the Defendants to protect and nurture her future ongoing safety, security and welfare;*
  - (viii) *the Plaintiff has not been looked after by the Defendants, and by one or more of Davey, Solomon and O'Connell despite the Plaintiff agreeing to make a sworn statement against Dale and agreeing to become a witness in any prosecution of Dale.*
- (v) failed to act in the best interests of the Plaintiff in dealing with their disclosure obligations in connection with the prosecution of Dale;

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**PARTICULARS**

*The failure of the Defendants to act in the best interests of the Plaintiff in dealing with their disclosure obligations in connection with the prosecution of Dale is evidenced by the following:*

- (a) *On or around 28 January 2010 Dale served a Witness Summons on the Second Defendant seeking the production of various documents and items some of which related to the Plaintiff;*
  - (b) *Between 28 January 2010 and 22 April 2010, the Second Defendant responded to Dale's Witness Summons by releasing at least 18 volumes of material and the Chart of Monies. Further particulars will be provided following discovery;*
  - (c) *The Defendants neglected, failed or refused to seek instructions from the Plaintiff as to matters directly affecting the Plaintiff's security, safety and wellbeing prior to responding to the Witness Summonses in the manner in which they chose to as referred to in the preceding sub-paragraph;*
  - (d) *The Defendants have repeatedly and incorrectly labelled the Plaintiff a police informer in open court during the hearing of Dale's committal in March 2010 thereby compromising the Plaintiff's security, safety and wellbeing.*
- (vi) failed to have regard to the information in their possession when serving on the Plaintiff on 8 February 2010 a summons to give evidence at the committal of Dale in March, 2010;

**PARTICULARS**

- (a) *On 7 December 2009, O'Connell and Smith attended upon the Plaintiff when she was an inpatient in hospital being treated for a number of ulcerated leg tumours and cavities where they observed, as they are trained to do, the Plaintiff's demeanour and that she was generally unwell and under stress as was obvious to any observer;*
- (b) *Between 23 December 2009 and 4 January 2010, Solomon attended upon the Plaintiff on 3 separate occasions when she was an inpatient in hospital being treated for a number of ulcerated leg, groin and chest tumours and cavities where Solomon observed the Plaintiff's demeanour and that she was generally unwell and under stress;*
- (c) *On 29 January 2010, the Plaintiff's solicitors advised the Defendants' solicitors of the state of the Plaintiff's health and the fact that she was not medically fit to give evidence at Dale's committal hearing in March 2010. The Plaintiff refers to a letter from Piper Alderman to VGSO dated 29 January 2010, a copy of which is in the Plaintiff's solicitors' possession and may be inspected by appointment;*

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42

- (d) On 4 February 2010, the Plaintiff and her sister Catherine met with O'Connell, Lloyd-DS and Graham E at which time the Plaintiff explained the nature of her medical condition including that:
- (i) the conduct of the Defendants had severely aggravated her chronic thalamic pain syndrome and trigeminal neuralgia;
  - (ii) the Plaintiff required radical vulva surgery for precancerous and cancerous cells;
  - (iii) The Plaintiff was unable to walk unaided as she was suffering from a number of as yet undiagnosed ulcerated tumours in her legs, groin and chest areas;
  - (iv) the Plaintiff required ongoing daily home nursing care;
  - (v) the Plaintiff would likely require further surgery in relation to her ulcerated cavities and tumours;
  - (vi) the Plaintiff was under significant stress.
- (e) On 5 February 2010, Graham E and Lloyd-DS in a telephone attendance on the Plaintiff conceded that the Plaintiff was not medically fit to give evidence at Dale's committal in March 2010;
- (f) On 8 February 2010, Davey and Solomon attended a meeting with the Plaintiff, her sister Catherine Gobbo and the Plaintiff's solicitors at which time, and in the knowledge of the matters referred to at sub-paragraphs (a) to (e) above, served the Plaintiff with a witness summons to attend and give evidence at Dale's committal hearing in March 2010; and
- (g) Between 29 January 2010 and 16 March 2010, the Defendants refused, failed or neglected to withdraw or have withdrawn the Witness Summons and/or to make arrangements for Dale's committal hearing to be adjourned so to as to facilitate the Plaintiff's medical needs.
- (vii) failed to disclose to the Plaintiff, all matters facts and circumstances which good faith and fidelity required the Defendants to disclose to the Plaintiff concerning:
- (i) the performance of the Agreement; and
  - (ii) the circumstances surrounding the Agreement.

**PARTICULARS**

The Plaintiff refers to and repeats the particulars joined to paragraph 45(a) hereof.

**J. Loss and Damage**

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43

53. Further or alternatively, but for the wrongful conduct of the Defendants as alleged in paragraphs 32, 34, 41, 45, and 52 above, the Plaintiff would:
- (a) not have entered into the Agreement; or
  - (b) not have acted or abstained from acting as alleged in paragraph 20(a) above in reliance on the assumption or expectation alleged in paragraph 35 above and
  - (c) not have agreed to make a statement against Dale and/or become a witness against him; and
  - (d) have continued, successfully, to practise law as a member of the Victorian Bar specialising in criminal law, practice and advocacy.
54. By reason of agreeing to and making a statement against Dale and/or agreeing to give evidence against him, the Plaintiff's:
- (a) health has been damaged and she has suffered personal injury; and
 

**PARTICULARS**  
*The Plaintiff has suffered significant stress which has exacerbated pre-existing conditions.  
 The Plaintiff refers to and repeats paragraphs 1(d), 24 and 27 hereof.  
 Further particulars will be provided prior to trial.*
  - (b) reputation as a criminal defence barrister is lost and she is no longer able to attract work as such or practise law as a criminal defence barrister;
 

**PARTICULARS**  
*As a consequence of:*
    - (a) recording Dale;
    - (b) agreeing to and making a statement against Dale;
    - (c) providing assistance to the Defendants in relation to the investigation of Dale in relation to the murders of the Hodsons;
    - (d) being labelled by the Defendants in open Court as a police informer;
    - (e) the inappropriate and unnecessary disclosures made by the Defendants in the hand up brief and in the course of the Dale committal,*the Plaintiff has lost and cannot in the future maintain a practice as a criminal defence barrister.*
  - (c) safety, welfare, security and personal circumstances have been compromised.
55. By reason of the matters aforesaid, the Plaintiff has been deprived of the benefit of the Agreement and has suffered loss and damage.
- PARTICULARS**
- (a) The Plaintiffs date of birth is 16 November 1972.

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44

- (b) *Loss of Income:*
- (i) *the sum of approximately \$250,000 per annum and continuing commencing 1 January 2009.*
- (c) *Loss of Earning capacity - the lost opportunity of career and reputation.*
- (i) *The Plaintiff has particular education training and skills, having the following academic qualifications: Bachelor of Arts, Bachelor of Laws (Honours), Master of Laws and a Graduate Certificate in Fraud Investigation. She was first admitted as a Barrister and Solicitor of this Court on 7 April 1997 and was called to the Bar on 19 November 1998;*
- (ii) *the Plaintiff had carefully cultivated a reputation as a responsible and capable barrister with judicial officers, instructing solicitors and clients, which reputation has been lost;*
- (iii) *had the Plaintiff not trusted the Representations she would have continued to practice as a criminal defence barrister with good prospects of succeeding including the opportunity for later appointment as Senior Counsel or as a judicial officer;*
- (iv) *the Plaintiff is no longer able to attract any work as a barrister, and,*
- (v) *the Plaintiff will no longer be able to live and work in Victoria where she is qualified to, and did, maintain her practice.*
- (d) *Out of Pocket Expenses:*
- (i) *medical expenses incurred by the Plaintiff since 1 January 2009 in the sum of approximately \$40,000 (net of private health insurance and Medicare rebates);*
- (ii) *dental expenses incurred by the Plaintiff since 1 January 2009 in the sum of approximately \$15,000 (net of private health insurance and Medicare rebates);*
- (iii) *prescribed pharmaceutical expenses incurred by the Plaintiff since 1 January 2009 in the sum of approximately \$20,000 (net of private health insurance and Medicare rebates);*
- (iv) *lease hire payments incurred by the Plaintiff since 1 January 2009 for a SLK350 Mercedes Benz from 1 January 2009 and continuing, currently in the sum of approximately \$1,642 per month;*
- (v) *lease payments incurred by the Plaintiff for the period 1 January 2009 to 30 June 2009 for the Plaintiff's chambers located at Crockett Chambers, in the sum of approximately \$13,170;*
- (vi) *removalists expenses incurred by the Plaintiff on or around 10 March 2009 in relation to closing the Plaintiff's chambers, in the sum of \$500.00;*
- (vii) *body corporate and utility expenses from 1 January 2009 incurred by the Plaintiff for her residential address in the sum of approximately \$10,000;*
- (viii) *mortgage repayments incurred by the Plaintiff since 1 January 2009 for the Plaintiff's residential address in the sum of approximately \$3,200 per month;*
- (ix) *telephone expenses incurred from 1 January 2009 in relation to the Plaintiff's former mobile phone connected on the Optus Network in the sum of approximately \$1,500;*

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45

- (x) car registration for the Plaintiff's SLK350 Mercedes Benz in the sum of approximately \$650;
- (xi) contents insurance incurred since 1 January 2009 for the Plaintiff's residential address in the sum of approximately \$1,200;
- (xii) continuing legal costs incurred by the Plaintiff since 11 February 2009 in relation to the Agreement; and
- (xiii) interest paid on a line of credit in the sum of approximately \$20,000 which the Plaintiff utilises to fund the expenses set out in sub-paragraph (e)(i) to (xii) above.

Further particulars of loss and damage will be provided following discovery and prior to trial.

56. Further, the loss and damage suffered by the Plaintiff had been aggravated.

PARTICULARS

*The Plaintiff's loss has been aggravated and her feelings have been injured by the manner in which the Defendants have wronged her and continue so to do:*

- (a) knowingly exposing, and continuing to expose, the Plaintiff to fear, apprehension, risk and stress;
- (b) the refusal of the Defendants to acknowledge, when repeatedly informed, that the manner and circumstances in which the Defendants were purporting to provide witness management, security, and support was contributing to the deterioration in the Plaintiff's health in serious ways;
- (c) the continuing failure by the Defendants to provide the Plaintiff with ongoing witness management and support, particularly forms of management and support for her circumstances which recognise and accommodate, rather than aggravate, her health issues, when the Defendants know of such health issues and the negative impact upon the Plaintiff's health of their past actions and omissions. The Plaintiff refers to and repeats paragraphs 29 to 31 and 34(a) - (e) above.
- (d) the failure and/or refusal by the Defendants to grant access to the Plaintiff to the Victorian Witness Program with an unprecedented degree of flexibility and [REDACTED] when the Defendants fail or refuse to offer practical solutions to the myriad difficulties which the Defendants can well anticipate would be caused to the Plaintiff. The Plaintiff refers to and repeats paragraphs 34(a) - (e) above.
- (e) the failure by the Defendants to accommodate proper and reasonable issues which the Plaintiff had in terms of becoming a witness, including but not limited to the Plaintiff's medical needs arising from her medical conditions. The Plaintiff refers to and repeats paragraphs 22 to 31 and 34(f) hereof.
- (f) the attempted imposition by the Defendants, after the Plaintiff had provided the required statement, of terms and conditions that did not correspond with the Representations. The Plaintiff refers to and repeats paragraph 30 to 31 and 34(e) hereof.
- (g) the circumstances of the failure by the Defendants to protect the identity, safety and security of the Plaintiff. The Plaintiff refers to and repeats paragraph 34(d) hereof.

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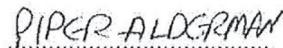
46

- (h) *the service by the Defendants of a Witness Summons on the Plaintiff on 8 February 2010 to attend Court and give evidence in March 2010 in circumstances where the Defendants knew that the Plaintiff would not be medically fit to attend court. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof.*
- (i) *the failure by the Defendants to take any step to have the Witness Summons referred to in the previous paragraph withdrawn or adjourned so as to accommodate the Plaintiff's needs. The Plaintiff refers to and repeats paragraph 52(b)(v) hereof.*
- (j) *the refusal of the Defendants of an opportunity for the Plaintiff to recover her health or, at least, arrest the detrimental effect upon her health being caused by the conduct of the Defendants.*

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS:

- A. Damages, including equitable damages or compensation.
- B. Aggravated damages.
- C. Interest.
- D. Costs.
- E. Such further or other Orders or relief as this Honourable Court shall deem just and equitable.

  
.....  
John R Dixon  
Senior Counsel for the Plaintiff

  
.....  
Piper Alderman  
Solicitors for the Plaintiff

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47

1. Place of trial – Melbourne.
2. Mode of trial - Judge alone
3. This writ was filed for the Plaintiff by:  
  
Piper Alderman Solicitors  
Level 24  
385 Bourke Street  
MELBOURNE VIC 3000.
4. The address of the Plaintiff is:  
  
Nicola Maree Gobbo  
At an address known to the Defendants  
C/- Piper Alderman Solicitors
5. The address for service of the Plaintiff is:  
  
C/- Piper Alderman Solicitors  
Level 24  
385 Bourke Street  
MELBOURNE VIC 3000.
6. The addresses of the Defendants is:-  
  
C/- Victoria Government's Solicitors office  
Level 33, 80 Collins Street  
MELBOURNE VIC 3000.

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SCHEDULE OF PARTIES

NICOLA MAREE GOBBO

Plaintiff

- AND -

STATE OF VICTORIA

First Defendant

AND

SIMON OVERLAND, CHIEF COMMISSIONER OF POLICE

Second Defendant

AND

CHRISTINE NIXON, FORMER CHIEF COMMISSIONER OF POLICE

Third Defendant

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VICTORIAN GOVERNMENT SOLICITOR'S OFFICE

RECORD OF ATTENDANCE / FILE NOTE

FILE GOBBO Date 9,6,2010  
 File Number \_\_\_\_\_ Start \_\_\_\_\_ am/pm  
 Telephone Call \_\_\_\_\_ Stop \_\_\_\_\_ am/pm  
 Conference \_\_\_\_\_ Venue \_\_\_\_\_ Minutes \_\_\_\_\_  
 Court attendance before \_\_\_\_\_  
 Drafting documents John Cair  
Peter Lardner  
 Research Steve Gleeson  
 Travel Dave Ryan

1 Management of docs  
 2 Counsel's PA  
 Portable hard drive  
 Safe - can be stolen  
 Outsourced database  
 Most significant informer in Aust legal history  
 Significant LPP issues  
 6 stand alone laptops, highly encrypted  
 Many sticks into encrypted  
 If go missing, cannot be accessed

(Signed)

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VICTORIAN GOVERNMENT SOLICITOR'S OFFICE  
RECORD OF ATTENDANCE / FILE NOTE

FILE \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / 201  
File Number \_\_\_\_\_ Start \_\_\_\_\_ am/pm  
Telephone Call \_\_\_\_\_ Stop \_\_\_\_\_ am/pm  
Conference \_\_\_\_\_ Venue \_\_\_\_\_ Minutes \_\_\_\_\_  
Court attendance before \_\_\_\_\_  
Drafting documents \_\_\_\_\_  
Research \_\_\_\_\_  
Travel \_\_\_\_\_

250 hours of conversations

longtail mus stand alone

Security issues vital

(Signed)

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Document ID : VGSO.2000.0138.0269

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VICTORIAN GOVERNMENT SOLICITOR'S OFFICE  
RECORD OF ATTENDANCE / FILE NOTE

FILE Gobbo Date 3 / 8 / 2010  
File Number \_\_\_\_\_ Start \_\_\_\_\_ am/pm  
Telephone Call John Ci Stop \_\_\_\_\_ am/pm  
Conference \_\_\_\_\_ Venue \_\_\_\_\_ Minutes \_\_\_\_\_

Court attendance before \_\_\_\_\_  
Drafting documents \_\_\_\_\_  
Research \_\_\_\_\_  
Travel \_\_\_\_\_

John Ci  
Fin McRum  
Reto Lander  
David Ryan

- Discussed mediation + Ministerial approval  
requirements to settlement

Manika

(Signed)

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Document ID : VGSO.5000.0004.7487

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1

## VGSO Chronology regarding dealings with Nicola Gobbo from 2009 to 2012

Date	Event	Document	Document Tab No.
27 January 2009 - 31 December 2009	Negotiations with Nicola Gobbo (Gobbo) and her representatives regarding [REDACTED] Isabel Parsons of the VGSO had carriage of these negotiations. Gobbo was represented by Piper Alderman solicitors for these negotiations together with her sister, Catherine Gobbo.	Chronology prepared by Isabel Parsons detailing communications/negotiations between 27 January 2009 to 31 December 2009.	1.
February 2009	Gobbo began receiving the following assistance from Victoria Police: 1. weekly payments of \$1000 to cover living expenses given that the witness was unable to work and her security threats; 2. payment of accommodation expenses; 3. vehicle hire and parking expenses; and 4. airfares to and from Melbourne from interstate.	VGSO Memo from Isabel Parsons to Fin McRae and David Ryan dated 3 January 2010	13
4 March 2009 - 14 December 2009	Various payments made to and on behalf of Gobbo by Victoria Police	Document titled 'Witness Proposal'	2
4 June 2009	DC Kieran Walshe writes to Gobbo re [REDACTED]	Document titled 'Chart of Monies' that details the date, description and amount paid for Gobbo	4
Mid-2009	VGSO became involved in negotiations taking place between Victoria Police (Witness Security Unit) and Gobbo to [REDACTED]	Letter from DC Walsh to Gobbo dated 4 June 2009	5
3 August 2009	VGSO received advice from Peter Hanks QC in relation to the <i>Witness Protection Act 1991</i>	VGSO Advice dated 21 May 2010 to Superintendent Peter Lardner Document titled 'Highly Protected' Memorandum of Advice from Peter Hanks QC dated 3 August 2009 (not provided - please advise	55 4 -

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6 August 2009	Byrne J makes a suppression order regarding Witness F in the bail application for Paul Dale	if required) Order of Byrne J dated 6 August 2009	6
26 August 2009	DC Kieran Walshe writes to Gobbo re [REDACTED]	Letter from DC Walsh to Gobbo dated 26 August 2009	7
24 November 2009 - 2 December 2009	Gobbo and Catherine Gobbo travel to Bali	VGSO Memo from Isabel Parsons to Fin McRae and David Ryan dated 3 January 2010	13
7 September 2009	Gobbo writes to CCP Simon Overland re 'Witness Protection Program and Conduct by Victoria Police'	Letter from Gobbo to CCP Overland dated 7 September 2009	8
11 September 2009	Dale given bail by Court of Appeal - decision discusses risks to Witness F	Decision in <i>Paul Noel Dale v DPP</i> [2009] VSCA 212	9
14 September 2009	DC Kieran Walshe writes to Gobbo re [REDACTED]	Letter from DC Walsh to Gobbo dated 14 September 2009	10
28 September 2009	Gobbo writes to CCP Simon Overland re 'Witness Protection Program and Response by Victoria Police'	Letter from Gobbo to CCP Overland dated 28 September 2009	11
16 November 2009	VGSO meeting (Isabel Parsons?) with Luke Cornelius in relation to Gobbo's request for CBD accommodation. Luke Cornelius instructed VGSO that Victoria Police would not accede to CBD accommodation	VGSO Memo from Isabel Parsons to Fin McRae and David Ryan dated 3 January 2010	13
25 November 2009	Rod Wilson advised Catherine Gobbo in a 'without prejudice' email that Gobbo could not reside in CBD accommodation and that she would have to cover her own CBD accommodation expenses	VGSO Memo from Isabel Parsons to Fin McRae and David Ryan dated 3 January 2010	13
21 December	Steve Smith confirmed to VGSO that since February 2009, Gobbo	VGSO Memo from Isabel Parsons to Fin McRae	13

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VGSO.5000.0004.7489

- 3 -

2009 24 December 2009	had been receiving financial assistance from Victoria Police. Conference held between Peter Hanks QC, Danny Masel of Counsel, Isabel Parsons & Georgette Apostolopoulos of VGSO, A/Inspector Shane O'Connell and Fin McRae re the financial payments made to Gobbo and the case of <i>Mou</i>	and David Ryan dated 3 January 2010 VGSO file note dated 24 December 2009	12
4 January 2010	'Without prejudice' meeting was held with Fin McRae of Victoria Police, Mark Waters of Piper Alderman, a representative of Gobbo and Isabel Parsons of the VGSO regarding whether Gobbo would give evidence in the Dale criminal proceedings and whether she would [REDACTED]	VGSO file note dated 4 January 2010	14
21 January 2010	Gobbo writes to CCP Simon Overland requesting a meeting	Letter from Gobbo to CCP Overland dated 21 January 2010	15
25 January 2010	Dale's solicitors serves Witness Summons (First Witness Summons) to CCP seeking a large number of documents about Gobbo and Carl Williams returnable on 1 February 2010	Letter from Tony Hargreaves to Greg Elms dated 25 January 2010 attaching the First Witness Summons	16
29 January 2010	Piper Alderman letter to VGSO re 'Witness F' re Gobbo being medically unfit to give evidence	Piper Alderman letter to VGSO dated 29 January 2010	17
8 February 2010	Piper Alderman letter to VGSO re the First Witness Summons and taking objection to Gobbo not being provided a copy of the First Witness Summons	Piper Alderman letter to VGSO dated 8 February 2010	18
8 February 2010	VGSO (Greg Elms) writes to Tony Hargreaves re First Witness Summons seeking to narrow the First Witness Summons and providing an outline of what documents might be produced by the CCP	Letter from VGSO (Greg Elms) to Tony Hargreaves dated 8 February 2010	19
10 February	VGSO (David Ryan) writes to Piper Alderman in relation to the	VGSO letter to Piper Alderman dated 10 February	20

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- 4 -

2010	First Witness Summons and Gobbo's safety. VGSO noted that 'our client does not consider that any of the documents that are proposed to be produced to the Court without objection will compromise your client's safety'	2010	
19 February 2010	VGSO (Greg Elms) writes to Tony Hargreaves re producing documents pursuant to the First Witness Summons	Letter from VGSO (Greg Elms) to Tony Hargreaves dated 19 February 2010	21
25 February 2010	Piper Alderman writes letter to VGSO about production of documents pursuant to First Witness Summons (in particular re redactions to the Chart of Monies produced)	Piper Alderman letter to VGSO dated 2 February 2010	22
26 February 2010	Piper Alderman sends 2 letters to VGSO re: 1. Gobbo's continued involvement with the Petra taskforce; and 2. confirmation that Gobbo is 'no longer interested in participation in the witness protection program'	Piper Alderman letters to VGSO dated 26 February 2010 (x2)	23 & 24
2 March 2010	VGSO writes letter to Piper Alderman about documents produced in response to the First Witness Summons in response to Piper Alderman letter dated 25 February 2010 and the Chart of Monies	VGSO letter to Piper Alderman dated 2 March 2010	25
4 March 2010	Piper Alderman writes letter to VGSO about production of documents pursuant to the First Witness Summons re Chart of Monies	Piper Alderman letter to VGSO dated 4 March 2010	26
9 March 2010	Piper Alderman sends 2 letter to VGSO regarding safety assurance to Gobbo and mail requirements	Piper Alderman letters to VGSO dated 9 March 2010 (x2)	27
10 March 2010	VGSO response to Piper Alderman letter of 9 March 2010 stating that VicPol is 'not able to manage the risk to your client's safety unless she agrees to [REDACTED]'	VGSO letter to Piper Alderman dated 10 March 2010	28

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VGSO.5000.0004.749

- 5 -

10 March 2010	DPP applies for a suppression order over the identity of [REDACTED] in the Dale committal hearing for the murder charges against Paul Dale. The CCP sought leave to join this application but Magistrate Reardon ruled that the CCP did not have standing.  CCP appeals ruling of Magistrate Reardon to Supreme Court of Victoria	VGSO letter to Piper Alderman dated 30 April 2010	49
11 March 2010	DPP unsuccessfully applies for a suppression order in relation to Gobbo's identity.  The CCP did not join the application as Magistrate Reardon made a ruling on 10 March 2010 that the CCP did not have standing to make a suppression order application about [REDACTED]  The DPP's application for a suppression order was refused but the media did not publish Gobbo's identity based on a previous suppression order made in Dale's bail proceedings in the Supreme Court by Justice Byrne (document behind tab 6).	VGSO Advice dated 21 May 2010 to Superintendent Peter Lardner  VGSO letter to Piper Alderman dated 30 April 2010	55  49
11 March 2010	VGSO writes to Piper Alderman informing them that Magistrate Reardon refused to make a suppression order which prohibited publication of Gobbo's identity in connection with the committal proceedings against Dale. Invites Gobbo to reconsider her position in relation to [REDACTED]	VGSO letter to Piper Alderman dated 11 March 2010	29
19 March 2010	Piper Alderman writes to VGSO about security arrangements for Gobbo (including suppression order issues)	Piper Alderman letter to VGSO dated 19 March 2010	30
24 March	VGSO writes to Piper Alderman about accommodation for Gobbo	VGSO letter to Piper Alderman dated 24 March	31

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VGSO.5000.0004.7492

- 6 -

2010	and safety concerns purportedly about the references in Court to Gobbo being an 'informant'.	2010-	
26 March 2010	Justice Beach of the Supreme Court of Victoria delivered a judgment saying the CCP did have standing to make a suppression order in the Magistrates' Court in relation to [REDACTED]	VGSO letter to Piper Alderman dated 30 April 2010	49
31 March 2010	Dale's solicitors send letter to VGSO attaching a further Witness Summons dated 31 March 2010 (the <b>Second Witness Summons</b> )	Letter from Tony Hargreaves to Greg Elms dated 31 March 2010 attaching Witness Summons dated 31 March 2010	32
31 March 2010	Piper Alderman writes to VGSO about documents produced to the Court pursuant to the First Witness Summons	Piper Alderman letter to VGSO dated 31 March 2010	33
1 April 2010	VGSO sends 2 letters to Piper Alderman in relation to: 1. security issues against Gobbo. States VicPol can't protect the risk unless she [REDACTED] and 2. How CCP is dealing with the Witness Summonses in Dale committal proceeding in relation to Gobbo.	VGSO letter to Piper Alderman dated 1 April 2010 (x2)	34 & 35
1 April 2010	VGSO (Greg Elms) sends letter to Tony Hargreaves regarding the first and second Witness Summons	Letter from VGSO (Greg Elms) to Tony Hargreaves dated 1 April 2010	36
1 April 2010	VGSO writes to Piper Alderman indicating that the CCP was proposing to make a suppression order application over Gobbo's identity on 12 April 2010 in the Dale committal hearing	Letter from VGSO to Piper Alderman dated 1 April 2010 VGSO letter to Piper Alderman dated 30 April 2010	37 49
6 April 2010	Piper Alderman writes to VGSO in relation to the First Witness Summons, alternate accommodation and security arrangements for Gobbo and the suppression order application of the CCP in the Dale committal proceeding. Indicated that Gobbo was aggrieved that the DPP had been unsuccessful in their application for suppression.	Piper Alderman letter to VGSO dated 6 April 2010	38

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- 7 -

7 April 2010	Dale's solicitors send letter to VGSO attaching a further Witness Summons (the <b>Third Witness Summons</b> ) dated 7 April 2010	Letter from Tony Hargreaves to VGSO (Greg Elms) dated 7 April 2010 attaching Witness Summons dated 7 April 2010	39
9 April 2010	Piper Alderman writes to VGSO stating CCP does not need to apply for a suppression order for Gobbo. States if she is harmed or her medical conditions are exacerbated as a result of the suppression order being lifted, she will hold the CCP and Crown liable	Piper Alderman letter to VGSO dated 9 April 2010	40
19 April 2010	Piper Alderman writes 2 letters to VGSO re: 1. seeking copies of three Witness Summons issued by Dale's solicitors in the committal proceeding; and 2. the safety requirements of Gobbo following the death of Carl Williams.	Piper Alderman letters to VGSO dated 19 April 2010 (x2)	41 & 42
20 April 2010	Piper Alderman writes to Detective Sergeant Shane O'Connell re security arrangements for Gobbo after murder of Carl Williams	Piper Alderman letter to D/S/S O'Connell dated 20 April 2010	43
28 April 2010	VGSO advised by email from Piper Alderman that Gobbo would issue civil proceedings on 29 April 2010 and that Gobbo would oppose any application to have the court file closed.	Email from Mark Waters, Piper Alderman to David Ryan, VGSO dated 28 April 2010	44
28 April 2010	Piper Alderman wrote to Acting Prothonotary confirming that Gobbo would be issuing civil proceedings and would be opposed to any court order closing the court file.	VGSO Advice dated 21 May 2010 to Superintendent Peter Lardner	55
28 April 2010	Piper Alderman wrote to Acting Prothonotary confirming that Gobbo would be issuing civil proceedings and would be opposed to any court order closing the court file.	Piper Alderman letter to Acting Prothonotary dated 28 April 2010	45

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- 8 -

29 April 2010	Nicola Gobbo issued civil proceedings in the Supreme Court of Victoria against the State of Victoria and Christine Nixon (Proceeding No. 2316 of 2010) (the civil proceeding)	Writ and Statement of Claim dated 29 April 2010	46
		VGSO Advice dated 21 May 2010 to Superintendent Peter Lardner	55
29 April 2010	VGSO writes to Acting Prothonotary seeking that the court file be closed due to security concerns for Gobbo despite Gobbo opposing the application.	VGSO letter to Acting Prothonotary dated 29 April 2010	47
29 April 2010	Representatives of the ABC, sought clarification from Magistrate Reardon about the status of a suppression order over the identity of Gobbo. This 'application' was made without notice to the CCP. Magistrate Reardon confirmed there was no suppression order over Gobbo.	VGSO Advice dated 21 May 2010 to Superintendent Peter Lardner	55
	The CCP made an application for an interim suppression order over Gobbo to prevent publication of Gobbo's identity on 29 April 2010 based on risks to Gobbo's safety. An interim suppression order was granted and the hearing was listed for 3 May 2010.	Piper Alderman letter to VGSO dated 29 April 2010	48
	Notwithstanding the interim suppression order, the media published articles over the following week which led to the identification of Gobbo as a witness in the criminal proceedings against Dale.	VGSO letter to Piper Alderman dated 30 April 2010	49
30 April 2010	The media (supported by Gobbo's barrister) applied to Justice Osborn to have the civil proceeding court file re-opened. The CCP did not object to the application given Gobbo's position.	VGSO letter to Piper Alderman dated 30 April 2010	49
		Order of Osborn J dated 30 April 2010	50

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- 9 -

30 April 2010	VGSO writes to Piper Alderman in relation to CCP withdrawing the suppression order application given Piper Alderman's indication they would oppose the application..	VGSO letter to Piper Alderman dated 30 April 2010	49
30 April 2010	CCP writes to Magistrates' Court withdrawing the application for a suppression order on the basis that Gobbo was opposed to the making of the order and disclosures made in the media.	VGSO letter to Magistrates' Court of Victoria dated 30 April 2010	51
6 May 2010	VGSO briefed Michael Wheelahan SC, Rowena Orr and Michael Rush of Counsel on behalf of the Defendants in the civil proceeding	Brief to Counsel dated 6 May 2010	52
7 May 2010	Email sent from Rod Wilson to VGSO in relation to conversations/negotiations held between Rod Wilson and Gobbo (or her representatives) about [REDACTED] as referred to in the Statement of Claim	Email from Rod Wilson to David Ryan, VGSO dated 7 May 2010	53
10 May 2010	Defendants file a Notice of Appearance in the civil proceeding	Notice of Appearance dated 10 May 2010	54
12 May 2010	Michael Wheelahan SC & Michael Rush briefed to advise whether VGSO had a conflict of interest in the civil proceedings due to involvement of David Ryan and Isabel Parsons in [REDACTED] negotiations - Counsel advises no conflict of interest	Brief or advice not provided - please confirm if it is required	-
15 May 2010	Monika Pekevaska and Isabel Parsons (both of VGSO) have conference to discuss negotiations held between Gobbo and Victoria Police regarding [REDACTED]	File note of conference held by VGSO - please confirm if it is required	-
16 May 2010	Gobbo made an application to be excused from giving evidence in the criminal proceedings against Dale saying she was not medically fit.	VGSO Advice dated 21 May 2010 to Superintendent Peter Lardner	55
21 May 2010	VGSO provided advice to Victoria Police about the civil proceeding. Advice dealt with background about Gobbo's dealing	VGSO Advice dated 21 May 2010 to Superintendent Peter Lardner	55

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- 10 -

	with the Petra taskforce, what occurred in relation to suppression at the committal hearing in respect of the murder charges against Dale and general issues to do with the civil litigation (such as recommendations for barristers, key areas of risk, exposure of sensitive information, the discovery process and relevant timelines).		
26 May 2010	VGSO writes to Piper Alderman about charges being withdrawn against Dale and Collins. Note that Gobbo is still at risk and urge her to reconsider her position about the [REDACTED]	VGSO letter to Piper Alderman dated 26 May 2010	56
28 May 2010	VGSO writes an advice about VGSO dealings with Gobbo and also advises that based on limited documents Simon Overland and Christine Nixon were acting necessarily, reasonably and in good faith in the course of their duties.	VGSO Advice dated 28 May 2010 to Superintendent Peter Lardner	57
1 June 2010	Isabel Parsons (VGSO) provides summary of 'without prejudice' meetings and what documents have been exchanged from February 2009 to 4 January 2010.	VGSO file notes dated 1 June 2010 (x2) Please let us know if you require attachments	58 & 59
1 June 2010	Counsel, David Ryan and Monika Pekevka (VGSO) have confidential briefing about Petra Taskforce, Purana Taskforce and Briars Taskforce's contact with Gobbo (Inspector Steve Smith, Inspector Stephen Waddell & Acting Inspector Michael Hughes).	No notes taken	-
1 June 2010	Counsel, Monika Pekevka (VGSO) and Andrew Bona (Victoria Police) have conference with Inspector Steve Smith	Any VGSO file notes returned to VicPol	-
2 June 2010	Michael Rush of Counsel, Monika Pekevka (VGSO) and Andrew Bona of Victoria Police hold conference with Senior Constable Cameron Davey	Any VGSO file notes returned to VicPol	-
7 June 2010	Counsel and Monika Pekevka (VGSO) hold conference with Shane	Any VGSO file notes returned to VicPol	-

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- 11 -

	O'Connell		
11 June 2010	Michael Rush of Counsel, Monika Pekevaska (VGSO) and Andrew Bona of Victoria Police hold conference with [redacted] Lloyd.	Any VGSO file notes returned to VicPol	-
15 June 2010	Counsel and Monika Pekevaska (VGSO) have conference with Isabel Parsons (VGSO)	VGSO file note not provided - please advise if required	-
18 June 2010	Directions Hearing in the civil proceeding before Kaye J. Orders made.	VGSO file note dated 18 June 2010	60
23 June 2010	VGSO (Monika Pekevaska) sent emails attaching a Table of Instructions' to Steve Smith, Shane O'Connell, [redacted] Lana Custovic and Greg Elms seeking further and final instructions regarding the defence	Orders of Kaye J made on 18 June 2010	61
23 June 2010	Monika Pekevaska (VGSO) met with Detective Sergeant Solomon for instructions for defence	Not included - VGSO can provide on request Table titled 'Instructions for Counsel regarding Defence' prepared by VGSO	62
23 June 2010	Conference held with Counsel, VGSO, Fin McRae & Peter Lardner re defence	Any VGSO file notes returned to VicPol	-
24 June 2010	VGSO receives factual responses from Lana Custovic, DPP re Statement of Claim	Not included - VGSO can provide on request	-
25 June 2010	Defence filed in the civil proceedings. VGSO spoke to Shane O'Connell and regarding outstanding queries.	Not provided - please advise if required Defence dated 25 June 2010	- 63

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- 12 -

6 July 2010	VGSO seeks advice from Dr [REDACTED] about Gobbo's claimed medical conditions in the civil proceedings	Not included - VGSO can provide on request	-
8 July 2010	Michael Rush of Counsel, Monika Pekevaska (VGSO) and Andrew Bona (Victoria Police) have conference with Inspector Steve Smith	Any VGSO file notes returned to VicPol	-
9 July 2010	Michael Rush of Counsel, Monika Pekevaska (VGSO) and Andrew Bona (Victoria Police) have conference with Rod Wilson	Any VGSO file notes returned to VicPol	-
13 July 2010	Conference held with Counsel, Monika Pekevaska of VGSO, Andy Bona of VicPol and Dr [REDACTED] to discuss medical condition of Gobbo	Not included - VGSO can provide on request	-
16 July 2010	VGSO writes to Piper Alderman about SMS message containing a security threat and offer to discuss reasonable protection/assistance	VGSO letter to Piper Alderman dated 16 July 2010	64
23 July 2010	VGSO received letter from Piper Alderman (Gobbo's solicitors) in relation to Gobbo's medical injuries and medical expenses	Plaintiff's Particulars of Earnings foregone and medical and like expenses and other expenses dated 23 July 2010	65
27 July 2010	Conference held with Counsel (Michael Wheelahan SC & Michael Rush), VGSO (David Ryan & Monika Pekevaska), Fin McRae, Peter Lardner, Andrew Bona of Victoria Police re settlement scenarios for the mediation	VGSO file note dated 27 July 2010 together with document titled 'Gobbo - mediation'	66
28 July 2010	VGSO advice to Victoria Police about instructions for the mediation on 11 August 2010 and settlement options as advised by Counsel	VGSO Advice dated 28 July 2010 to Superintendent Peter Lardner	67
3 August 2010	Conference with John Cain (VGS), Fin McRae, Peter Lardner and David Ryan regarding the mediation and Ministerial Approval	No notes held	-
4 August 2010	Conference held with Counsel, Monika Pekevaska of the VGSO, Andy Bona of VicPol and [REDACTED]	Any VGSO file notes returned to VicPol	-

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- 13 -

5 August 2010	John Cain and Fin McRae met with Michael Strong of OPI to discuss possible settlement	No notes held	-
6 August 2010	Peter Hanks QC briefed to give advice on liability and settlement options (oral briefing by Michael Rush)	No notes held - oral briefing	-
6 August 2010	John Cain & Fin McRae have meeting with Minister regarding mediation	No notes held	-
6 August 2010	Michael Wheelahan SC, Michael Rush of Counsel, Monika Pekevaska (VGSO) and Andrew Bona of Victoria Police hold conference with Geoff Allway, Witsec	Any VGSO file notes returned to VicPol	-
6 August 2010	Michael Wheelahan SC, Michael Rush of Counsel, Monika Pekevaska (VGSO) and Andrew Bona of Victoria Police hold conference with [REDACTED]	Any VGSO file notes returned to VicPol	-
9 August 2010	VGSO obtain advice from Peter Hanks QC about civil proceeding. Advice is that he agrees that Gobbo is likely to succeed in her claim for compensation and estimates compensation to be \$2,358,518 plus legal costs. Advice forwarded to client, Counsel and John Cain	Memorandum of Advice by Peter Hanks QC dated 9 August 2010	68
10 August 2010	Counsel meet with AC Emmett Dunne re mediation	No notes held	-
10 August 2010	Receive ministerial approval for settlement	Mediation Position Paper dated 10 August 2010	69
11 August 2010	Defendants provided Gobbo and mediator with a mediation position paper	VGSO file note of the mediation on 11 August 2010	70
11 August	Mediation with Gobbo occurred. Alex Chernov was the appointed mediator.	Terms of Settlement dated 11 August 2010	71

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- 14 -

2010			
17 August 2010	VGSO provided a letter to Victoria Police confirming what negotiations had taken place and the outcome of the mediation in the civil proceeding	VGSO Advice dated 17 August 2010 to Superintendent Peter Lardner	72
27 August 2010	VGSO writes to Piper Alderman about continued security arrangements and telephone/internet accounts	VGSO letter to Piper Alderman dated 27 August 2010	73
31 August 2010	Piper Alderman writes to VGSO about safety of Gobbo, telephone/internet account	Piper Alderman letter to VGSO dated 31 August 2010	74
2 September 2010	VGSO writes to Catherine Gobbo about continued security arrangements with Gobbo and telephone/internet accounts	VGSO letter to Catherine Gobbo dated 2 September 2010	75
2 September 2010	Catherine Gobbo writes email to David Ryan, VGSO saying terms offered for Gobbo to [REDACTED] does not meet her medical needs.	Email from Catherine Gobbo to David Ryan, VGSO dated 2 September 2010	75
3 September 2010	Email response from David Ryan to Catherine Gobbo states that the terms of the invitation to Gobbo by Victoria Police to [REDACTED] to her by [REDACTED] have not changed from those conveyed to her by [REDACTED] in July 2010.	Email from David Ryan to Catherine Gobbo dated 3 September 2010	75
24 September 2010	Justice Kaye of the Supreme Court made ordered dismissing the civil proceeding with no order as to costs.	Order of Kaye J dated 24 September 2010	76
17 February 2011	Telephone call between Fin McRae and David Ryan, VGSO, about Cth DPP contacting Gobbo to say she would be witness in the Dale perjury trial. Gobbo claims that this would be in breach of the terms of settlement - VGSO considers it would not be a breach.	VGSO file note dated 17 February 2011	77

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- 15 -

18 August 2011	VGSO provided advice to Victoria Police about the confidentiality provisions of the terms of settlement in the Gobbo v State of Victoria & Ors proceeding in relation to the perjury trial against Paul Dale	VGSO Advice dated 18 August 2011 to Superintendent Peter Lardner	78
17 October 2011	Gobbo writes to Detective Senior Sergeant Boris Buick about being called by the Cth DPP to give evidence against Dale in the perjury proceeding.	Letter from Gobbo to D/S/S Buick dated 17 October 2011	79
23 November 2011	VGSO provides advice about duty of care owed to Gobbo if she is called as a witness by the Cth DPP re the perjury trial against Dale.	VGSO Advice dated 23 November 2011 to Superintendent Peter Lardner	80
21 February 2012	Gobbo writes to Deputy Commissioner Kieran Walshe regarding the witness protection program and being called as a witness in the Dale perjury trial	Letter from Gobbo to DC Walshe dated 21 February 2012	81
20 March 2012	Conference held between Fin McRae, Supt Peter Lardner, Stephen Lee and David Ryan re Gobbo letter to DC Walshe from February 2012	VGSO file note dated 20 March 2012	82
23 April 2012	VGSO writes draft response to Gobbo from DC Walshe which is reviewed by [REDACTED]	Email from David Ryan, VGSO to Fin McRae with attachments dated 23 April 2012	83
20 May 2012	Gobbo writes letter to DC Kieran Walshe re Witness Protection Program and Conduct by Victoria Police	Letter from Gobbo to DC Walshe dated 20 May 2012	84
29 May 2012	VGSO provide draft letter in response to Gobbo to F McRae (on behalf of DC Walshe)	Email from David Ryan, VGSO to Fin McRae with attachment dated 29 May 2012	85
24 July 2012	Letter received from the Victorian Ombudsman to CCP, Ken Lay re Gobbo	Letter from Victorian Ombudsman to CCP dated 24 July 2012	86

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- 16 -

31 July 2012	VGSO writes draft response on behalf of the CCP to the Victorian Ombudsman	Email from David Ryan, VGSO to Peter Lardner with attachment dated 31 July 2012	87
16 August 2012	Conference held with Stephen Lee, Fin McKrae, Peter Lardner & Stuart McKenzie re Dale perjury trial and Gobbo involvement	VGSO file note dated 16 August 2012	88
17 August 2012	VGSO settles affidavit on behalf of Detective Supt Doug Fryer in Dale perjury trial re Gobbo's security risks	Email from David Ryan, VGSO to Doug Fryer with attachment dated 17 August 2012	89

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Document ID : VGSO.5000.0023.0434

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VICTORIAN GOVERNMENT SOLICITOR'S OFFICE

Your reference:

Our reference: 942607

Contact details: David Ryan (direct line)

All correspondence to:

PO Box [redacted] Melbourne 3001 Australia DX 300077 Melbourne

E-MAILED

28 July 2010

Superintendent Peter Lardner Civil Litigation Division Victoria Police Centre DX [redacted] MELBOURNE By email: [redacted]

This document is subject to Legal Professional Privilege

Dear Superintendent Lardner

Gobbo v State of Victoria & Ors - Supreme Court proceeding No 2316 of 2010

Table with 3 columns: Name, Party, Representative. Rows include Nicola Gobbo (Plaintiff), State of Victoria (First Defendant), Simon Overland (Second Defendant), and Christine Nixon (Third Defendant). All defendants are represented by VGSO.

Purpose

- 1. To advise you in relation to the mediation scheduled in this proceeding on 11 August 2010 and to seek your instructions.

Background

- 2. On 13 February 2009, Paul Dale, a former police officer, was charged with the murder of Terence Hodson at Kew between 15 and 16 May 2004. Nicola Gobbo (the plaintiff), a former barrister, was one of the key prosecution witnesses. She is 38 years old.
- 3. Victoria Police conducted a threat assessment in relation to the safety and security of the plaintiff as a result of her agreeing to give evidence against Mr Dale. The threat to the plaintiff was assessed as "Extreme", the highest rating of risk. Victoria Police offered to provide the plaintiff with appropriate protection and assistance [redacted]. However, an agreement was not able to be reached with the plaintiff in relation to the terms of the protection and assistance to be offered to the plaintiff. The main area of dispute has been the plaintiff's refusal to agree to [redacted] Inclusion in the Victoria witness protection program (the Program) is voluntary. [redacted] Another area of difficulty in the [redacted]

Southern Cross: Nauru House 435684

Level 25, 121 Exhibition Street Melbourne VIC 3000 Level 33, 80 Collins Street Melbourne VIC 3000

Tel: +61 3 8684 0444 Fax: +61 3 8684 0449 Tel: +61 3 9947 1444 Fax: +61 3 9947 1499

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- 2 -

negotiations was reaching agreement over the amount of financial assistance that ought to be provided to the plaintiff.

4. The criminal proceeding against Mr Dale was discontinued by the Director of Public Prosecutions on 4 June 2010 as the result of the death of another key prosecution witness.

#### **The civil proceedings**

5. On 29 April 2010, the plaintiff filed proceedings in the Supreme Court naming the State of Victoria, Simon Overland and Christine Nixon as defendants. The plaintiff alleges causes of action in contract, estoppel, breach of fiduciary duty and negligence. The essence of the plaintiff's claim is that she was promised by Victoria Police that, in the event that she agreed to give evidence against Mr Dale, she would be "no worse off" financially or otherwise. She claims to be entitled to compensation up to the sum of \$20,000,000. Most of this amount would appear to relate to future economic loss as the plaintiff claims that her successful career trajectory would inevitably have led to her being appointed a Senior Counsel followed possibly by an appointment to the bench.
6. The plaintiff claims to be suffering from some serious medical conditions. She had a stroke in 2004. She claims that the conduct of Victoria Police has detrimentally affected her health and ruined her career causing her substantial economic loss.
7. We have briefed Michael Wheelahan SC, Rowena Orr and Michael Rush of counsel on behalf of the defendants. A defence drafted by counsel was filed and served on 25 June 2010. In the defence, the defendants deny that there was any promise made to the plaintiff by Victoria Police in relation to the provision of protection and assistance. Further, the defendants claim that, in the event that the Court finds that an agreement was made with the plaintiff, then it is subject to an overarching term of reasonableness.

#### **Mediation**

8. A directions hearing was held in the Supreme Court before Justice Kaye on 18 June 2010. His Honour made an order requiring the parties to mediate the matter by 12 August 2010.
9. A mediation has been scheduled to take place on 11 August 2010. Former High Court judge Ian Callinan has been appointed as mediator.
10. Counsel provided advice in conference yesterday in relation to the plaintiff's prospects of success in the proceeding and also in relation to the damages the plaintiff may be awarded by the Court if she were successful.

#### **Liability**

11. In counsel's opinion, it is very likely that the plaintiff will be successful in her estoppel claim in that the Court will find that she was told by Victoria Police that she would be "no worse off" in the event that she agreed to give evidence and that she then acted to her detriment in reliance on this representation. We agree with counsel's advice.

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- 3 -

### *Quantum*

12. In the event that the plaintiff is successful in her estoppel claim, she will be entitled to damages from the State of Victoria. Counsel have provided advice in relation to the possible awards of damages the plaintiff may receive from the Court. We attach a copy of a table prepared by counsel which identifies five possible scenarios in relation to an award of damages.

#### *Scenario 1*

13. The first scenario is calculated on the basis that the plaintiff is awarded damages to include income support for 5 years at the level she was receiving prior to agreeing to give evidence against Mr Dale. This figure is **\$1,292,788**.

#### *Scenario 2*

14. The second scenario is calculated on the basis that the plaintiff is awarded damages to include income support until the age of 65 at the level she was receiving prior to agreeing to give evidence against Mr Dale **minus** an amount to reflect the plaintiff's income received on the basis that she were successfully re-employed after 5 years. This figure is **\$2,258,518**. In our view, this is the most reasonable option.

#### *Scenario 2b*

15. The third scenario is calculated on the basis that the plaintiff is awarded damages to include income support until the age of 65 at the level she was receiving prior to agreeing to give evidence against Mr Dale. This figure is **\$3,197,148**.

#### *Scenario 3*

16. The fourth scenario is calculated on the basis that the plaintiff is awarded damages to include income support until the age of 65 at the level she was receiving prior to agreeing to give evidence against Mr Dale (increased on the assumption that the plaintiff was appointed Senior Counsel at the age of 43) **minus** an amount to reflect the plaintiff's income received on the basis that she were successfully re-employed after 5 years. This figure is **\$6,121,441**.

#### *Scenario 3a*

17. The fifth scenario is calculated on the basis that the plaintiff is awarded damages to include income support until the age of 65 at the level she was receiving prior to agreeing to give evidence against Mr Dale (increased on the assumption that the plaintiff was appointed Senior Counsel at the age of 43). This figure is **\$7,501,057**.
18. We confirm that counsel are of the view that the Supreme Court is likely to adopt the approach represented by **Scenario 2**. We agree with counsel. However, we emphasise that there is a risk that the Court may award a higher sum of damages possibly based on the calculations identified in the fourth and fifth scenarios.

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- 4 -

#### **Factors supporting a settlement of the claim**

##### *Model litigant principles*

19. As a model litigant, the State of Victoria is obliged to resolve claims fairly and avoid litigation if possible where it is reasonably clear that it is seriously exposed on liability. Given the very clear advice of counsel that the plaintiff is likely to be successful in her estoppel claim, we are of the view that it is the obligation of the State to make all reasonable efforts to settle this proceeding for a reasonable sum.

##### *Exposure of sensitive information*

20. A trial in this case will involve scrutiny of the procedures adopted by Victoria Police in dealing with informers and in obtaining the cooperation of witnesses in criminal proceedings and will involve an examination of the limitations of the Program. The trial is likely to receive a great deal of publicity which could be damaging to Victoria Police and the administration of the criminal justice system.
21. Another sensitive issue which will be exposed in the event this matter proceeds to trial is the history of the plaintiff's relationship with Victoria Police. We understand that the plaintiff has provided information to Victoria Police in matters other than the Dale prosecution and that she may still be providing information to Victoria Police. Clearly, the plaintiff's status as a police informer is highly confidential and sensitive and its disclosure is likely to further increase the risk to her safety.

##### *Discovery*

22. The discovery process in this proceeding will be a significant task. Many, many hours of conversations between police members and the witness are currently being transcribed. This expensive process will need to continue if the matter is to proceed to trial. Further, relevant email communications between the members will need to be extracted from the Victoria Police database.
23. The discovery process will also be complicated by the sensitivity of the information being disclosed. Applications will need to be made objecting to production of many categories of documents on the basis of public interest immunity. Further, it is likely that suppression orders will also need to be made to prohibit publication of sensitive information which is tendered or given in evidence.
24. The sensitivity of the information relevant to this matter will also compromise the ability of counsel to adequately obtain and review the information in preparation for trial. We have already experienced significant difficulties in this regard.

##### *Diversion of police resources*

25. Many police members are likely to be called as witnesses at the trial of this proceeding. In preparation, they will be required to spend a significant amount of time providing detailed instructions to counsel in conference. This will divert the police members away from their core operational activities.

##### *Legal costs*

26. Proceeding to a trial will result in the defendants incurring significant legal costs. We would estimate that the defendants will incur between \$700,000 - \$1,000,000 in legal

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- 5 -

costs between now and the conclusion of a trial. Further, in the likely event that the plaintiff is successful in her estoppel claim, then it is also likely that the defendants will be ordered to pay the plaintiff's legal costs.

**Settlement premium**

27. In our view, there are cogent reasons to support the payment of an additional sum to settle this proceeding over and above the amount that the plaintiff may reasonably be expected to be awarded by way of damages from the Court. This additional sum would represent the value given by Victoria Police on the benefits of avoiding a trial. As identified above, these benefits would include avoiding:
- exposure of sensitive information damaging to the criminal justice system;
  - diversion of police resources; and
  - significant legal costs being borne by the tax payer.
28. In our view, an additional sum in the order of \$1 million dollars would not be inappropriate to reflect the value of these additional benefits. However, ultimately the value placed upon these benefits is a matter for you.
29. We await your instructions in relation to the amount of money that you are prepared to pay to settle this proceeding. If you have any queries, please contact David Ryan or Monika Pekevsk.

Yours faithfully  
Victorian Government Solicitor's Office



David Ryan  
Acting Assistant Victorian Government Solicitor

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**Gobbo - Mediation**

Miscellaneous items	\$ 200,000				
Past loss of income	\$ 100,000				
Pain and suffering	\$ 100,000				
Relocation and reestablishment	\$ 70,000				
Past medical expenses	\$ 30,000				
Other expenses	\$ 500,000				
<b>Sub-Total 1</b>					
	\$ 850,000		\$ 1,292,788		
<b>Scenario 1</b>					
5 years of future income	242.5		\$ 965,730		
Discount rate of 3%					
<b>Sub-Total 2</b>					
	\$ 1,292,788		\$ 2,258,518		
<b>TOTAL</b>					
			\$ 1,292,788		
			\$ 4,828,653		
			\$ 6,121,441		

<b>Scenario 2b</b>					
Sub-Total 1	\$ 500,000		\$ 1,292,788		
Income top-up	\$ 2,697,148		\$ 6,208,269		
<b>TOTAL</b>	\$ 3,197,148		\$ 7,501,057		

<b>Scenario 3b</b>					
Scenario 1	\$ 500,000		\$ 1,292,788		
Income top-up	\$ 6,208,269		\$ 8,001,057		

<b>Scenario 3</b>					
Scenario 1	\$ 850,000		\$ 1,292,788		
Income top-up	\$ 965,730		\$ 4,828,653		

1,170,000 p.a. net after tax, 18 months = 1,352,000 less 21,000 weekly income support.

Claim made for 981,000 required on flow much of 2% net by VPSW.

Average gross income including GST of \$300,000 before tax total \$260,000 less expenses \$66,000 After tax total \$194,000 2.3 years = \$102,000

22 years x \$170,000 = \$3,740,000  
 less 15% for vicariables = \$3,179,000  
 less discount rate of 22 years = 844.0  
 TOTAL = 985,730

22 years x \$300,000 = \$6,600,000  
 less 15% for vicariables = \$5,610,000  
 less discount rate of 22 years = 27.2m  
 less 15% for vicariables = \$5,338,000  
 less multiplier for multiplier

22 years x \$170,000 = \$3,740,000  
 less 15% for vicariables = \$3,179,000  
 less multiplier of 644

22 years x \$170,000 = \$3,740,000  
 less 15% for vicariables = \$3,179,000  
 less multiplier of 603.7

Scenario 1 - Income support at present level for 2 years  
 Scenario 2 - Income support at present level until 65, with new employment after 5 years at net after tax income of \$100,000  
 Scenario 2b - Same as scenario 2 but never works again  
 Scenario 3 - Income support at present level for 5 years, with new employment after 5 years at net after tax income of \$100,000 until 65 assuming would have taken job at 43 and earned a net after tax income of \$450,000  
 Scenario 3b - Same as scenario 3 but never works again

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VGSO.2000.0138.0230

David Ryan/Users/VGSO  
06/08/2010 12:07 PM

To Peter Lardner/MELCENTRAL/VICPOLICE@POL, Findlay  
McRae/MELCENTRAL/VICPOLICE@POL  
cc Andrew Bona/MFG/VICPOLICE@POL, Monika  
Pekevaska/Users/VGSO@VGSO  
bcc

Subject Gobbo

History:  This message has been replied to.

Gents

I refer to the recent discussion between myself, Monika, Fin and John Cain and now confirm the following:

- the Minister's position is likely to be confirmed on Tuesday morning. We are reasonably confident that the Minister will provide approval;
- Michael Wheelahan will call the plaintiff's counsel John Dixon SC and advise that we hope to have obtained Ministerial authority by Tuesday but that there is no guarantee. Michael will advise that we are happy to proceed with the mediation on Wednesday with Alex Chernov although there is a risk that on Tuesday we may need to seek an adjournment if we don't have instructions. If the mediation is adjourned, the plaintiff would be entitled to her costs thrown away being paid by the defendants;
- We will seek a second opinion from Peter Hanks QC in relation to the advice provided by Michael Wheelahan and Michael Rush. Given the time constraints, Michael Rush will identify for Peter the key pieces of evidence Michael Rush and Michael Wheelahan have relied upon for their advice. I have spoken with Peter and he is happy to proceed on this basis.

regards  
Dave

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